

**Cheshire East Council**

**Northern Planning Committee**

**Date of meeting: 10<sup>th</sup> July 2019**

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

**Title: Cheshire East Borough Council (Macclesfield – Land to the east of 80 Birtles Road) Tree Preservation Order 2019**

**PURPOSE OF THE REPORT:**

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 12<sup>th</sup> February 2019 at land to the east of 80 Birtles Road; 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 land to the east of 80 Birtles Road with no modifications.

**WARD AFFECTED**

Broken Cross and Upton

**POLICIES**

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

**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 full planning application 17/6346m was submitted seeking planning full permission for the erection of 10 semi-detached affordable dwellings off Birtles Road, this was withdrawn in October 2018 and has since been resubmitted under application 18/6230M. At the time of making the Order, no arboricultural information had been submitted which evaluated the mature high amenity road side trees and their relationship with the proposal. A preliminary tree report was submitted after the TPO was served.

The proposed development site comprises of a rectangular shaped and level area of land which is designated as open countryside which fronts Birtles Road. A linear group of four mature trees are located to the road side boundary and stand to be impacted upon by the proposal.

An amenity evaluation of 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 12<sup>th</sup> February 2019.

## **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 12<sup>th</sup> February 2019. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order 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 Jay Ashall Partnership on behalf of their client. The objector objects to the Order and its implementation for the reasons detailed below, and was accompanied by their arboricultural consultants report:

*Whilst there are a number of B2 classified trees on the site, there are only 4no. trees that are proposed to be protected which are in the location of the proposed access to the site as detailed in planning application ref. 18/6230M*

*It would therefore appear that the only reason to implement this tree preservation order is to prevent development which is contrary to the purpose of a tree preservation order.*

*For these reasons, our client's strongly objects to the order and requests that the tree preservation order is not implemented*

## **APPRAISAL AND CONSIDERATION OF THE OBJECTION**

### Objection by Jay Ashall Partnership

The decision to afford long term protection of the trees on the site was made further to consideration of information submitted with application 18/6230M, namely the proposed layout and the impact of this on high amenity trees. At the time of making the Order no supporting arboricultural information had been submitted despite requests for additional information from the Senior Arboricultural Officer in relation to application 18/6230M and withdrawn application 17/6346M.

Both applications had failed to make any reference to the presence of the trees in question, irrespective of them being a prominent feature of the southern boundary of the site and a material consideration in the context of the planning application. The submitted Preliminary Tree Report PM/BS/16/01/19 by Murray Tree Consultancy dated January 2019 submitted with the objection, has assessed the trees on the site and established root protection areas and tree constraints. The intention of this type of survey is that it informs design and site layout in accordance with BS5837:2012 Trees in relation to design, demolition and Construction.

The submission of a planning application in an area of open countryside where impacts on trees have been identified is one which would trigger an assessment for considering formal protection. The process is in accordance with the requirements of the Town and Country Planning Act and Planning Policy Guidance.

The TPO serves only to afford long term protection of trees with amenity value which contribute to the landscape character of an area where it is found to be expedient to do so, and is not a barrier to development and will not prevent development from taking place. The Order serves only to protect trees which make an important contribution to the amenity of the area and to focus consideration on the design layout of any future proposals.

## **RECOMMENDATION**

That the Cheshire East Borough Council (Macclesfield – Land to the east of 80 Birtles Road) Tree Preservation Order 2019 is confirmed without modification.