

## REPORT BY THE HEAD OF DEVELOPMENT MANAGEMENT

### The Maidstone Borough Council Tree Preservation Order No. 5004/2022/TPO

St Cross, Linton Hill, Linton, Maidstone, ME17 4AR

#### EXECUTIVE SUMMARY:

This report seeks the permission of the Planning Committee to confirm without modification the Tree Preservation Order No. 5004/2022/TPO, for which **1** objection has been received.

**TPO Served:** 18/08/2022

**Provisional Expiry:** 18/02/2023

#### Trees Specified Individually:

T1 – Multi-stemmed Common Ash – On the Southwest boundary to the rear of the property known as St. Cross, Linton Hill, Linton, Maidstone, Kent

#### Trees Specified by Reference to an Area:

None

#### Groups of Trees:

None

#### Woodlands:

None

#### Served on:

Mr Thomas Cole – St. Cross, Linton Hill, Linton, Maidstone, Kent, ME17 4AR.

Mrs Elisa Lyrelle Cole – St. Cross, Linton Hill, Linton, Maidstone, Kent, ME17 4AR.

#### Consultee:

Linton Parish Council – lintonpc@sherriebabington.co.uk

#### Neighbours

None

**1. RELEVANT HISTORY:**

**1.1. Planning:**

15/509940/TCA – Trees in a Conservation Area notification: Fell two Sitka Spruce. – No Objection – 05.01.2016.

20/504441/TCA – Conservation Area notification: to fell two Spruce trees (consent previously given under 15/509940/TCA). – No Objection – 01.12.2020.

22/503414/TCA – Conservation Area notification: to cut one Ash tree down to minimum height of 4 feet. – Tree Preservation Order Served. – 23.08.2022.

22/505070/TPOA – TPO Application to reduce one Ash tree to the nearby hedge height of 1.4m due to the tree blocking solar panels, blocking light into property and garden and the tree has vines growing over. – Refused – 23.12.2022.

**1.2. Enforcement:**

None

**1.3. Appeals:**

None

## **2. INTRODUCTION AND BACKGROUND:**

- 2.1.1. The Maidstone Borough Council made the provisional Tree Preservation Order No. 5004/2022/TPO on the 18th of August 2022, as attached in **appendix 1**. It protects a single individual tree (T1 on the order schedule/plan). The provisional order will expire on the 18<sup>th</sup> of February 2023, before which the Council must decide whether or not to confirm the Order, making it permanent.
- 2.1.2. The Tree Preservation Order (TPO) was made in response to a Conservation Area (CA) notification, also known as a section 211 notification, under reference 22/503414/TCA. The Local Planning Authority (LPA) can only respond by allowing the work or making a TPO. There is no scope for the Council to refuse a notification, grant consent or apply conditions.
- 2.1.3. In determining the CA notification 22/503414/TCA, which proposed the effective removal of the Ash tree in question. The proposal and the amenity value of the tree were assessed in which the Ash tree was found to merit the protection of a TPO on its amenity contribution to the local landscape, as well as being considered necessary in the wider context of the large number of Ash trees currently being lost to Ash dieback (*Hymenoscyphus fraxineus*). The proposal was viewed as inappropriate arboricultural management; therefore, it was considered expedient to make it the subject of a TPO.
- 2.1.4. A standard industry assessment, TEMPO (Tree Evaluation Method for Preservation Orders), was used to assess the tree's amenity value. A total score of 18 was awarded, which merits a TPO.

### **3. DESCRIPTION OF SITE AND TREE(S):**

#### **3.1. Site:**

##### **3.1.1. St. Cross, Linton Hill:**

3.1.2. The site is a residential property located along Linton Hill, near the junction for Wheeler's Lane. The property borders three other properties to the North, Southeast and Northwest.

#### **3.2. Tree(s):**

##### **3.2.1. T1 – Ash:**

3.2.2. A large multi-stemmed Ash tree, growing on the West boundary of the rear garden belonging to this residential property. This tree has a significant presence within the property and is likely the largest tree on the site.

3.2.3. The tree is estimated to be approximately 20m in height with an estimated radial spread of 5m-6m. The tree is considered to be in good health with good vitality when observed at the time of the site visit. The crown was viewed in full leaf. There was some minor deadwood, which is thought to be of low significance and typical of most tree species of this age which will naturally shed less productive branches in an attempt to reduce the energy costs required to sustain a larger canopy (Hirons and Thomas, 2018; Shigo, 2008) Exposed surface roots were also observed which like deadwood is regarded to be of low significance. Most temperate broadleaf trees are shown to have the majority of their rooting system in the top 50cm of soil (Roberts, Jackson and Smith, 2006) and so it is common to see exposed roots, especially of larger more mature trees, such as the Ash in question. The crown shape is considered sufficiently balanced with a suitable architecture. There were no significant defects to suggest that the tree presents an abnormal degree of risk or failure.

#### **4. OBJECTIONS AND REPRESENTATIONS:**

4.1.1. One objection was received to the making of the TPO. The objection has been replicated below, along with the council's response.

#### **4.2. Objection(s):**

##### 4.2.1. Objection 1: Owner

*Dear Sirs,*

*We would like to appeal the decision made for the proposed TPO on a tree on our land. When we applied to have the tree taken down, we didn't realise that we needed to express all reasons. We will now explain why we would like to tree removed and also why it should not have a TPO.*

*The reason for the Councils request for a TPO is as follows*

*'the tree contributes to amenity and local landscapes character'*

*This is not the case as the tree is at the rear of our land and is NOT visible by anyone else other than us, not the public, nor any neighbour.*

*In addition to this, we have the following reasons we would like the tree removed / moved.*

*1, We have been told by a tree surgeon that the tree is in fact very dangerous. The reasons given were that the tree has large portions of the roots above ground, too many branches have been cut back prior to us buying the property and as a result the trees weight is not balanced, the weight is all at the top of the tree and is not stable. This could topple in a storm and is a danger to life. We have children and it is a huge concern for us. (pic attached of missing branches and shows weight all at top)*

*2, If you look at our EPC, since we moved in 2 years ago, we have brought the rating up from F to B, we are very conscious of the environment and have solar panels which are being blocked by the tree for large part s of the day and we are trying to get to net zero carbon as desired by the government. With the tree there, we are consuming more electricity than needed and feeding much less back to the grid.*

*3, The entire tree is covered in dead vines, this is a very serious fire hazard in these extreme temperatures. (pic attached)*

*4, Our house is in darkness for over 5 hours a day as a result of the tree blocking the sun, this is also blocking any light to large areas of our garden too.*

*This is not a request by a builder, or someone wanting to destroy their surroundings, we are extremely concerned for this tree and the safety of our children and any property damage if the tree fell. As you can see, we*

*are very environmentally friendly and we have MANY trees on our land, we are even happy to plant another tree in its place if requested or even try to have the tree moved, but we strongly oppose the TPO.*

*Yours faithfully*  
Thomas Michael Cole

#### **4.3. Council's Response to Objections:**

- 4.3.1. *The landowner has suggested that the tree is not visible. However, there are partial views of the tree's crown and upper canopy possible between and over the neighbouring properties when viewed from along Linton Hill and Wheelers Lane contributing to the broader treescape of the local area.*
- 4.3.2. *It is not considered that the exposure of surface roots indicates ill health or that the tree presents a significant risk. Exposed surface roots can be a common occurrence in mature trees.*
- 4.3.3. *There is evidence of historic pruning (for which no record of an application for permission can be found) which appears to have been done to raise the canopy. No significant defects were identified during the site visit to suggest that this previous pruning has caused any long-term or irreparable damage/decline. The canopy is considered acceptably balanced.*
- 4.3.4. *The landowner's efforts to improve their carbon footprint are acknowledged. However, as there is no 'right to light', the council does not consider these grounds significant enough to permit the removal of a mature tree of good health.*
- 4.3.5. *It is also considered that the tree's position and its effects on the solar panels' efficiency should have been anticipated at the time of installation.*
- 4.3.6. *The tree has been subject to dense Ivy growth at some point which has been severed around the base and left to die. Removing Ivy (as well as deadwood) does not require permission under current legislation (The Town and Country Planning (Tree Preservation)(England) Regulations 2012) and can be easily removed at any time.*
- 4.3.7. *As stated above, there is no 'right to light', which is not considered justification to remove a mature and healthy tree. It is also thought that the issue of restrictions to light is highly subjective, with light levels fluctuating throughout the year.*

## **5. APPRAISAL OF CASE**

- 5.1.1. The LPA considers that the Ash tree merits the protection of a TPO on amenity grounds, as evidenced by the TEMPO assessment. It is also considered that the making of TPO No. 5004/2022/TPO in response to the conservation area notification 22/505414/TCA was an appropriate response to prevent felling works that would remove a significant and valuable tree from the local landscape, diminishing biodiversity of the tree species. It should be noted that the current guidance of the Forestry Commission is not to remove healthy Ash trees where it is not necessary to do so, as those which have been unaffected by Ash dieback will be vital in passing on the immune gene for the survival and continuation of the species.
- 5.1.2. If the TPO is confirmed, the tree will be afforded continued protection conserving the tree for future generations. Any future proposed works would require a formal application to the LPA, allowing the Council to refuse or approve consent for works as considered appropriate, as well as the ability to impose conditions on any permissions granted.
- 5.1.3. The landowner has objected to the making of this TPO. Reasons provided to support the objection are not based on arboricultural grounds nor considered sufficient to outweigh the loss of a healthy mature tree.

**6. CONCLUSION AND RECOMMENDATION:**

- 6.1.1. The proposed confirmation of the TPO is considered necessary to protect the Ash tree from the threat of inappropriate works and gives the LPA control over future works. It is therefore recommended that Tree Preservation Order **No. 5004/2022/TPO** is **CONFIRMED WITHOUT MODIFICATION.**

---

**Case Officer:** Phil Gower

Date: 03/01/2023

## **7. REFERENCE LIST**

- i) Hiron, A and Thomas, P. A. (2018) *Applied Tree Biology*. Oxford: Wiley-Blackwell.
- ii) Roberts, J., Jackson, N. and Smith, M. (2006) *Tree Roots in the Built Environment – Research for Amenity Trees #8*. London: The Stationary Office (TSO).
- iii) Shigo, A. (2008) *Modern Arboriculture*. 4th edition. Durham: Shigo and Tree Associates.
- iv) The Town and Country Planning (Tree Preservation)(England) Regulations 2012 c.14.  
Available at: <https://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>  
(Accessed: 28.12.2022).

**8. APPENDIX 1: Tree Preservation Order No. 5004/2022/TPO  
(Schedule and Plan)**

---