

OPEN

## **Southern Planning Committee**

**6 March 2024**

**Cheshire East Borough Council (Alsager – 51 Lawton Road)  
Tree Preservation Order 2023**

---

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

**Ward(s) Affected: Alsager**

### **Purpose of Report**

- 36 To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 14th December 2024 at 51 Lawton Road, Alsager; 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 Southern Area Planning Committee confirm the Tree Preservation Order at 51 Lawton Road with no modifications.

### **Background**

- 2 The circumstances are that a planning application 23/0380C for a detached dwelling and associated parking with amenity space has been received and is awaiting determination.
- 3 The proposed development is sited to the north side of Lawton Road in the existing garden of a residential dwelling. The garden presently benefits from two mature and high amenity trees, and the impact of development of the plot on the trees has been appraised in forestry consultation comments in association with the application.

- 4 The proposed development initially proposed the loss of one moderate (B) category White Poplar which was accepted due to the trees age, species characteristics, relationship with the existing dwellings and limited safe and useful life expectancy. An adjacent high quality (A) category mature Copper beech in the rear garden was shown for retention and concerns were raised by the Council's Arboricultural Officer regarding the sustainability of the relationship of the tree with the proposal in terms of shading and dominance to the new property. Advice was subsequently received that this tree would also be removed to accommodate the development.
- 5 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.
- 6 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 14<sup>th</sup> December 2023.
- 7 The information contained in this report is divided into three sections:
  - Section 5 provides a summary of the TPO service and consultation process.
  - Section 6 provides a summary of the objections/representation made (see Appendix 4).
  - Section 7 provides the Councils appraisal and consideration of the objection.
- 8 The Council has received two objections to the Tree Preservation Order and the protection.

### **Objection 1 – James Kilkenny Architecture**

- 9 Methodology and criteria used – No information has been supplied as to the methodology of the formal assessment and how the amenity has been assessed from a public place. The Councils Amenity Evaluation Checklist and score card used to inform the assessment should be provided.
- 10 Visibility from a public place – the visual amenity is queried as the tree was not proposed for formal protection prior to the submission of the planning application. If the tree was appreciable then the TPO should have been awarded earlier. No reference made to the tree during pre app discussions suggesting no obvious, appreciable or significant amenity.

Tree cannot be seen in its entirety and setting not conducive to a complete view of the tree.

- 11 Health rating – no information supplied as to health rating of the tree from Council. The Arboricultural Report advises that condition is fair, close to neighbour's garage and that it should be inspected to further assess tree condition. Life expectancy of same report considers it to have 10-40 years, so does health and status satisfy requirements of long term amenity feature for a TPO.

## **Objection 2 – Neighbouring property**

- 12 Damage caused by the roots of the trees – concrete lifting and garage floor lifting.
- 13 Drains were replaced 20 years ago due to roots in the pipes
- 14 Beech nuts and leaves have to be swept daily and gutters blocked with leaves.
- 15 Would have been courteous to discuss proposed TPO with affected property owners before serving
- 16 Property was built in 1876 before the offending tree was planted

Appraisal and consideration of the objections

## **Objection 1**

- 17 An Amenity Evaluation Checklist (AEC) and Tree Evaluation Method for Preservation Orders (TEMPO) assessment was undertaken following the agent's expressed intention to remove the tree in December 2023. Regrettably a copy of the AEC was not supplied at the time of the service of the TPO due to an update to the IT System which removed the option for the document to be formatted for public sharing. A copy of the AEC and the TEMPO assessment have now been provided to those affected by the Tree Preservation Order and are attached to this report.
- 18 A Tree Preservation Order is ordinarily only made in accordance with Government Guidance once a threat to the retention or the longer-term health and amenity of a tree has been identified. Tree Preservation Orders are not routinely made unless there is a known risk to that amenity being lost. The tree was not understood to have been at threat from development prior to submission of the full planning application.
- 19 It is noted that while pre application advice was sought, that specific tree advice from the council was not requested. The formal planning advice

provided stated that; 'As there are trees on site/adjacent to the site that are to be impacted by the proposed development, a tree survey and impact assessment would also be required. The loss of the existing trees is a material planning consideration.'

- 20 The planning application layout originally submitted (23/0380C) was supported by an Arboricultural Report which confirmed the removal of the high amenity road frontage Poplar (to which the Council raised no objections) and proposed the retention of the Beech which was subsequently identified as a high amenity tree and a material consideration. Further options and alternatives to removing the remaining Beech tree information tree have not been provided.
- 21 Government Planning Guidance on the visibility of trees states that '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'. (Guidance :Tree Preservation Orders and trees in conservation areas Paragraph: 008 Reference ID: 36-008-20140306 Revision date: 06 03 2014).
- 22 The agreed removal of the Poplar will enhance views of the Beech from Lawton Road and the tree is also clearly visible from public vantage points on Shady Grove to the west and Back Lane to the north. Furthermore, the Arboricultural Report (dated 2020) in support of the planning application references the Beech tree as the only mature and high quality A Category tree in the development area and concludes at section 8.5 that; this is a good shaped tree and can be seen from many angles
- 23 The Council does not need to provide a 'health rating' of a tree it protects. If a tree is demonstrated within an assessment to have future growth potential, to express good form, have some seasonal interest, and to contribute to the amenity of the area in that it is visible from various vantage points, then these factors are sufficient justification for formal protection. The submitted Arboricultural Report does recommend a further inspection of a fork at 3 metres after ivy has been removed. This observation is noted, however no further evidence has been presented to the Council that this presents a significant risk to warrant excluding the tree from formal protection
- 24 It is noted that all the trees within the supporting Arboricultural Report, have been described as having the same life expectancy;10-40 years. It is the Councils view that the Beech is an High A Category tree with an estimated life expectancy of at least 40 years which accords with the

cascade chart for tree quality assessment (Table 1)BS5837:2012) and that it will contribute to the amenity of the area in the longer term.

- 25 The proximity of the tree to the garage is accepted to be close although the relationship of established trees to secondary structures (not existing habitable buildings) is not in isolation considered sufficient justification to exclude the tree from formal protection and on balance the trees important contribution to the visual amenity of the area outweighs such considerations.

## **Objection 2 – Neighbouring property**

- 26 An assessment has considered the proximity of the tree to the garage structure (TEMPO Assessment Part 1 b and on balance a TPO was considered appropriate. The objector has been encouraged to provide evidence to demonstrate the damage to the garage floor but no evidence has been provided to justify the loss of the tree other than to accommodate development.
- 27 It is accepted that drains may have been found to contain tree roots at the time of the reported repair 20 years ago, however given the age of the property it is likely that that the drains would have become inevitably compromised over time. Tree roots will not normally fracture pipe work directly, but will take advantage and grow into and towards moisture and colonise a damaged drain. It's anticipated that the repair already carried out of the drain should prevent the occurrence of future problems.
- 28 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 roofing of individual properties is the responsibility of the homeowner. Leaf loss from trees is a seasonal issue rarely, if ever, deemed a nuisance in the legal sense. 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.
- 29 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 which may be considered by an owner to restrict land sale or development. Paragraph 031 of Planning Practice Guidance Tree Preservation Orders and Conservation Areas states that.
- 30 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

31 It is considered that Government Guidance was adhered to in terms of the service of the TPO.

32 Paragraph 010 of Planning Practice Guidance 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, where impacts on the tree were identified prompted an assessment and consideration for formal protection.

33 The date of construction of nearby properties is not relevant to the decision to make a Tree Preservation Order as a TPO is used to apply formal protection to trees found to be of arboricultural significance (individually or collectively) and which make an important contribution to the visual amenity of the area and include other important characteristics including the trees size, form, and its contribution to and relationship with the landscape in accordance with Government Guidance.

### **Consultation and Engagement**

34 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 objects or representations have been made, then the planning authority must take them into consideration before deciding whether to confirm the Order.

### **Reasons for Recommendations**

35 The site benefits from 2 mature trees in an area of Alsager which does not benefit from extensive tree cover. A planning application is proposing the loss of a high amenity Beech which could result in a significant impact on the amenity and sylvan setting of the area, and the impacts of this additional loss have not been fully appraised, or opportunities fully considered for its retention. The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over a tree of high amenity value.

## **Implications and Comments**

### *Monitoring Officer/Legal*

- 36 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*

- 37 None.

### *Policy*

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

### *Equality, Diversity and Inclusion*

No direct implication report.

### *Human Resources*

- 39 No direct implication.

### *Risk Management*

- 40 No direct implication.

### *Rural Communities*

- 41 No direct implication.

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

- 42 No direct implication.

### *Public Health*

- 43 No direct implication

## *Climate Change*

- 44 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:	Emma Hood  Job Title: Senior Arboricultural Officer (Environmental Planning)  Email: emma.hood@cheshireeast.gov.uk
Appendices:	Appendix 1 – Provisional TPO document  Appendix 2 – Landscape Appraisal, AEC and TEMPO assessment  Appendix 3 – TPO location Plan
Background Papers:	