

**Cheshire East Council**

**Southern Planning Committee**

**Date of meeting: 10<sup>th</sup> June 2015**

**Report of: Emma Hood, Arboricultural Officer, Environmental Planning**

**Title: Cheshire East Borough Council (Hack Green – land off Coole Lane/Chrisham Avenue) Tree Preservation Order 2015**

#### **PURPOSE OF THE REPORT**

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order (TPO) on 26<sup>th</sup> January 2015 at land off Coole Lane/Chrisham Avenue, Hack Green; 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 Head of Planning (Regeneration) recommends that the Southern Area Planning Committee confirms the Tree Preservation Order at land off Coole Lane/Chrisham Avenue, Hack Green.

#### **WARD AFFECTED**

Audlem

#### **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 3<sup>rd</sup> June 2014 the Council received a planning application for the change of use of land to provide 9 yards for 10 travelling show people's families, formation of roads and hard surfacing at the former Hack Green RAF Camp, Coole Lane, Hack Green, Austerson. (App.14/2714N).

The application was not supported by any Arboricultural Information although the site was identified as having habitat potential by the Council's Nature Conservation Officer, including the ability to support a number of breeding bird species including those which are UK BAP priority species. A Landscape Plan; Drawing No. 1017/PL1 indicated the location of the yards in relation to existing trees to be retained, but no other supporting information was provided in relation to the species or condition of trees located within these areas or how these were to be managed in the future.

The site is located in a rural setting to the east of a small residential development which is accessed off Coole Lane. Agricultural farmland borders the site to the north, east and south. The land and existing trees can be viewed for some distance along Coole Lane to the north and south.

A linear woodland (W1) located along the southern boundary of the site comprises of native tree species and horse chestnut that were planted to define the boundary of the former RAF camp. The woodland is adjacent to Agricultural land and is highly visible forming an ecological corridor along the field boundary in a very flat and open area with low percentage tree cover.

The horse chestnut trees within the above mentioned woodland and around the boundary of the site have been identified as being in various stages of decline due to infection by bleeding canker. However, the woodland is considered of sufficient amenity to ensure the visual amenity, integrity and management of the woodland for the future.

An amenity evaluation of all the trees on the site 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.

Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 26<sup>th</sup> January 2015.

## **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 26<sup>th</sup> January 2015. Copies of the Order were also sent to any adjoining landowners who are immediately affected by the Order, Audlem Parish Council and Ward Members for Audlem.

## **OBJECTIONS/REPRESENTATIONS**

The Council has received three objections to the Tree Preservation Order from Janet Montgomery, of Brimble Lea & Partners who are Agents acting for The Hack Green Group. The objector objects to the Order and its implementation for the following reasons:

- For assessment as to the suitability for a TPO the trees are usually deemed to be under an immediate or foreseeable threat to warrant protection. Through the submission of a planning application reference number 14/2714N, it was clear that the area of trees to be protected under this Order were proposed to be retained and incorporated within a comprehensive landscaping plan. There was no threat to the loss of trees and hence TPO's are not warranted.
- The Order refers to a large linear woodland located along the southern boundary (map reference W1). A lot of this area is scrubland and no evidence has been provided in respect of the arboricultural qualities of this area. To impose a blanket TPO over an area where a qualitative assessment has not taken place is unwarranted and unreasonable.
- The Hack Green group are of the opinion that the lodging of the Tree Preservation Order is a breach of the 1971 covenants on this land to which the Council signed. In particular, under clause 6, there was a right for the Secretary of State for Defence and any subsequent owners of the retained land to "erect such buildings or erections on any part of the retained land and to alter or add to or use the same or any existing buildings or erections on the retained land in such manner as he or they may think fit. By serving a TPO the Council are effectively stopping what was agreed in 1971, i.e. the potential to erect buildings or structures on the land. Having looked at the various Land Registry

documents in respect of houses to the west, these covenants are clearly referred to.

## **APPRIASAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS**

### Objection by Brimble, Lea & Partners on behalf of The Hack Green Group

It is not necessary for there to be an immediate risk for there to be a need to protect trees. However, where it is considered to be in the interests of amenity to make an order due to development pressures, changes of ownership and/or changes of use of an area of land and the Local Authority considers it expedient to do so, then provision can be made to serve an order under Section 198 of the Town and Country Planning Act 1990.

An Amenity Evaluation Assessment was carried out prior to serving the order and trees within this area were identified as being in various stages of decline. The protection has been applied to ensure the visual amenity, integrity and management of the woodland for the future and the purpose of W1 being to safeguard the woodland as a whole, including saplings and natural regeneration occurring along the woodland edge within the proposed site boundary, thus preserving the landscape character of this flat area of land with low percentage tree coverage.

The protection of the trees does not prevent or impose limitations on the location of the Plots proposed in application 14/2714N as indicated on Plan Title: Change of Use of Land at Coole Lane, Hack Green, Cheshire, Drawing No. 1017/PL1.

A TPO does not serve to prevent development; its purpose is to afford additional protection to trees in the interests of amenity and in this instance due to development pressures, and a proposed change of use of an area of land. An assessment determined that it was expedient under the circumstances to serve an order on this site under Section 198 of the Town and Country Planning Act 1990.

Having sought Legal Advice on the matter regarding the 1971 covenant on the land, the advice was as follows; *the reserved right as detailed under Clause 6 of the above mentioned Conveyance and the right to make a TPO, are two entirely separate matters. The existence of a reserved right in a title as in this case cannot and does not affect the right of the Council and/or any other Local Planning Authority to make or serve a TPO or any other order or notice under the appropriate relevant statutory powers.*

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. It is therefore recognised that, in the knowledge that trees located around the perimeter of the site were not afforded any long term protection and that a change of use of the land was proposed for the area on

which the trees were located, that the Council were duty bound in accordance with the Town & Country Planning 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.

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 change of use of land where trees are located and identified as providing a contribution to the visual amenity of the area; the Council must give full consideration to the impact of any development proposal on those trees, it is therefore considered expedient for Cheshire East Council to make the TPO in accordance with Section 198 of the Town and Country Planning Act.

## **RECOMMENDATION**

That the Cheshire East Borough Council (Hack Green – Land off Coole Lane/Chrisham Avenue) Tree Preservation Order 2015 be confirmed with out modification