

West Malling
West Malling And
Leybourne

TM/19/00001/TPO

Location: Field At Corner Of Lavenders Road And Swan Street West
Malling Kent
Go to: [Recommendation](#)

1. Description:

- 1.1 Since receipt of the planning application proposing residential development of this site (as discussed elsewhere on this Agenda), consideration has been given as to whether any trees within the site merit specific protection by Tree Preservation Order.
- 1.2 Having made an assessment of the collective amenity value of a number of trees along the site boundaries, it was considered appropriate to serve a Tree Preservation Order in February 2019. A copy of the Order is annexed to this report in full for ease of information (Annex 1).

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 has resulted in an objection being lodged on behalf of the prospective developer of the land and, in these circumstances (given other matters ongoing in connection with this site), the authority should consider these objections when deciding whether the Order should be confirmed.

3. The Site:

- 3.1 The Swan Street and Lavenders Road frontages of the site are aligned with mature trees atop raised landscaped banks.

4. Consultees:

- 4.1 One letter of objection received on behalf of the prospective developer of the land. A redacted version of this letter is reproduced in full at Annex 2 for completeness.

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 five identified groups.
- 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 sufficient to warrant such protection. In particular, due to the size and maturity of the groups, they provide amenity value to the area as a whole especially as the site serves as an important, sylvan entrance to the town of West Malling.
- 5.7 The objections raised are made with specific references to Groups G2 and G3; these are considered to be of poor quality. I accept that one Ash in G3 has been identified as being potentially hazardous (no. 224 on the survey plan), so should be removed from the TPO.
- 5.8 The arboriculturalist is disputing the number of species of trees within G1 and G2. Under the circumstances these will need to be reviewed.
- 5.9 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 a TPO and recommend accordingly, subject to further confirmation of tree species cited in Groups 1 and 2.

6. Recommendation:

- 6.1 The Tree Preservation Order as set out in Annex 1 **BE REVIEWED AND CONFIRMED FOLLOWING MODIFICATION**

Contact: Liz Guthrie