

## Northern Planning Committee

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**Date of Meeting:** 2 December 2020

**Report Title:** Cheshire East Borough Council (Knutsford – 2 Grassfield Way) Tree Preservation Order 2020

**Portfolio Holder:** Councillor Toni Fox - Planning

**Senior Officer:** David Malcolm- Head of Planning

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### **1.0 Report Summary**

1.1 To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 14th August at 2 Grassfield Way; 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.

### **2.0 Recommendation**

2.1 The Head of Planning (Regeneration) recommend that the Northern Area Planning Committee confirm the Tree Preservation Order at 2 Grassfield Way with no modifications

### **3.0 Reason for Recommendation**

3.1 The loss of the tree 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 a tree of amenity value.

### **4.0 Background**

#### **4.1 Introduction**

4.2 The mature Oak is located in the garden of 2 Grassfield Way sited at the junction of Grassfield Way and Summers Way. The tree is a prominent and valued feature in the locality and makes an important contribution to the landscape character of the area.

- 4.3 The circumstances are that further to 2 Grassfield Way becoming vacant and advertised for sale, a number of residents had contacted the Council to request that a TPO be made on the tree. An assessment by the Council in November 2019 found the Oak to be of high amenity and worthy of a TPO and subsequently placed it on the list for an Order to be made.
- 4.3 Following the submission of a Planning application (20/2894M) on 12th July 2020 for the demolition of the existing garage, a two storey side extension, and single storey front and rear extension, reports were received on 11th August 2020 from local residents that a Tree Contractor had arrived on site to dismantle the tree.
- 4.4 No arboricultural information was submitted in support of the original planning application, however following service of the Order being, a supporting arboricultural report was submitted and the layout revised and reduced to accommodate the retention of the tree. The planning application was subsequently approved on 16th November 2020.
- 4.5 An amenity evaluation has determined that the tree contributes to the visual amenity and landscape character of the area and there was a risk of the tree being removed and therefore it was considered expedient to make an Order to protect the tree.
- 4.6 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 14th August 2020.

#### Report Format

- 4.6 The information contained in this report is divided into three sections:
- 4.7 Section 5 provides a summary of the TPO service and consultation process
- 4.8 Section 6 provides a summary of the objections/representation made (see Appendix 3 &4).
- 4.9 Section 7 provides the Councils appraisal and consideration of the objection.

#### **5.0 Consultation**

- 5.1 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.

- 5.2 The Order was served on the owner/occupiers of the land and their Agents on 14th August 2020. Copies of the Order were also sent to residents that had requested the Order and Ward Members.

## **6.0 Objections/representations**

- 6.1 The Council has received two objections to the Tree Preservation Order one from Cheshire Woodlands Ltd on behalf of their client, and one from Philip Hobbs

### **6.2 Objection 1**

- 6.3 Cheshire Woodlands objects to the Order and its implementation for the reasons detailed below;

1. *Aspects of the Councils assessment of the Tree – as set out in their Amenity Evaluation Checkless (AEC) – overstate its visual and historic importance.*
2. *The basis of the Councils conclusion that making the Order is ‘expedient in the circumstances’ is therefore questionable*
3. *Two of the Councils reasons for making the Order (C and d) are not fully justified.*

### **6.4 Objection 2**

- 6.5 Philip Hobbs objects to the Order and its implementation for the reasons below;

1. *Undermining of the structure of the property – As you will see from the attached report. The tree, now subject to a provisional TPO, is adversely affecting the foundations of the property...the owner sought confirmation from the Council that the tree was not subject to a TPO because she was minded to remove it given the apparent damage to the property.*
2. *Tree condition and habitat – As you will see from the report commissioned from Cheshire Woodlands (sent under separate cover), the tree is in poor condition and requires attention to preserve it. Contrary to assertions, there is no evidence of bats roosting in the tree.*

3. *Due process and precedent – We feel that the letter received from the Council (attached) provided sufficient comfort for the Executors to market the property without notice of a TPO. The fact that a TPO request was initiated in December 2019 without reference to the executors has resulted in potential buyers being misled. We believe, having been in receipt of a Letter of Comfort, the Council was under a Duty of Care to inform the Executors when a application for a TPO was made. As a result of the TPO the sale price has been further reduced and the Executors have paid IHT on the estate in excess of that properly due.*

## **7.0 Appraisal and consideration of the objection**

### 7.1 Objection 1 by Cheshire Woodlands

- 7.2 It is agreed that following re - evaluation the trees landscape function is predominantly 'road frontage' rather than as a landmark tree at conurbation level. Nevertheless trees of the size and maturity of the Oak are not frequently occurring on the housing estate, and its prominent position at the junction of Grassfield Way and Summers Way presents a significant contribution to the street scene, is publically visible and therefore justifies protection in accordance with Government Guidance.

- 7.3 The statement that references the 1975 Ordnance Survey Map is a typographic error, and should refer to the 1875 Ordnance Survey Map. The presence of a tree in this location on this version of the OS confirms its presence as being of significant enough to be recorded 145 years ago and to be of historic importance.

- 7.4 The basis of making of an Order was determined following reports from members of the public and Knutsford Town Council that a tree surgeon had arrived on site on 11th August 2020 and that the tree was under threat of being removed . A site visit confirmed that this was the case, that the threat was immediate and motivated the service of the Order as it had been demonstrated as expedient in the public interest to serve a TPO.

- 7.5 The objection has referenced two subsections of the Regulation 5 notice as not justifying the making of the Order:

- The objection to Section c) is accepted notwithstanding this, the tree is clearly visible as a public amenity feature and contributes significantly to the street scene. .The expediency of making the TPO has been clearly demonstrated as the tree was found to be under immediate threat of removal on 11<sup>th</sup> August.
- Section d) The tree is considered to be of historic importance as confirmed on the attached plan showing 1875 overlay onto present day OS.

- 7.6 Objection 2 by Philip Hobbs
- 7.7 The submitted Engineers Report dated 19/8/2020 by Anthony Roylance – Chartered Civil Engineer provides a description of the property and refers to cracking in three locations internal to the property and garage. The report is not supported by a floor plan which indicates the location of the cracking in relation to the tree, but confirms that two areas are located within the main structure of the property, and that one is within the garage adjacent to a man hole. No information has been submitted as regards the type of soil present, its moisture content and plasticity, foundation depth of the property, crack appearance/direction, or level monitoring that would assist in demonstrating the cause of movement. Reference is made to movement and cracking adjacent to a man hole and the possibility that movement could be attributed to water escaping from leaking drains should not be discounted. In conclusion, it is considered that the report does not sufficiently demonstrate that subsidence at the property can be directly attributable to the Oak tree.
- 7.8 Contrary to the suggestion that the tree is in poor condition, the Cheshire Woodlands survey found the Oak to be a high amenity Category A tree with an estimated life expectancy of at least 40 years, the report also states that no works are currently required. Further to suggestions that a bat roost was present in the tree an assessment was undertaken by a bat surveyor at the request of the Rural Crimes Officer who subsequently confirmed that no bat roost was present but that an active birds nest was found and therefore demonstrated habitat value.
- 7.9 The letter dated 18<sup>th</sup> September 2008 from Cheshire East Council confirmed that a TPO was not in place at that time. The letter was in response to a query made 12 years ago and does not have a bearing on the current situation.
- 7.9.1 The Council is under no obligation to notify a tree owner that it intends to make a TPO as this can often result in pre-emptive felling of important trees prior to the service of the Order. The Order was formally served on Mr Hobbs on 14<sup>th</sup> August 2020 in accordance with Planning Practice Guidance Tree Preservation Orders and Conservation Areas (Paragraph 031) which states that;
- The local authority must, as soon as practicable after making an Order and before it is confirmed, serve ‘persons interested in the land affected by the Order’;*
- *a copy of the Order (including the map); and*
  - *a notice (a ‘Regulation 5 notice’) containing specified information*
- 7.9.2 Planning Practice Guidance (Paragraph 010) advises on the expediency of making an Order if the authority believes there is a risk to trees as a

result of development pressures. In this instance, the submission of a planning application, and the subsequent threat to the tree prompted the service of the Order

- 7.9.3 The Town and Country Planning Act (Tree Preservation) (England) Regulations 2012 provides the mechanism for Local Authorities to afford long term protection to trees of amenity value. The tree has been found to be worthy of formal protection in accordance with Cheshire East Councils Amenity Evaluation Checklist and in accordance with Government Guidance. There was therefore no requirement, or obligation for Cheshire East Council to agree to a legally binding covenant.

## **8.0. Implications of Recommendation**

### **8.1 Legal Implications**

- 8.1.1 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, willfully damage or willfully destroy any tree to which the Order relates except with the written consent of the authority.

### **8.2 Finance Implications**

- 8.2.1 No direct implication

### **8.3 Policy Implications**

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

### **8.4 Equality Implications**

- 8.4.1 No direct implication

### **8.5 Human Resource Implications**

- 8.5.1 No direct implication

### **8.6 Risk Management Implications**

- 8.6.1 No direct implication

### **8.7 Rural Communities Implications**

- 8.7.1 No direct implication

## **8.8 Implication for Children & Young People/Care for Children**

8.8.1 No direct implication

## **8.9 Climate Change** -

8.91 The retention of mature trees where possible is in accordance with the Councils Climate Change Agenda

## **8.10 Public Health Implications**

8.10.1 No direct implication

## **8.11 Ward Members Affected**

8.11.1 Knutsford

## **9.0 Access to Information**

9.1 The following document is appended to this report

Appendix 1 – Provisional TPO document  
Appendix 2 – Amenity Evaluation Checklist  
Appendix 3 – Objection 1  
Appendix 4 – Objection 2

## **10.0 Contact Information**

**10.1** Any questions relating to this report should be directed to the following officer.

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