

OPEN

Northern Planning Committee

21 August 2024

Cheshire East Borough Council (Macclesfield - 1 Kershaw Grove) Tree Preservation Order 2024

Report of: David Malcolm - Head of Planning

Report Reference No: NP/01/24-25

Ward(s) Affected: Broken Cross and Upton

Purpose of Report

- 1 To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 27th March 2024 at 1 Kershaw Grove, Macclesfield; 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.

RECOMMENDATIONS

The Head of Planning (Regeneration) recommend that the Northern Area Planning Committee confirm the Tree Preservation Order at 1 Kershaw Grove with no modifications.

Background

Introduction

- 2 The circumstances are that requests were made to the Council for confirmation that 2 trees, a Tulip tree and Swamp Cypress were not afforded formal protection as it was the intention of the owner to remove them.

- 3 A number of trees within the area which were formally protected by an existing TPO were conceded for removal in association with a planning application (73880P) for the Kershaw Grove development in the 1990s. The application was approved and was subject to the implementation of a Landscape Scheme which provided mitigation for the impact of the development on the character of Chester Road and made provision to replace trees lost to the development.
- 4 The two trees form part of a group of 7 trees located on a flat, wide verge to the south of properties on Kershaw Grove. The group of trees are currently fulfilling the objectives of the original landscape scheme to provide mitigation for the impact of the development on the street scene and for tree losses associated with the development in accordance with the duty under section 197 of the Town and Country Planning Act 1990 for planning permission to include appropriate provision for the preservation and planting of trees.
- 5 The loss of 2 trees from within the group would result in an erosion of existing tree cover established over time to mitigate for development and loss of trees associated with that development. A new Order will serve to ensure protection of the trees, emphasise their importance to the landscape character of the area, ensuring that they are retained in the longer term and that due consideration is given regarding their future management.
- 6 An assessment of the trees has been carried out in accordance with the Council's adopted amenity evaluation checklist which establishes that the trees contribute significantly to the amenity and landscape character of the surrounding area and are therefore considered to be of sufficient amenity value to justify protection by a Tree Preservation Order.
- 7 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 27th March 2024.

Objections/representations

- 8 The Council has received one objection to the Tree Preservation Order and the protection.

Objection 1

- 8.1 *Failure to confirm whether a TPO was in force and discuss reasons for removing trees.*
- 8.2 *The Tulip tree is subject to wind damage, branches are brittle, and some have snapped off over the past several years and the tree is a danger. The tree will potentially reach 60-100ft in height, 30ft wide with*

its roots extending up to 100ft deep and 40ft wide with potential to damage the main sewer from the estate leading to Chester Road.

- 8.3 *The Swamp cypress is unsuited to the location because of its current and potential size. The tree could grow to 60ft high with a spread of 25ft and is currently 40-50ft high and 25ft wide. The tree is sited 2ft from the edge of the sewer easement strip and could cause damage. It has been pruned to prevent overhang of the road and blocks light to the front of the house when in leaf. In autumn the leaf fall presents a skid hazard to cars leading Kershaw Grove.*
- 8.4 *Neither of the trees is a native species and the intention is to replace them with native specimens more suited to the location. The TPO evaluation makes no reference to the intentions regards replacement and notes that “emergency action” is required to protect “important and high amenity trees”.*

Appraisal and consideration of the objections

Objection 1

- 9 The Council is under no obligation to notify a tree owner that an application to make a TPO has been made as this can often result in pre-emptive felling of important trees. Paragraph 010 of Planning Practice Guidance advises that it may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned, or damaged in ways which would have a significant impact on the amenity of the area.

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-applications-tpo>

- 10 In this instance, the request for confirmation as to whether the trees were protected due to the expressed written intention to fell them, prompted an assessment and consideration for formal protection.
- 11 The Tulip tree forms part of an agreed comprehensive landscape scheme associated with the residential development of Kershaw Grove in the 1990s to provide replacement and appropriate mitigation for the removal of protected trees across the former Glen Bank/Field Bank and Summerhill House lands, and to provide a landscaped buffer to development from Chester Road.
- 12 The Tulip tree is located in green space which is approximately 40 ft wide to the south of 1 Kershaw Grove and is a fast-growing tree of interest which makes a meaningful contribution to the landscape character of the area.

- 13 Due to the Tulip tree being sited in a relatively urban situation it is considered unlikely that it would reach the suggested proportions of a same species tree in an open grown parkland setting due to a restricted rooting area which would naturally influence the height and spread of the tree. Whilst the wood is known to have brittle characteristics, this is a feature of a number of tree species and shedding of branches is more often associated where trees are planted on more exposed sites. The tree is still relatively immature, and it's anticipated that it would respond positively to pruning operations to maintain acceptable clearance from the road and to shorten any over extended branches which could be at risk of failure.
- 14 Depending on soil characteristics, tree roots will not extend to a depth greater than two metres. Roots will not normally fracture pipe work directly, but where conditions allow, may take advantage of and grow into and towards moisture and colonise a damaged drain. Damage to drains and pipe work and in particular sewer drains which are in ground inhospitable to the growth of tree roots is therefore considered unlikely as a consequence of a nearby tree.
- 15 The Swamp Cypress tree was also included as part of the aforementioned landscape scheme to provide interest as part of a collection of trees on this area of greenspace and reflect the setting of the adjacent Locally Listed building and sylvan character of Chester Road.
- 16 Leaf loss from trees is a seasonal issue rarely, if ever, deemed a nuisance in the legal sense. Ownership and maintenance responsibilities aside, the TPO would not prevent the reduction of branch tips to clear the streetlamp and achieve necessary clearance from the road if an application were submitted to the Council. The likelihood of drains being damaged as a consequence of the position of the Swamp cypress is considered unlikely for the reasons stated above. No supporting information has been provided to support the claims that either tree is causing issues to the drainage infrastructure in the area.
- 17 Government Guidance does not dictate that a tree should be of a native species to be suitable for formal protection and both trees are clearly visible from a number of public vantage points including Chester Road, Kershaw Grove, Jutland Close and the junction of Chester Road, Haldene Road and Fieldbank Road.
- 18 The offer of replacement planting is not a consideration when making a Tree Preservation Order. Government guidance advises that authorities need to exercise judgement when deciding to make an Order which should be used where the authority considers that a trees removal would have a significant negative impact on the visual amenity of the area.

- 19 The TPO evaluation is required by Government advice and considers the importance of each individual tree or group of trees, the extent by which it can be seen publicly and other characteristics including, size, form and contribution to the landscape. The authority should only make a TPO where it is expedient to do so and current government advice states that it may be expedient to make a TPO if there is a risk of trees being felled that would have a significant impact on the amenity of the area.
- 20 The Order was raised as a risk was apparent and the TPO evaluation identified that the trees contributed to the visual amenity of the area. Moreover, removal of the trees and replacing them would impact on the amenity of the area and undo the landscaping principles agreed as part of the previous development.
- 21 This Tree Preservation Order is made (and confirmed) under Section 198(1) and 199(3) of the Town and Country Planning Act 1990 following the procedures set out in the Town & Country Planning (Tree Preservation) (England) Regulations 2012

Consultation and Engagement

- 22 A TPO must be served upon anyone who has an interest in land affected by the TPO including owners and adjacent 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.
- 23 The Order was served on the owner of the property and any property whose title deeds extended up to the boundary of the assessed area on 27th March 2024. Copies of the Order were also sent to Ward Members and Macclesfield Town Council.

Reasons for Recommendations

- 24 The trees stand to the north of Chester Road (A537), the main arterial route into Macclesfield and to the south of residential dwellings on Kershaw Grove. The trees are an integral part of the landscape design of the Kershaw Grove and Summerhill development to mitigate for tree losses incurred as part of the approved development and to maintain the landscape character of Chester Road. The trees present a significant contribution to the visual amenity of the area and
- 25 The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over trees of high amenity value.

Implications and Comments

- 26 The service of the TPO and protection of Group G1 and the Tulip tree and the Swamp Cypress within it is therefore considered necessary as without the protection the Order affords there is a risk of the amenity of the trees being destroyed.

Monitoring Officer/Legal

- 27 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.

Section 151 Officer/Finance

- 28 The Decision to confirm the Order could be challenged by applying to the High Court under Sections 284 and 288 of the Town & County Planning Act 1990 if it can be demonstrated that;

(1) The order is not within the powers of the Town and Country Planning Act 1990

(2) The requirements of the Town & Country Planning (Tree Preservation) (England) Regulations 2012 have not been met

The costs associated with defending a challenge would be borne by the Council

Policy

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

Equality, Diversity and Inclusion

- 30 No direct implication.

Human Resources

- 31 No direct implication.

Risk Management

- 32 No direct implication.

Rural Communities

33 No direct implication.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

34 No direct implication.

Public Health

35 No direct implication.

Climate Change

36 The Order contributes to the Council's Climate Change Action Plan and commitment to reduce the impact on our environment and become carbon neutral by 2025.

Access to Information	
Contact Officer:	Emma Hood emma.hood@cheshireeast.gov.uk
Appendices:	Appendix 1 – Provisional TPO document Appendix 2 – Landscape Appraisal and AEC Appendix 3 – TPO location Plan
Background Papers:	Contact the report author.