

Committee: Planning Applications Committee

Date: 12th February 2015

Agenda item:

Wards: Trinity

Subject: Tree Preservation Order (No.666) at 30 Bradshaw Close, SW19

Lead officer: HEAD OF SUSTAINABLE COMMUNITIES

Lead member: COUNCILLOR LINDA KIRBY, CHAIR, PLANNING APPLICATIONS COMMITTEE

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Recommendation:

That the Merton (no.666) Tree Preservation Order 2014 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 take the objection into account before deciding whether to confirm the Order, with the recommended modification, or to permit the removal of the tree based on the concerns raised by the objector.

2. Details

- 2.1 On the 18 July 2014, a s.211 notice was submitted to the Council proposing the removal of a Purple leaved Plum tree located within the area of open amenity space that borders Queen's Road, and is positioned directly behind 30 Bradshaw Close. The reason being the tree work was in connection with 'on-going subsidence issues to the property'. No evidence of this claim was

provided. However, planning regulations do not require any reasons to be given in connection with proposals for tree work in a conservation area.

- 2.2 No objections or representations were received in connection with this notification.
- 2.3 The Purple leaved Plum tree is a healthy middle aged specimen and provides a significant level of visual amenity value to the local environment.
- 2.4 As this tree is located in the South Park Gardens Conservation Area, it was decided that a tree preservation order should be made to protect the tree, and to allow the applicant, or others who have an interest in the matter, a chance to provide evidence of the need to remove the tree. The Merton (No.666) Tree Preservation Order 2014, and this took effect on the 5 September 2014. A copy of the plan identifying the location of the tree (referred to as T1) is appended to this report.

3. Relevant History

- 3.1 In 1993, planning consent (ref: 93/P1161) was granted for the redevelopment of a former Council depot into a major new residential development. Part of this development included the retention and conversion of the buildings that front Queen's Road, and which includes the applicants property. The open amenity space formed part of the original planning application and is owned by the London and Quadrant Housing Trust.
- 3.2 After the tree preservation order took effect, the agent provided the tree officer with a copy of a structural engineer's initial assessment of the damage to the property. The assessment is dated 23 May 2014.
- 3.3 The assessor advises that the cracking to the property is of recent origin and '...is typical of that caused by foundation movement. There is an indication of subsidence to the front elevation towards the vegetation in the front garden.' Furthermore '...In all probability, the movement affecting this property can be stabilised by removal of the trees and shrubs to the front but this can only be confirmed following the conclusion of the investigations and a crack monitoring exercise.'

4. Legislative Background

- 4.1 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 is 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.
- 4.2 When issuing a tree preservation order, the Local Planning Authority must provide reasons why the trees have been protected by a tree preservation order. In this particular case 12 reasons were given that include references to the visual amenity value of the tree; that the tree has an intrinsic beauty; that is visible to the public view; that the tree makes a significant contribution to the local landscape; that the tree forms part of our collective heritage for present and future generations; that the tree contributes to the local bio-diversity; and as a supplement to planning ref: 93/P1161.

4.3 This Order is effective for a period of 6 months. If the Order is not confirmed within that period, then the provisional protection afforded by Section 201 ceases to have effect. 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. This Order remains valid, in its temporary state, until the 4 March 2015.

5. Objection to the Order

5.1 The Council received an objection to the Order by the leaseholders who occupy the property. A copy of the same report referred to above was appended to the letter of objection.

5.2 The objectors informed the Council that 'significant structural damage' was also evident in the neighbouring property, no.32, although this is not mentioned in the report. They are of the opinion that: 'Until such time as the subject tree is potentially able to be removed the properties are not able to be Mortgaged, re-mortgaged or insured due to the Structural issues evident and reported. As part of the solution to the above issue [the structural damage] the option to remove the tree is very important.'

6. Planning Considerations

6.1 Members should take into account the advice set out in paragraph 4.1 of this report and bear in mind that the essential purpose of a tree preservation order is to protect the visual amenities of a local area.

6.2 Where incidents of subsidence occur, it is normal procedure to carry out more site investigations, and these regularly include tree root analysis; arboricultural report; soil analysis; monitoring results for 12 months or more; details of foundations; full details of any areas of damage attributed to the subsidence; details of any drainage report; and information of any previous underpinning works or building works to the property. This has yet to be carried out at this property.

6.3 No evidence has been provided in connection with the reported difficulties relating to a mortgage, re-mortgage or insuring the property. However, this is not a material consideration in the matter of this tree preservation order.

6.3 Photographs provided as part of the assessment referred to in item 3.3 above, show a substantial and mature climber abutting the base of the bay window where cracking has been reported. An investigation would assess what, if any, influence this climber has on the bay window area of the property.

6.4 To remove a tree that has a significant visual amenity value in the locality on the basis of an initial opinion of a structural engineer, and without any actual site investigation, would be a premature reaction that could set a harmful precedent to s.211 notices elsewhere in the borough. It is wrong to assume that the mere presence of a tree is insufficient proof as a cause of damage as there may be other causes of the damage to the property that have yet to be identified.

6.5 Should further investigation prove that the tree is the main cause of the damage, then this can be processed through the submission of a new tree works application.

7. Officer Recommendations

- 7.1 The Merton (No.666) Tree Preservation Order 2014 be confirmed, without modification.

8. Consultation undertaken or proposed

None required for the purposes of this report

9. Timetable

N/A

10. 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.

11. 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.

12. Human rights, equalities and community cohesion implications

N/A

13. Crime and disorder implications

N/A

14. Risk Management and Health and Safety implications.

N/A

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

Tree Preservation Order plan

16. Background Papers

The file on the Merton (No.666) Tree Preservation Order 2014
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.