

**MAIDSTONE BOROUGH COUNCIL**

**PLANNING COMMITTEE**

**19th APRIL 2012**

**REPORT OF HEAD OF PLANNING**

REFERENCE: Tree Preservation Order No. 19 of 2011    DATE: 10 November 2011

TITLE: Trees rear of 12, 14, 16 Ashdown Close, Maidstone

CASE OFFICER: Nick Gallavin

Tree Preservation Order (TPO) No.19 of 2011 was made under section 201 of the Town and Country Planning Act 1990 to protect three Pine 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.

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

- One objection has been received

**POLICIES**

Government Policy:        PPS1, Delivering Sustainable Development- Protection & Enhancement of the Environment  
   CLG, Tree Preservation Orders: A Guide to the Law & Good Practice

Local Policy:                Maidstone Borough Council, Landscape Character Assessment and Landscape Guidelines, 2000

**BACKGROUND**

The Council was made aware of an intention to fell one or more mature Pine trees in the rear gardens of properties on the west side of Ashdown Close. The reasons for felling were not known.

A site visit was carried out the Landscape Officer on 7 November 2011 and the trees were viewed from public viewpoints only. Three trees, all Pines, were noted to be particularly prominent in the landscape, being visible from Ashdown Close and the A26 Tonbridge Road. As such they were considered to make a valuable contribution to the character and amenity of the area.

The trees exhibited some evidence of previous pruning works but appeared to be in good condition with apparently healthy density and colour of needle growth.

Although one tree was known to be directly under threat, it was not known with certainty which one. Furthermore, to protect only one tree could result in the felling of the unprotected ones in response to the making of the Order.

It was therefore considered expedient to protect all three trees, which are equally prominent.

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

The three Pine trees are mature, apparently healthy specimens, prominent from Ashdown Close and the A26 Tonbridge Road and therefore make a valuable contribution to the character and amenity of the area. The trees are considered to be under threat from an intention to carry out felling works. Therefore, it is considered expedient to make the trees the subject of a Tree Preservation Order.

The provisional Order expires on 10 May 2012.

**OBJECTIONS** (*objection/s from those parties served with the order*)

The TPO was served on the owners/occupiers of the land in question and any other parties with a legal interest in the land.

One formal objection has been received to the order in respect of T1 only, within the statutory 28 day period from its making by the owner/occupier of 12 Ashdown Close. 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 area is very well wooded. T1 does not make a valuable contribution to the character and amenity of the area.
2. The TPO fails to consider the effect on the occupant and owner.
3. T1 is not in good condition, with no branches on the lower half, and some branches appear to be dead. Branches sometimes fall from the tree.
4. Pine needles frequently block gutters and drains.
5. T1 is a potential hazard to persons and property, being taller than the distance it is from the house, so severe damage would occur if it failed. This causes the owner constant anxiety and stress. An identical tree has failed on the property in the past, causing extensive damage to gardens and the properties No.10 and No.12. The TPO is unreasonable because harsh weather conditions cannot be excluded and Maidstone Borough Council takes no responsibility and provides no compensation in the event of damage or injury.
6. It has not been found necessary to issue a TPO in the 49 years since the house was built and this has now been done without discussion with the owner.

A representation and further email was also received in response to the making of the order, within the statutory 28 day period from its making by the owner/occupier of 16 Ashdown Close. Although the representation does not state that it is a formal objection, members are requested to consider the issues

raised before deciding whether the order should be confirmed. The full text of the representation and email are attached to this report as Appendix B.

The issues raised in the representation and email are summarised as follows: -

1. The trees are close to houses.
2. No.16 had to be underpinned in 1983. The presence of mature trees may have contributed to the need for this to be done.
3. A tall pine in the garden of No.14 blew down in the 1987 hurricane, causing damage to No.10.
4. The three tall, old and heavy trees could cause serious damage to houses and risk to life.
5. The TPO may seriously reduce the value of their home.
6. Extant planning permissions in the adjacent property (The Poplars Nursing Home) mean that there is a danger that the demolition of concrete floors and the formation of hard surfaces could damage the roots of T3 and T2.

## **CONSIDERATIONS**

### SITE AND SURROUNDINGS

The trees are growing in the rear gardens of detached dwellings in Ashdown Close, a residential cul-de-sac. Adjacent and to the west of the rear gardens is the access drive and grounds to the front of The Poplars Nursing Home, Tonbridge Road. Ashdown Close is in an elevated position relative to the A26 Tonbridge Road, so the Pines appear as skyline trees from viewpoints on the A26. The character of the area is generally urban or suburban.

### DESCRIPTION OF TREE/S

The trees are all mature Pines and appear to be in a healthy condition with no significant visual defects.

T1 is growing in the garden of No. 12 Ashdown Close and reaches a height of approximately 22 metres, with a radial crown spread of approximately 3 metres. Stem diameter is estimated at 60cm. The tree has no lower branches below approximately half of its total height.

T2 is growing in the garden of No. 14 Ashdown Close and reaches a height of approximately 24 metres, with a radial crown spread of up to 8 metres. Stem diameter is estimated at 70cm.

T3 is growing in the garden of No. 16 Ashdown Close and is estimated to reach a height of 18 metres, with a radial crown spread of up to 8 metres. Stem diameter is estimated at 70cm. The tree has lost its central leading shoot in the past, consistent with storm damage as described by the owner.

### 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:-

1. Whilst other mature trees are present in the area, it is considered that T1 makes a valuable contribution to the character and amenity of the area, particularly from the A26 Tonbridge Road, from where it is a skyline tree, but also from Ashdown Close. The fact that it stands apart from T2 and T3 is not considered to reduce its value.
2. Tree Preservation Orders do not take account of the personal circumstances of tree owners. They are generally made to protect the public amenity afforded by trees that are potentially placed under threat.
3. T1 appears to be in reasonable condition. No significant dead branches were noted from ground level inspection. Evidence of a previously broken branch can be seen in the upper crown, consistent with old

storm damage. Some minor deadwood would be expected with a tree of this age. Any significant deadwood or broken branches could be addressed as exempt works and would not require an application to be made under the TPO.

4. Whilst inconvenient, Pine needle litter is a natural occurrence that should be expected and accepted in the vicinity of mature Pine trees and is not normally considered to be sufficient justification to fell trees.
5. No visual indications suggest that there is of an abnormal risk of failure of T1 and no evidence had been provided to that effect. Estimates of the trees height and stem diameter indicate that the ratio between the two (the 'slenderness' of the tree) falls within acceptable limits and no significant structural defects have been observed. The confirmation of the order would not prevent the owner of No.12 from making an application for works, or from carrying out emergency or 'exempt' works if they become necessary. The failure of other trees in the past is not considered to be a reason not to continue to protect T1, approximately 25 years since that event. Extreme weather events can result in the unpredictable failure of trees and can result in damage and injury, but this is not considered to justify the felling of a tree simply because it is within falling distance of a property. The making of a Tree Preservation Order does not transfer any responsibility to the Council. Compensation liability does not arise as a result of the making or confirmation of a Tree Preservation Order, but can arise as a result of a refusal of consent following an application in the future.
6. A Tree Preservation Order has not been made in respect of these trees in the past. This order was made because it was considered that the protection of the trees was expedient. It is not usual to discuss the making of an order with owners prior to them being made, as this could result in trees being felled before the making of an order is completed.

#### RESPONSE TO REPRESENTATION/S

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

1. The issue of trees being close to houses is addressed above.
2. The representation only states that the underpinning works may have been necessary due to the presence of mature trees and could therefore be entirely unrelated.
3. The Pine blowing down in the 1987 hurricane and causing damage to No.10 is thought to be the same tree referred to in the objection and is therefore addressed above.
4. No evidence has been put forward to indicate that the trees exhibit an abnormal risk of failure that would result in serious damage to houses or risk to life.
5. A reduction in the value of a property is not considered to be a reason not to confirm the order. The presence of mature trees is often considered to increase the value of properties.

6. The current planning consent, MA/11/0271, has conditions attached which require details to be submitted in respect of tree protection, intended to prevent unacceptable levels of tree root damage, in accordance with current British Standards.

#### OTHER CONSIDERATIONS

It has been brought to the Council's attention by a third party that the making of the order has caused considerable distress to the owner/occupier of No.12 Ashdown Close. It is understood that the distress results from a fear that the tree in their garden may fall, causing damage or injury and that the making of the order prevents action from being taken to remove the risk that is causing the constant anxiety and stress.

The making of an order seeks to control works to trees considered to be of public amenity value that are under threat and does not take account of individual personal circumstances. However, in order to minimise further distress, the owner has not been contacted directly by officers. Access to inspect the tree from the owner's garden in the context of the objection was requested via the third party but was unfortunately not possible. The tree has therefore only been viewed from the adjacent property and from public viewpoints and stem diameter has been estimated from the adjacent driveway.

#### **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.19 of 2011.

#### **BACKGROUND DOCUMENTS:**

406/100/343 - TPO No.19 of 2011  
MA/11/0271 (renewal of MA/08/1483)