

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

6 June 2013

REPORT OF THE DIRECTOR OF CHANGE, PLANNING AND THE ENVIRONMENT

REFERENCE: Tree Preservation Order No. 10 of 2012 Date made: 19/12/12

TITLE: Trees on land north of The Pines, Caring Lane, Thurnham

CASE OFFICER: Nick Gallavin

Tree Preservation Order (TPO) No.10 of 2012 was made under section Regulation 4 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 to protect 18 Oak, 3 Pine and 1 Hazel. 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, published 2012 & Landscape Guidelines, 2000

Government Policy: ODPM, 'Tree Preservation Orders: A Guide to the Law and Good Practice'

BACKGROUND

On 21st November 2012, Landscape Officers received a request to consider making a Tree Preservation Order on trees at the site, as the site was to be offered for sale at Auction on December 10th 2012 and concern was raised that it is common practice for a new owner to remove trees before submitting a planning application. The lot description stated "the land may be suitable for grazing or, perhaps, equestrian use, subject to all the necessary consents being obtainable. Equally, the land may offer future development potential, again subject to all necessary consents being obtainable."

As a result, it was considered expedient to protect the trees by the making of a TPO.

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

The Oak, Pine and Hazel trees are visible from Caring Lane and are considered to make a valuable positive contribution to the character and amenity of the area. A change in ownership of the land following its sale at auction as land with potential for development is considered to place the trees on the site under threat of felling. Therefore, it is considered expedient to make the trees the subject of a Tree Preservation Order.

The six month provisional Order expires on 19 June 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 new owner 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 Estate and Corporate Solicitors on behalf of the new owner of the site. The main text of the objection is reproduced here:-

"...Our Client wishes to object and has instructed us to object to the order. The tree preservation order it will appear focuses solely on the parcel of land purchased by our client which in itself puts our client at a very serious disadvantage as it was issued after our client purchased the property on Auction.

Our client would like to know if there was any consultation had prior to the imposition of the previous owners and if not why.

Our client is concerned that his property has been unfairly selected and would like to know why his land was the only property in the area affected by the order. Why was a blanket order not issued for the entire area if the objective is to make a valuable and positive contribution to the character and amenity of the area? The imposition of the order will adversely affect the intended use of the land and significantly has dire financial consequences on our client.

Our client also would like to have access under the freedom of information Act to the paperwork that led to the imposition of this tree preservation order [sic]. We are further authorised to receive any correspondence on this matter on behalf of our client."

The grounds of the objection/s are summarised as follows: -

- The property was unfairly selected
- The new owner is at a very serious disadvantage as the order was made after the property was sold at auction.
- The order adversely affects the intended use of the land and has significant dire financial consequences on the new owner.

CONSIDERATIONS

SITE AND SURROUNDINGS

The site is a plot of land on the north side of Caring Lane, Thurnham. It is rural in character, with trees and grassland. Currently, there is no direct access to the plot from Thurnham Lane.

DESCRIPTION OF TREE/S

There is a large group of trees on the Caring Lane frontage, consisting of 18 Oak of varying maturity and 3 mature Pine, which form a prominent group that are considered to make a positive contribution to the character of the area. Various other trees are set further back in the site and are therefore less visible, but can still be seen from public viewpoints. Of these, 10 individual Oaks and 1 Hazel were considered to be of sufficient size to merit protection.

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 points of objection set out above is as follows:-

The site was considered for protection because of a change in ownership. Whilst this might be considered as unfair, the making of a Tree Preservation Order only arises where it is expedient to do so. This means that the making of orders is generally reactive, in response to a perceived threat to trees. This site was considered alone because it was only this site that was subject to a change in ownership that potentially threatens the trees present.

Tree Preservation Orders can be made at any time. The new owner considers that they have been placed at disadvantage as the order was made after the auction, but the seller could make an objection on the same grounds when an order is made prior to an auction.

It is not known what the intended use of the land is. The objection states that the making of the order will adversely affect the intended use of the land and significantly have dire financial consequences. This implies that tree removals were intended, and that it was indeed expedient to protect trees on the site.

Note: The financial issues raised above are not considerations that relate to the making of Tree Preservation Orders. The Local Planning Authority might, in certain circumstances, be liable to pay compensation for financial losses resulting from a refusal of consent following an application for works to protected trees, but such liability does not arise from the making or confirming of Tree Preservation Orders.

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. The ongoing protection of the trees will prevent tree removals from being carried out for the sole purpose of enabling development proposals and ensure that the trees are appropriately considered in any proposal.

RECOMMENDATION:

CONFIRM **WITHOUT** MODIFICATION Tree Preservation Order No. 10 of 2012.

BACKGROUND DOCUMENTS:

TPO No. 10 of 2013