

# **MAIDSTONE BOROUGH COUNCIL**

## **PLANNING COMMITTEE**

**20<sup>th</sup> March 2014**

### **REPORT OF THE HEAD OF PLANNING AND DEVELOPMENT**

REFERENCE: Tree Preservation Order No. 1 of 2014      Date: 9<sup>th</sup> January 2014

TITLE: Tree within grass verge of Courtlands to the south of Dolly Bees, Malling Road, Teston

CASE OFFICER: Paul Hegley

Tree Preservation Order (TPO) No.1 of 2014 was made under Regulation 4 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 to protect one Lime tree. 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**

Maidstone Landscape Character Assessment (March 2012 amended 19 July 2013) and Supplement (2012- Saved Sections of the Landscape Character Assessment and Landscape Guidelines 2000)

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

#### **BACKGROUND**

Following the submission of Planning application MA/13/1036 for the erection of a new detached chalet bungalow within the rear garden of Dolly Bees, the Lime tree growing within the neighbouring grass verge was made subject to TPO No.8 of 2013 on a provisional basis due to its size and position close to the southern boundary of the development site. The tree was considered vulnerable to future post development pressure for felling or inappropriate pruning to abate problems such as honey dew, falling leaves and seeds and shading.

TPO No.8 of 2013 expired on 15<sup>th</sup> January 2014. There was one objection which was received outside of the statutory 28 day period from the order's making but it was not possible to report this to Planning Committee within the required time period. It was therefore considered expedient to continue the tree's protection by allowing the current order to lapse and to make a new order, TPO No. 1 of 2014.

The new order also addresses one of the concerns the objector raised to the original TPO which questioned the title and description of the Lime's location.

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

Provisional TPO No.8 of 2013 which protects one Lime tree growing within the grass verge to the south of Dolly Bees is due to expire on 15<sup>th</sup> January 2014. The Lime is considered to make a significant and positive contribution to local landscape quality and amenity of the area so it is considered expedient to continue its protection by making a new Tree Preservation Order in order to secure its long-term retention and address some of the objections raised to the original order.

The Section 201 direction bringing the order into immediate effect expires on 9<sup>th</sup> July 2014.

In the meantime, on the 10<sup>th</sup> June 2013 planning application MA/13/1036 was refused permission on the following ground:

*"Sited on the verge fronting Courtlands and in close proximity to the site is a lime tree, the subject of TPO No 8 of 2013. This tree currently makes a substantial visual contribution to the street scene and character of the area while its age and condition is such that it is likely to double in size. Were the tree to substantially increase in size it would be likely to become excessively dominant and overbearing on the occupants of the proposed bungalow resulting in pressure to fell or carry out work to tree harmful to the character and appearance of the area. The proposal is therefore contrary to policies to protect trees and trees and tree cover set out in the Maidstone Borough Council Landscape Character Assessment and Landscape Guidelines together with Government Policy: DETR TPO's: Guide to the Law and Good Practice and the National Planning Policy Framework 2012."*

## **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. It was also copied to any landowners immediately adjacent to the site.

One objection to the order asking that the original objection be reconsidered, has been received, outside of the statutory 28 day period from the order's making, by Arboricultural Consultant Ben Larkham on behalf of the owner of the neighbouring property Dolly Bees, Malling Road, Teston.

The main grounds of the objection are summarised as follows: -

1. The Tree Preservation Order, TPO No. 8 of 2013 describes within its front page and schedule "Tree on verge to the south of Dolly Bees, Malling Road, Teston". It should be noted that it may have been more appropriate to describe the tree as being within the "grass verge of Courtlands to the south side of Dolly Bees, Malling Road, Teston.
2. The Lime stands within a grass verge which does not currently have a defined ownership having been registered to a company which is not longer

trading. It is understood that the Local Parish Council have previously maintained the verge through grass cutting. The Parish Council are understood to be proposing *de facto* ownership of the land due to their history of 'maintenance'. It is unusual for a Local Authority to serve a Tree Preservation Order on land in the control of the Parish Council as the Parish would usually be regarded as a reasonable guardian and a body which would act in the best interest of its parishioners.

3. There have been recent discussions between the owner of Dolly Bees and the respective County, Local and Parish councils over the obstruction to both the public carriageway and footpath from the unrestricted development of the branches of this tree. Despite maintaining the grass verge the Parish Council do not appear to have historically undertaken any maintenance of the subject Lime tree.
4. It is noted that the roots of the Lime tree to the south side are beginning to cause disruption to the tarmacadam footpath, a situation which will continue to worsen given the future growth of the tree and likely radial expansion of roots if retained in this position.
5. The general character of Courtlands is open plan typical of the 1960's format of single storey detached and semi-detached residential development. It is evident that when driving, or walking through Courtlands there is a significant absence of trees, or vertical elements within the front gardens. The subject Lime tree would be classed as a large tree in maturity and as such of inappropriate proportions for an estate comprising single storey properties and open plan character.
6. The benefit this tree provides to the locality may, as suggested by the local authority, be seen as positive in respect of amenity, or as I would contend negatively in the context of the setting of the site. The height and mass of the tree is incongruous to the overall open appearance of Courtlands. It is respectfully requested in determining whether to confirm the Tree Preservation Order that the Council identify whether Courtlands is subject to any restrictive covenants, or conditions, in respect of trees or other detail such as hedges and fences, put in place at the time of approving the original development in the 1960's.
7. The Tree Preservation Order, TPO No.8 of 2013, was served in direct reaction to planning application MA/13/1036 to subdivide the existing garden of Dolly Bees and construct a detached chalet bungalow. Whilst the service of Tree Preservation Orders is regularly undertaken at the time of planning applications it is generally accepted that the function of a Tree Preservation Order is not to preclude development or to act as obstacle to the effective use of a site. The sole ground for refusal of planning application 13/1036 is the presence of the tree and concerns over shading the tree may cause to future occupants of a new house in the rear garden of Dolly Bees. With no other grounds for refusal of planning application 13/1036 this order can only be seen to have been served to obstruct the reasonable development potential of this land.

8. It is suspected that one of the reasons for the open plan character of Courtlands is the benefit of the views to the south across the Medway Valley. The presence of this tree and restrictions to its management through the imposition of a Tree Preservation Order significantly limit the reasonable enjoyment of this outlook from my clients existing garden, and, probably, from adjacent gardens to the north on Malling Road, and to the east those properties within the first cul-de-sac in Courtlands. That this tree will increase in proportions and crown spread if left unmanaged will only further obstruct the benefit of this outlook for these properties.

In addition to the letter of objection summarised above, a letter was originally received from the owner of Dolly Bees on 18<sup>th</sup> July 2013 within the statutory 28 day period from order's making. At that time the letter did not raise any significant issues or formally object to the order being made.

### **CONSIDERATIONS**

The Lime tree subject to this order is growing within the roadside verge to the north of Courtlands which flanks the southern boundary of Dolly Bees. A number of smaller ornamental trees are also growing within the verge. The Lime is of medium age for its species, attaining a height of approximately 10m and average radial crown spread of 6m. The overall crown height is low with a number of branches impeding pedestrian and vehicular traffic. At the time of inspection by the Landscape Officer, from ground level the Lime appeared to be in a reasonable physiological and structural condition for its age and species.

### **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. The description of the tree's location in TPO No. 1 of 2014 has been revised to take into account the objection raised.
2. The legal ownership of the grass verge is uncertain as the company who hold the title are no longer trading. The Parish Council have taken it upon themselves to maintain the verge which they have done for a number of years although this does not make them the legal owners of the tree. Therefore, due to the uncertainty of land ownership the making of the TPO was considered to be expedient.
3. The Lime has had very little maintenance undertaken to it over the years which has resulted in branches becoming very low over the road and pedestrian footpath. Following advice from the Landscape Officer the Parish Council has recently submitted an application (ref:TA/0149/13) to crown lift the tree to give an all-round ground clearance of 3m and a height clearance of no more than 5.5m above the road by removing sub-branches. This application was granted permission on 26 February 2014.
4. Disruption to tarmac footpaths are often commonplace in urban streets planted with trees and as such is not considered to be a sufficient reason to remove healthy prominent trees. In this case, there appears to be some slight cracking of the tarmac surface nearest the Lime tree although there is no proof to implicate the tree as the probable cause. Simple repairs to the footpath could easily be undertaken in the future should root damage occur.
5. In general, the Courtlands estate has very little tree cover so those trees that are present, such as the Lime are considered to be more important in the context of making a significant and positive contribution to local landscape quality and amenity of the area.
6. The Lime tree does not provide a negative contribution in the setting of the site as it is clearly a prominent feature when entering the estate and its size and form is considered to be appropriate for its setting. It is not known if the estate is subject to any covenants or conditions that would restrict the planting of trees and hedges but this is not a consideration for determining whether to confirm the order.

7. The making of the order was not to prevent development of the neighbouring site but to preserve the Lime tree in the interests of amenity in accordance with current TPO regulation guidance.
8. The reasonable enjoyment of a view is not a material consideration when protecting a tree. In current law no one is entitled to a view and the imposition of a TPO does not restrict or prevent good arboricultural management through the application process.

**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. 1 of 2014.