

Southern Planning Committee

31 July 2024

Cheshire East Borough Council (Goldford Lane – Bickerton No.1) Tree Preservation Order 2024

Report of: David Malcolm, Head of Planning

Report Reference No: SP/01/24-25

Ward(s) Affected: Wrenbury Ward.

Purpose of Report

- 1 To inform the Committee about the background and issues surrounding the making of a Tree Preservation Order (TPO) on 13th March 2024 at land at Goldford Lane, Bickerton; 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 The trees are located within a mixed hedgerow at the boundary of a small paddock to the west and adjacent to Goldford Lane, a minor lane providing a primary link to the A534 Nantwich to Wrexham carriageway. Goldford Lane is recognised as a Cheshire Cycleway route (Route 70) and serves as a link to Public Rights of Way (Bickerton FP33, Bickerton FP9) and an assumed footpath to an area of mixed woodland and heathland known as Bickerton Hill. The area generates a relatively high volume of pedestrian access frequenting the footpaths and cyclists using the Cheshire Cycle route.
- 2 An assessment has been carried out in accordance with the Council's adopted amenity evaluation checklist and collectively the trees are considered to make an important contribution to the landscape character and sylvan setting of the area and are therefore considered of sufficient amenity value and a long-term feature to justify a Tree Preservation Order being made.
- 3 The Council has received one objection to the Tree Preservation Order and the protection it affords to the trees located along Goldford Lane.

RECOMMENDATIONS

The Head of Planning (Regeneration) recommend that the Southern Planning Committee confirm the Tree Preservation Order at Goldford Lane, Bickerton with no modifications.

Background

- 4 The circumstances are that the Council has received a felling licence consultation from the Forestry Commission (Consultation FL 010/662/2023) to fell five Sycamore trees at the roadside of Goldford Lane as part of an expansion scheme for a local vineyard business. An email and petition have also been received from a local resident requesting a TPO be made to protect a group of trees perceived to be under threat of removal from the landowner. The original Order served as CEBC (Goldford Lane – Bickerton) TPO 2023 was not confirmed at the appropriate date and consequently an additional Order was made and served on the 13th March 2024.
- 5 As a requirement for restocking following removal, it is proposed to replace the felled trees with Cider Apple trees.
- 6 It is the Council's intention to submit an objection to the proposal in order that the trees may be retained as a public amenity.
- 7 An amenity evaluation established that the trees contribute significantly to the visual amenity and landscape character of the area. There is evidently a risk of the trees being removed in order to accommodate the proposed addition to the existing vineyard. Accordingly, it was deemed expedient to make an Order to secure the trees long-term contribution to the amenity of the area.
- 8 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 11th March 2024.
- 9 The TPO was served on the existing owners of the properties and any property whose title deeds extended up to the boundary of the assessed area on 13th March 2024.

Objections/representations

- 10 The Council has received one objection to the Tree Preservation Order and the protection it affords to the two tree groups.

11 Objection 1 – Owners of Fairview, Goldford Lane, Bickerton, Malpas. SY14 8LL

Public Liability

- 1. After any storms we regularly clear away the branches and occasionally larger boughs of these trees that have fallen into Goldford Lane. In 2022, Scottish Power Energy Networks, which supplies electricity to Bickerton, asked for our permission to cut back the trees to improve security to the power lines which run along Goldford Lane and below the trees. We granted that permission. The work requires the lane to be closed and the electricity supply to be cut off to the whole village which was scheduled for April 25th 2023. Despite a full day of power cut it was not possible to get the work done because of the volume of other works carried out on the same day further up the lane. This work is still outstanding and the risk to the power lines remains and will require another power cut and road closure to sort out.*
- 2. The trees are described as 6 trees, 3 are on the Crewe and Nantwich side of the sign and 3 are on the Cheshire West side of the sign (not 4 and 2). In fact they are multi-stem sycamores and so consist in total of 14 trunks. As is common with multi-stem sycamores, rot is occurring at the joins. The forestry commission who reviewed our felling application sent an inspector to site who later told us that he felt that there is significant rot evident. We invite you to visit to make your own evaluation.*
- 3. Our major concern regarding public liability is the very real potential for one or more of these trees to fall in a storm, blocking the lane and causing a power failure. Two of our neighbours park cars on the boundary under the trees so there is a risk to property and obviously a risk to life and limb of a tree falling onto the public highway. Further concerns are the wider consequences of a power failure to the whole village in the depths of winter. These are not public liabilities which we feel can be simply ignored. Our proposed removal and restocking plan secures the power supply of Bickerton long term and removes the above mentioned public liabilities.*

Biodiversity.

- 4. For the 10 years we have lived here we have been trying to encourage a traditional hedgerow to grow along our Goldford Lane boundary but it is very slow and unrewarding effort as there is insufficient light. Whilst some of the hedge plants are alive the growth is not vigorous enough to survive laying. Our felling application proposed that following removal of the trees we would replace them with a replanted traditional hedgerow (to be laid in due course) with mixed broadleaves including hawthorn, hazel and crab apple, significantly improving the biodiversity of the boundary.*

5. *Furthermore, we will plant, in the adjacent field which meets Goldford Lane, 18 apple trees on full standard root stock. We proposed this with our felling application and the forestry commission have incorporated this requirement in their conditions for the licence. Together with the replanted boundary we feel these will more than replace the amenity value of the old trees, offering a field of spring blossom and autumn colour at a height that can be enjoyed and greatly improving the biodiversity of this currently grazing-only field and bringing it into useful productivity. Such planting is not possible and will not go ahead without removal of all the sycamores which currently take light, water and nutrients from the surrounding land.*
6. *Every part of the felled trees will be used appropriately including planking for indoor furniture production. The brash from the trees would be chipped as is usual and the chipping used for weed suppression in the new hedge-row and around the new apple trees. We will also generate biochar for organic field fertilisation of our other crops.*

Appraisal and consideration of the objections

12. Public Liability

1. *After any storms we regularly clear away the branches and occasionally larger boughs of these trees that have fallen into Goldford Lane. In 2022, Scottish Power Energy Networks, which supplies electricity to Bickerton, asked for our permission to cut back the trees to improve security to the power lines which run along Goldford Lane and below the trees. We granted that permission. The work requires the lane to be closed and the electricity supply to be cut off to the whole village which was scheduled for April 25th 2023. Despite a full day of power cut it was not possible to get the work done because of the volume of other works carried out on the same day further up the lane. This work is still outstanding and the risk to the power lines remains and will require another power cut and road closure to sort out.*

Material falling from the trees is a process caused by the trees own mechanism for natural shedding of unwanted branches. This could be exaggerated and accelerated in periods of adverse weather. Periodic inspection of the trees by a competent person may reveal potential for branch failure and any works deemed necessary to abate that potential for failure be carried out accordingly. This may help to reduce any risk of future branch failure caused in high winds.

It is not uncommon for twigs and branch wood to become dislodged in even relatively low winds, but this does not usually constitute a serious hazard, nor would it designate a tree as 'dangerous'. It could be alleviated

by periodic maintenance of the trees which would include crown cleaning, i.e. removal of any dead, diseased, broken or rubbing branches.

It is considered that the trees do not currently present a significant risk to the applicant's property as no evidence was found of any structural defects that would render the tree an imminent risk. In this regard the risk is considered to be broadly acceptable under the tolerability of risk framework (HSE).

- 2. The trees are described as 6 trees, 3 are on the Crewe and Nantwich side of the sign and 3 are on the Cheshire West side of the sign (not 4 and 2). In fact they are multi-stem sycamores and so consist in total of 14 trunks. As is common with multi-stem sycamores, rot is occurring at the joins. The forestry commission who reviewed our felling application sent an inspector to site who later told us that he felt that there is significant rot evident. We invite you to visit to make your own evaluation.*

Within G1 there are 4 trees indicated on the TPO map, a close inspection deemed trees 1 & 2 to be growing directly adjacent to each other but are considered to be two trees each emanating from individual root stock, tree 3 is a twin-stemmed specimen emanating from one root stock, tree 4 of the group is a twin-stemmed specimen emanating from a single root stock.

G2 consists of tree 1 considered to be a multi-stemmed specimen emanating from one root stock, tree 2 is a multi-stemmed specimen emanating from a single root stock.

A visual tree inspection (VTA) was undertaken to ensure long term retention of the trees were not compromised due to foreseeable features which may present a potential for failure. A steel probe and nylon sounding hammer was used to determine areas of decay likely to present future problems. No discernible indication of decay was noted within the rooting zone, root collar, stem bases or lower stem areas. There is a large basal cavity to one of the trees within G1, nevertheless, an inspection using a nylon sounding hammer and steel probe concluded the cavity to be occluding well with evidence of strong reactive wood present and no obvious indication of significant root deterioration.

- 3. Our major concern regarding public liability is the very real potential for one or more of these trees to fall in a storm, blocking the lane and causing a power failure. Two of our neighbours park cars on the boundary under the trees so there is a risk to property and obviously a risk to life and limb of a tree falling onto the public highway. Further concerns are the wider consequences of a power failure to the whole village in the depths of winter. These are not public liabilities which we feel can be simply ignored. Our proposed removal and restocking plan secures the*

power supply of Bickerton long term and removes the above mentioned public liabilities.

All trees have natural points of weakness, and most have individual growth patterns or zones of decay which can be regarded as features that may be of concern to the current or future safe retention of the tree or parts of the tree. However, the presence of minor defects is not usually regarded as a basis for judging a tree to be hazardous.

As alluded to previously, periodic inspection by suitably trained persons would help in identifying potential problems.

4. For the 10 years we have lived here we have been trying to encourage a traditional hedgerow to grow along our Goldford Lane boundary but it is very slow and unrewarding effort as there is insufficient light. Whilst some of the hedge plants are alive the growth is not vigorous enough to survive laying. Our felling application proposed that following removal of the trees we would replace them with a replanted traditional hedgerow (to be laid in due course) with mixed broadleaves including hawthorn, hazel and crab apple, significantly improving the biodiversity of the boundary.

Hedgerows growing in the English climate often will contain species which are well adapted to shade conditions. For example, Blackthorn, Hazel, Hornbeam, Yew and Holly are all native species, are shade tolerant and often used within hedgerows where low light conditions are considered a limiting factor.

5. Furthermore, we will plant, in the adjacent field which meets Goldford Lane, 18 apple trees on full standard root stock. We proposed this with our felling application and the forestry commission have incorporated this requirement in their conditions for the licence. Together with the replanted boundary we feel these will more than replace the amenity value of the old trees, offering a field of spring blossom and autumn colour at a height that can be enjoyed and greatly improving the biodiversity of this currently grazing-only field and bringing it into useful productivity. Such planting is not possible and will not go ahead without removal of all the sycamores which currently take light, water and nutrients from the surrounding land.

It is considered that at an area of 0.3 Hectares, which is the approximate dimensions of the lower paddock area immediately adjacent to the boundary, is sufficient space for the planting of Apple trees and spring flowering plants. Furthermore, it is accepted that one mature tree offers bio-diversity value much greater than younger trees of similar species. Mature trees are inclined to develop features such as cavities, holes, water pockets and bark structures more attractive as a habitat suitable for mammals.

6. *Every part of the felled trees will be used appropriately including planking for indoor furniture production. The brash from the trees would be chipped as is usual and the chipping used for weed suppression in the new hedgerow and around the new apple trees. We will also generate biochar for organic field fertilisation of our other crops.*

The usage of materials gained by the removal of these important trees is not considered to be justification for their removal and cannot be used in support of such works.

- 13 *Extent of canopy growth* – Tree canopies located adjacent to property will often encroach towards property leading to reduction in light levels. Where trees are protected by a TPO, property owners may submit a formal application for consent to the Council proposing works to reduce the growth and create a separation from branch tip to properties.
- 14 *Other incidents* – Failure of trees or limbs occur for many reasons and any incidents affecting other trees are not relevant in this case.
- 15 *Risk associated with limb/tree failure* - The duty of care for the maintenance and safety of the tree will rest with the owner of the tree. Periodic inspections of owners' tree stock by a competent person will identify foreseeable problems or features indicating potential structural or physiological problems associated with the trees.
- 16 *Proposed works* – Where a tree is formally protected and works are proposed, the submission of a formal application is required. Any works proposed will be assessed accordingly along with reasons submitted in support of the proposals.

Consultation and Engagement

- 17 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 objects or representations have been made, then the planning authority must take them into consideration before deciding whether to confirm the Order.
- 18 The Order was served on the existing owners of the properties and any property whose title deeds extended up to the boundary of the assessed area on 13th March 2024. Copies of the Order were also sent to Ward Members, The Forestry Commission, Cheshire East Highways, Cheshire West and Chester Council and Bickerton and Egerton Parish Council.

Reasons for Recommendations

- 19 The area to the west of Goldford Lane benefits from considerable tree cover with coverage emphasised by established woodlands in the ownership of The National Trust. Tree cover to the east of Goldford Lane is sporadic with much of the land given way to arable fields with tree cover in the main restricted to hedgerows. The suggestion of the trees being felled indicates a threat to/or loss of trees which could arise 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

- 20 An alternative option would be to do nothing.
- 21 The service of the TPO and inclusion of tree groups 1 & 2 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

- 22 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.

Section 151 Officer/Finance

- 23 None.

Policy

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

Equality, Diversity and Inclusion

- 25 No direct implication

Human Resources

- 26 No direct implication.

Risk Management

27 No direct implication.

Rural Communities

28 No direct implication.

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

29 No direct implication.

Public Health

30 No direct implication.

Climate Change

31 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:	Gary Newsome Senior Arboricultural Officer (Environmental Planning) Gary.newsome@cheshireeast.gov.uk
Appendices:	Appendix 1 – Provisional TPO document Appendix 2 – Landscape Appraisal Appendix 3 – TPO location Plan
Background Papers:	None