

**Maidstone Borough Council
PLANNING COMMITTEE**

REPORT BY THE HEAD OF PLANNING SERVICES

**The Maidstone Borough Council
TREE PRESERVATION ORDER NO 5010/2017/TPO**

19 St Luke's Avenue, Maidstone, Kent, ME14 5AN

EXECUTIVE SUMMARY

This report seeks the permission of the Planning Committee to Confirm without modification Tree Preservation Order No 5010/2017/TPO for which objections have been received.

FOR DECISION

RELEVANT PLANNING HISTORY

16/508601/FULL Land Rear Of 20 St Luke's Avenue Maidstone Kent ME14 5AN
Demolition of existing garages and erection of a 3 bedroom detached dwelling house
Application Refused Fri 24 Mar 2017

SUMMARY TPO INFORMATION

TPO Served (Date): 14 March 2017	TPO Expiry Date 14 September 2017
Served on: Tree owner - 19 St Luke's Avenue Adjacent properties – 20 St Luke's Avenue, 48 St Luke's Rd Owner and agent for adjacent site subject to planning application 16/508601/FULL	

OBJECTIONS AND CONSULTATIONS

Three objections to the making of the TPO were received from interested parties of the adjacent garage plot, along with two representations in support of the TPO from the tree owner and a neighbour. The representations are summarised below:

Summary of Objections to the making of the TPO

It is not a tree of significant interest (e.g. rare/cultural/historic).

There would be no impact on local environment or amenity if it were to be removed.

The tree has a detrimental impact on adjacent land as it is positioned inappropriately close (25cm away) to the boundary of 19 St Luke's Avenue and the canopy causes significant shade to surrounding properties.

No trees along St Luke's Road or Avenue are preserved and some have been removed due to impact of root systems on foundations (which are not significant on houses in the area built c.1900).

It is not in keeping with other trees in the area; it is a carbuncle on the landscape.

The TPO was made to thwart the planning process for application 16/508601/FULL. A previously refused planning application in 2015 was not refused on arboricultural grounds and a TPO not mentioned at that time. 16/508601/FULL was submitted to address previous objections, conducted in consultation with MBC and a TPO was not mentioned during discussions

A TPO should not be imposed whilst a planning application is under active consideration.

The species is best suited to parks, large gardens and woodlands with a disposition for broad crowns.

It is semi-mature (i.e. continuing to increase in size) and already causing problems with neighbouring properties. Leaves and seeds are blown into neighbouring properties. It causes loss of daylight and sunlight, leading to difficulty growing plants and lawns, also due to competition for water and nutrients. Damp results from long periods of shading.

The tree is a significant nuisance that affects all surrounding properties, not just the garage site.

The tree was planted after the house at 19 St Luke's Avenue was built.

The tree has an unmaintained gross canopy causing heavy shading to the south end of the garage plot, with no redress to mitigate the negative effects.

The amenity value of the tree must be considered low; it is a common native tree not suited to an urban garden and there is nothing unique about this individual specimen.

Only the upper trunk and crown are of limited visibility to the general public from the highway and only accessible to the property owner.

The expedient case appears based on speculative future assumptions for limited public amenity value with ongoing detriment to the local environment of the adjacent garage plot.

The tree was used inappropriately by the Council and neighbours to as reason to refuse the planning application.

Summary of Representations in Support of the TPO

The tree is magnificent and contributes greatly to the local street scene and the general amenity for those living near it.

Although the tree sheds plenty of leaves and debris each year, it provides shelter from the prevailing wind.

A tree surgeon was recently instructed to cut back the Beech and other trees overhanging the site who said that if he had cut the Beech as instructed, he'd kill it.

The tree provides a natural habitat for wildlife and is an amenity and a benefit to the local landscape.

APPRAISAL

The tree is a large semi-mature Beech, situated in the rear garden of 19 St Luke's Avenue. It is generally in good health and condition. It is set back from St Luke's Road but the crown is visible from public viewpoints on the road.

The tree was made the subject of a Tree Preservation Order in response to the proposal 16/508601/FULL, to demolish the existing garage block between 20 St Luke's Avenue and 48 St Luke's Road and to replace it with a 3 bedroom detached house.

The tree was assessed along with other trees potentially affected by the proposed development by the Landscape Officer in response to a consultation request on the planning application. It was clearly visible from public viewpoints and considered to make a contribution to local landscape character and amenity, particularly visual amenity in an area of the town with few mature trees.

A TEMPO (Tree Evaluation Method for Preservation Orders) was therefore carried out to assess the tree's suitability for protection by a TPO. This takes into account factors such as the tree's condition, retention span, size, public visibility and the level of threat to the tree and enables a score to inform decisions. The result of this assessment was that the tree merits a TPO.

The presence of the tree had implications on the proposed dwelling, as it overhangs the plot significantly and would dominate the rear garden space. Some pruning was proposed to alleviate this effect, but it was not considered that this would fully resolve the problems that future occupiers would experience, principally shading to the garden and the rear of the house, particularly as the tree is to the south of the plot. It was therefore considered that future occupiers would subsequently want to cut back the tree further than the pruning initially proposed i.e. to the boundary, and that there would be pressure on the owner to reduce or remove the tree. The planning application was therefore not supported on arboricultural grounds.

Without TPO protection, under common law rights, adjoining landowners would be able to cut back the tree to the boundary without needing the permission of the tree owner,. If this was done from the garage plot, it would result in a significantly unbalanced crown and leave inadvisably large pruning wounds that could result in structurally significant decay, reducing the safe useful life expectancy of the tree. Such action would also reduce the tree's contribution to amenity.

As the planning proposal was not supported on arboricultural grounds and was a potential reason for refusal of the application, it was considered expedient to make the tree the subject of a TPO as, if the application was refused, inappropriate pruning may have been carried out to address a reason for refusal. Had the application been permitted, it was considered that a TPO was necessary in order to have a measure of control over pruning by future occupiers.

The issue for decision is whether the provisional Tree Preservation Order should be made permanent by confirming it. The decision is unrelated to the planning proposal in so far as neither the proposal itself, nor the potential of the garage plot for redevelopment in general are under

consideration. However, the consideration of the garage plot for redevelopment as residential use is the principal reason for considering it expedient to protect the tree.

The remaining consideration is therefore whether the tree merits ongoing protection on amenity grounds. No evidence of poor health or condition has been noted to suggest that it has a limited safe useful life expectancy. It is an average specimen and being set back in the site, is not particularly prominent. However, it is clearly visible to the public and makes a contribution to amenity in this part of the town centre, an area with few mature trees. It has the potential to continue to make that contribution for many years, based on its current condition. The TEMPO assessment suggests that it merits a TPO. It is considered that pruning to boundaries or the removal of the tree would be detrimental to local landscape quality and amenity.

On balance, the officer recommendation is to confirm the TPO without modification.

RECOMMENDED

Confirm Tree Preservation Order No.5010/2017/TPO without modification

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Head of Planning Services