

## **Southern Planning Committee**

**29 November 2023**

**Cheshire East Borough Council  
(Church Lawton – Barleybat Hall, 47 Liverpool Road West)  
Tree Preservation Order 2023**

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**Report of: David Malcolm, Head of Planning**

**Report Reference No: SP/01/23-24**

**Ward(s) Affected: Odd Rode**

### **Purpose of Report**

- 1 To inform the Committee about the background and issues surrounding the making of a Tree Preservation Order (TPO) on 16th June 2023 at Barleybat Hall, 47 Liverpool Road West; 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.

### **Executive Summary**

- 2 Barleybat Hall, a Grade II Listed building, located to the south side of Liverpool Road West, Church Lawton has been advertised for sale further to the property becoming vacant. The owners of the property had expressed concerns that the trees around the Hall could be at risk of removal following change of hands of the historic property to a new owner.
- 3 An amenity evaluation of the trees established that trees around the Hall contributed significantly to the visual amenity and landscape character of the area and that a risk of these trees being removed or heavily pruned could arise further to transfer of ownership of the property. Accordingly, it was deemed expedient to make an Order to secure the trees long-term contribution to the amenity of the area and a Tree Preservation Order was made on 16 June 2023. The Council has received one objection to the Tree Preservation Order and the protection it affords to one specific tree (T2 Oak) located within a residential garden that abuts the boundary on which the tree stands.

## RECOMMENDATIONS

The Head of Planning (Regeneration) recommend that the Southern Planning Committee confirm the Tree Preservation Order at Barleybat Hall, 47 Liverpool Road West with no modifications.

### **Background**

- 4 The Hall sits within a large plot of land (0.468 hectares) and is bordered by Liverpool Road West (A50) to the north with residential properties to the east and west with agricultural land to the south. The property sits at a raised level and the trees are a prominent feature of the landscape character and skyline and can also be viewed from the Trent and Mersey Canal to the east and Linley Lane (A5011) to the south.
- 5 The circumstances are that Barleybat Hall a Grade II Listed building located to the south side of Liverpool Road West (A50) has been advertised for sale further to the property becoming vacant. The owners of the property had expressed concerns that the trees around the Hall could be at risk of removal following change of hands of the historic property to a new owner.
- 6 An amenity evaluation of the trees established that trees around the Hall contributed significantly to the visual amenity and landscape character of the area and that a risk of these trees being removed or heavily pruned could arise further to transfer of ownership of the property. Accordingly, it was deemed expedient to make an Order to secure the trees long-term contribution to the amenity of the area
- 7 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 16<sup>th</sup> June 2023.
- 8 The TPO was served on the existing owners of the property and any property whose title deeds extended up to the boundary of the assessed area on 16th June 2023.

### **Objections/representations**

- 9 The Council has received one objection to the Tree Preservation Order and the protection it affords to one specific tree (T2 Oak) located within a residential garden that abuts the boundary on which the tree stands.

## 10 Objection 1 - Residents of 47 Liverpool Road West

1. *Previous tree maintenance - The tree has not received good tree management over the last 23 years and use of the garden has been restricted beneath it.*
2. *Survey recommendations - The tree was identified as needing maintaining or removing as part of the homebuyers survey in 2002 due to possible subsidence risks. All of the trees in the garden (of 47) have been removed due to concerns over the dominance of the oak. The property is old and could be more susceptible to movement from root infiltration or changes in land drainage.*
3. *Historic Importance - The tree is not evident on the 1875 Ordnance survey as provided, at the point where the oak tree stands is evidenced by a white rectangle.*
4. *Public amenity - The tree is not enjoyed by the public at large as it is behind 2 properties of high elevation. Unsure what the TPO brings as a reasonable public benefit in the present or future.*
5. *Soil suitability - the Oak tree resides on Loamy and Clay soil, the surrounding soil has a high clay content and needs to be kept hydrated to minimise natural shrinkage and cracking which occurs during spells of dry weather and this is expected to increase further due to climate change*
6. *Ownership - the land the Oak tree sits on is currently being sold as three separate lots so will no longer be part of the Barley Bat Hall (Green Bank House) footprint this again evokes further concern, a TPO has been applied for with no regard to the safety of the tree, no planned maintenance of the tree prior to selling the land or regard to the properties the tree will affect.*
7. *Sylvan setting – the TPO wishes to help maintain a Sylvan setting and landscape character around the Grade 2 listed building which was only listed in 1987 much of the landscape and trees have been lost.*
8. *As homeowners we feel that a TPO on the Oak Tree T2 has been provisionally issued without due diligence to the properties for which it could affect, it has been requested by individuals who will have no benefit from its preservation and who have provided no care or maintenance to the tree or developed a plan to ensure that the tree is maintained at an appropriate height for the setting.*

### **Appraisal and consideration of the objections**

- 11 Previous tree maintenance – The Oak tree was found to exhibit good physiological health at the time of the Councils assessment. The issue of what constitutes a ‘well maintained’ tree is however subjective. Pruning work including crown raising to maintain appropriate clearances, and/or reduction of occasional selected branches to clear structures, or to reduce loading may be appropriate. Such work can be addressed by way of a

formal application to the Council and granted consent where appropriate. In addition, the removal of deadwood can be carried out without formal consent.

- 12 Survey recommendations and soil suitability - Insurance companies and home buyer reports routinely make recommendations based on the perceived risk of subsidence damage arising from nearby trees and may advocate their removal. In such cases the need to remove trees (irrespective of formal protection) should be supported by evidence that demonstrates seasonal movement/subsidence is a causal link in any damage. This is usually prepared in association with an insurance claim and the influence of the tree would be identified through a series of technical reports that would include levels monitoring, trial pit excavation, sub soil conditions, soil plasticity, and identification of roots which would provide the appropriate evidence and subsequent recommendations.

As the Oak is located approximately 25 metres from the nearest building (a garage) it is considered that in the absence of any evidence subsidence is not considered reasonably foreseeable, nor is it considered a sound reason to exclude the tree from the TPO.

- 13 Historic importance - Barley Bat Hall and trees on the site are evident on Historic mapping. It is accepted that not all trees present today may occur on the maps, however this does not reduce the importance of any tree found to be of such high amenity value that they have been included in the TPO and is not a valid reason to remove the Oak from the TPO.
- 14 Public amenity -. The Oak is visible from Liverpool Road West, Linley Road and the Trent and Mersey Canal and is considered a prominent tree which contributes to the wider landscape character of the area. The visibility of the tree is subsequently of such a degree that formal protection is deemed appropriate and in the public interest in accordance with Government Guidance.
- 15 Ownership - The duty of care for the maintenance and safety of the tree will rest with the new owner of the tree. Please refer to paragraphs 7.1 and 7.2 regarding the Councils view on matters relating to the potential for structural damage to occur and tree safety.
- 16 Sylvan setting - The date of listing of the Hall in isolation is not relevant to the decision to make a Tree Preservation Order as an Order made to protect trees which make an important contribution to the visual amenity of the area and may include other important characteristics including the trees size, form, cultural or historic value and contribution to and relationship with the landscape and local surroundings. The sale of the property, the presence of important trees on the land, and several

requests to consider protecting the trees given the potential risk that they could be lost following transfer of the land to any new owner is considered sufficient justification to ensure the long-term protection to trees. The trees afforded protection were found to contribute to the landscape character of the Hall and the sylvan setting of Liverpool Road West and the surrounding area.

## **Consultation and Engagement**

- 9 A TPO must be served upon anyone who has an interest in land affected by the TPO including owners and adjacent 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 objections or representations have been made, then the planning authority must take them into consideration before deciding whether to confirm the Order.
- 10 The Order was served on the existing owners of the property and any property whose title deeds extended up to the boundary of the assessed area on 16th June 2023. Copies of the Order were also sent to Ward Members and Church Lawton Parish Council.

## **Reasons for Recommendations**

- 11 The site benefits from extensive and established tree cover and the anticipated change of ownership of the property could arise in a threat to/or loss of trees which could result in a significant impact on the amenity and sylvan setting of the area. The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over the trees of high amenity value.

## **Other Options Considered**

- 12 An alternative option would be to do nothing.
- 13 The service of the TPO and inclusion of tree T2 Oak is considered necessary as without the protection the Order affords there is a risk of the amenity of the trees being destroyed.

## **Implications and Comments**

### *Monitoring Officer/Legal*

- 14 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, willfully damage or willfully destroy any tree to which the Order relates except with the written consent of the authority.

*Section 151 Officer/Finance*

15 None.

*Policy*

16 Cheshire East Local Plan – SE5 - Trees, hedgerows and woodland.

*Equality, Diversity and Inclusion*

17 No direct implication

*Human Resources*

18 No direct implication.

*Risk Management*

19 No direct implication.

*Rural Communities*

20 No direct implication.

*Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

21 No direct implication.

*Public Health*

22 No direct implication.

*Climate Change*

23 The Order contributes to the Council's Climate Change Action Plan and commitment to reduce the impact on our environment and become carbon neutral by 2025.

**Access to Information**

Contact Officer:	Emma Hood Senior Arboricultural Officer (Environmental Planning) <a href="mailto:emma.hood@cheshireeast.gov.uk">emma.hood@cheshireeast.gov.uk</a>
Appendices:	Appendix 1 – Provisional TPO document Appendix 2 – Landscape Appraisal Appendix 3 – TPO location Plan Appendix 4 – Objection 1
Background Papers:	None