

**Delegated Authority Request to Confirm TPO: 1018, Open Space at Malborough Park, Malborough.**



**Tree Preservation Order:** TPO Ref: 1018 T1

**Site Address:** Land adjacent to 4 Malborough Park, Malborough, TQ7 3SR

**Reason item is being put before Planning Committee:** Delegation authority was sought to confirm the provisional TPO from ward members, who requested it be brought to Committee for decision.

Cllr Pearce gave an expanded reason summarised as - *neighbouring property owners complain so much about the resultant damage that they maintain it causes harm to the amenity and their enjoyment of their property*

Cllr Long expounded upon his request as follows *I would wish this to be considered by DM Committee given the expressed concerns of the Parish Council and local residents that have been raised over a prolonged period of time regarding many aspects of this tree, including gradual reduction in ability to utilise outside space safely, and consideration of quality of life, health and general welfare.*

**Site assessed by** : L Marshall

**Date** (In respect of initial TPO1003) : 19/12/2019

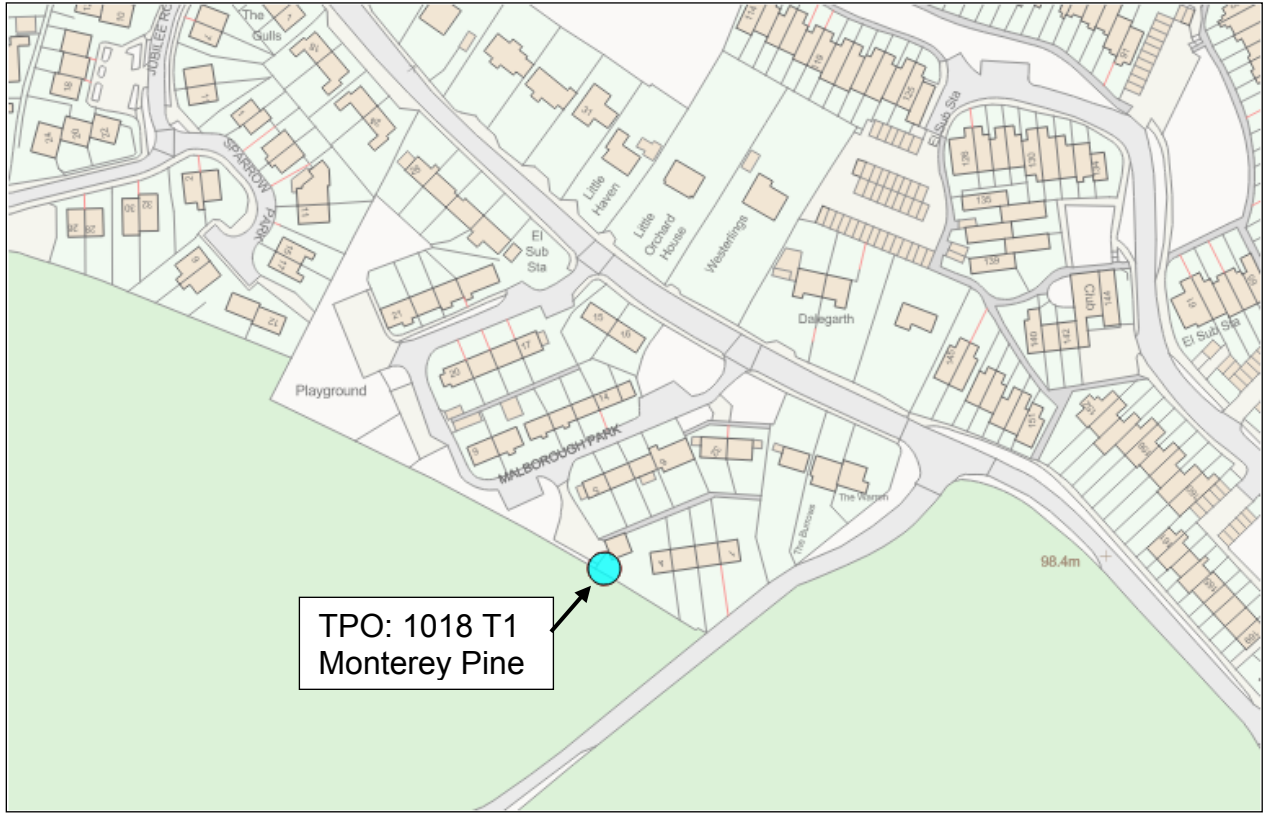


Figure 1: Site location plan



**Figure 2: T1 viewed from North West**



**Figure 3: Point of origin from linear POS and condition of footway serving properties**



Figure 4: Closer image showing amount of crown overhang over extension to the property, and approximate amount that could be removed if TPO is not confirmed

### Appraisal

- The subject tree (T1) tree is within the ownership of South Hams District Council
- SHDC received a complaint from Mr & Mrs Hurrell, owners of No 4 Malborough Park raising significant concerns hinging upon a of risk of falling parts causing harm to persons or the property, noting a wish to have this overhang removed.
- Provisional TPO 1003 was served to allow a continued dialogue between the assets Tree Specialist Alex Whish and the complainant

- The parties below the tree could, if the TPO wasn't in place, enact their common law right to prune back the overhanging branches to their boundary line (upto the amount approximately annotated within Figure 4
- Original TPO 1003 received 6 letters of Objection, including a request for a joint site visit from the initial complainant. Given the Covid situation preventing such meetings and the short time period to the TPO lapsing at the end of the six month period TPO 1003 was revoked and current TPO 1018 served to allow time for consideration.
- The second TPO received 1 letter of Objection from the original complainant reiterating previous points and adding concerns that tree inspections are out of date and planned works not undertaken.
- All points of objection (from both TPOs) were brought to the attention of ward members as Delegated Authority was sought due to the difficulties experienced by all parties as a consequence of the pandemic, to allow full consideration of all representations.
- Two tree reports have been commissioned, one on behalf of the initial complainant against the tree, and the second for the Authority. Both found T1 to be safe for retention recommending the removal of deadwood and maturing cones only over targets of value.
- I have been in dialogue with Alex Whish who confirms safety inspections are upto date and will continue to be so, furthermore it is noted that the tree poses no significant or obvious risk to the property and persons below. Planned works to remove deadwood and maturing cones will minimise this risk even further
- If the TPO were to be confirmed Tree Specialists could offer pre-application advice as necessary and any works agreed to be necessary in the interests of safety or good tree management would be likely to be supported subject to a review of representations received.

### **Key issues for consideration:**

The potential impact on public visual amenities if the TPO is not confirmed by the right to abate the overhang being enacted by parties living below parts of the tree.

If fully enacted a large part of the trees crown could be removed without consent from the Local Authority likely to negatively affect its visual form, ongoing health and structural stability. This would have an adverse impact upon the ability of the Local authority to discharge its duty of care to the wider public if the tree went into decline as a result of excessive tree works, with a parallel lessening of the trees contribution to the sylvan setting of the wider landscape.

### **Summary of Consultations:**

#### **TPO1003 & TPO1018**

- Concerns of risk posed by falling branches, deadwood and cones
- Challenges the Tree Specialists assessment of the amenity value of the tree
- Notes SHDC declines to accept liability for damages caused by falling tree parts

- Cites case law that allows overhang from protected trees to be pruned without the need for consent
- Tree is too large for its location
- The tree blocks light to nearby properties
- As a non-native the tree is not an amenity
- Roots have damaged the footpath serving properties, leading to a settled claim for damages for personal injury.
- New adjacent development is likely to have led to damaged roots during its construction
- Tree is in decline
- SHDC has not fully undertaken works detailed within a previous inspection.

### **Conclusion**

Due consideration has been given to all points of objection raised. Purely arboricultural matters in terms of tree risk have been addressed by way of the professional reports finding no defect that cannot be remedied by minor tree surgery works that would continue the trees positive contribution to visual amenity.

In terms of light loss, species, native status and size of tree I consider these to be subjective matters that do not carry sufficient weight to prevent the confirmation of the order.

Case law cited refers to a situation where the risk is considered to be actionable, thereby allowing works outside of the need for consent under a TPO. Given that T1 has an upto date safety inspection it is not considered that the risk is actionable and works would therefore require consent from the Local Authority.

It is my professional opinion that whilst a number of the points made are understandable and a typical response experienced when discussing large trees in close proximity to residential properties, that the duty of care owed to residents can be discharged whilst retaining T1 as a large and prominent sylvan feature in the wider landscaper setting of the area

### **Recommendation**

TPO1018 Is confirmed as served