

**Maidstone Borough Council
PLANNING COMMITTEE**

REPORT BY THE HEAD OF PLANNING SERVICES

**The Maidstone Borough Council
TREE PRESERVATION ORDER NO 5009/2020/TPO**

Uptons Farmhouse, Lees Road, Laddingford, Maidstone, Kent ME18 6DB

EXECUTIVE SUMMARY

This report seeks the permission of the Planning Committee to Confirm without modification Tree Preservation Order No 5009/2020/TPO for which objections have been received.

FOR DECISION

RELEVANT PLANNING HISTORY

None relevant

SUMMARY TPO INFORMATION

TPO Served Date: 14 December 2020	TPO Expiry Date 14 June 2021	
Served on: Uptons Farmhouse, Lees Road, Laddingford, Maidstone, Kent ME18 6DB The Coach House, Lees Road, Laddingford, Maidstone, Kent ME18 6DB 2 The Coach House, Lees Road, Laddingford, Maidstone, Kent ME18 6DB		
Copied to: Kent Highway Services Mid Kent Division GIS Team MKIP Yalding Parish Council Land Charges Team		
Representations	Support: 6	Objections: 1

OBJECTIONS AND REPRESENTATIONS

Objection to the making of the Order

An objection to the making of the TPO was received from the owners of the Coach House (also assumed shared owner of the Lime tree). The objection is summarised below.

- They have been in constant communication with their neighbours at Uptons Farmhouse regarding the two trees in question and have at all times complied with their wishes.
- From their perspective, the East, South and West boundaries of Uptons Farm have precision manicured hedges and bushes. The North boundary with their property has various trees and hedges, many evergreen, which are unkempt and left to their own devices. Many overhang their land but are too tall for them to prune without hiring expensive professional help.

Regarding the Yew tree: -

- The main issue is the height of the tree and lack of management. The tree is less than five metres from their house and a good deal taller than the house. They feel it is a danger to our house and themselves, with the rise in frequency and ferocity of storms/gales in this ever-changing climate.
- They fear the root system could disturb their foundations.
- The tree was pruned for the first time in at least 15 years, at their request, about six months ago. However, the height was not reduced a great deal and the branches / greenery only taken back to the fence line and is already encroaching on their side of the fence.
- They can cut it back themselves up to around ten feet but higher requires a professional at a cost. That cost should not be incurred by them and if under the protection order and they are required to apply for permission each time, their property entrance will certainly be overtaken.
- A further issue is the shielding of solar panels, which had become noticeable before the pruning.

- The tree sheds needles constantly which fall on their flowerbed, driveway, parked cars and block their house guttering. This necessitates regular and frequent attention.
- The constant shadow created by the tree makes cultivation in their flowerbed to hide an ugly fence almost impossible.

Regarding the Lime tree: -

- This tree is mainly on their land and about five years ago they instigated a prune, first consulting their neighbours and again bowing to their wishes. In their view the tree is ugly and untidy and does nothing to enhance the area. It would be fine in an orchard or field but not on a driveway.
- If left to its own devices, it will obstruct the overhead power lines and quickly obstruct the vehicular access to their property.
- They do not feel it adds anything to the landscape and would prefer to cut it down completely and plant a more attractive and more manageable tree.
- They have planted six trees at the rear of their property and five at the front but do manage the trees to ensure they do not become overgrown and cause problems or danger to neighbours.
- On the boundary with Uptons Farm there are also two conifers/leylandii in line with the Yew tree in question. This constitutes an evergreen hedge which cannot be over two metres in height. There is also a covenant in their deeds which contains 'a provision as to light or air', something they lose due to the height of these trees.
- The lack of management of these trees and consequent loss of light and enforced extra property maintenance is anti-social and needs to be addressed.
- Past damage to cars parked underneath the trees was verbally reported during the site visit.

Representations in support of the making of the Order

6 representations in support of the making of the TPO were received from the owners of Uptons Farmhouse (owners of the Yew and assumed shared owner of the Lime tree), the Yalding Tree Warden and 4 other local residents. The representations are summarised below.

- The two trees are variously described as valuable, magnificent, beautiful, old, native, ancient, healthy and meriting protection.
- The trees support wildlife. Several representations refer to the Lime in particular being home to several species of nesting birds in the spring and attracting bees in the summer.
- The trees have high amenity value to the general public passing on foot or in vehicles.
- The trees are a bonus to the passing public and to the environment in general.
- The trees shield both houses from the busy road.
- The trees absorb flood water. Several representations noted this and that that flooding in Lees Road in an ongoing problem that seems to be getting worse.
- The Lime appears to have been badly pruned over the years, which is a shame.
- Too many trees are disappearing in the area.
- Concern at the prospect of the trees being removed; they have been there longer than the current residents.
- We need to protect our trees, especially those established as part of the local environment and not bow to the whim of passing human interest.

APPRAISAL OF TREES

T1 Lime

T1 Lime is a late mature tree with an estimated basal stem diameter greater than 1 metre, radial crown spread of up to 6 metres and a crown reaching about 12 metres in height. The main stem size indicates that the tree is much older than its crown size suggests.

It has clearly been subject to significant pruning works in the past, with crown structure indicating that it was last topped at a height of about 8 metres. It is reported that this work was carried out approximately 4 years ago, which is consistent with the regrowth of 3-4 metres present. The tree exhibits some deadwood /dieback following the topping works and associated decay may be present but is not confirmed.

Dense epicormic growth, typical in Lime trees, is present from the base of the main stem up to 3 metres height, which hinders inspection of the main stem for possible structurally significant decay, but none was found during inspection and in any case, failure risk would be significantly reduced by the severe reduction works that have been carried out.

A drilled hole with a copper pipe inserted was noted on the North side of the main stem at a height of approximately 1 metre.

Overhead electricity cables were noted on the roadside at a distance of approximately 7 metres from the base of the tree. Current clearance between the crown and the cables is about 2 metres.

In general, the tree appears to be in reasonable health for its age and in its current form, with appropriate arboricultural management could be expected to have a safe useful life expectancy of 20-40 years. The species is typically long lived, but in this case its lifespan is likely to be compromised by decay following past pruning works. Its current condition is assessed as fair. The presence of drill hole(s) and copper pipe is concerning, as it indicates a possible attempt to deliberately harm the tree, although it is considered unlikely to have a significant effect on its long-term health.

As a native tree in a prominent roadside position, with its age and features present suggesting potential for future veteran tree status with good wildlife habitat opportunities, it is considered a good candidate for TPO protection on public amenity grounds.

A TEMPO (Tree Evaluation Method for Preservation Orders) assessment scores the tree in the 'TPO defensible' category.

Ownership of the tree is unclear, as the exact position of the boundary between The Coach House and Uptons Farmhouse is not known, but both parties seem to agree that the main stem of the tree straddles the boundary. The tree is therefore assumed to be in shared ownership.

T2 Yew

T2 Yew is a mature Yew tree with an estimated stem diameter of 80 centimetres, radial crown spread of up to 7 metres reaching about 12 metres in height. It appears to be in good health and

structural condition. It generally has good form but has been subject to a recent crown reduction that included cutting back to the boundary on the North side where the foliage is now denser and hedge-like suggesting that this has been carried out regularly in the past. The tree is regenerating well following the pruning works. No evidence of decay or significant defects were noted during inspection.

Some ivy growth is present in the crown, but it was noted that this has recently been severed at the base of the tree.

The Yew tree appears to be in good health for its age and could be expected to have a very long safe useful life expectancy in excess of 100 years. The species typically is very long lived and generally tolerates pruning well. Its current condition is assessed as good.

As a large native tree, it is considered a suitable candidate for TPO protection. It is set back from the road and is therefore less visible than T1 Lime, which partially obscures public views of the Yew but it is nonetheless visible from public viewpoints. It is therefore considered a good candidate for TPO protection on public amenity grounds.

A TEMPO (Tree Evaluation Method for Preservation Orders) assessment scores the tree in the 'Definitely merits TPO' category.

Ownership of the Yew tree is Uptons Farmhouse. The main stem is located approximately 1.5 metres inside the property boundary.

APPRAISAL OF CASE

T1 Lime, despite its past management is considered to be a suitable candidate for ongoing TPO protection on amenity grounds. Its shared ownership and the clear disagreement between the two parties on how it should be managed, together with the apparent deliberate attempt to harm the tree are considered to make it expedient for the Council to continue to have control over future works proposed to the tree and the potential to prosecute wilful destruction.

T2 Yew, although less visible is also considered to be suitable for ongoing protection on amenity grounds. There are also conflicting views between the two parties on how it should be managed. Again, there appears to be disagreement and it is therefore expedient for the Council to continue to have control over future works proposals.

In response to the objections and representations received,

- The management of other trees in a neighbouring garden is irrelevant to the matter that the Council is considering.
- The perception of trees being 'unkempt', 'ugly' or 'untidy' is a subjective observation, as is demonstrated by the representations describing the trees with opposing terms such as 'beautiful', 'magnificent' and 'valuable'.

- A 'lack of management' is similarly subjective and a distinction should be made between negligence through failure to address a clear danger and management for management's sake. Trees do not necessarily need to be regularly pruned; pruning breaches a tree's natural defences and creates wounds that are potential entry points for pathogens, principally decay fungi and as such is best avoided unless there are clear objectives and reasons for having to prune.
- Overhanging branches and litter dropped from neighbouring trees is a natural consequence of living in a semi-rural area characterised by mature landscaping. Blocked gutters and leaves shed by trees are an inconvenient but unavoidable consequence of living in such an area and can be addressed through regular maintenance without necessarily resorting to pruning or felling. It is generally considered to be unreasonable to expect to remove the problem entirely.
- Proximity and height of trees in relation to a house, in itself, is not considered grounds to prune trees of perceived amenity value. There may be clear grounds to justify pruning, such as the prevention of direct damage from branches in contact with the built structure, defects that indicate an elevated failure risk, or damage to foundations where a tree is clearly implicated as a contributory factor in the damage. It is not reasonable to expect to prune on the basis of fear that failure or foundation damage may occur, in the absence of evidence to demonstrate that it is likely that it will.
- A Tree Preservation Order does not transfer liability for the cost of works to the Council. It is simply a control mechanism over works that are proposed to the tree. Making applications for works to protected trees does not attract a fee and it is possible to apply for works on a regular cycle to avoid the need for repeat applications for the same works.
- Shading of solar panels may be grounds for pruning, so the confirmation of the TPO would not necessarily prevent works to alleviate this problem, but would enable the extent of pruning to be controlled to ensure that it is proportionate to the problem and balances the negative impact of pruning on amenity and tree health with resolving the problems experienced.
- The Lime tree is not currently obstructing overhead power lines or access to The Coach House and confirmation of the TPO would not prevent applications for works to be submitted to carry out works to prevent such conflicts, which are likely to be considered justifiable grounds for pruning.
- The planting of trees is irrelevant to the matter that the Council is considering, albeit commendable.
- The presence of other evergreen trees on the boundary is irrelevant to the matter that the Council is considering. It is suggested that this may constitute a 'high hedge' under the Anti-social Behaviour Act 2003, and therefore cannot be over 2 metres in height. At this time, a formal complaint has not been submitted under the Act and it has not been determined whether the trees (which includes Yew T2) would fulfil the definition of a hedge under the Act. If it did, however, the Act does not state that it must be less than 2 metres. A complaint cannot be made about a hedge less than 2 metres in height, but where a complaint is made about a hedge that fulfils the definition, the Council would decide what a reasonable hedge height is for that situation, which might be considerably greater than 2

metres but cannot be less than 2 metres. Covenants are a private matter that are not afforded weight in decisions relating to protected trees.

- It is likely that the trees, as native species, will provide wildlife benefits.
- The TEMPO assessments confirm the view that the trees are considered to have good amenity value and merit protection on amenity grounds.
- The trees may shield both houses from the busy road, but this is a private rather than public benefit and a subjective observation. Trees may provide an effective visual screen but are unlikely to reduce noise significantly.
- The trees will contribute to the uptake of groundwater in the area, but it is important to note that this is not a proposal to remove the trees and is therefore irrelevant to the matter that the Council is considering.

CONCLUSION

It is considered that the two trees merit protection on amenity grounds and that it is expedient to confirm the Tree Preservation Order due to the threat of inappropriate future management that would be harmful to the trees' amenity value or life expectancy. It is not considered that the reasons for objection to the making of the order demonstrate that the trees do not merit protection nor that it is inappropriate for the Council to seek to retain control over future works proposals. It is therefore recommended that the Tree Preservation Order is confirmed without modification.

RECOMMENDATION

Confirm Tree Preservation Order No 5009/2020/TPO without modification

Contact Officer: Nick Gallavin