

Cheshire East Council

Southern Planning Committee

Date of meeting: 7th March 2018

Report of Emma Hood, Arboricultural Officer, Environmental Planning

Title: Cheshire East Borough Council (Congleton – 59 Park Lane) Tree Preservation Order 2017

PURPOSE OF THE REPORT:

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 16th November 2017 at 59 Park Lane, Congleton; to consider representations made to the Council with regard to the contents of the TPO and to determine whether to confirm or not to confirm the Order.

SUMMARY RECOMMENDATION:

The Head of Planning (Regulation) recommends that the Southern Area Planning Committee confirm the Tree Preservation Order at 59 Park Lane, Congleton with no modifications.

WARD AFFECTED

Congleton East

POLICIES

Not applicable

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

The validity of a TPO may be challenged in the High Court on the grounds that the TPO is not within the powers of the Act or that the requirements of the Act or Regulations have not been complied with in respect of the TPO. When a TPO is in place, the Council's consent is necessary for felling and other works, unless the works fall within certain exemptions e.g. to remove a risk of serious harm. It is an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy any tree to which the Order relates except with the written consent of the authority.

RISK MANAGEMENT

The loss of trees could have an impact upon the amenity and landscape character of the area. The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over trees of amenity value.

CIRCUMSTANCES

The circumstances are that a Section 211 notice was received (17/4843T) from the tree owner to dismantle one large Sycamore located in the rear garden of 59 Park Lane which is sited within the Park Lane (Congleton) Conservation Area.

The tree is located within the garden of a property which features on the 1845 Tithe of the Congleton area and provides a continuation of existing green coverage along the northern boundary of the Conservation Area. Existing TPO coverage is present within the garden of the subject property and also adjacent to the western boundary. The cited reasons for the notice to remove the tree were;
'Over powering the garden. Dominating other trees and flower beds'.

An assessment of the tree on 15th November found the tree to exhibit good vitality and form for a tree of its size and age with no obvious visible defects. The tree is visible from Edinburgh Road and Hillesden Rise with filtered views from footpaths and residential dwellings in the area.

An amenity evaluation of all the trees was carried out in accordance with Government guidance. The assessment confirmed that the tree contributed to the visual amenity and landscape character of the area and that it was considered expedient to make an Order to protect the tree as without a Tree Preservation Order the tree would be removed as indicated in the Section 211 notification.

Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 16th November 2017.

CONSULTATIONS

On making the TPO a planning authority must publish and serve copies on owners and occupiers of land directly affected by it. There is a 28 day period to object or make representations in respect of the Order. If no objections are made the planning authority may confirm the Order itself if they are satisfied that it is expedient in the interests of amenity to do so. Where objects or representations have been made, then the planning authority must take them into consideration before deciding whether to confirm the Order.

The Order was served on the owner and the adjoining properties on 16th November 2017. Copies of the Order were also sent to Congleton Town Council and the Ward Members.

VIEWS OF THE PARISH/TOWN COUNCIL

No comments have been received.

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order from Mr Tomkinson of 64 Edinburgh Road whose garden adjoins the rear boundary of 59 Park Lane and the boundary along which the recently protected tree is situated.

The objection comprises of a letter which details the grounds for the objection to the Order:

My wife and I would like it known that we object to the TPO on the grounds that the above tree causes us untold misery every year. I have lived at my present address for the past 35 years and enjoyed gardening and don't object to trees in general but large Sycamore trees are totally unsuitable for a hedgerow, indeed we once had a lovely boundary hedge but due to the growth of this tree it is destroying the hedge. We have several other Sycamore trees growing in adjacent gardens due to this tree shedding Sycamore seeds and also there is a large Sycamore in the garden of 68 Edinburgh Road, so I don't see your Officers point that it adds to the amenity of the area. I couldn't think of a worse tree to add to the amenity. We have now lost the use of the top half of my garden due to this tree, where I used to grow fruit and vegetables and also had a greenhouse. As the tree has grown none of this is any longer possible. Indeed I have had to get rid of my greenhouse.

In the amenity evaluation checklist it states that the tree in question is visible from the Parklands. This I find very difficult to believe as it would be obscured by the large Poplar trees and large Sycamore in the garden of 68 Edinburgh Road.

Also dispute the fact that birds or bats nest or roost in the tree. For bats to roost the tree would have to have some hollows or defects from fallen branches, this is not the case.

I disagree with the Officers comments in section 9 Management.

I disagree with comments in Section 13 Supplementary Information that the removal of the tree in my opinion isn't adding to the historic character of the area and cannot even be seen from Park Lane, I know for a fact the tree grew from a seedling inside a greenhouse belonging to the previous tenants of 59 Park Lane.

Please listen to my objections and give me and my neighbour at 62 Edinburgh Road our once lovely gardens back.

APPRAISAL AND CONSIDERATION OF THE OBJECTION

Objection Mr & Mrs Tomkinson, 64 Edinburgh Road, Congleton

The submission of the Section 211 notice on 29th September 2017 (tree work application 17/4843T) triggered an assessment of the nature of the proposed works at 59 Park Lane. The Officer allocated the application had expressed concerns over the notification to remove the Sycamore and requested that an Amenity Evaluation Assessment be carried out to determine whether a Tree Preservation Order was appropriate. Government Guidance states that a local authority can deal with a section 211 notice in one of three ways. It may:

- make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.

Guidance states that the authority's main consideration should be the amenity value of the tree. In addition, authorities must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

With reference to the objector's comments in relation to the amenity of the tree, Government Guidance states 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. Guidance also recommends taking into account the following criteria:

Visibility - The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact - Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including: size and form, future potential as an amenity, rarity, cultural or historic value, contribution to, and relationship with, the landscape; and contribution to the character or appearance of a conservation area.

The tree in question was noted to be a mature Sycamore of good form with no structural defects and which was visible from adjacent roads and properties; Hillesden Rise but most notably from Edinburgh Road. The observation that the extent of the visibility of the tree from The Parklands is questionable is understandable with only filtered views of the crown of the tree as you look west from the top of Congleton footpath 75 which connects the Parklands with Edinburgh Road.

The amenity evaluation assessment found that due to the size, age and quality of the tree, its presence along the boundary of the Conservation Area and the fact that a degree of public visibility could be demonstrated, that in light of the notification to fell that there would be an impact on the amenity of the northern boundary of the Conservation Area if the tree were not protected.

While Sycamore is a non-native species tree and is regarded as a nuisance by the objector, Sycamore is widely used in parks and gardens as an amenity tree and while acknowledging the comments made by Mr Tomkinson, the shedding of leaves/seed is considered to be a seasonal nuisance and is not generally deemed sufficient justification for the removal of a healthy protected tree. The comments in relation to the impact of the tree on the garden space of the objectors are noted, however an evergreen hedgerow appears to define the rear garden boundary between 64 Edinburgh Rd and 59 Park Lane and is estimated to be at a height of between 6 and 7 metres and it is unlikely that the Sycamore is the sole cause of the alleged detrimental impact on the useable garden space.

A reduction in the height of this hedgerow would undoubtedly improve light levels to the garden, and while the Sycamore is presently afforded protection by the TPO it is considered there are alternative solutions such as a crown volume reduction which would enable the retention of the tree while addressing the concerns of the objector and maintaining the green coverage along the conservation area boundary.

Any mature tree provides an above ground opportunity for roosting birds, and while the presence of a bat roost was not noted, a tree of this size which forms part of a linear group of fragmented boundary trees and vegetation may still be used for foraging.

In response to the Objectors disagreement with Section 9 – Management, of the Amenity Evaluation Checklist, the tree was found to be under good arboricultural management, and a TPO was considered justified. The tree is situated approximately 30 metres to the south of 64 Edinburgh Road and approximately 45 metres from the rear of 59 Park Lane, and these distances are such that the tree could not be determined to present a poor social relationship with either dwelling which would exclude it from consideration for formal protection.

In response to the Objectors disagreement with Section 13 of the Amenity Evaluation Checklist and the reason stated for promoting the Order; ‘to maintain the landscape setting and historic character of the Park Lane (Congleton) Conservation Area; The tree forms part of a linear group of established tree cover which defines the northern boundary of the Park Lane Conservation Area. The tree is considered to contribute to the sylvan setting and landscape character of 59 Park Lane and the Conservation Area as viewed from Edinburgh Road and surrounding properties.

RECOMMENDATION

That the Cheshire East Borough Council (Congleton – 59 Park Lane) Tree Preservation Order 2017 is confirmed without modification.