



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
20 JULY 2022**

Application Number	TPO 3/22
Location	Cap and Feathers Inn – South Street – Tillingham – CM0 7TJ
Proposal	Confirmation of TPO 3/22
Owner's	Mr Sean Cole - Cap and Feathers Inn – South Street – Tillingham – CM0 7TJ
Confirmation by	05.10.2022
Case Officer	Hayley Sadler
Parish	TILLINGHAM VILLAGE COUNCIL
Reason for Referral to the Committee / Council	Decision on confirmation of a Tree Preservation Order as per the Council's scheme of delegation

1. **RECOMMENDATION**

CONFIRM Tree Preservation Order (TPO) 3/22 without any modifications

2. **SITE MAP**

Please see below.

Tree Preservation Order

Cap and Feathers Inn - South Street Tillingham

TPO 03/22

Details

G1 - 3 x Silver Birch



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Scale:	1:1,250
Organisation:	Maldon District Council
Department:	Planning Services
Comments:	TPO 03/22
Date:	21/03/2022
MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 In February 2022, the Council received a notification under the terms of section 211 of the Town and Country Planning Act 1990, to undertake works to trees within a Conservation Area. The notification proposed to reduce the height by 1.5 metres and remove the lower branch overhanging the outside seating area of 3 x Silver Birch trees located to the rear of the Cap And Feathers Inn, South Street, Tillingham. Due to the prominent location and the size of the tree, and lack of any Arboricultural justification for its removal, it was considered by the Council that the unjustified works to the trees would materially impact on the amenity of the area and the future health of the trees. Therefore, a Tree Evaluation Method for Preservation Orders (TEMPO) assessment, which is a professionally and nationally accepted system of scoring the amenity value of a trees, was carried out. The TEMPO assessment scored the trees 20 out of 25 and concluded that the Silver Birch trees were worthy of a Tree Preservation Order (TPO). Therefore, a TPO was served on 5 April 2022.
- 3.1.2 One letter of objection has been received relating to the serving of TPO 3/22 located at the Cap And Feathers Inn, South Street, Tillingham.
- 3.1.3 The objection remains unresolved; therefore, the question of whether or not to confirm the TPO has been brought before members to determine.

3.2 The site

- 3.2.1 The G1 (Silver Birch x 3) are located within the rear garden of the Cap and Feathers Inn within the pub garden area on the boundary with the car park and are highly visible from within the streetscene of both South Street and Vicarage Lane, due to their proximity to Vicarage Lane and them not being screened by buildings and/or other protected trees.

4. MAIN RELEVANT POLICIES

Members' attention is drawn to the list of background papers attached to the agenda.

4.1 Corporate Plan 2019-2023:

- 4.1.1 Impact on Strategic Themes: The Environment - protected and improved environment for residents and visitors. Partnership working to protect our countryside and coastline.

4.2 Relevant Planning Guidance / Documents:

- National Planning Policy Framework (NPPF)

4.3 Government Guidelines:

- 4.3.1 Government guidelines advise that: the Local Planning Authority (LPA) is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.
- 4.3.2 If Members decide to confirm TPO 3/22, the owners have the right to make an application to the High Court to challenge the validity of the TPO. There are specific grounds on which this application must be made:

1. that the TPO is not within the powers of the Act, or,
 2. that the requirements of the Act or Regulations have not been complied with in relation to the TPO.
- 4.3.3 There are costs involved in this procedure which can be awarded. An application must be made within six weeks of the date the TPO was confirmed.

5. MAIN CONSIDERATIONS

- 5.1 The G1 (Silver Birch x 3) are located within the rear garden of the Cap and Feathers Inn within the pub garden area on the boundary with the car park and are highly visible from within the streetscene of both South Street and Vicarage Lane, due to their proximity to Vicarage Lane and them not being screened by buildings and/or other protected trees.
- 5.2 Planning Practice Guidance states (Paragraph 10 reference ID: 36-010-21040306) *'It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.'* As part of the Section 211 notice regarding the height reduction of the G1 (Silver Birch x3), the applicant claims that the reduction in height would remove wind sail. The applicant also applied for the removal of 200mm lower branch that overhangs the seating area to the rear of the pub garden, however, no suitable arboricultural evidence or further supporting information has been provided to demonstrate that the reduction in height or removal of the branch would overcome the issues of wind sail. Therefore, the proposed works under the Section 211 notification were not considered to be suitably evidenced or justified and the branch removal would leave a large wound which could impact on the trees' future health and longevity.
- 5.3 In the interest of protecting this prominent landscape feature and the amenity value of these trees within the locality, the Silver Birch trees were assessed using the TEMPO which is designed as a guide to decision making and stands as a record that a systematic assessment has been undertaken. The TEMPO considers all of the relevant factors in the TPO decision making chain including amenity assessment, expediency assessment and decision guide. Within the assessment the Silver Birch trees scored satisfactory for the suitability of a TPO for its amenity due to its prominent size and location which is clearly visible within the public realm. The expediency assessment reflected the immediate threat of the trees as mentioned in section 5.2. The Silver Birch trees scored an overall total 20 out of 25 which means that the Silver Birch trees would definitely merit a TPO.
- 5.4 It is worth noting that the guidance provided to sit alongside the TEMPO assessment acknowledged that the reason for serving the TPO can be quite minor (precautionary only). However, as the enquiry was to reduce the height by 1.5 metres and remove

the lower branch overhanging the seating area, it is considered by the Council that this was a precautionary threat and a threat to the future health of the trees.

- 5.5 It should be noted that the TPO would not prevent works to the trees from being carried out, however it would control any such works to ensure that they were suitable, justified and did not harm the health of the trees or the amenity value it offers to the surrounding area. Furthermore, TPOs can serve as a useful control by securing and protecting replacement planting which is not an option under a Section 211 notification. It is considered relevant to note that whilst no suitable arboricultural justification for the works to reduce the height of the trees has been provided under this application, a subsequent Section 11 application could be submitted with such justification and without a TPO in place, the LPA would be unable to secure the replacement of such an important landscape feature.

6. ANY RELEVANT SITE HISTORY

- **06/00108/TCA** - Fell Wild Plum tree due to causing damage by branches to adjoining property, and potential damage to foundations from roots, Allowed To Proceed, 22/02/2006
- **22/00340/TCA** - G1 (3 x Silver Birch) - Reduce height by 1.5 metres. The removal of the lower branch over the seating area., TPO Served, 30/03/2022.

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Interested Parties

- 7.1.1 1 letter from the owner was received **objecting** to the serving of the TPO 3/22 and the reasons for objection are summarised in the table below:

Objection Comment	Officer Response
The trees are lifting the slabs in the pub garden creating areas that cannot be used and cause trip hazards	The concerns raised are noted, however, this application is to consider the confirmation of the TPO, to ensure that any works carried out would protect its integrity, health, character and the amenity of the area to which it contributes.
The trees are very tall and the works would decrease the wind sail.	Responded to in 5.4 and 5.5
The trees currently cover 50-60% of the garden seating area and drops resin on the seating area as well as mess from the pigeons sitting in the tree.	As above. Confirmation does not prevent works being carried out subject to management and works being suitable in the interests of the trees and the area.

8. CONCLUSION

- 8.1 The 3 x Silver Birch trees, the subject of the TPO makes a significant contribution to the character and appearance of the surrounding area due to their size and the prominent location of the trees. Given that the trees have a TEMPO score of 20, it is considered that the TPO should be confirmed to prevent the loss of these trees without securing appropriate protection from the proposed works and replacement trees if required, which could harm the amenity value of the Conservation Area.

Please see below photos of the 3 x Silver Birch trees:



