

Committee: Planning Applications Committee

Date: 23rd November 2022

Agenda item:

Wards: Hillside

Subject: Objection to the Merton (No.780) Tree Preservation Order 2022 at 50 Ridgway Place, Wimbledon, SW19 4SW.

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Recommendation:

That the Merton (No.780) Tree Preservation Order 2022 be confirmed without modification.

1. Purpose of report and executive summary

This report considers the objection that has been made to the making of this tree preservation order. Members must consider the objection before deciding whether or not to confirm the Order, with/without modification.

2. Planning History

- 2.1 On the 6 May 2022, the Council received a s.211 notification for the following tree work: 'Front Garden:- Ash tree along the front boundary - to fell. Two Elm trees (dead/dying) along the front boundary to fell. Rear Garden:- Mulberry tree to remove the split section and lift the lower canopy to balance the shape by removal of the three lowest major limbs. Holly tree with movement at the base and leaning over the neighbouring garden to fell Two Conifers in the centre to fell.' This was registered as 22/T1435. A s.211 notice gives the Local Planning Authority 6 weeks notice of intended tree work. This means that the Council either allows the work as described to take place after the expiry of 6 weeks, or if there is any aspect that is unacceptable, a tree preservation order must be made to protect a particular tree(s) in order to prevent the work from taking place.
- 2.3 In consideration of this notification, the majority of the work was found to be acceptable, but with the exception of the proposed removal of the large mature

Ash tree located on the front boundary, adjacent to Ridgway Place. The tree surgeon provided no reason for the proposed removal of this tree.

- 2.4 On the 13 June 2022, the Council issued a formal decision to allow the tree work with the exception of the Ash tree and the Merton (no.780) Tree Preservation order 2022 was made and took effect on the 8 June 2022. The plan is appended to this report.
- 2.5 On the 19 August 2022, a planning application (ref: 22/P2556) was submitted for the following proposed development: CONSTRUCTION OF SINGLE STOREY REAR AND SIDE EXTENSION; FORMATION OF A FRONT LIGHTWELL AND STEPS DOWN TO THE EXISTING BASEMENT LEVEL; EXTEND MAIN ROOF OVER EXISTING FLAT ROOF AT REAR AND RECONFIGURATION OF EXISTING DORMER WINDOWS; AND CONSTRUCTION OF NEW FRONT BOUNDARY TREATMENT.
- 2.6 This application is currently undetermined. However, the Ash tree referred to above is shown for retention. The tree report attached to the planning application has assessed this tree as a 'B' category tree and provides the following comments: 'Prominent boundary tree. Early symptoms of Ash Dieback Disease (ADB) within canopy. Slightly sparsely foliated. Currently of moderate landscape value, but of no more than medium-term potential.'

3. Legislative Background

- 3.1 Section 198 of the Town and Country Planning Act 1990 (as amended), empowers Local Planning Authorities to protect trees in the interests of amenity, by making tree preservation orders. Points to consider when considering a tree preservation order are whether the particular tree has a significant impact on the environment and its enjoyment by the public, and that it is expedient to make a tree preservation order.
- 3.2 When issuing a tree preservation order, the Local Planning Authority must provide reasons why the tree has been protected by a tree preservation order. In this particular case 8 reasons were given that include references to the visual amenity value of the tree to the area; that the tree has an intrinsic beauty; that the tree preservation order is in response to a s.211 notification; that the tree makes a significant contribution to the character and appearance to the local area; that the tree forms part of our collective heritage for present and future generations; that the tree is an integral part of the urban forest; that the tree contributes to the local bio-diversity; and protects against climate change.
- 3.3 Under the terms of the provisional status of an Order, objections or representations may be made within 28 days of the date of effect of the Order. The Council must consider those objections or representations before any decision is made to confirm or rescind the Order.
- 3.4 If the tree preservation order is not confirmed, the Ash tree can be removed irrespective of any indications to the contrary in the current planning application.

4. Objection to the Order

- 4.1 The Council has received an objection to the Order from the arboricultural agent acting on behalf of the owner of 50 Ridgway Place.
- 4.2 The objection has been summarised as follows:

- That the tree is exhibiting early symptoms of Ash Dieback Disease. The tree is considered to be in reasonable condition. The agent has carried out a risk assessment based on the Tree Risk Assessment Qualification Methodology developed by The International Society of Arboriculture and has determined the residual risk of this tree is **low**. It is anticipated that a greater risk may be applied to this tree in the next 5 – 10 years. The presence of a tree preservation order will restrict the timely intervention should the tree become dangerous in years to come.
- The agent has been commissioned to oversee all arboricultural elements of the site and has advised the tree should be retained as part of any re-development and that there is a benefit in retaining the tree. Consequently, the threat to the tree's retention caused by the previous s.211 notification is now lost.
- Considers that protection afforded by the conservation area is sufficient legal protection for the tree and that the tree preservation order should be revoked. As trees are a material consideration in the planning process, any disagreements in the future should be dealt with as a refusal of the application on arboricultural grounds.
- That a tree preservation order protects the amenity a tree provides and does not form part of the approach taken by the BS 5837:2012 that provides its method of evaluating tree in relation to the proposed development of a site. Therefore, a tree preservation order should be applied to trees because they are of value and that no additional weight should be given to its protected nature in the determination of a planning application.

5. Planning Considerations

5.1 The Tree Officer would respond to each of the objector's respective points as follows:

- If the disease is present as reported, it has been assessed as being a low risk. Both the Tree Council and the Forestry Commission advise a general presumption against felling living Ash trees, whether infected or not. However, decisions concerning appropriate management, including felling, should be taken as the disease progresses. For the present time, there is no reason why this tree cannot be retained. The legislation provides for speedy decisions in the event of a tree being found to be dead or dangerous, therefore this is not a reason to revoke the tree preservation order.
- The retention of the tree preservation order will ensure that the greatest care will be taken if any site works take place in the vicinity of the tree. It is the correct legal response to a s.211 notification of the proposed removal of a tree in a conservation area. The tree preservation order will allow the Council to seek a replacement place in the event of the Council approving the removal of this tree at any time in the future.
- A tree preservation order identifies trees of importance that should be retained in any potential development. This would remove any element of doubt in an evolving design for a development within a property and is not

a reason to revoke the tree preservation order. It would also eliminate any risk of the tree being shown for removal in any follow-up drawings that may be submitted to discharge a planning condition.

- This point is noted. However, this is not a reason to revoke this tree preservation order. By protecting this tree, the Council is identifying a tree of significance that provides a greater degree of visual amenity value than others that may be set back further within the site and are less visible to the public. Other trees of significance within any proposed development can be protected for other reasons that justify their retention and protection.

6. Officer Recommendations

- 6.1 The Merton (No.780) Tree Preservation Order 2022 should be confirmed without modification.

7. Consultation undertaken or proposed

None required for the purposes of this report

8. Timetable

N/A

9. Financial, resource and property implications

The Order may be challenged in the High Court and legal costs are likely to be incurred by Merton. However, it is not possible to quantify at this time, and may be recoverable from the property owners if the Court finds in favour of the Authority.

10. Legal and statutory implications

The current tree preservation order takes effect for a period of 6 months or until confirmed, whichever is the earlier. There is no right of appeal to the Secretary of State. Any challenge would have to be in the High Court.

11. Human rights, equalities and community cohesion implications

N/A

12. Crime and disorder implications

N/A

13. Risk Management and Health and Safety implications.

N/A

14. Appendices – the following documents are to be published with this report and form part of the report Background Papers

Tree Preservation Order plan

15. Background Papers

The file on the Merton (No.780) Tree Preservation Order 2022
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.