

Committee: Planning Applications Committee

Date: 12th February 2015

Agenda item:

Wards: Wimbledon Park

Subject: Tree Preservation Order (No.665) at Land R/O Milk Depot, 53
Gap Road, 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.665) Tree Preservation Order 2014 be confirmed, but be modified by a correction to the reference on the map referred to under Schedule 1 of the Order to read W1 rather than T1.

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 or not to confirm the Order, with the recommended modification.

2. Details

- 2.1 In a letter dated 15 August 2014, a resident of Ashcombe Road, SW19, requested a tree preservation be made on a large parcel of land located to the

rear of the Milk Depot, because the land supported a wide range of trees and wildlife.

- 2.2 The land is approximately 5477 sq. metres and supports a range of tree species of varying ages across the whole area. In terms of public visibility, the area can be viewed from the bridge over Ashcombe Road, and by the users of the adjacent railway line. More slight and distant views can be glimpsed from the public car park to the rear of the Centre Court Shopping Centre.
- 2.4 Following this request, the Merton (No.665) Tree Preservation Order 2014 took effect on the 8 September 2014. A copy of the plan identifying the location of the wooded area (referred to as W1) is appended to this report.

3. Relevant History

- 3.1 Under the Merton's Local Plan this area of land has been identified as a Site of Importance for Nature Conservation (SINC) and the Green Corridors Policies. Policies CS13 and DM02 apply.
- 3.2 Soon after this tree preservation order was made it became apparent that the land formed part of an emerging proposal for a development consisting of a mixture of housing and workshops, as well as there being a need to safeguard the area for the Crossrail 2 scheme.
- 3.3 More recently, a planning application (ref: 14/P4637) has been submitted proposing an outline proposal for the re-development of the Milk Depot as well as the adjoining Abbey Self Storage depot. Under this proposal the land has been retained as a SINC area.

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 are whether the particular tree, or in this case, a woodland, 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 woodland has been protected by a tree preservation order. In this particular case 9 reasons were given that include references to the visual amenity value of the area of woodland; that the woodland has an intrinsic beauty; that is visible to the public view; that the woodland makes a significant contribution to the local landscape; that it forms part of our collective heritage for present and future generations; that it contributes to the local bio-diversity; and as a support to the Council's policies, referred to above..
- 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 7 March 2015.

5. Objection to the Order

- 5.1 The Council received an objection to the Order by the agent acting on behalf of the landowner. The agent also provided a copy of an arboricultural assessment of the trees on the land.
- 5.2 The agent objected to the Order on two grounds:
- That the Order does not accord with government guidance on the making of TPOs, and;
 - The TPO is an inappropriate use of the Council's powers given that there is no appeal procedure or external oversight when TPOs are made.
- 5.3 The arboricultural report assessed the land and its trees, and identified 10 individual trees using the BS 5837:2012 – Recommendations in relation to design, demolition and construction, which were considered to have some value. The remaining trees are described as 'scrub', 'very young trees' and 'self-sown semi-mature and early mature sycamores of low quality'. The report is critical of the Order for the following reasons:
- There is a typing error in the TPO document (Schedule 1 of the Order refers to T1 rather than W1);
 - Disputes the description of the land being in a residential area as the Merton Policies Map states the land is part of a Locally Significant Industrial Area;
 - The outline of the TPO includes areas without any tree growth;
 - Views of the trees are very limited;
 - An ecological assessment of the site in 2014 concluded that the site has relatively little potential to support protected species;
 - By safeguarding the woodland for the public, it is implied that the public has access to the land, which is not the case;
 - Only one tree, an Oak, merits protection;
 - The protection of those trees as if they were an established woodland is an inappropriate use of the powers to make TPO's.

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 Local Planning Authorities are advised to use tree preservation orders if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. The term 'amenity' is not defined in law, but in protecting trees; authorities should be able to show that protection would bring a reasonable degree of public benefit in the present or future. Ways of assessing the amenity of trees includes the visibility of the tree/woodland. Authorities are advised that at the trees, or at least a part of them, should be visible from a public place. Public access onto the land is not required for that amenity value to exist. Public visibility alone will not be sufficient to warrant an Order, and further criteria should be included in that assessment, such as the characteristics of the tree/woodland, including its

future potential as an amenity; contribution to the landscape; its importance to nature conservation; or a response to climate change. In this particular instance, the land is already identified in Merton's Local Plan as a SINC area.

- 6.3 As the Local Planning Authority, Merton has exercised its powers to issue a tree preservation order on a wooded area of land that is considered to have amenity value. There is no provision within the Act for an 'external oversight', or appeal procedure in the Act. However, should a tree works application be made, and then be refused, the applicant would have a right to appeal against that decision.
- 6.4 The arboricultural report uses the wrong method of assessing the trees. The BS 5837:2012 provides recommendations and guidance on the relationship between trees and design, demolition and construction process. It has no relationship with tree preservation orders.
- 6.5 The Act is not concerned with the species of the trees being protected, as the main focus is the amenity provided by those trees.
- 6.6 Authorities are advised that an Order can be used to protect trees of any size and species. More specifically: 'Orders covering a woodland protect the trees and saplings whatever the size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting'.
- 6.7 The land currently adjoins a residential area, and has a direct bearing on the local environment and its amenities to the public. If the plans submitted under 14/P4637 are fully realised, then the land will become a central focus for an enlarged residential area.
- 6.8 The resident who asked for the tree preservation order, describes the land as being '...home to dormice, squirrels, all kinds of birds (crows, thrush, robins, and some bright green tropical-looking varieties)..'. Whilst the value of the land to nature conservation alone is not a sufficient reason to warrant making an Order, it can be seen as an additional factor for making an Order. An area recognised as having nature conservation interest is not dependent on the inclusion of a protected species. This site has been recognised as having an importance within the Borough and for its role as part of a Green corridor, which links large green spaces to each other and allows animals to undertake movements between different habitats that they require for survival.
- 6.9 There is scope to amend the boundaries of the Order. However, this would be dependent on an accurate tree and land survey being carried out, and for the existing Order to be rescinded and replaced by a new Order.

7. Officer Recommendations

- 7.1 The Merton (No.665) Tree Preservation Order 2014 be confirmed, but be modified by a correction to the reference on the map referred to under Schedule 1 of the Order to read W1 rather than T1.

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.665) Tree Preservation Order 2014
Government Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas.

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