

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

20th March 2014

REPORT OF THE HEAD OF PLANNING AND DEVELOPMENT

REFERENCE: Tree Preservation Order No. 13 of 2013 Date: 20th September 2014

TITLE: Woodland east side of Dean Street, East Farleigh, Maidstone, Kent

CASE OFFICER: Paul Hegley

Tree Preservation Order (TPO) No.13 of 2013 was made under Regulation 4 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 to protect an area of developing woodland to the east side of Dean Street, East Farleigh. 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

Maidstone Landscape Character Assessment (March 2012 amended 19 July 2013) and Supplement (2012- Saved Sections of the Landscape Character Assessment and Landscape Guidelines 2000)

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

BACKGROUND

Located to the east side of Dean Street near the junction with Heath road is a small area of young regenerating woodland that consists mostly of deciduous species such as Oak, Ash, Hazel, Cherry, Sweet Chestnut, Apple and Sycamore. As a whole, the woodland adds to the sylvan character of the area and is considered to be important in landscape and ecological terms.

The site has recently been subject to pre-application advice (ref:PA/13/0471) for possible development which will threaten the trees within the wood. Therefore, it was considered expedient to protect the woodland by making it subject to TPO No.13 of 2013

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

The trees growing within the woodland to the east side of Dean Street make a significant and positive contribution to local landscape quality and amenity of the area. Pre-application advice has been sought from the Council for possible development within the wood that would jeopardize the trees' long-term retention. Therefore, it is considered expedient to make the Wood the subject of a Tree Preservation Order in order to secure its long-term retention.

The Section 201 direction bringing the order into immediate effect expires on 20TH March 2014.

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. It was also copied to any landowners immediately adjacent to the site.

One objection has been received to the order, within the statutory 28 day period from its making, from Arboricultural Consultant Curtis Barkel on behalf of the site owner.

The main grounds of the objection are summarised as follows: -

1. *Woodland Classification – Improper use of the woodland classification of TPO. The site is not a woodland and does not comprise of the diverse range of features characteristic of a native woodland.*

The site is an unmaintained orchard which has primarily become overgrown with small, short lived understorey or shrub-layer trees: Hazel, Hawthorn and Sallow. The majority of these trees are mature and have reached their maximum size, many are over-mature and beginning to decline. The trees do not present any future potential to increase in size or stature.

A 'Woodland' Order serves to provide protection for all trees of whatever species and age that currently exist or come to establish in the future. To classify the site under a 'Woodland' Order serves to effectively change the use of the land from what is quite clearly an unmaintained orchard, covered with a quite unremarkable shrub layer, to an area of protected woodland.

This carries highly prohibitive constraints to not only potential planning considerations but to general maintenance operations on the site, even preventing the re-instatement of orchard management practices.

The site does not display the typical characteristics of a locally native woodland. This can be easily demonstrated by stepping into the traditional woodland area to the south of the site which, even for such a small strip of land, harbours all the components of a local woodland, including a woodland structure of ground flora; shrub layer and natural regeneration. Even to the layman the difference in character and ambience between the unmaintained orchard and a true woodland is quite apparent. To promote the development of indigenous woodland on the site would be an enormous undertaking requiring the removal of the non-indigenous species such as the apple trees and arguably the one semi-mature Sweet Chestnut and one semi-mature Sycamore. In addition much of the dense Hawthorn understory would require thinning to try to promote natural regeneration or to ensure the success of planting. The amount of work required to achieve this would not be

dissimilar to the creation of a new woodland on an open field and would require the removal of many of the trees that are considered under the TPO to be of significant value.

2. *Amenity Value – The trees do not make a significant and positive contribution to local landscape quality and amenity of the area.*

Maidstone Borough Council state in their TPO Formal Notice that 'the trees growing within the woodland...make a significant and positive contribution to local landscape quality and amenity of the area'.

A request was submitted to Maidstone Borough Council for a copy of the amenity assessment that was carried out prior to the TPO being served, as is advised in the government guidance. The Tree Officer's response was that 'a site visit was made by a tree officer prior to serving the order and all observations were made from surrounding public areas (roads/footpaths etc)'. The method of amenity assessment was not clarified and no record of assessment provided.

Upon visiting the site I considered the three key criteria to be assessed when serving a TPO:

i. Visibility - *An assessment of how visible the woodland was from surrounding roads was carried out and it was apparent that the majority of the trees on the site are not visible at all from public viewpoints. It is just about possible to make out the tops of the larger individuals on the site when viewed from the north some distance along Dean Street; and dead or moribund Sallow are visible behind the boundary hedge from Adbery Drive. However other than the Hawthorn / Hazel boundary hedge and one semi-mature Sycamore of poor form located along the western boundary, there are no trees visible that could be described as being components of a woodland that is significant to the local environment.*

ii. Individual Impact - *The guidance states that in relation to a woodland, an assessment should be made of its collective impact. Other than the boundary hedge the majority of trees on the site are not visible from public viewpoints, as such whether assessing partial or combined impact the trees within the site do not make a significant contribution to the visual amenity of the area.*

iii. Wider Impact - *Due to the topography of the surroundings and the size of the trees on the site the area of protected trees is not of any significant visual importance in the local landscape. Other than the fifteen individual semi-mature trees identified on the site, all other tree cover comprises of short-lived, small species of tree i.e. Hazel, Hawthorn and Sallow, with the boundary hedge comprising primarily of Hawthorn and Hazel. The Hazel and Hawthorn cover that dominates the main part of the site will not develop to any greater height than the boundary hedge and as such does not offer any future potential to increase in visual significance. The Sallow in the north-eastern section of the site will (and has) grown slightly taller than the Hazel/Hawthorn, however with this being a short lived species once maximum height is achieved the trees soon begin to decline as is apparent when viewed from Adbery Drive.*

The fifteen individual semi-mature trees, although not currently of significance to the local area, do have the potential to develop into large trees which may offer notable amenity value in future years.

3. *Expediency - It is not considered to be expedient to serve a 'Woodland' TPO on land which pre-application planning advice states would offer the potential for local needs development.*

On the one hand the LPA states in their pre-application advice that the site presents the potential for local needs development. Whilst on the other hand a 'Woodland' TPO has been served to protect the 'woodland unit' i.e. all saplings and trees both present and future.

LPA's are advised that the intention of a TPO is not to obstruct development schemes. However, the serving of a Woodland Order clearly frustrates the potential for any future success in the planning process; for the development of a protected woodland would be far less likely to achieve planning approval than the development of a site hosting individual or group TPO trees. The serving of this Order therefore contradicts the pre-application advice provided.

CONSIDERATIONS

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:-

1. Woodland Classification.

The woodland consists mostly of self regenerating deciduous species such as Oak, Ash, Hazel, Cherry, Sweet Chestnut, Apple and Sycamore. As a whole, it adds to the sylvan character of the area and is considered to be important in landscape and ecological terms, particularly as it forms part of an extension to the larger lapsed Sweet Chestnut coppice woodland that flanks the southern boundary, which is protected by TPO No. 16 of 2009. It is acknowledged that trees within the woodland are of varying ages and physiological and structural condition. This variance is what you would expect to find within any woodland ecosystem.

At the time of the making of the order, given the species range and tree cover present on the site, a woodland classification was considered to be the most appropriate form of protection. Current TPO legislation does not define the term 'woodland' and there appears to be no definition either in legislation or case law. In the Secretary of State's view, trees which are planted or grow naturally within a woodland area after a TPO is made are also protected by the order. This is because the purpose of such an order is to safeguard the ecological integrity of the woodland unit as a whole, which depends on regeneration to be sustainable.

2. Amenity Value

Prior to the TPO being made, a visual assessment of the trees/woodland was undertaken from ground level from the surrounding public roads and paths that flank the boundary of the site in accordance with current government guidance. Visibility, individual impact and wider impact of the trees/woodland were all assessed from these public areas and an amenity assessment form was subsequently completed which gave a score of 20.5 out of a benchmark of 17, thus confirming that the woodland is of sufficient amenity value to merit protection.

3. Expediency.

As previously detailed in this report the site has been subject to recent pre-application advice for future potential development suitability. Regardless of this, there was nothing to stop the landowner from clear felling every tree so, in order to safeguard the situation, it was considered expedient to make them the subject of a TPO. The order was not made to hinder any future development proposals and it should be noted that if full planning consent is granted it would override the TPO.

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. 13 of 2013.