

# REPORT BY THE HEAD OF DEVELOPMENT MANAGEMENT

Case officer: Paul Hegley

The Maidstone Borough Council  
Tree Preservation Order No. 5003/2022/TPO

The Village Green, Church Street, Teston, Maidstone, ME18 5AJ

## EXECUTIVE SUMMARY:

This report seeks the permission of the Planning Committee to confirm without modification the Tree Preservation Order No. 5003/2022/TPO, for which **1** objection has been received.

**TPO Served:** 27/07/2022

**Provisional Expiry:** 27/01/2023

## Trees Specified Individually:

T1 – Silver Birch – On the southern boundary of the green to the rear of the property known as Sylvaner

## Trees Specified by Reference to an Area:

None

## Groups of Trees:

None

## Woodlands:

None

## Served on:

Landowner – Teston Parish Council

Owner/Occupier, 'Sylvaner', The Street, Teston, Maidstone, Kent

## Consultee:

Teston Parish Council

## Neighbours

None

## **1. RELEVANT HISTORY:**

### **1.1. Planning:**

22/501491/TCA – Conservation Area notification: to fell one Silver Birch & grind out stump. – Tree Preservation Order Served. – 27.07.2022.

19/505694/TCA – Conservation Area notification: Crown lift 6 no. Prunus Pandora, 1 no. Indian Bean Tree, 1 no. Silver Birch tree and 3 no. Prunus trees to give a clearance of up to 3m above ground level and 3 no. Hawthorn trees to give a clearance of 2.1m above ground level and to maintain the above clearances on an ongoing basis – No Objection 24.12.2019

16/507790/TCA - Trees in Conservation Area - crown lift 3 x Hawthorn 'Crataegus Prunifolia' to give clearance of up to 6 feet from ground – No Objection – 14.12.2016

TA/0070/14 - Conservation area notification: Teston Conservation Area notification of intention of works to crown lift 1no Birch tree, 3no Cherry trees and 1no Indian Bean tree to give ground clearance of up to 2.5m. – No Objection 20.05.2014

TA/0110/13 - Conservation area notification: Teston conservation area notification of intention to crown lift three hawthorn trees to give clearance of 2m above ground level. - No Objection 05.09.2013

### **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. 5003/2022/TPO on the 27th of July 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 27<sup>th</sup> of January 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 22/501491/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 22/501491/TCA, which proposed the effective removal of the Silver Birch tree in question. The proposal and the amenity value of the tree were assessed in which the Silver Birch tree was found to merit the

protection of a TPO on its amenity contribution to the local landscape. 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 17 was awarded, which merits a TPO.

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

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

- 3.1.1. Teston Village Green, Teston:

- 3.1.2. The site is a residential area of open space along Church Street.

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

- 3.2.1. T1 – Silver Birch:

- 3.2.2. The Silver Birch tree is mature in age, approximately 13m tall with a crown spread of 8m. It is prominent from Church Street. It overhangs a grass area and the safety surfacing to the children's play equipment and the side boundary to the adjacent neighbouring residential property (Sylvaner, The Street, Teston).

- 3.2.3. At the time of a ground assessment, the tree was found to be in a good condition, both physiologically and structurally. The tree has a natural lean to the north, away from the neighbouring property (Sylvaner), towards the children's play equipment. The main stem divides at a height of approximately 6m and the main fork union appears structurally sound. The 'distorted' bough kinks at a distance of approximately 1.5m from the main stem but, otherwise seems structurally sound. Rough tree bark is present on the lower stem which is considered a natural characteristic of this species of tree. Some small fallen twigs were observed which again is a natural phenomenon on all mature trees.

## 4. OBJECTIONS AND REPRESENTATIONS:

- 4.1.1. One objection was received to the making of the TPO.
- 4.1.2. A copy of the objection is replicated below, along with the council's response (in italic).

### 4.2. Objection(s):

- 4.2.1. Objection 1: Owner – Teston Parish Council received 19<sup>th</sup> August 2022
- 4.2.2. The above TPO has been announced and we now request that it not be confirmed by the Council and that this provisional protection is allowed to lapse or, preferably, is withdrawn.

Our Parish Council has consistently pressed for greater "greenery" and biodiversity in Teston. **Attachment 3** gives an indication of our endeavours over past years and we believe it demonstrates our care for the natural environment, despite this challenge to the above TPO.

We find ourselves in a very unusual position. We are challenging the confirmation of this TPO, whereas we would normally show our strong support for the Council's Tree and Conservation Officers.

#### **Tree Context**

Please see the Google Earth images in **Attachment 2**; aerial and street-scene views. They give the setting and hopefully support our view that the tree should be removed.

This Silver Birch is leaning, with a distorted bough threatening to break and fall onto a neighbouring property. Removing that bough would further un-balance the tree, which is already leaning considerably towards our Play Area and litters that area with twigs and leaves. It is the wrong tree at this location.

Assessment of the tree was delegated to an external consultant (from, we believe, The Living Forest consultancy) and we are concerned that the consultant was not aware of the wider context of the tree and considered it as in isolation, rather than within the context of the Play Area and wider Village Green.

We had hoped to fell this tree and replace nearby with a more-appropriate tree as part of our Platinum Jubilee celebrations. While we have missed the long Jubilee weekend, we would at least like to do our planned work during the Jubilee year. The ideal planting time would be early Autumn to give the replacement tree a good start before summer 2023.

#### **Our Request**

We object to confirmation of this provisional protection and ask, please, that:

- it be allowed to lapse by the Council i.e. not confirmed; or, preferably
- it be withdrawn as soon as possible, so that we can plan for a replacement tree to be planted in the early Autumn, not in February as waiting for the TPO to lapse would imply, as that would not give the new tree a good start.

Should this go to Planning Committee for confirmation of TPO, we request the opportunity to speak.

## Replacement of Silver Birch with Acer Platanoides Drummondii

Teston Village Green currently hosts a Silver Birch in its south-western corner. It is estimated to have 10-15 years life remaining. Three pictures to the right show it, without its leaves.

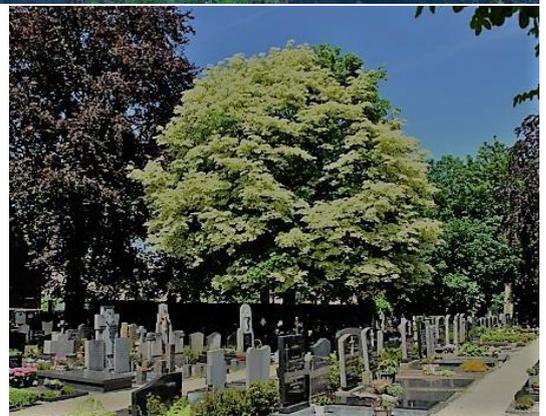
It now represents an unappealing specimen to have in this prominent part of Teston. As can be seen, it is considerably off vertical, has a distorted bough, a very rough bark and drops a considerable number of twigs onto the Play Area. A neighbour is concerned that the distorted bough is reaching towards his home and, if it fails, would cause damage.

We have received a quotation to reduce that distorted bough by 30%, with crown-thinning by 15% to endeavour to re-balance it. However, we are not convinced that the work is worthwhile, given the tree's remaining life and characteristics, and nor are we convinced that the tree would remain stable.

It is leaning towards our children's Play Area and, combined with its very rough bark and propensity to drop twigs, represents an uncomfortable situation.

We would like to take the opportunity to fell and grind-out this tree and to replace it (nearby) with an *Acer Platanoides Drummondii* – picture bottom right.

That would then be a belated part of Teston's marking of the Queen's Platinum Jubilee, together with a stone feature, carrying a tablet with suitable marking that has already been installed.



**Views of Teston Village Green** (Courtesy Google Earth)

The Silver Birch is the red ring. Please note the closeness of the Play Area and other trees on Village Green.



As viewed southwards from Church Street. The Silver Birch is at the centre-rear of the picture.



## **ATTACHMENT 3**

### **Our Landscape-related Initiatives**

In recent years we have:

- planted Hawthorn trees along the edge of our Village Green;
- planted trees on the Tonbridge Road (A26) at the junction with B2163, Teston Lane (with a nesting box);
- established trees, shrubs and bulbs at Ash Tree Corner, a prominent triangle of land at the junction of Tonbridge Road and Church Street;
- via Medway Valley Countryside Partnership, planted wildflowers on the wide verge of Tonbridge Road, just to the west of the junction with B2163, as well as wildflowers on the opposite verge;
- planted innumerable bulbs at various locations within our Parish;
- restricted hedgerow maintenance to out-of-nesting-season, unless pedestrian safety dictates otherwise;
- successfully acquired a "forgotten" wide verge at Courtlands via use of "adverse possession" procedure, then requested a TPO on a prominent Lime Tree on that verge and, as necessary, sought and received permission to maintain its canopy; and
- maintained trees on the Village Green, with relevant permissions.

We facilitated the establishment of Teston Land Conservation Trust (TLCT), a charity with Parish Councillors as Trustees and Paul Oldham as Trustee and Chair. TLCT's object is "for the benefit of the inhabitants of Teston, the conservation, protection and maintenance of the unspoilt rural and agricultural nature of land within or abutting the Parish of Teston ...". TLCT now owns 22 acres of land.

Via TLCT and on its land, we have then:

- in consultation with Network Rail, planted seven Oak Trees with a view to masking the visual impact of the railway level crossing at Teston in a visually important section of the Medway Valley- they are now well- established;
- given permission for three disease-resistant Elms to be planted just to the east of Teston Bridge Country Park;
- in three acres along the south side of Tonbridge Road, just to the west of the entrance to Teston Farm Shop, planted about 3,500 native saplings and a few mature trees, with some 10% of them now flourishing, and with subsequent prunings being left to provide natural habitats;
- nurtured a water meadow in a field opposite Teston Bridge Country Park; and
- made available fields for graziers with their sheep, cattle and other animals, including for the enjoyment of those walking along the river bank to the east of Teston Bridge Country Park.

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

- 4.3.1. *In summary of the above objection, the landowner has suggested that the Silver Birch is estimated to have 10-15 years life remaining and now represents an unappealing specimen in this prominent part of Teston. It is considerably off vertical, has a distorted bough, a very rough bark and drops a considerable number of twigs. A neighbour is concerned that the distorted bough is reaching towards his home and, if it fails, would cause damage.*

- 4.3.2. *Following inspection by an independent arboricultural consultant and the Councils Landscape Officer/Arboriculturist the tree was found to be in a good condition, both structurally and physiologically with a useful safe life expectancy of at least 20 years.*
- 4.3.3. *The tree is growing off vertical with a natural lean towards the north away from the neighbouring property, towards the children's play equipment. At the time of inspection there was no visual signs of root plate movement or indication that the lean presents an increased risk of failure.*
- 4.3.4. *The distorted bough does have a kink/twisted wood fibres at a distance of approximately 1.5m from the main stem to the south but, otherwise seems structurally sound. The rough bark on the lower stem is a natural occurrence on this species of tree and again is not considered to indicate an increased risk of failure.*
- 4.3.5. *Falling twigs/branches is a natural phenomenon on mature trees and should not be taken as a sign of decline.*
- 4.3.6. *The retention of the Silver Birch tree does not prevent the Parish Council from planting the Acer platanoides 'Drummondii' in another suitable area of the Village Green.*

## **5. APPRAISAL**

- 5.1.1. With any application to fell protected trees, a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area. In this case, the proposed felling of the Silver Birch would result in significant harm to the character and appearance of the area and, in judgement, insufficient justification has been demonstrated for the proposed felling.
- 5.1.2. The LPA considers that the Silver Birch 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. 5003/2022/TPO in response to the conservation area notification 22/501491/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.
- 5.1.3. 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.
- 5.1.4. 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 Silver Birch tree from the threat of inappropriate works and gives the LPA control over future works. It is therefore recommended that Tree Preservation Order **No. 5003/2022/TPO** is **CONFIRMED WITHOUT MODIFICATION**.

## 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. 5003/2022/TPO (Schedule and Plan)

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**Tree Preservation Order**  
**Town and Country Planning Act 1990**  
**The Tree Preservation Order No. 5003/2022/TPO The Village Green Church Street Teston**  
**ME185AJ**

The **Maidstone Borough Council** in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order-

**Citation**

1. This Order may be cited as **Maidstone Borough Council** Tree Preservation Order No. 5003/2022/TPO- The Village Green Church Street Teston ME18 5AJ

**Interpretation**

- 2.- (1) In this Order "the authority" means the **Maidstone Borough Council**
- (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

**Effect**

- 3.- (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
- (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall-
  - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
  - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 27th day of July 2022

. J\_

Rob Jarman  
Head of Development Management Maidstone  
Borough Council

Authorised to sign by the Council in that behalf.

## SCHEDULE

### Specification of trees

5003/2022/TPO

The Village Green Church Street Teston Maidstone ME18 5AJ

#### Trees specified individually

{encircled in black on the map}

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i>  |
|-------------------------|--------------------|---|
| <b>T1</b>               | Silver Birch       | On the southern boundary of The Green to the rear of the property known as Sylvaner |

#### 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 (including number of trees of each Situation species in the group)</i> |
|-------------------------|---|
| NONE                    |   |

#### Woodlands

{within a continuous black line on the map}

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|------------------|
| NONE                    |                    |                  |

Planning Committee Report  
19 January 2023




**Teston Village Green**  
 Scale: 1:700  
**Tree Preservation**  
 Order No. 5003/2022/TPO

**Tree Schedule**  
 T1 - Silver Birch

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