

Cheshire East Council

Southern Planning Committee

Date of meeting: 26th June 2013

**Report of: Chris Hudson, Principal Forestry and Arboricultural Officer,
Heritage and Design**

**Title: Cheshire East Borough Council (Stapeley, The Maylands, Broad
Lane) Tree Preservation Order**

PURPOSE OF THE REPORT

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order (TPO) on 5th February 2013 at The Maylands, Broad Lane, Stapeley; to consider the objections and representation made to the TPO and to determine whether to confirm or not to confirm the Order or to confirm the Order subject to modification.

SUMMARY RECOMMENDATION

The Development Management and Building Control Manager recommends that the Southern Area Planning Committee confirms the Tree Preservation Order at The Maylands, Broad Lane, Stapeley.

WARD AFFECTED

Nantwich South and Stapeley

POLICIES

Policy BE2 concerning Design Standards for new development and NE5 referring to the integration of Trees, Woodlands and Hedgerows of the Crewe and Nantwich Replacement Local Plan 2011 (Saved policies) are relevant to the making of the Order.

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 of trees 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 a significant impact upon the amenity and landscape character of the area. The confirmation of the Tree Preservation Order will ensure that the Council maintains adequate control over trees of amenity value in its administrative area.

CIRCUMSTANCES

On 28th September 2012 the Council received an outline application for residential development of up to 189 dwellings, retail and employment development with vehicular and pedestrian access off Broad Lane, Stapeley (App. 12/3747N).

The application was supported by an Arboricultural Report which provided an assessment of the environmental and amenity values of all the trees within the application site and the arboricultural implications of the proposed development.

The proposed access off Broad Lane has been designed to link into the former Stapeley Water Gardens site, providing an access for the western part of that site onto Peter Destapeleigh Way and provides an alternative access for the proposed mixed use proposals.

In order to facilitate the position of the proposed access, the application proposed the removal of a group of 9 Scots Pine trees located adjacent to Broad Lane which are located on land to the east of 'The Maylands' building and a mature Beech tree within the garden. The supporting arboricultural assessment categorised and valued the group of Scots Pine as making a substantial contribution and the Beech as a significant contribution.

As the trees were identified as high and moderate quality and were shown to be removed, an amenity evaluation of the trees was carried out in accordance with Government guidance. The assessment confirmed that the trees contributed to the visual amenity and landscape character of the area and in the light of this assessment it was considered expedient to make an Order to protect the trees. The opportunity was also taken to protect three Lime trees and two other Beech trees also located within The Maylands, which although are not directly affected by the proposed access also contribute to visual amenity and local landscape setting and could also be a material consideration in any future development of the land.

The Council also received over 30 requests from members of the public for the trees to be protected by a TPO.

Under powers delegated to the Development Management and Building Control Manager, a Tree Preservation Order was made on 5th February 2013.

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 objections 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 owners/occupiers of the land and their Agents on 5th February 2013. Copies of the Order were also sent to any adjoining landowners who are immediately affected by the Order, Stapeley Parish Council and Ward Members for Nantwich South and Stapeley and Crewe East.

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order from Haydn Jones, Associate of Pegasus Group who are Agents acting for the developer Muller Properties. The objector objects to all the trees and groups included in the Order and its implementation for the following reasons:

- That the Order is unnecessary and is not expedient in the interests of amenity as described in Government Guidance as there is no threat to any of the trees save by way of a full planning approval to develop the site and adjacent land.
- Should a planning approval be given, this would effectively override the Order and would allow the Local Authority to require landscape planting to mitigate any losses of valuable trees. The power to require mitigation for the loss of trees and/or to require the planting of additional trees pursuant to a conditional planning permission exists irrespective of whether the trees or land was subject to a TPO.
- The inclusion of the Beech (T5) on the Order is not justified as the tree is situated in a secluded location within a private garden screened from roads and footpaths by other trees, as a consequence it is barely visible from a public place. In such cases Government guidance states a TPO might only be justified in exceptional circumstances. There does not appear to be nor have the Local Planning Authority identified any exceptional circumstances that would justify the inclusion of this tree.
- The Order is unnecessary and is not expedient in the interests of amenity. The loss of any of the trees subject to the TPO and the planting of new ones will ultimately be dependent on the granting of planning permission.

APPRIASAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS

Objection by Pegasus Group on behalf of Muller Homes

Section 197(b) of the Town and Country Planning Act 1990 places a specific duty on planning authorities to consider making Tree preservation Orders in connection with the grant of planning permission or as Government advice states in *Tree Preservation Orders – A Guide to the Law and Good Practice* (para. 3.5) where certain trees are at risk generally from development pressures.

In the context of this development proposal, the Order identifies which trees the authority considers to be important in terms of their contribution to the amenity of the area and wish to see retained on the site. It is therefore recognised that, in the knowledge that trees were proposed to be removed as part of this development proposal, the Council were duty bound in accordance with the Act to consider whether a Tree Preservation Order should be placed on the trees. The risk of such development pressures has been recognised in Government advice as an appropriate test of expediency for raising a TPO.

In considering the merits, or otherwise of any development proposal that includes the removal of important trees. The Council must be in a position to evaluate the overall impacts of the scheme on the amenity of the area including the retention of any important amenity trees and whether such trees should be retained and form part of the mitigation for development.

Should the authority consider the merits of the scheme outweigh the protection of such trees then planning permission can be granted with the provision for attaching such conditions for planting to mitigate for any loss of trees.

Government advice states that trees, or at least part of them should be visible from a public place and therefore it is not necessary to justify any exceptional circumstances for the protection of this tree. The Councils' Arboricultural Officer takes the view that the protected Beech tree (T5 of the Order) contributes to the setting of 'The Maylands' in association with other trees, and that part of the tree can be seen a glimpses between properties and as filtered views from a number of vantage points along Broad Lane and therefore is visible from a public place.

The Order is considered to be necessary as the test for expediency has been met in accordance with Government advice, and the Council has demonstrated and recognised that the trees are a significant contribution to the visual amenities of the area. The Order allows the trees to be protected and ensures that full consideration is given to ensuring that adequate mitigation is secured as part of any development proposals.

CONCLUSION

In the light of the planning application received indicating the removal of trees which contribute to the visual amenity of the area and the Council must give

full consideration to the impact of any development proposal on those features that contribute to the amenity of the area, it is therefore considered expedient for Cheshire East Council to make the TPO in accordance with Section 198(1) of the Town and Country Planning Act.

RECOMMENDATION

That the Cheshire East Borough Council (Stapeley – The Maylands, Broad Lane) Tree Preservation Order 2013 be confirmed without modification