

# **MAIDSTONE BOROUGH COUNCIL**

## **PLANNING COMMITTEE**

### **REPORT OF THE HEAD OF PLANNING**

REFERENCE: Tree Preservation Order No. 20 of 2011

TITLE: Tree at 591 Loose Road, Maidstone, Kent

AGENDA DATE: 7 June 2012

CASE OFFICER: Nick Gallavin

Tree Preservation Order (TPO) No.20 of 2011 was made on 30<sup>th</sup> November 2011 under section 201 of the Town and Country Planning Act 1990 to protect one Horse Chestnut tree. One objection to the making of the order has been received and therefore the Council is required to consider this before deciding whether the TPO should be confirmed.

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

- Councillor Hogg has, following notification that the Landscape Officer was minded to allow the order to lapse, requested it be reported to planning committee for consideration on the grounds that felling of the tree would be detrimental to the character and amenity of the area.

#### **POLICIES**

Government Policy: NPPF 2012  
DCLG, 'Tree Preservation Orders: A Guide to the Law and Good Practice'

South East Plan 2009: C4

MBC: Maidstone Landscape Character Assessment 2012  
Landscape Guidelines 2000

#### **BACKGROUND**

At the time of the making of the order, it was understood that the owner of the Horse Chestnut tree was under pressure to fell it and may have been considering doing so. As a result, it was considered expedient to protect the tree by the making of a TPO.

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

The Horse Chestnut tree is a mature, healthy specimen, prominent from the A229 Loose Road and therefore makes a valuable contribution to the character and amenity of the area. The tree is considered to be under threat due to previous root damage and potential felling. Therefore, it is considered expedient to make the tree the subject of a Tree Preservation Order.

The Section 201 direction bringing the order into immediate effect expires on 30 May 2012. Despite the fact that the direction expires before the date of this Committee, under current legislation, this order can still be confirmed at any time up until 5 October 2012.

Since the TPO was made a tree application has been submitted by the neighbour at 589 Loose Road, reference TA/0041/12. The application proposal is to cut back branches overhanging 589 Loose Road. This report does not consider the merits of that application. However, if the Tree Preservation Order is allowed to lapse, the decision on that application will no longer have any effect.

## **OBJECTIONS**

The TPO was served on the owner/occupier 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 neighbour at 589 Loose Road. The full text of the objection is attached to this report as Appendix A.

The grounds of the objection/s are summarised as follows: -

The tree is in the wrong place and too close to his property. It has created a lot of concern and hard work, necessitating daily sweeping of leaves in Autumn and blossom in Spring to prevent his car from sliding on the sloping driveway.

The tree has caused thousands of pounds worth of damage to the driveway, cracking tarmac and lifting large chunks.

The owner is unable to leave his car at the entrance of his driveway because falling twigs, branches and nuts could damage the vehicle.

Massive roots are visible which are damaging his retaining brick wall.

Falling debris endangers public safety, including school children that wait for the bus at the entrance to his driveway.

The tree is not old enough to warrant a Tree Preservation Order.

The tree is riddled with disease; the leaves turn brown and shrink in May and June and drop off.

## **REPRESENTATIONS**

No other representations were received.

## **CONSIDERATIONS**

### **SITE AND SURROUNDINGS**

The tree is growing in the northwest corner of the front garden of 591 Loose Road. It is in an elevated position relative to the level of the A229 Loose Road and is visible from multiple public viewpoints. Its location is adjacent to a busy main road in a suburban area. The property in which the tree is growing is a corner plot, at the junction of Loose Road and Norrington Road. Surrounding tree cover is moderate to low.

### **DESCRIPTION OF TREE**

The tree is a mature Horse Chestnut, reported by the owner to be around sixty years old. It reaches an estimated height of ten metres with a radial crown spread of five metres and a stem diameter (measured at 1.5m above ground level) of 55 centimetres.

The tree is generally in good health and condition. A number of small pruning wounds are present throughout the crown, consistent with previous selective branch removal. The tree owner verbally confirmed that a tree surgeon was employed to carry out some works to the tree approximately four to five years ago. There is also evidence of crown reduction on the north side, consistent with the tree having been previously cut back to the boundary by the neighbour at 589 Loose Road.

### **BACKGROUND TO THE MAKING OF THE ORDER**

The neighbour and the owner both report that the leaves of the tree turn brown early in the season. This is consistent with damage by the now widespread Horse Chestnut leaf miner insect and can result in premature defoliation, but is generally not regarded as affecting the overall health of the tree in a significant way. Continuing repeated defoliation, especially when it occurs early in the growing season, may lead to an overall gradual decline in tree vigour, but death occurs rarely and is usually found to involve other factors, such as bacterial canker.

The crown of the tree overhangs the drive of 589 Loose Road to the north by approximately one metre, consisting largely of regrowth since it was last pruned. The crown also extends over the pavement, highway and bus stop to the west, but this does not appear to conflict with vehicles or pedestrians at this time. No overhead cable conflicts were noted, but a telephone cable is present to the east side, just clear of the current crown spread.

A large root, probably from this tree can be seen growing between two retaining walls on the northern boundary. Photographic evidence dated 2006 and 2007 has been provided by the owner to demonstrate damage to this root, including drilling of holes and saw cuts. This damage is still visible and consistent with the

operations described. The presence of surface roots with minor associated damage, within the tarmac driveway of 589 was also noted.

The tree is prominent and is considered to make a valuable contribution to the character and amenity of the area. In an amenity evaluation assessment, the tree scored 17.5, just exceeding the benchmark score of 17, suggesting that it just meets the criteria for protection on amenity grounds.

At the time of the making of the order, it was understood that the owner of the tree was under pressure to fell it and may have been considering doing so. Where the owner is under pressure to fell the tree, a Tree Preservation Order gives the Council control over the decision to fell and enables replanting to be secured, should the tree ultimately be felled.

### 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

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

Whilst inconvenient, the need to sweep leaves and blossom is not normally considered to be a reason not to confirm a Tree Preservation Order.

Minor tree root damage to the driveway surface is clearly visible, but other trees are present to the North that could be wholly or partly responsible for the damage. If the Horse Chestnut is found to be causing some or all of the damage, this could be addressed by an application to carry out root pruning works and is not grounds to not confirm the order.

The risk of falling twigs, branches and nuts damaging a vehicle at the driveway entrance is considered low, particularly as the crown does not currently extend significantly over the drive due to previous pruning. There is also a significant area of hardstanding at the property, providing alternative positions to leave a vehicle.

One large root is visible as described in above. The neighbour stated verbally during a site visit by the Landscape Officer that the presence of this large root has prevented the newer section of the retaining wall from being continued as he would have wanted. However, no recent damage to structures was noted during the site visit

A bus stop is present adjacent to the tree, which the crown overhangs, but no defects were noted that would indicate an increased or abnormal risk of falling debris and no significant deadwood was noted during inspection.

The age of a tree does not impact on the Council's ability to make or confirm a Tree Preservation Order. However, its size and anticipated safe useful life expectancy are considered in the amenity assessment.

The leaves turning brown and dropping off are probably due to Horse Chestnut leaf miner. This is discussed in the main body of the report.

## EXPEDIENCY

At this time, the tree scores just enough in an amenity assessment to indicate that it merits protection on amenity grounds. However, its score is very close to the benchmark and its continued protection is therefore considered to be a balanced issue.

The tree was originally protected on the grounds that it was under threat due to previous root damage and potential felling. It is clear that the neighbour at 589 Loose Road would rather see the tree removed but that the owner at 591 has no intention of allowing this. The owner is only able to control works to the tree within his own property boundaries, but this includes control of felling.

Continuing protection by a TPO would enable the Council to control works to the tree that the neighbour at 589 may choose to carry out under common law rights. The neighbour is able, without the owner's consent, to cut back the parts of the tree that trespass onto his property. This right has been exercised in the past, with overhanging branches. As it has been done before, doing so again would, in my opinion, have little impact on the health or amenity value of the tree at this time. However, the past pruning has left a slightly unbalanced crown and if carried out on an ongoing basis, would have an increasing impact on the crown shape as the tree grows and the crown increases in size.

The right to cut back the parts of the tree that trespass onto his property has not been exercised in the same way with roots, but I consider that it could be without detriment to the tree's long term health and stability. The large root described is already severed, so it is unlikely to be contributing to water and nutrient uptake. It would be reasonable to expect that the level change between the two gardens will have restricted rooting into the neighbour's property at driveway level, so severing any roots present beneath the drive of 589 Loose Road is unlikely to have a significant impact on the tree.

The matter of expediency has therefore been reconsidered. The threat of felling is no longer a consideration as this is controlled by the owner, who wishes to retain the tree. The neighbour may choose to exercise common law rights to cut back trespassing parts of the tree, but this is unlikely to be detrimental to the long term health of the tree.

It would not be appropriate, in my opinion, for the Council to use a Tree Preservation Order to lend support to a tree owner where the owner retains control over works to the tree. A difference of opinion exists between two neighbours and there is an ongoing dispute, but the tree's contribution to the character and amenity of the area is not directly under threat as a result.

### **CONCLUSION:**

The confirmation of the Tree Preservation Order is a balanced case on amenity grounds but the objection received does not raise any issues which are sufficient to throw the making of the Order into doubt.

The tree owner is strongly opposed to the felling of the tree despite pressure from the neighbour. It is therefore not considered expedient for the Council to continue to protect the tree as the owner ultimately has control over works to the parts of the tree within his property.

### **RECOMMENDATION:**

ALLOW TO LAPSE Tree Preservation Order No. 20 of 2011.

### **BACKGROUND DOCUMENTS:**

406/100/344- TPO No. 20 of 2011