

Cheshire East Council

Northern Planning Committee

Date of meeting: 11th September 2019

Report of Emma Hood, Arboricultural Officer, Environmental Planning

**Title: Cheshire East Borough Council (Adlington – Little Breck, Sugar Lane)
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 21st June 2019 at Little Breck; 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 Little Breck with no modifications.

WARD AFFECTED

Poynton West and Adlington

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 application 18/6168M for a certificate of lawful development for extensions and the construction of a single storey outbuilding at Little Breck was part consented and part refused on 5th April 2019. A new application 19/2105M was subsequently submitted for a certificate of lawful development for a single storey side/rear extension and a single storey outbuilding which was granted on 12th July 2019.

The site is located within an area of Special County Value and within the Peak District National Park Fringe in an area of open countryside to the south side of Styperson pool. The property benefits from the presence of established wooded areas of trees along the northern and western boundaries which feature on Natural Englands National Forest Inventory and the Priority Habitat Inventory. The trees are adjacent to Adlington footpath 30 and 31. No arboricultural information has been submitted in support of the proposals and a number of tree removals have taken place within the wooded area to the west side of the property and driveway.

The most recent application indicates the positioning of the garage and access driveway close to the stem base of a mature Sycamore which is considered to be of high amenity value. The revised footprint of the side extension is in close proximity to the overhanging crown of a mature off site Sycamore located in the garden of Breck Cottage.

An amenity evaluation has determined that the trees contribute 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 21st June 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 21st June 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 Ascerta on behalf of A.E Planning Consultants and their client. The objector objects to the Order and its implementation for the reasons detailed below;

- (i) *Area A2 description appears inaccurate and could lead to ambiguity:*

The description provided for A2 does not follow the prescribed format of the Model Order in that it states, "The trees of whatever species within area marked A1 on the map", when it presumably should refer to A2. It is not clear whether this was the intention of the council or in fact an error, but the use of the document cannot rely on an assumption and therefore ambiguity needs addressing.

- (ii) *The plans are poor quality which could lead to misidentification of trees:*

The plan following the Specification of trees is of such poor quality that it is difficult to confidently identify the location of the trees subject to the Tree Preservation Order. The colour difference between roads and other land use is almost indistinguishable and the outlines of buildings are faded and almost non-existent for the property that is subject to this Order (Little Breck). The 'Ordnance Survey Overlaid onto Current OS map' is also unhelpful and does not contain clear identification of the Tree Preservation Order Area designations or any labels for the Areas or individual trees. The clarity of both plans needs to be improved if they are to be used reliably to inform any future decisions concerning the trees.

On the basis of the above points, we consider that the Order contains sufficient ambiguities and errors that it could be considered invalid. On this basis we recommend that it is not confirmed in its current form.

APPRAISAL AND CONSIDERATION OF THE OBJECTION

Objection by Ascerta

The decision to afford long term protection of the trees on the site was made following the recent removal of a number of trees and further to the assessment of information submitted with application 19/2105M. At the time of making the Order no arboricultural information had been submitted. In the light of the threat to remaining trees and following discussions with the Council's Planning Officer and Principal Forestry and Arboricultural Officer a TPO was authorised

The Area A2 description within the schedule is a typographical error and should read; "The trees of whatever species within area marked A2 on the map". Should the Order be confirmed, the TPO Schedule would be modified to reflect the correct description for A2 and all persons served with the original Order forwarded a copy of the modified Order in accordance with Government guidance.

A scanned copy of the original TPO is attached to this report. It is not considered that the plan is of such poor quality that it is not possible to distinguish the position of the protected trees. Government Guidance states that; *'The Order must have annexed to it, a map giving a clear indication of the position of the protected trees, groups of trees or woodlands'*, it also states; *'legislation does not require authorities to describe the trees in the Order with full scientific names or plot them with pinpoint accuracy'*. The Local Authority considers that both of these criteria have been fulfilled and that it cannot be held accountable for the quality of any scanned copies of the Order which have been distributed.

The plan referenced; *'Ordnance Survey overlaid onto current OS map'* is located within the Landscape Appraisal, a document which supports the Council's Amenity Evaluation Checklist. The overlaying of historic maps onto current OS is a method regularly used to demonstrate the historic importance of trees as part of the Council's amenity appraisal. As part of this appraisal it is accepted that a margin of error can be expected with the positioning of OS Maps over 170 years old, onto up to date OS maps

The appraisal is not part of the TPO legal document but provides evidence to demonstrate that the Council has carried out an appraisal of the amenity value of trees in accordance with Government Guidance.

The Landscape Appraisal demonstrates the relative importance of tree cover in the locality over a period of time and is not used to identify the protected trees.

RECOMMENDATION

That the Cheshire East Borough Council (Adlington – Little Breck, Sugar Lane) Tree Preservation Order 2019 is confirmed without modification.