

Ightham

16 July 2018

TM/18/01627/TNCA

Wrotham, Ightham And
Stansted

Proposal: Removal of 18 Beech; 1 Pine; 5 Hornbeam; 6 Acacia; 1 Oak; 2 Holly and 1 Silver Birch trees from garden to be replaced with various different species

Location: Land Adjacent To Oldbury Hatch Oldbury Lane Ightham Sevenoaks Kent TN15 9DG

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1. Description:

- 1.1 Trees in a conservation area that are not protected by an Order are protected by the provisions in section 211 of the Town and Country Planning Act 1990. These provisions require people to notify the local planning authority, using a 'section 211 notice', 6 weeks before carrying out certain work on such trees, unless an exception applies. The work may go ahead before the end of the 6 week period if the local planning authority gives consent. This notice period gives the authority an opportunity to consider whether to make an Order on the tree(s).
- 1.2 Such a notification was issued to the Council in respect of the removal of a number of trees on land adjacent to Oldbury Hatch as set out in the proposal description above. The justification for removing the trees was that they were considered by the applicant to be potentially at risk of falling over a private road and the owner wanted to create an orchard and market garden.
- 1.3 The authority can deal with a section 211 notice in one of three ways. It may:
 - make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
 - decide not to make an Order and inform the person who gave notice that the work can go ahead; or
 - decide not to make an Order and allow the 6 week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.
- 1.4 A section 211 notice is not, and should not be treated as, an application for consent under an Order. So the authority cannot:
 - refuse consent; or
 - grant consent subject to conditions.
- 1.5 Having made an assessment of the notification received in line with the above provisions, officers considered the trees to have sufficient value to warrant the

making of a Tree Preservation Order (TPO) on the line of Beech trees, a group of two mature Oaks and a Pine tree to ensure their retention. The TPO as made is annexed to this report in full for ease of information.

2. Reason for reporting to Committee:

- 2.1 Procedure requires that upon making a TPO consultations are carried out and consideration given to any representations received. The consultation undertaken resulted in a significant level of local interest (summarised in Section 5 of this report). The authority should consider duly submitted objections when deciding whether the proposals are inappropriate and whether an Order should be made

3. The Site:

- 3.1 The trees stand on a plot of land to the west of Oldbury House and east of Oldbury Hatch adjoining Oldbury Lane within the Conservation Area.

4. Consultees:

In response to the original s211 notification:

- 4.1 PC: We are concerned that removal of these trees, especially the Beech will affect the visual amenity of the area. We would like to see a TPO on them, although as a compromise would suggest some judicious pruning, especially the branches over the road.

In response to the original s211 notification and consultation on the making of the TPO:

- 4.2 Private Representations: 9 representations in support of the removal of the trees summarised as follows:

- Concern that the trees are exposed to high winds and could fall on the road, blocking it, and bringing down overhead lines;
- Trees lean heavily over the road and pose a threat to Oldbury House;
- They are a danger owing to their size and proximity to neighbouring property;
- The area supports many trees generally and beech woodland particularly so the risk of habitat loss is minimal;
- The line of Beech is the result of a hedge being unmanaged for many years. Best to remove them and replace with Beech that can be managed as a hedge.

- 4.2.2 In addition, the owner of the site submitted a detailed objection to the TPO, summarised as follows:

- No objection to the TPO on the two Oaks G2, but is concerned about the amount of large deadwood in them and the threat of any potential damage to the adjoining property, of safety of local people and their pets.
- Objects to T1 Scots Pine being protected as the tree has been naturally seeded and not planted to improve the local landscape character. The tree is competing with the Oaks. The tree is restricting access onto the land. Dead branches fall and could damage overhead power lines.
- Opposes TPO on G1 in strongest terms.
- The trees/neglected hedgerow pose a considerable danger to the road and the TPO places unreasonable liability on the owner.
- The trees block sunlight to the land and low branches extending over the site posing a hazard. In case of tree fall the private access will have no emergency access.
- Removal would prevent damage to overhead services.
- The owner of Oldbury House has serious worries about the trees in relation to his 500 year old property.
- Replacement planting with an orchard would benefit the whole community and attract wildlife into the area.

4.2.3A total of 5 representations objecting to the removal of the trees and supporting the making of the TPO summarised as follows:

- The area is a gateway to Oldbury Woods regularly enjoyed by walkers and nature enthusiasts. Removal of the trees would have significant impact and completely change the character;
- Removal would irrevocably destroy the visual beauty of the conservation area;
- Trees could be pruned if they affect overhead lines or the neighbouring property rather than removed;
- Concern that owner wishes to build a new house on the land.

5. Determining Issues:

5.1 An Order comes into effect on the day the authority makes it. This provisional effect lasts for 6 months, unless the authority first either confirms the Order to provide long-term protection or decides not to confirm it.

5.2 Authorities can confirm Orders, either without modification or with modification, to provide long-term tree protection. They may also decide not to confirm the Order,

which will stop its effect. Authorities cannot confirm an Order unless they have first considered any duly made objections or other representations.

- 5.3 Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner.
- 5.4 The main issue in determining this application is whether or not the trees in question have sufficient amenity value to warrant retention and thus confirm the TPO made on the line of Beech, two Oaks and a Pine.
- 5.5 Planning Practice Guidance (PPG) makes clear that 'amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. It goes on to make clear that Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.
- 5.6 It is considered that the trees do have high amenity value in the conservation area within the AONB. They stand next to a public footpath which runs up Oldbury Lane into Oldbury Woods to the west.
- 5.7 In particular, due to the size and maturity of the line of Beech, they provide amenity value to the area as a whole and can be seen across open land from outside Oldbury Close in Spring Lane. They frame the view down the private road to the south side of the site, and are particularly attractive in spring with fresh green growth, and autumn when they provide attractive autumn colour.
- 5.8 The two mature Oaks are fine, old specimens with huge benefit to wildlife, and the Pine provides evergreen presence when the other trees have lost their leaves.
- 5.9 Meetings have been held between Officers and relevant parties, in particular the site owner, his instructed tree surgeon and the owner of Oldbury House to discuss various issues and concerns. They have been respectively advised of what works might be possible to trees that are damaged, dying or dangerous without needing consent from the authority regardless of the presence of a TPO. In addition, it is understood that a report is undergoing preparation to manage trees that require certain works including appropriate crown lifting. In addition, the poorest specimens could likely be removed without objection.
- 5.10 There are clearly concerns about the safety of the line of Beech trees. However with appropriate management the majority of them could be kept.

5.11 The owner has raised no objection to the TPO on the two mature Oaks but clearly they need some attention in terms of removal of deadwood and some reduction of branches extending towards Glebe Cottage.

5.12 I remain of the view that it is necessary and appropriate in the circumstances to seek to protect the trees in question through confirmation of the TPO. Following this, officers will be able to seek to ensure works that are undertaken are acceptable in reaching a balance between retaining their amenity value and the contribution they make locally to the area and any effective management works to improve their longevity and retain safety without necessitating wholesale removal.

6. Recommendation:

6.1 The Tree Preservation Order as set out in Annex 1 **BE CONFIRMED**

Contact: Liz Guthrie