

Ref: 5019/2017/TPO

REPRESENTATIONS

A further representation was received from the objector by email today. The full text of the representation is reproduced in italics below:-

Thank you for your letter dated 10 March 2018, which was emailed to my office on 12 March 2018, notifying us that the Order referenced above will be debated at planning committee on 15 March. It is unfortunate that we were only notified with four days notice as we are unable to attend in person.

We have had the opportunity to review the officers report and regret that the Order is proposed to be confirmed with no modification.

The Planning Committee resolved to grant (had it been the determining body) planning permission, subject to conditions and a S106 Agreement, for a much needed secondary school on this site. In accepting that proposal, the committee agreed to the removal of a number of trees the Order seeks to protect. This resolution followed a planning officer recommendation for approval.

As discussed a meetings at the end of 2017 and in subsequent email correspondence, the confirmation of the Order, in its current form, will only serve to further delay the school coming forward following the determination of the pending appeal, should the appeal be allowed. This is because it will delay the removal of trees and increase the likelihood of birds nesting in these trees. It was only after careful consideration that an appeal was submitted. This was primarily because the team did not have any assurance from the Council that the application would be approved, following its deferral.

If birds are found to be nesting and trees cannot be removed until such time as a permission is granted, then this could result in a further 12 month delay in the opening of the school, as the construction phase will be delayed given the need to create a construction access to the site. This further frustrates the delivery of this essential piece of infrastructure unnecessarily. The team has sought to de-risk this process by submitting an additional application for works to these trees, given the Council's refusal to withdraw the provisional Order.

Should the Planning Committee confirm the Order, it will undermine the Government's aims of delivering schools in a timely and constructive matter and will go against the aim to work collaboratively to bring this project forward. This aim was discussed at a meeting on 18 December 2018 between the ESFA, representatives of Maidstone Borough Council and the local MP. It was also referenced in Rob Jarman's letter of 29 January 2018 to which a response will be provided shortly.

We request that committee members do not accept the recommendation to confirm the TPO, but either seek to vary it and exclude the trees required to be removed to facilitate the delivery of the school, or revoke the TPO in its entirety.

As noted in the report, the planning committee decision is not a grant of planning consent, but an indication that the planning committee would have granted consent had an appeal not been lodged. It is therefore considered that tree removals, which would include the loss of an early veteran Holly, ahead of a planning permission would be premature.

Furthermore, the Tree Preservation Order seeks to control works to trees in addition to those that would need to be removed in order to implement the proposed scheme.

It is true that if birds nest in trees, this could delay their removal, as 'active nests' under construction or containing chicks are protected from disturbance by wildlife legislation. It is unlikely that this would result in a 12 month delay. The generally accepted bird nesting season is March to September, but nesting often does not start until the end of March and most species will have vacated nests by the end of July. If birds are found to be nesting in the trees the maximum delay to felling is likely to be closer to four months and potentially less, depending on the timing of the appeal decision.

Varying a Tree Preservation Order is a formal process that is used to alter existing confirmed Orders. With a provisional Order, the Council has the option of confirming the Order with modification, to exclude (but not add) trees. Similarly, revocation of an Order is not considered necessary with a provisional Order, as a decision to not confirm the Order has the same effect.

RECOMMENDATION

The officer recommendation remains unchanged.