

**Maidstone Borough Council
PLANNING COMMITTEE**

REPORT BY THE HEAD OF PLANNING SERVICES

**The Maidstone Borough Council
TREE PRESERVATION ORDER NO 5019/2017/TPO**

Valley Park Community School, Huntsman Lane, Maidstone, Kent

EXECUTIVE SUMMARY

This report seeks the permission of the Planning Committee to Confirm Tree Preservation Order No. 5019/2017/TPO without modification for which an objection has been received.

FOR DECISION

RELEVANT PLANNING HISTORY

17/501471/FULL Erection of a three storey secondary school with associated access, car parking and landscaping. Currently under appeal for non-determination

5011/2017/TPO - Area Order. Lapsed and remade as 5019/2017/TPO

SUMMARY TPO INFORMATION

TPO Served (Date): 05.10.2017	TPO Expiry Date 05.04.2018
Served on: Invicta Grammar School, Huntsman Lane, Maidstone, Kent, ME14 5DS	
Copied to: Kent Highway Services Mid Kent Division GIS Team MKIP Land Charges Team Planning Applications Unit	

OBJECTIONS AND CONSULTATIONS

An objection to the TPO was received from Barker Parry Town Planning. The text of the objection is reproduced in italics, with the officer response set out below each point:

We are in receipt of the 'Request for Authority to Make a TPO' report in which it states the following reasons for the immediate protection of the trees:

"The Council considers that the tree or tree(s) Contribute to amenity and local landscape character and it is expedient to make a Tree Preservation Order (TPO)"

The 'Request for Authority' makes no further elaboration on the changes to the TPO from the previous version issued in March 2017, albeit this TPO relates to a reduced area of protection.

This TPO differs from the earlier version in that it identifies specific trees for protection compared to the Area designation of the original Order.

The service of this TPO is considered to be excessive and only serving to further frustrate the delivery of a much-needed Secondary School within Maidstone. The TPO itself is undermined by the decision of the Local Planning Authority to 'grant planning permission, subject to a S106 Agreement' had they have remained as the Decision Maker, on the same day as the service of this notice.

The justification for the appeal against non-determination is solely associated with the lack progress on the application and the ongoing attempts by the Council to frustrate the process, including a TPO and lack of information pertaining to the suggested S106, which has now been outstanding since June 2017.

The service of this further TPO on the same day as the Planning Committees resolution is perverse and only serves to highlight the ongoing intentions to frustrate the delivery of this school.

The inability to at least pollard these trees increases the risk of nesting birds in this location. Should nesting occur, it will prevent development for 12 months, thus rendering it impossible to deliver the proposed school. We have already been prejudiced and cannot deliver the school for the September 2018 academic year and this may jeopardise the opening of any part of the school by September 2019.

A TPO is not designed to frustrate the planning process. A full planning consent can be implemented without the need for further application under a TPO. Rather, the original TPO was made in response to plans to pre-emptively fell trees to create a temporary access before planning permission had been obtained and before Members had had the opportunity to explore access options. At this point in time, with a current appeal, there is no guarantee that the site will obtain planning consent. Pre-emptive felling could turn out to be premature and potentially in a different location to where an access might be located. Timing of felling could ultimately be affected by nesting birds, but this is not considered justification to fell on a preventative basis.

There are five main grounds for objecting to a TPO, as set out within the DETR 'A Guide to the Law and Good Practice'. These are as follows:

- 1) Challenging the LPA's view that it is expedient in the interests of amenity to make a TPO;*
- 2) Claiming that a tree included in the TPO is dead, dying, diseased or dangerous;*
- 3) Claiming that a tree is causing damage to property;*
- 4) Pointing out errors in the TPO or uncertainties in respect of the trees which are supposed to be protected by it; and*
- 5) Claiming that the LPA have not followed the procedural requirements of the Regulations.*

The trees on this site and as now covered by this TPO have been in the ownership and maintenance of the Valley Invicta Academies Trust for a significant period of time, with no TPO imposed on the site.

It has not been considered necessary or expedient to protect the trees in the past as they have not previously been considered to be under threat.

Some 32 trees contained within areas of the TPO are proposed for removal as part of the delivery of this secondary school. In making a resolution on the 5th October 2017, the Planning Committee endorsed the removal of these trees. It is not therefore considered expedient to make the TPO.

Although the committee indicated that they would have granted consent had an appeal not been lodged, the decision is now in the hands of the Planning Inspectorate.

The nature of the TPO is also questioned, the guidance advises that, if the trees merit protection in their own right they should be specified as individual trees, not to be an easy way to protect trees of particular merit that stand close to each other.

The lack of any clarity obtained from the 'Request for Authority' provides little insight into the Council's true intentions. Certainly large areas of the groups contained within the TPO are of limited value and have C classification. The Council has taken to stating the quantum of tree species contained within each group, if the Council consider these to be worthy of specific protection, they should be listed as individual trees within the TPO.

Trees are identified in the Order as groups and woodlands for their cohesive merit. Individual tree protection is used for specimens that stand alone or as clearly identifiable individuals. Officers consider that the Group and Woodland categories have been used appropriately in this case.

In respect of the woodland categorisation, woodland TPO's should not be used as a means of hindering beneficial management work, which may include regular felling and thinning. Given the resolution by Councilors and the ownership of the tree belt, this is exactly what the Council is doing in respect of this tree

belt. It is hindering good quality management of the area unnecessarily and affording protection to large swathes of C category trees that do not warrant protection.

If the Council considered individual trees to be of merit, they have full access to the tree survey submitted in support of the planning application for the school in March 2017 and whilst this appears to have been used to some extent, had further information been requested we would have sought to work with them. In its current form, the TPO is considered excessive and completely disproportionate. It will prevent good management of the site, which is not in the interests of the amenity of the area or the general public, whilst running contrary to the decision made by Councilors on the same day as it was issued.

In light of the Tree Survey undertaken on behalf of BAM Construction and submitted to the Council in support of the planning application, it is requested that the decision to confirm this TPO will not be taken and that the proposed Order will be withdrawn.

A TPO does not prevent beneficial woodland management. Urgent works may be undertaken under the exceptions to the Tree Preservation Regulations (as has already taken place on this site since the TPO was made in the form of highway safety works) and non-urgent works can be the subject of an application. Local Planning Authorities must grant consent for works in Woodlands that are considered to be appropriate woodland management. It is therefore not considered that the confirmation of the TPO will prevent good management of the site.

Should the Council wish to progress with this matter further, we would welcome discussions on both the required extent of the proposed Order and on those trees which are considered to be of sufficient value to warrant an additional level of protection.

The Council cannot progress the Order as currently proposed, as it is not based on a sufficient level of understanding associated with both the risk to trees on the site given the proposed works at the site and the quality of the trees. Evidently, the extent of any Order should be proportional to the works envisaged and the Council is aware of the intentions at the site, having now endorsed the principles contained within the application.

We therefore object to the Order in its current form and formally request that in light of the detailed tree information available to you that the Order is withdrawn as soon as is practically possible to ensure that development is not hindered, to the disadvantage of the Borough.

APPRAISAL

It is not considered that any of the issues raised in the objection should prevent the confirmation of the Order in its current form. The woodland and group categories are considered to have been used appropriately and are based on the information provided by the objector in their tree survey.

It is therefore recommended that the TPO be confirmed without modification.

RECOMMENDED

Confirm Tree Preservation Order No. 5019/2017/TPO without modification

Contact Officer: Nick Gallavin

Head of Planning Services

Appendices: Plan and schedule for 5019/2017/TPO

APPENDIX I - TPO SCHEDULE

SCHEDULE

Article 3

Specification of trees

Trees specified individually (encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	None	

Trees specified by reference to an area (within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	None	

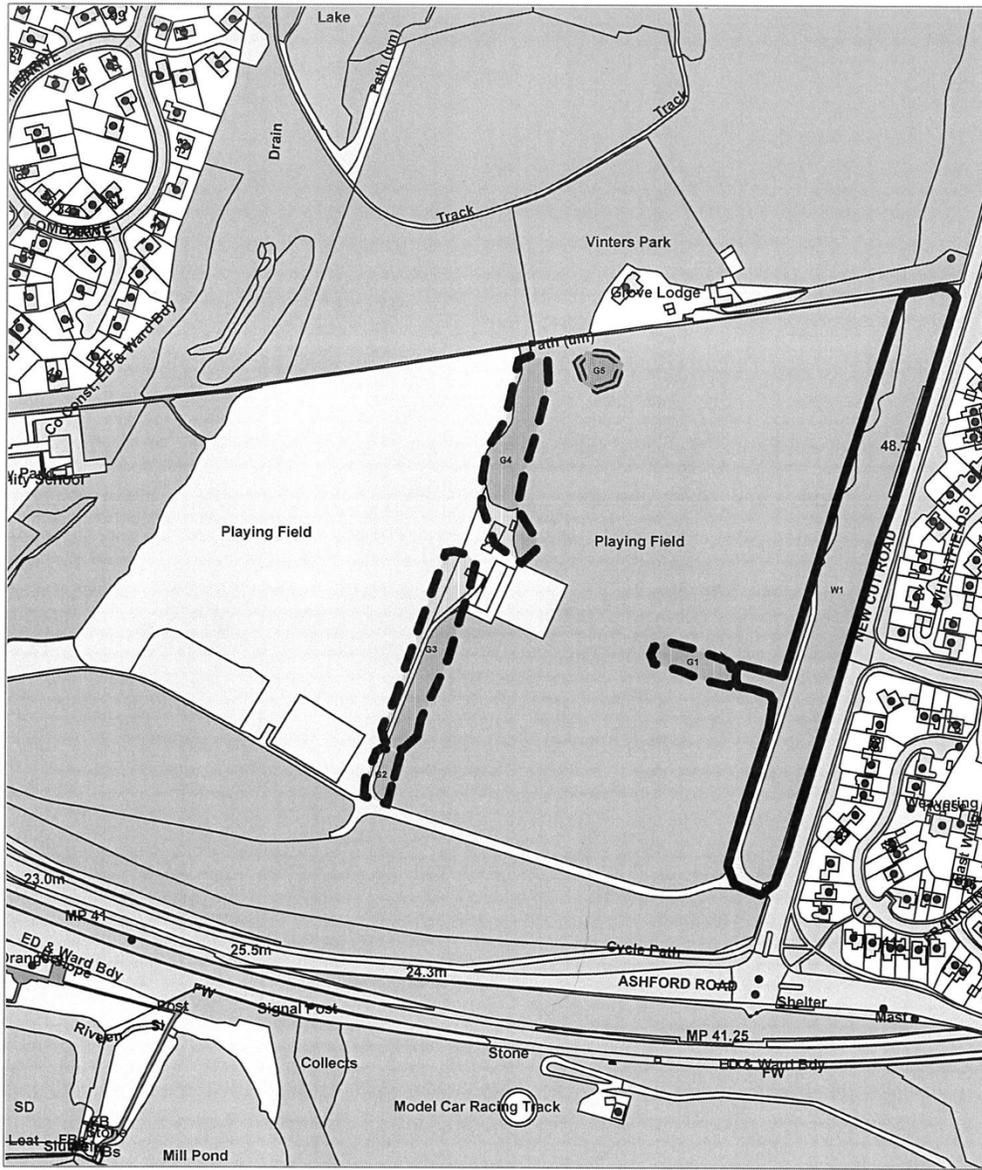
Groups of trees (within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
G1	Consisting of 5 Pine, 1 Beech, 1 Field Maple, 2 Horse Chestnut	Adjacent W1 on west side
G2	Consisting of 1 Norway Maple, 1 Sycamore, 1 Beech, 1 Pine, 1 Oak	Southern edge of site
G3	Consisting of 1 Pine, 3 Oak, 1 Holm Oak, 1 Horse Chestnut, 6 Norway Maple, 1 Field Maple, 1 Norway Spruce	North of G2 / centre of site
G4	Consisting of 4 Cedar, 8 Oak, 1 Lime, 5 Cherry, 1 Ash	North of G3 / northern central part of site
G5	Consisting of 2 Holm Oak	Northern boundary

Woodlands (within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
W1	Mixed woodland including mainly Oak, Ash, Beech, Yew, Cherry, Sycamore, Holly, Pine, Poplar, Birch, Holm Oak, Hornbeam, Horse Chestnut, Ailanthus, Field Maple, Norway Maple, Hawthorn	Eastern boundary of site fronting New Cut Road

APPENDIX II – TPO PLAN



THE MAIDSTONE BOROUGH COUNCIL

Tree Preservation Order No. 5017/2017/TPO
 Valley Park Community School, Huntsman Lane, Maidstone, Kent ME14
 5DT



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