

**Maidstone Borough Council  
PLANNING COMMITTEE  
26 April 2018**

**REPORT BY THE HEAD OF PLANNING SERVICES**

**The Maidstone Borough Council  
TREE PRESERVATION ORDER NO 5003/2018/TPO**

**5 Southways, Sutton Valence, Maidstone, Kent**

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**EXECUTIVE SUMMARY**

**This report seeks the permission of the Planning Committee to Confirm without modification Tree Preservation Order No 5003/2018/TPO for which objections have been received.**

**FOR DECISION**

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**RELEVANT PLANNING HISTORY**

MA/87/0692E Land adjacent Southways, North Street, Sutton Valence. Erection of one no. four-bedroom and five no. five- bedroom detached houses as amended by drawing nos. K091/09 K091/10 K091/11 received on 13th July 1987 and further amended and validated by drawing no. K091/01 Rev D received 21st August 1987. Permission granted subject to conditions 14 April 1987.

**SUMMARY TPO INFORMATION**

<b>TPO Served (Date):</b>  18 January 2018	<b>TPO Expiry Date</b>  18 July 2018
<b>Served on:</b>  The owner/occupier, 5 Southways, Sutton Valence, Maidstone, Kent Property owners identified on Land Registry search Kent County Council as adjoining landowner	
<b>Copied to:</b>  Kent Highway Services Mid Kent Division GIS Team MKIP Parish/Town Council Land Charges Team Planning Applications Unit	

## **PRE-APPLICATION ADVICE**

The owners of 5 Southways submitted a request for pre-application advice in respect of the potential removal of four very large Wellingtonia trees to the front of 5 Southways, as they were perceived to be discouraging interest in the sale of the property and causing damage to surrounding structures. The removal of the trees was understood to be controlled by to conditions (iv) and (vii) of planning permission MA/87/0692E, reproduced below:

(iv) All trees (other than fruit trees) shown for retention on Drawing No.K091/01/D received on 21<sup>st</sup> August, 1987 shall be retained;

Reason: to protect the general character and appearance of the site and preserve the many fine mature trees in the interests of amenity

(vii) No trees on the site, the subject of this permission, shall be felled, topped, lopped or destroyed without the consent in writing of the District Planning Authority:-

- a) Levels shall not be raised or lowered in relation to the existing ground level within the spread of the branches of the tree;
- b) No roots shall be cut, trenches dug or soil removed within the spread of the branches of the tree;
- c) No buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the tree;
- d) No fires shall be lit within the spread of the branches of the tree;
- e) No vehicles shall be driven over the area below the spread of the branches of the tree;
- f) No materials or equipment to be stored within the spread of the branches of the tree;

Reason: to preserve trees on the site in the interests of visual amenity and environment

A pre-application site meeting took place at the property, where the Landscape officer met with the owner of the property and inspected the trees that they intend to fell.

The trees are four Wellingtonia, planted in a row. They are very large, reaching an estimated height in excess of 20m and with stem diameters of between 1.1m and 1.7m.

Historic damage was noted on one of the buttress roots of the northernmost tree and was found to have an associated cavity up to 28cm deep. However, the trees have a bark thickness of around 10cm, so the depth of the cavity is about 18cm in structural wood. Given the size of the tree, this is not considered to be structurally significant. An area of delaminating bark is present on the north side of the tree that might indicate that some associated decay is present, but no significant decay was found during inspection. No evidence of damage or decay was found in the other three trees.

No damage to the buildings was reported or observed, but there is significant disruption and damage to the garden paths likely to be attributable to the growth of the roots of the trees.

During the site visit, the public visibility of the trees was assessed from public viewpoints, principally from North Street, from which the trees are set back about 80 metres and partially obscured from view by the doctors surgery close to North Street and by 5 Southways itself. Despite this, the tops of the trees are clearly visible from North Street over the top of these two buildings and are skyline trees. It should also be noted that the road into Southways is a publicly maintainable highway in KCC ownership and is also therefore considered a public viewpoint, albeit that it is probably used only by the residents of Southways and their visitors.

The pre-application advice response is set out below:

'When we met to discuss the trees, we were aware of the planning conditions from 1987 that specifically stated that all trees (other than fruit trees) shall be retained and shall not be 'felled, topped, lopped or destroyed without the consent in writing of the Local Planning Authority'. I originally advised you that I thought that you could seek that consent through the submission of an application to vary or remove the condition, which would attract a fee. The alternative would be for us to make the trees the subject of a Tree Preservation Order (TPO) and for you to make an application under that Order, which would not attract a fee. You indicated when we met that the former would be your preferred approach.

However, having discussed your situation further with Planning Enforcement Officers, I am now advised that the planning conditions would be considered by them to have expired and that an application to vary or remove them would therefore not be appropriate/possible. It also means that there are no longer any controls in force that require you to seek the consent of the Local Planning Authority before felling the trees.

This left me with a difficult decision, as I am aware of your reasons for wanting to fell, but also required to consider the contribution that the trees make to local landscape character and visual amenity. After we met, I viewed the trees from various public viewpoints and found them to be quite prominent. As such, and having discussed the situation with colleagues, we have decided that we have no option other than to make the trees the subject of a Tree Preservation Order. This has been made today, and I attach an electronic copy.

I know that this is not the outcome that you were hoping for, but the trees make a significant contribution to the area and the Council has a duty to protect such trees. You can still make an application to fell them (I attach a form and guidance notes) with a right to appeal a refusal and additionally you have 28 days to submit an objection to the making of the TPO, which the Council will consider before deciding whether the TPO should be made permanent. The details of how to do this will be in the formal letter accompanying the paper copy of the TPO which is sent by post.'

The tree preservation Order was therefore made and served on 18 January 2018, protecting the four Wellingtonia trees as individual trees, numbered T1 –T4.

## **OBJECTIONS**

Objections to the TPO were received on behalf of the owners of 5 Southways from Alex Chapman, Bradford and Company Solicitors and Ben Larkham Associates (Arboricultural consultant) in the form of a detailed tree report.

A representation in support of the objections was also received from Kent County Councillor Eric Hotson.

Alex Chapman co-ordinated the objection material and summarises the grounds for objection as follows:

- there are only broken views of the trees from North Street;
- the trees negatively impact on local amenity given the overbearing relationship to the property and adverse impact on the open appearance of Southways;
- the trees are causing a loss of sunlight to the property, damage to existing lightly loaded structures, maintenance issues related to the management of gutters and roof surface; and
- there is potential for future structural influence

Bradford and Company “outlines liabilities that Maidstone Borough Council should be responsible for should the TPO be confirmed and the owner is unable to carry out works to the trees immediately, including felling, unimpeded. These liabilities include any future damage to the property and structures within its curtilage, including, but not limited, to the driveway and footpaths; any future damage to neighbouring properties and their curtilages; any harm to humans; and costs associated with applications to do works to the trees.”

The Ben Larkham Associates report is referred to, highlighting existing damage to paths and the driveway and considers that “Whilst the contribution of the roots to any potential subsidence at the property are unknown at this time, it is beyond reasonable doubt, especially given the nature and age of the trees, that there is an extensive root zone that could contribute to subsidence in the future”. It is stated that the “owner is keen to ensure that there is no further damage to the property or risk to human safety and requests the ability to fell the trees immediately. The owner can also confirm that the felling of the trees will also assist in the sale of the property as prospective purchasers have raised the very concerns highlighted here.”

The trees’ contribution to amenity is challenged and considers that the TPO ignores the damage that the trees have already caused and are likely to cause in the future, that the TPO was made in the knowledge of the owner’s desire to fell the trees and in the full knowledge that there were grounds for the trees to be felled and considers that there is a gross failing in procedure, that Maidstone Borough Council has acted entirely unreasonably and should assume liability in the areas outlined should the TPO not be withdrawn, and requests a review of procedures for issuing a provisional TPO.

The reference to the sale of the property is supported by a letter from Savills estate agents, which states:

“As we have discussed, the trees have been the consistent negative in respect of feedback. Many parties not only expressing concerns over the proximity of the large Sequoias and the implication these have on the structural integrity of the building but also their impact in respect of

shade/maintenance – two couples mentioning in particular the consequence of ‘damp’ environment (lichen build up), the house ‘feeling’ dark and the mess caused from falling needles (blocked gutters etc.).

Whilst we continue to extol the many virtues of the property, it is fair to say in a more challenging and sensitive market place, the extent of the trees at 5 Southways are a concern to buyers. In our view some kind of professional reduction/removal will have a positive effect on saleability.”

Eric Hotson states:

“Having read the correspondence and detailed objection by Ben Larkham Associates Ltd, I wish to record my support of the objection.

I recall the original planning application for development at Southways and was concerned at the time of the close proximity of substantial trees to the new house (No 5).

The consultant’s objection very clearly details the existing and highly likely future problems the trees will cause to the property.

I consider that the felling of the described trees will not have an adverse effect or impact on the landscape character or visual amenity for there will still be substantial trees, hedges and bush growth within the development.

For the above reasons, I support the objection and trust my concerns will be disclosed at the appropriate planning committee.”

## **APPRAISAL**

The trees are large, mature and have no significant defects to suggest that their structural stability is threatened at this time.

There is no evidence of damage to structures other than garden paths at this time.

Their public visibility is challenged and whilst they are visible from Southways, which itself is a public highway, relatively few people are likely to view the trees from this viewpoint. Views of the trees from North Street are partially obscured by buildings and other trees, and at a distance of 80 metres. From some viewpoints the tops of the trees are visible as skyline trees.

There was a clear intention to retain these trees when planning permission was granted to build the property. The conditions that were put in place to ensure their retention at the time are now considered to have no effect, so without the protection of a TPO, the owners would be able to fell or prune the trees without restriction. It is true that the construction of a property at this distance from the trees is unlikely to be considered appropriate under current guidance.

It is not considered that there is currently insufficient information to be able to determine that there is a subsidence risk to the property. More detailed soil investigation and testing would be needed to demonstrate this.

A TPO does not pass liability to Maidstone Borough Council. In the event that MBC refuses an application for works, the applicant may be able to make a compensation claim in certain

circumstances, but generally only in the event that works are refused in the face of evidence that the refusal will result in loss or damage.

At this time, it is not considered that there is any clear evidence to justify the felling of the trees. It is therefore recommended that the TPO is confirmed to ensure their retention until such evidence is available, and can be considered under the application process.

**RECOMMENDED**

That Tree Preservation Order No.5003/2018/TPO be confirmed without modification.

**Contact Officer:** Nick Gallavin

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**Head of Planning Services**