

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

6th June 2013

**REPORT OF DIRECTOR OF CHANGE, PLANNING AND THE
ENVIRONMENT**

REFERENCE: Tree Preservation Order No. 1 of 2013 Date: 29th January 2013

TITLE: Trees on land at Lenham Square, Lenham, Kent

CASE OFFICER: Paul Hegley

Tree Preservation Order (TPO) No.1 of 2013 was made under Regulation 4 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 to protect eight Lime trees. One objection to the order has been received and the Planning Committee is, therefore, required to consider this before deciding whether the Order should be confirmed.

The recommendation on whether to confirm this TPO is being reported to Committee for decision because:

- One objection has been received

POLICIES

National Planning Policy Framework
Maidstone Borough Council, Landscape Character Assessment & Landscape Guidelines, 2000
Government Policy: ODPM, 'Tree Preservation Orders: A Guide to the Law and Good Practice'

BACKGROUND

Following the submission of a section 211 notice to fell seven Lime trees (reference: TA/0088/12) Tree Preservation Order No. 6 of 2012 was made on the 31 July 2012 on a provisional basis to ensure the trees were retained. Following the making of the order, it was noted that there are in fact 8 Lime trees located within the row that front the northern boundary of the main village square, fronting shops and properties numbered 7 – 13.

This order expired on 31 January 2013 and, whilst no objections were received, it was considered expedient to allow it to lapse and replace it with TPO No. 1 of 2013 to ensure all eight trees within the row are protected.

The grounds for the making of the order were stated as follows: -

Provisional Order No. TPO 6 of 2012 is due to expire on 31st January 2013 and currently protects seven out of eight Lime trees growing to the north of Lenham Square. All eight trees have significant amenity value and it is therefore considered expedient to replace the current order and make all eight trees the subject to a TPO to ensure their continued long-term retention.

The six month provisional Order expires on 29 July 2013, after which the Order automatically lapses if not confirmed. The order cannot be confirmed after this date.

OBJECTIONS

The TPO was served on the owner/occupier of the land in question and any other parties with a legal interest in the land.

One objection has been received to the order, within the statutory 28 day period from its making by the owner of The Corner House, who has also recently purchased the Lime Tree Hotel, both properties of which front onto the row of Lime trees.

The grounds of the objection are summarised as follows (the explanation referred in the text is attached as **Appendix A** to this report):-

"I object to the proposed TPO because it includes a tree that I have permission to fell.

The tree that I have permission to fell is between T4 and T5 of the TPO6 of 2012. I gave my intention to fell this tree on the 19/06/2012 using 'Application for tree works in a Conservation Area'. The LPA did not object to my proposal to fell this tree and I therefore have two years to do so.

I enclose a copy of my explanation why I would like all the Lime trees replanted. Please note that TPO6 of 2012 has not been confirmed and TPO1 of 2013 is defective."

In addition to this, three further letters were received from the same objector on 14 March, 2 April and 29 April 2013. None of these letters raised any new issues and were responded to accordingly but are summarised below:-

1. "In my letter dated 17 February 2013 I explained that I have the right to fell the tree scheduled T4 in your letter.

Are you challenging my right to fell this tree? Would you please explain how you can retract my two year right to fell this tree.

My understanding is the tree owner is the only person or body that could stop this felling."

2. "I agree that any Tree Works application can only be determined in two ways. One way was to T.P.O the trees. This was the determination for six of my seven application trees. The other way was to allow the proposed works. This was the determination for one of my seven application trees. This tree is T4 of T.P.O 1 of 2013.

The guidance notes of TA/0088/12 Application for Tree Works clearly state that:-

Item 10 (ii) I may proceed with the works after six weeks has elapsed.

Item 12 I have two years to carry out the works.

These items are unconditional and you therefore have to wait the two year period to T.P.O this tree, which will be felled by then anyway."

3. "In your letter of 28th March you admit that a tree was omitted from the order. This tree was T4 of TPO No.6 of 2012. Your mistake cannot be rectified by putting a TPO on T4 after the 6 week period has lapsed under 9.7(2) a decision not to make a TPO for this tree has been made. The two year period after submitting the tree works notice is unconditional and therefore binds both parties i.e. MBC and myself.

Mistakes have to be paid for. After all, there would be no need for litigators or P.I. insurance if we could simply change our minds about things.

Has this matter been referred to your legal department?"

REPRESENTATIONS

The order was also copied to any landowners immediately adjacent to the site.

There were no letters of objection to the original order, TPO No.6 of 2012, but two letters of support were received.

CONSIDERATIONS

The eight Lime trees subject to this order are growing within the cobbled path, known as The Limes, which fronts the shops and properties along the northern boundary of The Square, Lenham. All 8 trees have been pollarded in the past (as permitted under application reference TA/0176/06) in order to restrict their size and dominance over the neighbouring shops and properties. They form part of a historic planting of trees that have been present within the square since the 19th century and, although not the original trees, they contribute significantly to the amenity of the conservation area.

Recently re-pollarding has been undertaken in accordance with an approved application, reference TA/0155/12.

LEGAL CONTEXT

Local Planning Authorities (LPAs) may make a TPO if it appears to them to be:

'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

The Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees should therefore normally be visible from a public place, such as a road or footpath. The benefit may be present or future. It is, however, considered

inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

LPAs are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the following key criteria:

- (1) visibility
- (2) individual impact
- (3) wider impact

Officers use an amenity evaluation assessment form based on Government guidance and an industry recognized system which enables Arboricultural Officers to make an objective decision on whether trees fulfill the criteria for protection under a TPO.

However, although a tree may merit protection on amenity grounds, it may not be expedient to make it the subject of a TPO. For example, it is unlikely to be expedient to make a TPO in respect of trees which are under good arboricultural management. It may, however, be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate.

RESPONSE TO OBJECTION/S

The response to the principle point of objection set out above is as follows:-

The Council received a section 211 notification on 20 June 2012 to fell 7 out of 8 Lime trees growing to the north of Lenham Square.

The LPA can deal with a section 211 notice in one of three ways. They may:

- (1) make a TPO if justified in the interests of amenity. The proposal would then have to be the subject of a formal application under the TPO, or
- (2) decide not to make a TPO and allow the six week period to expire, at which point the proposed work may go ahead as long as it is carried out within two years from the date of the notice, or
- (3) decide not to make a TPO and inform the applicant that the work can go ahead.

The LPA cannot refuse consent. Nor can they grant consent subject to conditions.

The applicant clearly received a decision letter dated 31 July 2012 in accordance with current legislation, confirming that the Council's decision was to make a TPO, No. 6 of 2012, in order to prevent the removal of the seven trees.

The Order omitted one tree of this group of 8 as it was made in response to the notice relating to only 7 trees. The omitted tree was still protected by virtue of

being located in Lenham Conservation area. However, when considering confirmation of the original Order, it was considered open to misinterpretation in relation to which of the 7 out of the 8 trees was protected under the TPO. It was therefore considered expedient to let TPO No. 6 of 2012 lapse and remake it as TPO No. 1 of 2013 to protect all 8 trees.

The tree the objector incorrectly believes he can remove could potentially have legitimately been removed during the period after the 6 week notification expired and prior to the new Order being made but it is now clearly protected.

The objector is not believed to own these trees but, with regard to his statement at appendix A, the removal and replacement of the Lime trees may be considered appropriate from a long-term management perspective. The TPO, in itself, does not stop anyone applying to remove and replace these trees. However, even if the objector did submit an application and was granted consent, he would not be able to proceed with the work without the owner's permission. It should be noted, though, that ownership is not a matter for the consideration of the Council in either the confirmation of this Order or in relation to any future application for work to these trees.

CONCLUSION:

For the reasons set out above it is considered that there are no grounds of objection above which are sufficient to throw the making of the Order into doubt.

RECOMMENDATION:

CONFIRM **WITHOUT** MODIFICATION Tree Preservation Order No. 1 of 2013.

BACKGROUND DOCUMENTS:

TPO No. 1 of 2013
TPO No. 6 of 2012.