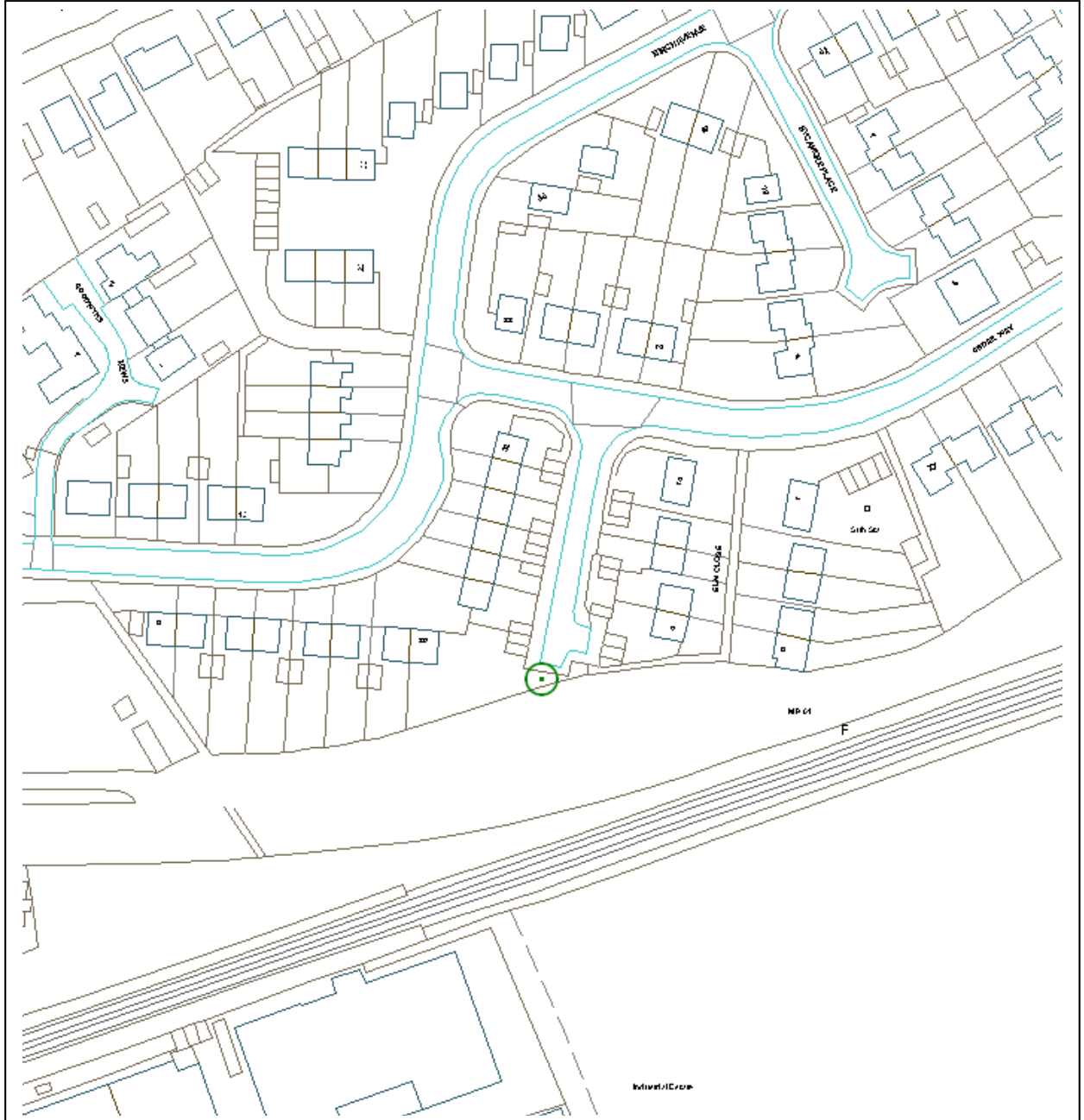


PLANNING COMMITTEE

14 OCTOBER 2014

REPORT OF THE HEAD OF PLANNING

**A.1 PROVISIONAL TREE PRESERVATION ORDER 14/00007/TPO - 20 BIRCH AVENUE,  
GREAT BENTLEY, ESSEX CO7 8LL**



DO NOT SCALE

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

<b>Application:</b>	14/00007/TPO	<b>Town / Parish:</b> Great Bentley
<b>Address:</b>	20 Birch Avenue, Great Bentley, Colchester, Essex CO7 8LL	
<b>Development:</b>	1 x Maple Tree	

## **PURPOSE OF THE REPORT**

- 1.1 To determine whether the provisional Tree Preservation Order, made in respect of 1 Maple situated within the curtilage of 20 Birch Avenue, Great Bentley should be confirmed or allowed to lapse.

## **BACKGROUND**

- 2.1 On 26 March 2014 information was received by the Council's Tree and Landscape Officer that a Maple situated at the above location was at risk of being felled because of the proposed development of adjacent land as set out in Planning Application 14/00355/FUL Land rear of Bold Venture, Station Road, Great Bentley. The planning application identified the removal of the Maple to facilitate access to the land.
- 2.2 On the 17 April 2014 a site visit was made to assess the impact of Planning Application 14/00355/FUL Land rear of Bold Venture, Station Road, Great Bentley on both the Maple and other trees on the application site. Several trees on the adjacent land are afforded protection by Tree Preservation Order 06/11 and the development proposal did not compromise the integrity or retention of these trees. Therefore the main issue to consider was whether or not the condition and amenity value of the Maple was such that it merited protection by means of a Tree Preservation Order (TPO).
- 2.3 On 22 April 2014 a new TPO was served to protect 1 Maple situated within the curtilage of 20 Birch Avenue, Great Bentley.
- 2.4 On 16 June 2014 Planning Application 14/00355/FUL Land rear of Bold Venture, Station Road, Great Bentley was refused because of its scale and design as well as the impact of the change of use of the land on local residents, including increased vehicular movements. The refusal notice described the impact of the loss of the tree on the local street scene and the harmful visual impact of the proposed workshop.

## **SITE ASSESSMENT AND AMENITY VALUE**

- 3.1 The primary purpose of the site visit made on 17 April 2014 was to carry out an assessment of the amenity value of the Maple situated within the curtilage of 20 Birch Avenue.
- 3.2 The Maple is situated in a prominent location and makes a positive contribution to the appearance of the street scene. It has high visual amenity value as it can be clearly seen from the adjacent highway. It has considerable growth potential and as the tree develops and increases in size the contribution that it makes to the amenity of the locality will increase commensurately.

- 3.3 From a visual inspection from the ground the tree appeared free of any significant pest infestation or disease and has no significant structural defects.
- 3.4 The Maple tree makes a positive contribution to the character and appearance of the area.
- 3.5 As the Maple was at risk of being felled a new Tree Preservation Order was made in order to ensure that it is retained.

#### **4. REPRESENTATIONS/OBJECTIONS**

- 4.1 Following notification of the making of the Order to the owner of the property and adjacent properties, three letters of representation were received objecting to the Tree Preservation Order. One objection was from the owner of the land on which the tree is situated (Mr Spake) and the other from the owner of the adjacent land (Mrs B Wallis). Mrs Wallis's objection is supported by a letter of objection from Hayden's Arboricultural Consultants
- 4.2 The objections must be fully considered in the process to determine whether or not to confirm the Order.
- 4.3 The objection from Mr Spake is as follows:
  - 1. Over the past 10 years it has been necessary, as a result of root development, to raise the ground around the tree in order to maintain its healthy condition on four separate occasions. This has been completed at considerable expense and physical effort and is not something that I am in a position to continue to do, particularly as I am an aging member of the population whose health is not improving and for whom heavy work is no longer an option.
  - 2. Current growth rates would suggest that within the next five years the area around the tree will again require raising. If, as stated above, I am unable to increase the level of ground around the tree, the roots will become exposed and will pose a danger to persons and property and in such circumstances the tree would need to be removed, which under current legislation would be permissible irrespective of any TPO in force at the time.
  - 3. The tree is only directly visible at street level to two properties facing into the cul-de-sac at the rear of my property from Cedar Way, and therefore the ability for those in the surrounding area to enjoy its 'amenity' is somewhat misleading. In order for those living in the area immediately surrounding my property to be able to take full advantage of said 'amenity' they have to view same through the first floor windows of their accommodation. Uninterrupted views of my garden are not available to the majority of residents living on my estate, which is why I feel that it is inappropriate to suggest that the tree is providing an amenity to be enjoyed by residents.
  - 4. Whilst I very much support the need to maintain a healthy balance of natural features in urbanised areas, the need to maintain safety of persons and property must surely take precedence over the tree preservation order. It is for this reason that it would, in my opinion, be inappropriate to enforce an order on tree which is already posing a long term threat to both people and property.
- 4.4 To address the objections raised in Mr Spakes letter the response to each point above is as follows:

1. The issues raised by the landowner concerning the re-profiling of soil levels beneath the canopy of the Maple and their personal circumstances are not relevant to the decision of the Council to protect the tree for its amenity value.
2. With regard to the anticipated changes in soil levels and the potential danger to persons or property this matter would need to be addressed if it arises. The owner of the land on which the tree is situated remains responsible for the tree and the land. The *Town and Country Planning (Tree Preservation) (England) Regulations 2012* contains a number of exceptions from the normal requirement to obtain for consent for works to trees if they are dead, dying or in a dangerous condition. If the condition of the tree were to deteriorate then a decision would need to be made at that time whether or not any of the exceptions applied.
3. The tree can be seen from the whole length of the cul - de - sac between the back garden of the properties in Birch Avenue and Elm Close and from Cedar Way. The tree is a prominent feature in the street scene and therefore has good visual amenity value.
4. At the present time the tree is not in such a condition where it is considered to threaten the safety of either persons or property. If the condition of the tree should change then the owner can apply for consent for works to make the tree safe or contact the Council to establish whether any of the aforementioned exceptions apply.

#### 4.5 The objection from Mrs Wallis is as follows:

1. The reason for my objection is that if this tree is to be under such an order this shall effectively block the only possible access route onto a parcel of land at the rear of Bold venture, Station Road, Great Bentley, on which a month prior to the order being placed we had submitted a planning application in which, as directed by the Highways authority, it was clear that the only means of access would require this tree to be removed.
2. In addition to this I cannot understand why this tree, of such importance to the local area, has previously not been considered worthy of protection – indeed, planning permission was granted by this authority, and still relevant, allowing this tree to be significantly reduced – including the roots and a house built very close to it.
3. This tree was assessed along with a number of others just 2 years ago in relation to a previous planning application (granted) and whilst other trees were given protection orders, despite being within a building plot this tree was not.
4. It appears incredible that this tree should be given a TPO only now – a month after our submission especially after our planning application made it clear that we intend to plant many more trees. It is also impossible to understand how this tree was considered suitable for a TPO using your own guidelines published on the TDC website where it is helpfully detailed five points to be considered when a TPO may be made for an individual tree. When on the website it refers to an individual impact assessment what is questionable is that this tree does not meet any, yet alone a number, of the five points of importance a tree should have. (extract website attached)

[TDC Website – Individual Impact: the mere fact that a tree is publicly visible will not itself be sufficient to warrant a TPO. The Local Planning Authority should also assess the trees particular importance by reference to its size{1} and form {2}, its

future potential as an amenity, taking into account any special factors such as its rarity {3}, value as a screen or contribution to the character or appearance of a conservation area{5}. As noted in paragraph 3:2 above in relation to a group of trees or woodland, an assessment should be made of its collective impact.]

Mrs Wallis comments on website extract. 1} Tree described in pre-application as being small. 2} Healthy but immature tree. 3} this tree (Maple) is not rare. 4} it screens nothing. 5} this is not a conservation area.

5. We have made it clear to the relevant officer that we are more than happy to replace this tree with a number of others of the same species just a few feet from this trees location.
6. To sum , this land which is of significant size and value, is landlocked by this order despite this tree being relatively young and easily replaced if the Council allows this order to stand.

4.6 To address the objections raised in Mrs Wallis's letter the response to each point above is as follows:

1. It is accepted that the tree obstructs the proposed access to the land known as Land rear of Bold Venture, Station Road, Great Bentley however the role of the Council's Tree Officer is to protect trees with such visual amenity value that their removal would have a significant impact on the local environment and its enjoyment by the public. The determination of subsequent development proposals that necessitate the removal of the tree must balance the loss of the tree against the benefits of the development.
2. The decision to make a TPO is often 'triggered' by a threat to a tree. Although works to reduce the size of the Maple were proposed under a previous planning application neither its viability nor retention were threatened. The current application identified the removal of the tree. The assessment of its health, condition and amenity value resulted in the new TPO.
3. As described in paragraph 2 the removal of the tree was not threatened by the previous planning application.
4. The reason for making the TPO at this time is described in paragraphs 2 and 3 above.

With regard to the information provided on the Councils Website this refers to guidance document produced by Central Governments - Department of Communities and Local Government entitled: A Guide to the Law and Good Practice. The extract entitled individual impact is part of the criteria under which the amenity value of trees should be assessed. The document also refers to visibility and wider impact. The guidance is not intended to be prescriptive but to assist with ways in which amenity value can be consistently assessed. In this instance the tree is an early mature specimen in a relatively prominent location. It currently makes a good contribution to the appearance of the area and this will increase commensurately with the development of the tree.

5. The proposed planting to mitigate the potential loss of the tree is noted and this will be considered under any future planning application for the development of the land.

6. It is accepted that the retention of the Maple stops access to the land from Elm Close.

4.7 The objection from Hayden's Arboricultural Consultant is as follows:

1. The specimen is of notably flat headed form which is a clear indicator that it is declining in vigour – i.e. no longer producing the exploratory form of growth associated with dynamic enlargement apical growth. The tree also includes notable included bark unions. This is a typical growth habit of the species and regularly leads to substantial limb failure through branches tearing out under storm loading as such the tree cannot be considered to have a safe useful life expectancy.
2. When a tree is being considered for protection by a TPO, Government advice linked from Tendring District Council's own website states that "the mere fact that a tree is publicly visible will not itself be sufficient to warrant a TPO. The LPA should also assess the trees particular importance by reference to its size and form, its future potential as an amenity, taking into account any special factors such as its rarity, value as a screen or contribution to the character or appearance of a conservation area."
3. In this situation, it is respectfully argued that the tree is not of significant size, and the poor form (flat headed growth and included bark unions) has already been discussed earlier. Realistically, the tree cannot be allowed to greatly increase its current scale due to the adverse impact it would have to the garden, the greater likelihood of limb loss, and increasing problems with the lighting column. In view of this it cannot be considered to have high quality long-term amenity. There are no special factors such as rarity, unique habitat, or historic importance and the tree does not provide any important screening. Lastly it is not located within a conservation area. In view of the above it is clear that the tree does not possess any outstanding features that would make it worthy of protection from a Tree Preservation Order.
4. It is important to note that the serving of the Tree Preservation Order occurred shortly after the submission of a planning application to gain development access through to a land-locked site beyond the southern tip of Elm Close. It is a tenet of Tree Preservation Order protocol that Tree Preservation Orders cannot in themselves be used to prevent development proposals. However, the timing of the serving of the order, bearing in mind the discredited amenity value of the tree discussed above would indicate that the action has been undertaken to provide a reason to inhibit the development proposals. This impression is re-enforced by advice from the case officer to the development applicants that if the development design were adjusted to incorporate a different layout/revised number of units, the loss of the tree protected by the order would not be a problem. This demonstrates that the serving of the Tree Preservation Order is purely motivated from a development control perspective and the condition/quality of the tree is irrelevant.

It is therefore respectfully concluded that it is not appropriate to confirm TPO 14/00007.

4.8 To address the objections raised in Hayden's letter the response to each point above is as follows:

1. With regard to the health and condition of the tree; structurally it is in reasonable condition and the defects highlighted, that may be an issue under 'storm loading', are not considered to threaten its structural integrity or viability.

2. This issue relating to the justification for making the TPO is addressed in the second paragraph of point 4 the response to Mrs Wallis's objection to the TPO.
3. This paragraph also relates to the justification for the making of the TPO and is also addressed in the second paragraph of point 4 the response to Mrs Wallis's objection to the TPO.
4. In response to the question relating to the justification for making new TPO's it should be noted that the process is often triggered when trees are at risk of being felled - sometimes because of development proposals. In such circumstances the role of the Council's Tree and Landscape Officer is to assess the health, condition and amenity value of any given tree and to make new TPO's when appropriate. Future development proposals are then determined taking into account the benefits of the development and its impact on the tree.

The advice alleged to have been given by the case officer reflects the above process inasmuch as any development resulting in the potential loss of a protected tree is assessed against the benefits of the development giving due consideration to proposals to mitigate harm such as compensatory planting.

The tree has been protected because of the contribution that it makes to the amenities of the locality, and for no other reason. The subsequent impact on the development aspirations of the landowners is an undeniable consequence of the TPO but was not the justification for protecting the tree.

## **5. CONCLUSIONS**

- 5.1 There is a statutory duty on local planning authorities, set out in Part 8 of The Town and Country Planning Act 1990, in the interests of public amenity to make provision for the protection of trees.
- 5.2 The tree has a considerable amenity value to the locality. Its removal would have a significant detrimental impact on the local environment and its enjoyment by the public.
- 5.3 Following consideration of the representations made by the owner of the land on which the tree is situated, the owner of the neighbouring land and their tree surgeon it is felt there is no substantive reason why the order should not be confirmed.

## **6. RECOMMENDATIONS**

- 6.1 That Tree Preservation Order 14/07 is confirmed.

### Background Papers

None.