

Reference	TPO/18/00002
Report Title	Confirmation of Tree Preservation Order No. 2, 2018
Location	Rear Garden, 17 High Street, Biddenden, TN27 8AL
Parish Council	Biddenden
Ward	Biddenden

Introduction

1. The Joint Development Control Manager and the Head of Development Management and Strategic Sites have delegated authority to deal with all matters relating to Tree Preservation Orders. However, in order to comply with Human Rights Legislation, it is considered inappropriate for the same officer to make and then confirm Orders under delegated powers where an objection has been received. For this reason the following Tree Preservation Order, which is subject to an objection, is being reported to this Committee with a view to seeking authority for confirmation.

The Order

2. The Order was made on 22nd March 2018 to protect an ash tree on the southern boundary of the rear garden of 17 High Street, Biddenden TN27 8AL. A copy of the Order may be found in Annex 1a.
3. The tree is a visible landscape asset that borders a number of gardens and is visible from the important North Street and High Street junction at the heart of the Biddenden Conservation Area – a location map is provided within the copy of the TPO in Annex 1 a.
4. The tree's protection is expedient owing to the performance of tree works without the submission of the requisite Section 211 notice as required under the Town and Country Planning (Tree Preservation) (England) Regulations 2012. The tree was due to be felled on the instruction of the owner following an insurance assessment alleging that the tree is causing subsidence damage to the adjacent neighbouring garage. The report advised that the tree was not protected and it was this statement that led to the instruction of the works.
5. The tree meets the TEMPO criteria for the consideration of a TPO. The industry adopted standard TEMPO (Forbes-Laird – Tree Evaluation Method for Preservation Orders) Assessment, which acts as a decision guide aid for

the serving of a TPO, a score of 16 was derived – any score of 16 or more qualifies as 'Definitely Merits a TPO'.

6. The important considerations as defined by the Planning Guidance (Tree Preservation Orders and trees in conservation areas) when making and serving a TPO are listed below and it is considered that they have been satisfactorily met;
 - Expediency;
 - Visibility;
 - Amenity;
 - Individual, collective and wider impact.
7. The purpose of the TPO is to ensure that the tree is not the subject of further unauthorised pruning works or subsequent felling.

Representations

8. Following the serving of the TPO an objection email dated 16th April 2018 backed with a hard copy letter was received from the owner of the tree, and a summary of the points is listed below:
 - The tree has a lack of amenity value in its current state.
 - The Insurer's reports implicate the tree as the agent of the damage to the adjacent garage structure and as a result the tree should be removed.

Assessment

9. A site visit was undertaken by the Council's Tree Officer on the 14th March 2018 following an anonymous report that tree works were being undertaken without consent to an ash tree within the garden of 17 High Street, Biddenden. It is an offence under the Town and Country Planning Act 1990 Section 210, (1) (c) to cause or permit the cutting down or topping of a protected tree. The tree is protected by virtue of its location within the designated Biddenden Conservation Area. The owner admitted the offence and advised that the works had been instructed in good faith owing to the insurer's report stating that it was not protected, the report does state this and the owner's explanation is understood.

10. The serving of the Order was expedient in terms of preventing further tree works being undertaken without consent and ensuring that whatever the ultimate outcome of the insurance case that an appropriate replacement tree is planted (the fact that the tree is protected within the Conservation Area does not allow for its replacement) Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012, a tree that is removed under a Section 211 application cannot be conditioned for replacement. A copy of the assessment is provided within Annex 1b.
11. The tree is visible from key points within the Biddenden Conservation Area as described in point 4, and in addition acts as an amenity focal point for the surrounding properties situated along the High Street and to the south. Prior to pruning, the tree was the largest single landscape asset within the back gardens of properties to the south of the High Street and had a significant presence in terms of contributing to the canopy cover within the area. The pruning removed 60-70% of the leaf-bearing structure of the tree and has left a profile of natural crown and pollard.
12. The amenity value of the tree has been somewhat diminished in its current form – a photograph taken on 16th May 2018 and a photograph of the stem taken on 14th March 2018 is provided in Annex 1 c and d respectively. However, there is an opportunity, with remedial works that the tree will form a substantial and aesthetically pleasing amenity asset once the crown has re-established itself. The owner has subsequently submitted an application to pollard the tree (18/00101/TP) in order to address the amenity value of the tree. A managed pollard will provide a significant landscape asset that will potentially contribute to the local amenity for many years to come.
13. The insurance reports as submitted do not meet the evidential threshold for the removal of the tree as required within the Planning Portal guidance notes for tree works applications. The threshold is in line with the Joint Mitigation Protocol (JMP) 2008 which provides the framework for consideration of insurance claims, this framework is supported by OCA Ltd who are the arboricultural consultants in this case.
14. The following two evidential criteria that have not been met are:
 - a) Crack monitoring to demonstrate the seasonal movement of the structure has not been provided;
 - b) Root identification of the species allegedly implicated in the structural damage has not been provided.

15. Without the required evidence, the Council cannot consent to the removal of the tree as it upholds a consistent and fair process that meets with Planning Policy Guidance and the JMP.
16. Should the evidence be presented to the Council, then the Council might consider the removal of the tree to be appropriate on the basis that any harm could be mitigated with an appropriate replacement tree. However, there is no evidence at the present time.

Conclusion

17. In conclusion, an offence has been committed with the pruning of the tree without consent, the Council has a duty to ensure that it protects trees within Conservation Areas and the serving of a TPO is the most effective measure to achieve this. Despite the pruning of the tree, it retains the potential to have a significant amenity value within the Biddenden Conservation Area. The Council will duly consider the removal and replacement of the tree with an appropriate species if the required evidential threshold is met in terms of the insurance claim.

Recommendation

To confirm the order notwithstanding the objection

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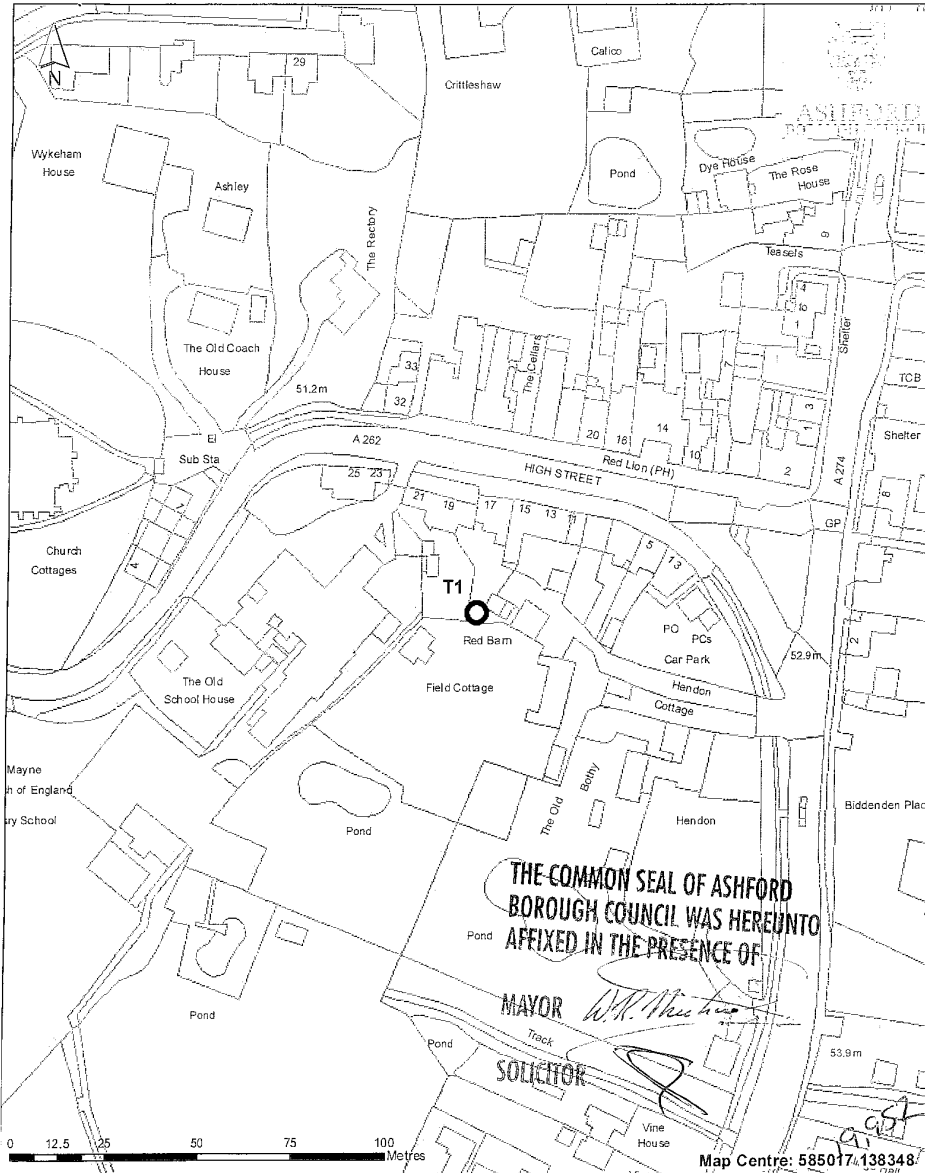
Email: phil.cook@ashford.gov.uk

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 22 March 2018



ASHFORD BOROUGH COUNCIL
TREE PRESERVATION ORDER NO 2, 2018
17 High Street, Biddenden, Ashford, Kent, TN27 8AL

Planning and Development
Civic Centre
Tannery Lane
Ashford
Kent
TN23 1PL

March 2018 Scale: 1:1250

SCHEDULE

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Ash	Southern boundary of rear garden of 17 High Street, Biddenden

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
		None

Groups of trees
(within a broken black line on the map)

Reference on map	Description	Situation
		None

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
		None

Ashford Borough Council - Report of Head of Development Management and Strategic Sites
Planning Committee 20 June 2018

TOWN AND COUNTRY PLANNING ACT 1990

**ASHFORD BOROUGH COUNCIL
TREE PRESERVATION ORDER NO. 2,2018
17 High Street, Biddenden, Ashford, Kent TN27 8AL**

Ashford Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order:-

Citation

1. This Order may be cited as Ashford Borough Council Tree Preservation Order No 2,2018 - 17 High Street, Biddenden, Ashford, Kent TN27 8AL

Interpretation

2. (1) In this Order "the authority" means Ashford Borough Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to regulation 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall -
(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of
any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 22 March 2018

THE COMMON SEAL OF ASHFORD BOROUGH COUNCIL

was affixed to this Order in the presence of -

Mayor

Solicitor



Annex 1 b - Copy of TEMPO Assessment

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 14/3/18	Surveyor: P. COOR
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Tree details	Tree/Group No:	Species: Ash
TPO Ref (if applicable):	Location: Rear garden 17 High St, Biddenden	
Owner (if known):		

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- 5) Good Highly suitable
- 3) Fair/satisfactory Suitable
- 1) Poor Unlikely to be suitable
- 0) Dead/dying/dangerous* Unsuitable

* Relates to existing context and is intended to apply to severe irremediable defects only

Score & Notes	3
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b) Retention span (in years) & suitability for TPO

- 5) 100+ Highly suitable
- 4) 40-100 Very suitable
- 2) 20-40 Suitable
- 1) 10-20 Just suitable
- 0) <10* Unsuitable

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes	4
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c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- 5) Very large trees with some visibility, or prominent large trees Highly suitable
- 4) Large trees, or medium trees clearly visible to the public Suitable
- 3) Medium trees, or large trees with limited view only Suitable
- 2) Young, small, or medium/large trees visible only with difficulty Barely suitable
- 1) Trees not visible to the public, regardless of size Probably unsuitable

Score & Notes	3
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d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify.

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

Score & Notes	1
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Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

Score & Notes	5
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Part 3: Decision guide

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-11 Does not merit TPO
- 12-15 TPO defensible
- 16+ Definitely merits TPO

Add Scores for Total:	Decision:
16	Y

Annex 1 c – Photograph of Tree taken 16th May 2018



Annex 1 d – Photograph of Tree Taken 14th March 2018 showing the relative diameter of the two Stems

