

Cheshire East Council

Northern Planning Committee

Date of meeting: 12th September 2018

Report of Emma Hood, Arboricultural Officer, Environmental Planning

Title: Cheshire East Borough Council (Bollington – Bollington – 17A Jackson Lane No.2) Tree Preservation Order 2018

PURPOSE OF THE REPORT:

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 24th April 2018 at 17A Jackson Lane; 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.

SUMMARY RECOMMENDATION:

The Head of Planning (Regeneration) recommend that the Northern Area Planning Committee confirm the Tree Preservation Order at 17A Jackson Lane with no modifications.

WARD AFFECTED

Bollington Town Council East Ward

POLICIES

Not applicable

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 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 this Tree Preservation Order will ensure that the Council maintains adequate control over trees of amenity value.

CIRCUMSTANCES

The circumstances are that a Section 211 notice was received (18/1207T) from the tree owner to dismantle one large Oak located to the rear of 17A Jackson Lane which is sited within the Kerridge Conservation Area.

The tree is located within the garden of the property and forms part of an important group of trees visible from Jackson Lane. Existing TPO coverage is present within the garden of the subject property. The cited reasons for the notice to remove the tree were;

'The tree is growing in shallow soil on top of bedrock and therefore has a shallow root system. We are concerned that the tree may become unstable and fall onto our property in severe weather. There is a precedent for Oak trees being blown down in the vicinity of our house as one fully mature tree in my neighbours garden blew down during the east storm as well as two mature oak trees in the field diagonally across the road from the Bulls Head pub in Kerridge. Furthermore all these trees were in good health and in deep soil'

'The tree when in full leaf blocks a significant amount of light to the property necessitating the use of lights throughout the day.'

An assessment of the tree on 20th April found the tree to be of reasonable form, good condition and vigour consistent with the normal growth habit of the genus. An amenity evaluation of the tree was carried out in accordance with Government guidance.

The assessment confirmed that the tree contributed to the visual amenity and landscape character of the area and that it was considered expedient to make an Order to protect the tree as without a Tree Preservation Order the tree would be removed as indicated in the Section 211 notification.

Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 24th April 2018.

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 objects 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 owner/occupiers of the land and their Agents on 24th April 2018. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Bollington Town Council, and Ward Members.

VIEWS OF THE PARISH/TOWN COUNCIL

No comments have been received.

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order from the tree owner. The objection comprises of a letter and the main points of objection are as detailed below:

- *Whilst I agree with your arguments about tree preservation in a conservation area, and the importance of maintaining such trees, an exception should be considered when safety is an issue.*
- *You point out that the tree is healthy. However healthy trees blow down and as you are aware several healthy trees in the vicinity of my house blew down during a storm last winter*
- *Three years ago a tree in the grounds of Hollin Hall Hotel, which backs onto my land, blew down and wrote off my daughters car (which was parked next to the oak tree in question)/ She had exited the vehicle only minutes before the accident.*

- *You state that the tree is between 8 and 15 metres tall and is situated an acceptable distance from the tree owners property. However the tree is nearer to 20m tall and is only 10 m from my property. In fact the lower branches are almost touching the house.*
- *The area we are discussing is exposed and subject to strong winds during a storm. Moreover, the tree in question is growing on a bed rock and has a shallow root system and as the tree matures it is becoming increasingly top heavy. If we are to believe global warming, adverse weather conditions will prevail and storms we experienced last winter will become more common. Moreover, since Hollin Hall Hotel topped the fir trees, behind this Oak tree, the top of this tree is now further exposed to winds from the west.*
- *There are in excess of 50 trees within 100m of my property. Indeed there are 25 trees on my land of which 9 are mature trees. I am asking for the removal of only one of these trees based on our safety concerns.*

APPRAISAL AND CONSIDERATION OF THE OBJECTION

Objection by the tree owner.

The registration of the Section 211 notice on 15th March 2018 (tree work application 18/1207T) triggered an assessment of the nature of the proposed works at 17A Jackson Lane. Government Guidance states that a local authority can deal with a section 211 notice in one of three ways. It may:

- make a Tree Preservation Order if justified in the interests of amenity, preferably within 6 weeks of the date of the notice;
- decide not to make an Order and inform the person who gave notice that the work can go ahead; or
- decide not to make an Order and allow the 6-week notice period to end, after which the proposed work may be done within 2 years of the date of the notice.

Guidance states that the authority's main consideration should be the amenity value of the tree. In addition, authorities must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

The amenity evaluation assessment found that due to the size, age and quality of the tree, its presence within the Conservation Area and the fact that a degree of public visibility could be demonstrated, that in light of the notification to fell that there would be an impact on the amenity of the northern boundary of the Conservation Area if the tree were not protected.

The assessment determined that there were no obvious signs of structural weakness or decay sufficient to warrant the removal of the tree at this present time or progressive root plate disruption that would suggest the tree has been, or is likely to be structurally compromised. Some deadwood was noted within the trees crown but this is consistent with the trees age and recent squirrel activity. The tree has clearly adapted to its below ground conditions and there is no evidence to suggest that it has been affected by the recent strong winds.

The tree is considered a suitable species for its location with space available to accommodate its growth to maturity without the need for inappropriate or unreasonable intervention.

While it is acknowledged that tree failures have occurred in the vicinity, the removal of healthy trees because they may fail during an extreme weather event does not constitute adequate justification for the removal of trees which are demonstrated to have amenity value.

The tree has been recorded as being between 15 and 18 metres in height and it is acknowledged that the Amenity Evaluation Assessment form was incorrectly populated and should have read; large (more than 15 metres).

The position of the tree to the dwelling is not considered unreasonable and pruning solutions exist to allow for the clearance of lower branches of the tree from the property. In addition the tree in question is the most mature and prominent specimen on the plot in terms of significance and is integral to the collective value of a group of trees.

It is accepted that most tree roots are found in the top 600-900mm of the soil and that typically trees have shallow widespread root systems which provide for anchorage and stability. In the absence of any supporting arboricultural information that demonstrates that this is not the case, that the tree is structurally compromised, diseased or presents an increased risk of failure, its protection is considered appropriate given its significant contribution to the amenity of the area. If the removal of mature and prominent trees is allowed based on the assumption that a risk is present simply due to the failure of other trees in the area, then a precedent would be set that could in turn lead to further erosion of the current mature tree cover in the area.

RECOMMENDATION

That the Cheshire East Borough Council (Bollington - 17A Jackson Lane No.2) Tree Preservation Order 2018 is confirmed without modification.