

**OPEN**

**Northern Planning Committee**

**23 April 2025**

**Cheshire East Borough Council (Knutsford – 82 King Street)**

**Tree Preservation Order 2024**

**Report of: David Malcolm - Head of Planning**

**Report Reference No: NP/01/24-25**

**Ward(s) Affected: Knutsford**

**Purpose of Report**

- 1 To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 5th December 2024 at 82 King Street, Knutsford; 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 82 King Street with no modifications.

**Background**

**Introduction**

- 2 The circumstances are that a Section 211 notice was received (24/4411/TCA) to remove a mature Lime within the boundary of Knutsford (Town Centre) Conservation Area.
- 3 The tree is located approximately 15 metres from the rear (south western) corner of 82 King Street, the former Nat West Bank, a Grade II Listed Building. The mature tree is clearly visible from Slaters Court, Red Cow Yard, Leaks Terrace with filtered views from both commercial and residential premises in this town centre location. A connecting footpath between King Street and Princess Street PROW (Knutsford FP23) runs to the south of the tree.

- 4 The tree is considered to be of high amenity value, and to make a contribution to the character and appearance of the Knutsford Conservation Area.
- 5 A row of Listed buildings stands to the east of the tree on King Street and to the south on Regent Street. A view of the 1875 Ordnance Survey suggests that the tree stands on the boundary of a former garden area associated with 82 King Street which benefited from trees, and which extended from the rear of the property up to the Princess Street boundary.
- 6 The Council's Principal Heritage and Conservation Officer has expressed the view that irrespective of the tree's age, that its removal would arise in harm to the character and appearance of the CA and have a negative impact on the setting of the listed building.
- 7 An assessment of the tree has been carried out in accordance with the Council's adopted amenity evaluation checklist which establishes that the tree contributes significantly to the amenity and landscape character of the surrounding area and is therefore considered to be of sufficient amenity value to justify protection by a Tree Preservation Order.
- 8 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 5<sup>th</sup> December 2024.

### **Objections/representations**

- 9 The Council has received three objections to the Tree Preservation Order and the protection.
  - 9.1 **Objection 1 & 2** – Received from local businesses occupying part of the area affected by the TPO
    - 9.1.1 *Height and size now cause great concern from a health and safety perspective.*
    - 9.1.2 *The tree causes frequent damage to surrounding properties due to extent of root expanse and overhanging canopy of large and small branches.*
    - 9.1.3 *Overhanging branches are also a constant threat of falling onto members of the public, local company staff members, people who park cars in area daily*
    - 9.1.4 *Fallen leaves in autumn pose a slip hazard on pathways, alley stairwells used by staff, school children and members of public*
    - 9.1.5 *Removing the tree would open up area for development*
  - 9.2 **Objection 3** – Submitted by Cheshire Woodlands Ltd on behalf of their client

- 9.2.1 *The 'background check' (section 1) confirms that the Conservation Area is not designated partly because of the importance of trees, which infers that tree cover is of secondary importance to the built form, particularly in this part of the Conservation Area.*
- 9.2.2 *It would appear that the Arboricultural Officer has made judgements on historical associations, and the tree's contribution both to the setting of the Listed Building and to the character and appearance of the Conservation Area without the benefit of advice from a suitably qualified conservation/heritage expert. Whether or not the Arboricultural Officer has the qualifications, knowledge and experience to make such judgements is questionable.*
- 9.2.3 *In the assessment of the tree's contribution to the setting of the Listed Building, there is no suggestion that the tree is contemporary with the Listed Building. The tree may well be a later planting, which would substantially affect its significance. The mere presence of a tree within the curtilage of a Listed Building does not necessarily confer significance in terms of contribution to setting. This would require input from a conservation/heritage expert.*
- 9.2.4 *The assessment of 'visual prominence' lists 'site and immediate surroundings', which suggests that public views of the tree are limited and localised. The Landscape Appraisal suggests that the tree is only visible from Slaters Court, Red Cow Yard and Leaks terrace, but does not distinguish between public and private views. Whilst the Slaters Court photographs appear to be public views from a public footpath (Knutsford FP23), it is unclear whether the Red Cow Yard, Stables and Leaks Terrace photographs are from public or private viewpoints. Either way, the Landscape Appraisal demonstrates that public and private views of the tree are very localised and are limited to a very small part of the Conservation Area. The suggestions that the tree makes 'a valuable contribution to the Conservation Area', and that its loss would 'have a significant impact on the local environment' and would compromise 'the landscape character and historic character of the 'Conservation Area' are questionable. That these judgements have been made without the benefit of suitably qualified landscape and heritage advice is problematic.*

### **9.3 Additional letter dated 11/2/2025.**

*A letter was emailed to the objector and their agent on 27<sup>th</sup> January responding to the points in their objection, advising the matter would be determined at Northern Planning Committee. This letter had included an additional assessment carried out after the TPO was served and this is attached at Appendix 5 of this report. A further letter was then received on 11<sup>th</sup> February 2025. A full response to the additional objections and points*

*made is not provided within this report as it was received after the cut-off date for making objections (28/1/2025). The letter has been attached at Appendix 4.4 of this report on request from the agent.*

## **Appraisal and consideration of Objection 1 & 2**

- 10 The mature height and size of a tree does not render it a health and safety risk subject to appropriate management and the expected level of routine assessment being implemented.
- 11 The proximity of the tree to the building is accepted as close although the relationship of the tree with parking and the Offices is not in isolation considered sufficient justification to exclude the tree from formal protection. Having regard to root expanse, at present, no evidence has been provided to demonstrate any issues arising.
- 12 Overhanging branches should not cause a threat to people or property unless defective. Regular inspection and removal of dead wood are expected routine operations, in addition to crown raising to maintain appropriate clearances, and/or reduction of occasional selected branches to clear structures, or to reduce loading. The removal of dead wood from protected trees is an operation which is exempt from the requirement to obtain formal consent from the Council, and the duty of care to ensure that the tree does not pose a risk of failure is the responsibility of the tree owner, irrespective of the TPO.
- 13 Leaf loss of mature trees cannot be avoided, and tree owners do not have any legal obligation to cut or maintain trees for any other reason than safety. The maintenance of guttering and the roofing of individual properties is the responsibility of the owner. 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 achieve necessary clearance from property and structures if an application were submitted to the Council.
- 14 Removing the tree to enable development has not been a consideration with the service of this TPO. A planning application to develop land on which the tree stands had not been received at the time of making the Order. The tree's removal was considered in relation to Section 211 notification (24/4411/TCA) of the Town & Country Planning Act 1990. Government Guidance states that the Local Authority must deal with a Section 211 notification in one of three ways in that 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. (Paragraph 118)

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

### **Appraisal and consideration of objection 3**

- 15 Trees within a Conservation Area (CA) that are not protected by an Order are protected by the provisions of section 211 of the Town and Country Planning Act 1990 (T&CPA 1990). Government 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. (Paragraph 119).*

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

The matter of whether a CA is designated partly because of trees is not a primary consideration in the making of any TPO when a Sec 211 is submitted, as many CA's do not specifically refer to trees, notwithstanding this, the Principal Heritage and Conservation Officer had expressed the view prior to service of the TPO that the tree contributes to the character and appearance of the CA.

- 16 The Arboricultural Officers and Heritage Conservation Officers both operate within the same team (Environmental Planning) at Cheshire East Council. The proposed TPO, its location and relationship with Listed Buildings and the historic landscape character was discussed with the Principal Heritage & Conservation Officer prior to making the TPO. Further to receipt of this objection, a request was made for this view to be expressed in writing, see below.

*Conservation Areas are designated based on the significance of built form, however, as is the case with many historic buildings and areas the way trees and landscape interact with built heritage whether by design or incremental changes to their setting, all can contribute to the overall character and appearance of a conservation area. This is set out in more detail in Historic England Guidance Note 1. One such paragraph is 56; Trees, hedges, boundaries and street greenery are important elements of many conservation areas, not only in public places, but on private land as well. Identification of important single trees and groups and a description of their location and species, age and assessment of condition and potential lifespan can recognise their importance to the conservation area. Developing a strategy for protection, maintenance and replanting may also be beneficial.*

*The presence of trees enhances the understanding of place and how it was used. The first 0s map shows a planted rear garden, this is not present on the*

*later maps, but this doesn't mean they were removed or not present but simply not plotted. The building is early 19th century, likely always had a joint commercial and domestic use, requiring recreation space to the rear.*

*Development has eroded the presence of trees to the rear of the properties along King Street, but this alone should not justify its removal and further harm to the CA as a result. Harm doesn't then justify more harm or in this case total loss of character or ability to read the rear space of the building as its historic intended use as recreational /garden space.*

*I discussed the heritage value of the site and the contribution by the tree to the setting of the LB and the CA, there is regularly cross over between built heritage and Trees. Removal of the tree would cause harm to the character and appearance of the CA/have a negative impact on the setting of the listed building, the tree does not need to be contemporary to the date of the listed building or CA to be of value, contributions change over time, and in this case the tree is a positive feature and one to be retained. It does seem likely that the size of the tree and the age of the building at 19th century it is a likely a contemporary feature to the latter.*

- 17 The tree is accepted to be sited within an area that cannot be viewed from the main adjacent roads due to the presence of tall buildings and for this reason, 'site and immediate surroundings', was a fair assessment of visual prominence.
- 18 The tree can be seen from PROW (FP23) which passes directly to the south side of the main stem, demonstrating that the tree is clearly visible by members of the public to such a degree that there would be an impact on public amenity if it were removed, irrespective of all other referenced viewpoints, and whether they be private or public views.
- 19 It is considered that the visibility recommendations of Government Guidance have been accorded with;

*Visibility - The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public. (Paragraph 008)*

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

- 20 The decision to make the TPO has been made in accordance with Government Guidance and with the benefit of advice from the Councils Principal Heritage and Conservation Officer.

The tree stands within a CA and was proposed for removal in a Sec 211 notification which triggered an assessment of the quality of the tree and impact its loss would have on the amenity of the area.

- 21 This Tree Preservation Order was made 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 5<sup>th</sup> December 2024. Copies of the Order were also sent to Ward Members and Knutsford Town Council.

### **Reasons for Recommendations**

- 24 The tree is the last remaining mature Lime within the town centre of Knutsford and in a Conservation Area; The tree is visible by the public locally and stands within the curtilage of a listed building and contributes to the landscape character of the area, and the combination of these factors justifies its protection.
- 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 is considered necessary as without the protection the Order affords the present amenity of the tree will be destroyed as indicated in the Section 211 application.

### *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 & Country 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.

<b>Access to Information</b>	
Contact Officer:	<p>Emma Hood</p> <p><a href="mailto:emma.hood@cheshireeast.gov.uk">emma.hood@cheshireeast.gov.uk</a></p>
Appendices:	<p>Appendix 1 – Provisional TPO document</p> <p>Appendix 2 – Landscape Appraisal and AEC</p> <p>Appendix 3 – TPO location Plan</p> <p>Appendix 4 – Objections</p> <p>Appendix 5 – TEMPO Assessment</p>
Background Papers:	Contact the report author.