

**Maidstone Borough Council
PLANNING COMMITTEE**

REPORT BY THE HEAD OF PLANNING SERVICES

**The Maidstone Borough Council
TREE PRESERVATION ORDER NO 5008/2021/TPO**

5008/2021/TPO Becketts Croft, Malling Road, Teston, Maidstone, Kent

EXECUTIVE SUMMARY

This report seeks the permission of the Planning Committee to allow Tree Preservation Order No 5008/2021/TPO for which objections have been received, to lapse.

FOR DECISION

RELEVANT PLANNING HISTORY

21/500422/TCA - Section 211 notification for various works proposed including the Pollarding of G1 (as numbered in TPO and in s211 notification) - 11 Lime trees from 21m to 7m height and T1 (as numbered in TPO, T4 in s211 notification) - Lime tree from 20m to 8m height.

TPO made in response to notification for works to Lime trees, raised no objection to other works included in notification.

20/502814/TCA - Section 211 notification for various works proposed in The Old Post Office garden but also including crown lifting to 6m T1 (as numbered in TPO) Lime in the garden of Becketts Croft. No objection raised.

SUMMARY TPO INFORMATION

TPO Served Date: 19 May 2021		TPO Expiry Date 19 November 2021	
Served on: Becketts Croft, Malling Road, Teston, Maidstone, Kent Kent County Council, County Hall, Maidstone, Kent Down To Earth Trees Ltd, The Oast, Preston Farm, Shoreham Road, Shoreham The Owner/Occupier, The Old Post Office, Church Street, Teston, Maidstone, Kent			
Copied to: Kent Highway Services Mid Kent Division GIS Team MKIP Teston Parish Council Land Charges Team Planning Applications Unit (KCC)			
Representations		Support: 0	Objections: 13

Main Report

1. Introduction and background

- 1.01 Provisional Tree Preservation Order (TPO) No.5008/2021/TPO - copy attached at Appendix 1 - protects a group of 11 Lime trees as group G1 and a single Lime tree as individual tree T1. The TPO was made on 19 May 2021 and the Council must decide whether or not to confirm (make permanent) the provisional Order before its expiry on 19 November 2021.
- 1.02 The TPO was made in direct response to a conservation area notification (also known as a Section 211 notification), registered under reference 21/500422/TCA. The Local Planning Authority can only respond to such notifications in two ways, either to raise no objection to the works proposed, or to make a Tree Preservation Order to prevent the works. There is not scope for the Council to refuse a notification, grant consent for lesser works or apply conditions in decisions on Conservation Area notifications.
- 1.03 In determining 21/500422/TCA, officers considered the works proposed, and the quality and the amenity value of the trees. 21/500422/TCA contained works to other trees on the property, to which officers raised no objection. However, the Lime trees made subject to the TPO were considered to merit protection on amenity grounds and the works proposed were considered inappropriate arboricultural management. It was therefore considered expedient to make them the subject of a TPO.
- 1.04 In determining whether the trees merited TPO protection on amenity grounds, a standard TEMPO (Tree Evaluation Method for Preservation Orders) assessment was carried out by officers. A TEMPO assessment of group G1 indicates that the trees 'definitely merit protection', scoring 23 (against a benchmark of 16+ to definitely merit protection). Individual tree T1 scored 17, also falling within the 'definitely merits protection' category. It is therefore considered that the trees meet standard amenity criteria for protection.

2. Description of trees

G1 - 11 Lime trees

- 2.01 A linear row of large, mature Lime trees growing on the Western boundary, fronting Malling Road and forming a prominent group. As such they are considered to be a prominent feature of the area, make a valuable contribution to local landscape quality and the character of the conservation area.
- 2.02 The trees are estimated to be up to 20m in height, The trees are generally in good condition, with no significant defects to suggest that they represent an abnormal failure risk. They are considered to have a remaining life expectancy greater than 40 years. Stem structure suggests that the trees have been managed as pollards in the past, with the original pollard points at a height of around 6.5m. The pollard cycle has clearly not been continued through recent decades.

T1 – Individual Lime

- 2.03 A large, mature Lime tree growing on the Southern boundary, adjacent to the rear garden boundary of The Old Post Office. Although less prominent than G1, it is nonetheless considered to be a prominent feature of the area and to make a valuable contribution to local landscape quality and the character of the conservation area.
- 2.02 The tree is estimated to be approximately 15m in height. It is generally in good condition, with no significant defects to suggest that it represents an abnormal failure risk. It is considered to have a remaining life expectancy greater than 40 years. Stem structure suggests that the tree has been managed as a pollard in the past, with the original pollard point at a height of around 7m. The pollard cycle has clearly not been continued through recent years but it has been re-pollarded more recently than the trees in G1, and has also been subject to recent crown lifting works allowed under conservation area notification 20/502814/TCA.

3. Reason why proposed works were considered inappropriate and the TPO was made

- 3.01 21/500422/TCA proposed pollarding all trees in G1 back to the historic pollard point at 7m height. As noted above, it is clear that the trees in G1 have not been pollarded for many years (described as a lapsed pollard) and the proposed works would therefore result in large diameter wounds.
- 3.02 The guidance in BS3998:2010 warns against creating large wounds or creating pruning wounds that have a total cross-sectional area that exceeds one third of that of the main stem. Furthermore, it notes that mature and older trees having a reduced capacity to tolerate the potentially adverse effects of wounding, especially with regard to the development of physiological dysfunction and decay.
- 3.03 Lime also lacks a durable heartwood and the creation of wounds also therefore has a high potential for large wounds to lead to structurally significant decay. In relation to the management of lapsed pollards, BS38998 states:

"7.10 Pollarding

...Once initiated, a pollard should be maintained by cutting the new branches on a cyclical basis. The frequency of the cycle should be decided according to site management objectives, species, age, condition and/or any product that might be required. Selective cutting, whereby some of the pollard branches are retained within each cycle, should be chosen if this would help to prevent dieback and decay in the stem.

Branches that grow after pollarding should normally be cut at their bases in order to encourage the formation of a knuckle after a number of cycles. If, however, the pollard cycle has been allowed to lapse over many years, the crown should instead be reduced to the minimum necessary to fulfil current objectives. These could include the relief of any mechanical stress that would otherwise be likely to cause the stem to split apart.

Even if the stress on an old pollard branch is severe, it should not be cut back to the knuckle, since the removal of all its attached foliage would probably lead to physiological

dysfunction and decay. It should instead be shortened by cutting just above a suitable lateral branch, or failing that, by retaining a live stub from which new shoots could grow.”

- 3.04 It was therefore considered that the reduction of these lapsed pollards back to the original pollard point at approximately 7 metres is contrary to the guidance contained in BS3998. No evidence was submitted or observed to demonstrate that such a significant reduction is necessary in order to address defects or stresses on the trees, such that the negative effects of the proposed works are outweighed by failure risk considerations.
- 3.05 21/500422/TCA proposed pollarding T1 back to the historic pollard point at 8m height. The considerations for T1 Lime were similar to G1, although it is acknowledged that it scored less in the TEMPO assessment and that the size of regrowth indicates that the pollard cycle has not lapsed for as many years as the trees in G1. Notwithstanding this, it was still considered that the proposed works would result in wounds of a size and number that was considered to exceed the recommendations in BS3998. The proposed works were therefore considered to be inappropriate arboricultural management for the same reasons as set out above.
- 3.06 It was therefore considered that that the proposed works were inappropriate arboricultural management and that it was expedient to make a TPO in order to prevent the works notified in 21/500422/TCA from being carried out. The officer view on this remains unchanged.

4. Objections and Representations

- 4.01 A total of 13 objections to the making of the TPO were received, including a detailed report submitted by Sylvanarb on behalf of the tree owners (attached at appendix 2), an objection from Teston Parish Council and 11 objections from local residents, one of which was submitted on behalf of five properties in Readers Court.

Tree Owner / Sylvanarb objection

- 4.02 The Sylvanarb report comprises a fully detailed assessment of the subject trees' current condition. Officers consider this to be an accurate representation. It criticises the timescale of the making of the TPO and that the Council did not enter into discussions with the tree owner prior to making the TPO. This is considered irrelevant as Local Planning Authorities can decide to make a TPO at any time and whilst it would be preferable to enter into discussions in every case, resources do not allow this. In this case, once the conservation area notification had expired, making a TPO was the only mechanism by which the proposed works could be prevented from being carried out.
- 4.03 The Sylvanarb report also discusses the interpretation of BS3998 guidance and refers to additional paragraphs that it argues support the original proposal. After careful consideration of the points raised, officers still consider that their interpretation of the standard remains true, principally that the creation of such large wounds on the trees is likely to lead to structurally significant decay with a high risk of regrowth (growing from a decaying pollard head) subsequently breaking, which would significantly reduce the safe useful life expectancy of the trees.

- 4.04 The Sylvanarb report discusses alternative works to the original proposal that may be suitable, including a phased reduction approach. Officers agree that there is scope for alternative works to manage the trees with smaller crowns. This can be discussed with the applicant or their agent prior to a fresh application or notification being submitted, via the Council's pre-application advice service.
- 4.05 In conclusion, the Sylvanarb report aims to present an alternative approach to the management of the trees, which they hope offers a mutually acceptable solution to the situation. Assuming this is the case they request that the Council consider whether the confirmation of the Order would then still be necessary. Having only ever wanted to manage their trees responsibly, tree owner's preference would be for the TPO to be revoked (or allowed to expire), with the ongoing management of the trees then agreed with the Council through discussions and controlled under the protection of the Conservation Area. Officers consider this to be an acceptable approach.

Teston Parish Council objection

- 4.06 The Parish Council state that they find themselves in a very unusual position in challenging the confirmation of this TPO, whereas they would normally show strong support for the Council's Tree and Conservation Officers. They are keen to demonstrate their green credentials, giving examples, but cannot support this TPO. The Lime trees were pollarded many years ago (probably in the early 1970's), but subsequent maintenance was then neglected. The relatively new owners are showing commitment to rectifying the situation, at considerable personal expense. The Parish and residents living near the trees would welcome the planned work (referring to the works notified under 21/500422/TCA). When the Parish Council discussed the notification, they thought that, at last, some necessary maintenance work would be done and were surprised that, while, in essence, approving the other work, it has been thought unreasonable to reduce those twelve twenty-plus metres high trees back to previous pollarding levels. The reasons why officers considered the proposed works unreasonable are set out above. However, note that allowing the TPO to lapse will not have the effect of permitting the previously notified works.
- 4.07 The Parish consider the trees' context, in that they consider the trees to overawe the house, overhang the pavement and highway and that in the Autumn, they create considerable hazard to pedestrians along the fairly steep pavement, as the fallen leaves get wet and very slippery. They state that they were pollarded many years ago, but then clearly neglected, that their natural growth pattern has been distorted by proximity to the house, resulting in very tall, overbearing and distorted trees that give rise to safety concerns and present far from the normal, pleasing visual impression derived from Limes. Officers do not necessarily disagree with this assessment and believe there is scope for works to reduce the size of the trees and bring them back to a size more suited to their situation whilst minimising the impact on the trees' long term health.
- 4.08 The Parish consider that the resultant shape must adversely affect stability of the trees. That instability is a worry for the house owners and their neighbours. It is also probably contributing to stress on the old wall that, at various points, has cracks and is leaning towards the pavement. That wall is an important part of the street-scene. Officers have not

observed any evidence, and none has been submitted, to indicate that the trees are unstable. Fear of trees failing, in the absence of such evidence is not normally considered justification for works to trees of amenity value. Similarly, problems caused by litter from trees is rarely considered grounds to carry out works as it tends to be seasonal and, whilst inconvenient, can be tackled by other means such as regular clearance of fallen leaves.

- 4.09 The Parish Council state that the Limes really need major maintenance, with the objective of bringing them back, eventually, to a shape and height appropriate to their location amongst buildings and along a busy road. There are old pollarding points that the owners wish to cut back to. Cutting perhaps 12-14 metres to get back to previous pollarding points may “shock” the trees and encourage them to sprout extensively from the base. That would require further ongoing maintenance, but perhaps a phased programme of height reduction back to the old pollarding points over a year or so may reduce the risk or extent of such sprouting. Radical maintenance is required to remedy past neglect and to stabilise the trees, but such work requires to be planned and executed carefully, perhaps even in stages, to assure on-going health of the trees. Such maintenance is, in our view, essential for long-term sustainability. Officers agree that the reduction originally proposed would be a significant shock to the trees, with the risk that they may not recover and that would also create unacceptably large wounds that would lead to future decay problems. A phased reduction, as also suggested in the Sylvanarb report is likely to be more acceptable from an arboricultural viewpoint.

- 4.10 The Parish Council request that:

- the TPO be withdrawn;
- radical maintenance be permitted; and
- if the Council wishes, a TPO re-presented after that radical maintenance, to protect the re-pollarded Limes, but permitting, without fresh Conservation Area Notification or TPO-related procedure, re-pollarding at reasonable future intervals by suitably qualified personnel.

Without such pragmatic way forward, the Parish Council are concerned for the future stability and integrity of these trees. They would regret their continuing adverse impact on visual amenity at this location and their continuing threat to owners and neighbours derived from instability. Without radical work, we fear their probable future disappearance through structural failure.

- 4.11 Officers are recommending that the TPO is allowed to lapse, effectively withdrawing it. This will not allow the radical works originally proposed, and the trees will still continue to enjoy the protection afforded by their conservation area location, meaning that any future works proposals will need to be the subject of a fresh conservation area notification. If any future works proposals are considered inappropriate management, a fresh TPO would be made in response, but there would be no need to make a TPO if the trees are being managed in a way that the Council considers appropriate. The legislation does not make it possible to make a TPO that exempts certain operations without the need to follow the usual application or notification processes.

Local resident objections

4.12 A further 11 objections, from 15 properties were received. The main grounds of objection are summarised below.

- Concern about height and size of the trees and fears that they may fail. They stretch across Malling Road and their size is intimidating.
- Loss of light caused by the trees.
- Risk of damage to property.
- Damage to the pavement outside Becketts Croft causing a trip hazard.
- Damage to the front wall of the property caused by roots.
- Slip hazard for pedestrians caused by fallen leaves and twigs on a well-used route to local amenities.
- Highway safety - hazards and increased braking distance for cars caused by fallen leaves and leaves blocking highway gutters causing localised flooding, motorists avoiding debris and darkened area caused by the canopy restricting motorists' view, on a hazardous blind bend. Branches and debris have been dislodged by agricultural and heavy goods vehicles that use the road.
- The trees should be removed completely as the risks far outweigh the very limited contribution to amenity and local landscape character that has been stated as the reasoning for the TPO.
- Local residents were not consulted prior to the TPO being made.
- The trees are on private land, behind a wall, on a bend that can't be appreciated by anybody as there is no safe place to be able to stand/sit and take in their overwhelming size and presence. They add little visual amenity to the village and have become a liability and an irritation.
- The trees are severely overgrown and desperately need controlling and reducing to the scale of the property, so that they are in keeping with the Local Landscape Character.
- It is not feasible to expect the owner of Beckett's Croft to be aware of the stability of each branch, of which most are hidden behind a wall of greenery. Risk and liability could be reduced if the trees were pollarded to a manageable controlled state, the owner is trying to be accountable, and lessen the hazards significantly.
- Nuisance caused by sap throughout the summer and constantly shed branches and leaves.
- The trees have been unmanaged by previous owners and allowed to grow unchecked, and are now scruffy or unsightly.
- Beckett's Croft is a property of beauty and central to the character to the village of Teston and is now greatly concealed by these rather large trees. When first planted and in their

early years, these trees would have enhanced the character of Beckett's Croft, but now having grown to their current size, ironically diminish the character of the building.

- The trees are in a conservation area and as such, benefit from protection against any work or modification that would be detrimental or decrease the amenity value enjoyed by the residents of Teston. With the powers already granted, a TPO appears both unjust and excessive.

4.13 Officer response to local resident objections:

The objections received largely centre on a perceived need for works to the trees. This report is not considering any works proposals, only whether the TPO should be confirmed or allowed to lapse. Allowing the TPO to lapse will not have the effect of permitting works. Future works proposals would still need to be the subject of a fresh conservation area notification or, if the TPO is confirmed, a TPO application.

Local Authorities do not need to consult with local residents prior to making TPOs. The TPO process allows comments to be made on a provisional Order before the decision is made whether or not to confirm it.

None of the issues raised regarding the cited problems caused by the trees are considered to be grounds for not confirming the TPO. There is no evidence to suggest that the trees are currently at risk of failure or that it would be otherwise inappropriate for them to be subject to TPO controls.

Some residents have expressed the view that the trees do not have amenity value. This is addressed above in the TEMPO assessment results.

5 Appraisal of case

- 5.01 It is considered that the trees merit TPO protection on amenity grounds, evidenced by the standard TEMPO assessment. It is also considered that the making of the TPO in response to conservation area notification 21/500422/TCA was an appropriate response to prevent works that would be harmful to the trees' long-term health, structural integrity and contribution to amenity.
- 5.02 If the TPO is confirmed, the trees will become permanently subject to a Tree Preservation Order. Any future works proposals would then need to be applied for via the TPO application procedures, which has the advantage of a right of appeal for the applicant, the ability for the Council to grant consent for lesser works than those applied for and the ability to impose conditions on permissions.
- 5.03 If the TPO is allowed to lapse, the trees will continue to enjoy the protection of conservation area status and any future works proposals would need to be the subject of a conservation area notification. This has the disadvantage that the Council can only respond in two ways, either to make a TPO to prevent the works notified, or to raise no objection the works exactly as proposed. There is no mechanism for appealing the decision on a conservation area notification and the Council cannot give permission for lesser works than those notified, nor apply conditions to decisions. It has the advantage of a less onerous application process and faster decision timescales.

- 5.04 The tree owner submitted conservation area notification 21/500422/TCA in good faith, on the basis of advice received from tree surgeons, believing that advice would be considered good management, perhaps not realising that this could result in the making of a TPO if the Council considered the proposed works to be inappropriate management. They have now sought the advice of a professional arboriculturalist who is advising alternative works that are more likely to be considered appropriate management by officers, and a desire to discuss future works proposals prior to submission. The tree owner is therefore demonstrating an intention to manage the trees appropriately, which considerably reduces the expediency for the trees to be subject to a TPO.
- 5.05 There is considerable local support for works to the trees. However, this is not what the Council is considering. In deciding whether to confirm the TPO or to allow it to lapse, either outcome will not permit works to be carried out. The effect of the Council's decision on the confirmation of the TPO will only serve to determine whether future works proposals will need to be made via a TPO application or a conservation area notification.

6. Conclusion

- 6.01 This is a balanced case. The trees merit protection on amenity grounds, but the owner clearly intends to approach future works in such a way that the threat of inappropriate management is significantly reduced and have expressed a clear desire for the trees to not be subject to a TPO. The Council would continue to have control over future works proposals due to the trees' location in a conservation area. If future works proposals were again considered to be inappropriate management, the Council could respond by making a new TPO. On balance, it is not considered expedient to confirm the TPO and it is therefore recommended that it is allowed to lapse.

7. RECOMMENDATION

- 7.01 Allow Tree Preservation Order No 5008/2021/TPO to lapse on 19 November 2021.

Contact Officer: Nick Gallavin

Planning Committee
18 November 2021

Appendix 1
Copy of Tree Preservation Order No. 5008/2021/TPO

Planning Committee
18 November 2021

Appendix 2
Copy of Sylvanarb objection report