

OPEN

Northern Planning Committee

12 November 2025

Cheshire East Borough Council (Chelford – Land south of Pepper Street) Tree Preservation Order 2025

Report of: David Malcolm - Head of Planning

Ward(s) Affected: Chelford

Purpose of Report

- 1 To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 15th July 2025 at Land south of Pepper Street, Chelford; 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.

RECOMMENDATIONS

The Head of Planning (Regeneration) recommend that the Northern Area Planning Committee confirm the Tree Preservation Order at Land south of Pepper Street, Chelford with no modifications.

There may be calls to review the Order following confirmation into Individuals and groups

Background

Introduction

- 2 The circumstances are that requests were received in October 2024 to protect mature trees located along the eastern boundary of a plot of land following a known change of ownership. At that time there was no perceived immediate threat to the trees.
- 3 On 10th July 2025, further communication was received reporting damage to one of the Oak trees. Following investigation, a Permission in

Principle (PIP) application (Ref: 25/0364/PIP) had been approved for the erection of a single dwelling to the north of the site.

- 4 Ongoing communication with a local resident on 15th July 2025 confirmed that tree surgeons had returned to site and were conducting further pruning; alleging further work would also be carried out, indicating preparation for future development, including claims that two additional dwellings were proposed.
- 5 An officer visit assessed the amenity of the trees and evaluated their visibility and contribution as viewed from public vantage points. It was concluded that the area comprises of extensive, mature, and high-value trees, characteristic of the sylvan setting and landscape character of the area. Given the indication of incremental removal and tree works carried out, it was considered that a credible threat to the trees existed.
- 6 An assessment of the trees has been carried out in accordance with the Council's adopted amenity evaluation checklist which establishes that the trees contribute significantly to the amenity and landscape character of the surrounding area and are therefore considered to be of sufficient amenity value to justify protection by a Tree Preservation Order.
- 7 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 15th July 2025.

Objections/representations

- 8 The Council has received one objection to the Tree Preservation Order and the protection.
 - 8.1 **Objection 1** – A report prepared by Shields Arboricultural Consultancy (PSS/TPO/08/25) sent to the Council from A E Planning Consultants on behalf of Henty Capital Ltd
 - 8.1.1 *Absence of Individual Assessment - The Area TPO applies indiscriminately to all trees, without evidence of individual assessment of amenity value. This approach fails the proportionality requirement under statutory guidance*
 - 8.1.2 *Disproportionate and Unreasonable Restrictions - By treating all trees—whether of high quality or poor condition—as equally worthy of protection, the order imposes restrictions that are neither necessary nor reasonable*
 - 8.1.3 *More Appropriate Alternatives Exist - Selective individual or group TPOs, based on structured assessment would better align with*

statutory purpose and ensure protection of genuinely important specimens while allowing proper management of others

8.1.4 Risk to Arboricultural Health - A blanket order risks restricting necessary management of poor or declining specimens, potentially leading to decay and hazards. Removal and replacement may in some cases be the most beneficial approach, which the current order obstructs.

8.1.5 Legal Incoherence - The High Court has made clear that protections must be justified on a tree-by-tree basis, not imposed generally. The broad-brush Area TPO conflicts with this principle.

8.1.6 Improper Motivation - The evidence suggests that the order was prompted by neighbour pressure arising from and motivated by disputes and private grievances, rather than an objective assessment of arboricultural value

Appraisal and consideration of Objection 1

Absence of Individual Assessment

- 9 Government guidance (Planning Practice Guidance Tree Preservation Orders and Trees in Conservation Areas) acknowledges that TPOs may be made in respect of individual trees, groups of trees, areas or woodlands.
- 10 The Area Category is a legitimate form of protection and was used as an emergency measure due to a large branch being removed from a mature Oak, allegedly without consent from the tree owner. The contractor involved reportedly made threats of further similar works to trees along the same tree line and therefore an Area designation was deemed appropriate to safeguard all trees within a defined area. Notably Permission in Principle (25/0364/PIP) had already been granted for development of land adjacent to the northern end of the tree line and one mature tree on the road frontage was known to have been removed within that area prior to determination of the application. The Area TPO was made expediently to prevent further loss or potential damage to trees within the area. The Order will be subsequently reviewed to consider whether it is appropriate to change the designation to individual or groups based on amenity value to ensure proportionality of the Order.

Disproportionate and Unreasonable Restrictions

- 11 Government Guidance acknowledges that TPOs should not be used to impose disproportionate or unreasonable restrictions but clarifies the decision to protect trees must be based on their amenity value and potential risk of the trees being felled, pruned or damaged which would impact on the amenity of the area. Trees may also be at risk from development pressures and change in property ownership where intentions to fell trees may not be known, where it may be appropriate to make TPOs as a precautionary measure.
- 12 The TPO was made following a site visit by a qualified officer who determined that the trees in question contributed significantly to the amenity of the area and based on the reports received were potentially at risk. The order does not restrict all work to trees but ensures that any proposed work is subject to appropriate scrutiny to safeguard the trees amenity value.
- 13 The TPO does not impose unreasonable or disproportionate restrictions and provides a balanced approach, consistent with Government guidance, ensuring trees of public amenity value are protected whilst allowing for management through the application process.

More Appropriate Alternatives Exist

- 14 Whilst the use of selective individual or group designations for TPO's based on a structured assessment is acknowledged as a valid approach, the current Area TPO serves as a necessary and proportionate interim measure to provide immediate protection and prevent the potential loss or mismanagement of trees before a more detailed assessment can be undertaken. This approach balances the need for urgent protection and subsequent refinement of the Order to ensure important specimens are safeguarded.

Risk to Arboricultural Health

- 15 Government guidance recognises that whilst Tree Preservation Orders serve to protect trees of amenity value, they should not obstruct arboricultural management necessary for the health of trees. In such cases, the Order does not prevent reasonable and justified work and appropriate intervention for trees in declining health would be dealt with through the submission of a formal application to remove affected trees and replacement where appropriate.

Legal Incoherence

- 16 Whilst the High Court emphasises the need for tree-specific justification, this does not render Area TPOs legally incoherent provided it is used appropriately and followed by a detailed assessment as soon as practicable that produces a more refined TPO based on individual tree merit. A subsequent assessment will be carried out at the appropriate time to consider refining the TPO into individuals or groups. This current approach therefore aligns with statutory powers under Section 198 of the Town and Country Planning Act 1990 and Government Guidance.

Improper Motivation

- 17 The decision to make the Order was based on a professional arboricultural assessment of the tree's contribution to public amenity, including visual prominence and potential longevity. Whilst public representations may have drawn attention to the trees, the decision to make the order was based on objective criteria. In this case the following factors contributed to the Council's decision:

The Change of ownership of the land

- An approved Permission in Principle planning application.
- Pre-emptive felling of a high amenity Copper beech tree prior to determination of the planning application.
- Tree Works exceeding BS3998:2012 Tree work – Recommendations.
- Requests to protect the trees dating back to October 2024 further to change of ownership of the land.
- A systematic Amenity Evaluation in accordance with Planning Practice Guidance

Whilst neighbour concerns may have initiated scrutiny, the making of this TPO was based on arboricultural and amenity-based criteria and the degree of threat present at the time. These factors demonstrate that the decision-making process was transparent, evidence-led, and consistent with national guidance.

Consultation and Engagement

- 18 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.

- 19 The Order was served on the owner of the property and any property whose title deeds extended up to the boundary of the assessed. Copies of the Order were also sent to Ward Members and Peover Superior and Snelson Parish Council.

Reasons for Recommendations

- 20 Change of use of the land and recent activity on the site in relation to an approved Permission in Principle Application are considered to provide adequate justification for the service of this TPO to ensure that the most important trees which contribute to the landscape character are retained with the existing and future land use in mind.
- 21 The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over trees of high amenity value.

Implications and comments

- 22 The service of the TPO is considered necessary as without the protection the Order affords the present amenity of the tree line could be detrimentally impacted in the longer term

Monitoring Officer/Legal

- 23 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

- 24 The Decision to confirm the Order could be challenged by applying to the High Court under Sections 284 and 288 of the Town & County Planning Act 1990 if it can be demonstrated that;
- (1) The order is not within the powers of the Town and Country Planning Act 1990

(2) The requirements of the Town & Country Planning (Tree Preservation) (England) Regulations 2012 have not been met

The costs associated with defending a challenge would be borne by the Council

Policy

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

Equality, Diversity and Inclusion

26 No direct implication

Human Resources

27 No direct implication.

Risk Management

28 No direct Implications

Rural Communities

29 No direct implication

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

30 No direct implication.

Public Health

31 No direct implication.

Climate Change

32 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 emma.hood@cheshireeast.gov.uk

Appendices:	Appendix 1 – Provisional TPO document Appendix 2 – Landscape Appraisal and AEC Appendix 3 – TPO location Plan Appendix 4 – Objections
Background Papers:	Contact the report author.