

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

Agenda Date: 4th February 2010

**REPORT OF THE ASSISTANT DIRECTOR OF DEVELOPMENT AND
COMMUNITY STRATEGY**

REFERENCE: Tree Preservation Order No. 21 of 2009 Date: 23rd September 2009

APPLICANT: N/a

LOCATION: Trees on Land at Court Lodge, Lower Road, West Farleigh.

PROPOSAL: Tree Preservation Order (TPO) No.21 of 2009 was made under section 201 of the Town and Country Planning Act 1990 to protect an avenue of Sweet Chestnut trees. One objection to the order has been received and the Planning Committee is, therefore, required to consider this before deciding whether the Order should be confirmed.

CASE OFFICER: Guy Stephens

The recommendation for this TPO decision is being reported to Committee for decision because:

- One valid objection has been received

POLICIES

Maidstone Borough Council, Landscape Character Assessment & Landscape Guidelines, 2000

Government Policy: ODPM, 'Tree Preservation Orders: A Guide to the Law and Good Practice'

PLANNING HISTORY/ BACKGROUND

MA/09/0187 - Change of use of paddocks (part) and engineering operations to construct two car parks for use in association with the residential use of Court Lodge- withdrawn.

MA/09/1126 - An application for listed building consent for change of use of 'cow house' into ancillary residential accommodation for 'Court Lodge'- approved subject to conditions.

MA/09/1127 – An application for change of use of 'cow house' into ancillary residential accommodation for 'Court Lodge' – approved subject to conditions.

TPO No 8 of 2009- Trees on Land at Court Lodge, Lower Road, West Farleigh – revoked on 23rd September 2009. This order was made following the receipt of planning application, MA/09/0187, which potentially had an adverse impact on the trees in question.

The original order, TPO No 8 of 2009 was an area order which covered all the trees within the semi circular driveway. This was made as a matter of urgency and subsequently revoked in accordance with government guidance which discourages the use of area orders. One letter of support and one letter of objection were received to the original order.

A site visit subsequently took place between the Landscape Officer and representatives of the landowner on 11th September following receipt of the initial objection. The Order was, therefore, remade, containing only those trees which fulfilled the criteria for protection, namely the Sweet Chestnut avenue.

The grounds for the making of the most recent order, TPO No 21 of 2009, are as follows: -

The avenue of Sweet Chestnut trees are mature, healthy specimens, prominent from Lower Road and therefore make a valuable contribution to the character and amenity of the area. A previous application to construct two car parks either side of the avenue, (MA/09/0187), has been withdrawn. However, to ensure the Sweet Chestnut trees' future health and longevity it is still considered expedient to make them the subject of a Tree Preservation Order.

The Section 201 direction bringing the order into immediate effect expires on 23rd March 2009.

CONSULTATIONS

The TPO was served on the owner of the land in question and any other parties with a legal interest in the land. One objection has been received to the order, within the statutory 28 day period from its making by Terance Butler Holdings on behalf of the landowner. The full text of the objection is attached to this report as Appendix A.

The grounds of the objection are summarised as follows: -

1. The trees are not under threat.
2. The change in ownership of Court Lodge was the reason for justifying the order.
3. The most recent planning application, MA/09/0187 has been withdrawn.
4. The trees which are subject to the TPO cannot be easily viewed from any public viewpoint and therefore make very little, if any, contribution to the character and amenity of the area.

5. The trees subject to the proposed TPO have a very significant private amenity value for the owner of Court Lodge and his family. The trees are not under threat but essential to the privacy and amenities of Court Lodge and its occupants and it is imperative for them to be retained.
6. The grounds surrounding Court Lodge are not registered historic parkland and the trees within the garden form a valuable screen providing privacy of the owner of Court Lodge. It stands to reason, therefore, that his best interest is served by the retention of all the trees in the garden.
7. The TPO does nothing to ensure the future health of the trees or their longevity as stated within the Council's letter of 23rd September 2009.

REPRESENTATIONS

Neighbouring occupiers were notified of this order. No letters of objection and no letters of support were received.

CONSIDERATIONS

SITE AND SURROUNDINGS

The line of mature Sweet Chestnut, which forms an avenue, starts from the boundary with Lower Road and ends at the front of Court Lodge. The avenue, which runs north to south, is located on open grassland and enclosed by a semi circular drive, extending to either side of the avenue of Sweet Chestnuts.

The trees within the avenue consist of a single line of 11 mature Sweet Chestnuts. A common characteristic of these species is the stems are of significant girth. The present house dates from 1780 and, given the size of the trunks, it is probable that the avenue was planted at the same time. There are an additional 3 replacement trees of the same species which have been planted within the avenue. In order that the avenue is retained as a unique landscape feature it is essential that trees are planted where previous ones once stood. The replacement trees are semi mature and well established but will not reach their potential maximum size for a number of years.

DESCRIPTION OF TREES

The average height of the Chestnuts is estimated at 12 metres and the radial crown spread is approximately 6 metres. All the mature trees have been reduced back to significant growth points which have resulted in them retaining their natural shape. Within the avenue there are four more recently planted trees which have been planted to retain the avenue. Mature trees are not only important to the landscape but also support a variety insects and invertebrates.

LEGAL CONTEXT

Local Planning Authorities (LPAs) may make a TPO 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 Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees should therefore normally be visible from a public place, such as a road or footpath. The benefit may be present or future. It is, however, considered inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

LPAs are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the following key criteria:

- (1) visibility
- (2) individual impact
- (3) wider impact

Officers use an amenity evaluation assessment form based on Government guidance and an industry recognized system which enables Arboricultural Officers to make an objective decision on whether trees fulfill the criteria for protection under a TPO.

However, although a tree may merit protection on amenity grounds, it may not be expedient to make it the subject of a TPO. For example, it is unlikely to be expedient to make a TPO in respect of trees which are under good arboricultural management. It may, however, be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate.

ASSESSMENT OF CASE

CONTRIBUTION TO AMENITY

Along the frontage is a band of deciduous trees which provides seasonal screening for Court Lodge. The Sweet Chestnut avenue can be viewed from Lower Road during autumn and winter months and therefore contributes to the amenity of the surrounding area. The fact that the avenue consists of Sweet Chestnut rather than the more commonly associated Lime, Beech and London Plane species adds to the uniqueness and reinforces the importance the avenue has within the immediate landscape.

Whilst the avenue in its current form may look untidy it is worth noting that the existence of mature trees adds to the visual amenity of the area rather than detracting from the formality of a planned avenue. During the inspection it was noted that the mature trees exhibited signs which would suggest they can be classed 'veteran' trees which are part of cultural heritage of Britain. Such features include fungal fruiting bodies, large girth, decay holes and an old appearance.

RESPONSE TO OBJECTION/S

The response to the principle points set out above is as follows:-

1. Although the trees may not be under threat at the moment there is always the possibility that future applications could be submitted which may result in the avenue coming into direct conflict with future development.
2. The change in the ownership is not reason why the trees have been made subject to a TPO; it is because of the recent application MA/09/0187 which indicated that trees within the avenue would have been affected by the construction of the car parks.
3. Although MA/09/0187 has been withdrawn it does not mean that the TPO should be allowed to lapse. Confirming the order ensures that any future applications duly consider the importance of the trees and that, where they create a constraint, alternative solutions are considered to ensure the trees are retained.
4. Whilst the small woodland at the front provides screening during the summer it is evident that the avenue is visible from the highway during the winter months.
5. During the site visit, it was evident that the avenue and parkland are well maintained by the current owners and are part of the wider landscape which contributes to the character and the amenity of the area. This is not in dispute.
6. The fact the grounds are not registered historic parkland was not one of the considerations when assessing whether the trees were worthy of protection.
7. The making of an Order does ensure the tree's health and longevity through exerting control over its future management.

CONCLUSION:

For the reasons set out above it is considered that there are no grounds of objection which are sufficient to throw the making of the Order into doubt.

RECOMMENDATION:

CONFIRM WITHOUT MODIFICATION Tree Preservation Order No.21 of 2009.