

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

20th MAY 2010

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

REFERENCE: Tree Preservation Order No. 29 of 2009

Date: 16/12/2009

TITLE: Woodland south of Lenham Road, Kingswood.

CASE OFFICER: Guy Stephens

Tree Preservation Order (TPO) No.29 of 2009 was made under section 201 of the Town and Country Planning Act 1990 to protect woodland consisting of coppiced Sweet Chestnut, Oak, Hornbeam, Silver Birch, Holly, Hawthorn and Hazel. 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.

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

- One objection has been received

POLICIES

Advice in PPS9: Ancient Woodland & Other Important Natural Habitats

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

South East Plan, 2009: NRM7 Woodlands.

BACKGROUND

Prior to this making of this TPO the northern part of the woodland was protected under TPO No 2 of 1994. There have been a number of applications to develop this section of land, the most recent being MA/08/1866, which was for the erection of one bungalow with elderly person annexe and associated, works including access and parking. This was refused and an appeal was lodged (APP/U2235/A/09/2105458/WF) which was dismissed.

In December 2009 Landscape Officers became aware that the woodland was up for auction and given the history of the site, it was considered expedient to protect the entire woodland. TPO No 2 of 1994 was therefore subsequently revoked and the new Order made accordingly.

The grounds for the making of the order were stated as follows: -

The woodland consists mostly of coppiced Sweet Chestnut, Oak, Hornbeam, Silver Birch, Holly, Hawthorn and Hazel; all of which are mature, healthy specimens, prominent from Lenham Road which therefore makes a valuable contribution to the character and amenity of the area. The woodland is considered to be under threat due to the impending sale of the land. The southern part of the woodland was identified as ancient woodland in the Provisional Inventory of Kent's Ancient Woodlands, Revised 1994. Therefore it is considered expedient to revoke Tree Preservation Order No.2 of 1994 and make the trees the subject of a new Tree Preservation Order.

The Section 201 direction bringing the order into immediate effect expires on 16th June 2010.

OBJECTIONS

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 the owner. The full text of the objection is attached to this report as Appendix A.

The grounds of the objection are summarised as follows: -

- The wood was purchased to add a woodland dimension to the property and it is to be managed accordingly.
- The Forestry Commission are to provide a woodland management plan following a site visit from the Woodland Officer. This will involve a programme of rotational coppicing.
- In order to implement the proposed planned management of the woodland it would be more beneficial if the TPO was not confirmed.
- The owners are members of the Small Woods Association which will provide guidance for on-going training and advice on woodland management.

REPRESENTATIONS

The order was also copied to any landowners immediately adjacent to the site.

2 letters in support of the TPO has also been received from neighbours. The full texts of the support are attached to this report as Appendix B.

The reasons for this support are summarised below:-

- The area of woodland is ancient and consists of healthy specimens.

- The woodland contributes to the character of the village which is surrounded by coppiced woodland.
- The Tree Preservation Order will ensure the land is retained for the enjoyment of the villagers.
- Walkers regularly enter the land to enjoy this piece of land.
- There is concern that if the trees were removed then it will affect the wildlife within the woodland.
- When advertised for auction it was described as having potential for 'infilling'. This would result in the loss of the woodland.
- The woodland is an impressive and important feature of the area.
- Concern that any development would erode the rural nature of the area.

CONSIDERATIONS

SITE AND SURROUNDINGS

The northern section of woodland which fronts onto Lenham road is narrow, approximately 6 metres in width however the southern part of the site increases in width. The eastern boundary follows the rear garden of Kingsway House and extends south a further 350 metres. The widest part of the woodland extends to the boundary of 'Nine Oaks' which is approximately 155 metres in distance. A vehicle track leading through the site gives access to the larger area to the south.

The woodland as a whole consists of predominantly Sweet Chestnut stools, interspersed with Holly, Birch and Oak stands.

DESCRIPTION OF TREE/S

The Sweet Chestnut stools in the southern part of this site have not been coppiced for approximately 10 years. This is evident by the height and girth of the regenerated stems. Within this section there are a number of mature Oak stands. The boundary along the southern end of the woodland is marked by over mature Sweet Chestnut stools; the purpose of which is to act as windbreak during any coppicing works. The sweet chestnut stools in the northern section have been coppiced. During the most recent planning appeal (APP/U2235/A/09/2105458/WF) an ecological scoping survey was carried out by Kent Wildlife Trust on behalf of the applicant, during which five woodland indicators were found which indicated that the southern part of the woodland was Ancient Woodland, which means there has been a continuous woodland cover since at least 1600AD. Furthermore this section of woodland was identified as ancient woodland in the Provisional Inventory of Kent's Ancient Woodlands, revised 1994. Although there is no physical boundary separating the two sections of woodland the extent of the section of woodland currently protected by TPO No 2 of 1994, is evident because the Sweet Chestnut stools have recently been recoppiced under application TA/0118/07.

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.

RESPONSE TO OBJECTION/S

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

- The reason for purchasing the woodland has no bearing on whether it should be made subject to a TPO. Protecting the woodland should not be seen as a hindrance; rather it allows the Local Authority to have an input on how it is managed. This is particularly relevant as part of the woodland has been identified as Ancient Woodland. Therefore it is important that any future works do not have an adverse effect on the overall structure of the wood.
- To date no woodland management plan has been received.
- The fact that the woodland is subject to a TPO will not in itself prevent the implementation of any works proposed within a management plan. Government guidance, 'Tree Preservation Orders: A Guide to the Law and Good Practice', section 6.41, states that only one application is required

when a programme of works is proposed over a short period of time, for example a 5 year management plan.

- Although the applicant states they are members of the Small Woods Association there is no indication of how they intend to manage the site and this would have no bearing on whether the woodland should be protected.

RESPONSE TO REPRESENTATIONS

The response to the issues arising from the representations set out above is as follows:-

The points raised are in support of the TPO given the recent planning history of the site. It is important that any proposals for tree work in this woodland take into consideration the fact that it is classified as Ancient Woodland and that it is an important feature of the village.

CONCLUSION:

For the reasons set out above it is considered that:

There are no grounds of objection above which are sufficient to throw the making of the Order into doubt.

RECOMMENDATION:

CONFIRM WITHOUT MODIFICATION Tree Preservation Order No. 29 of 2009.

BACKGROUND DOCUMENTS:

406/106/21- TPO No. 29 of 2009 Woodland south of Lenham Road, Kingswood.