

# CHESHIRE EAST COUNCIL

## SOUTHERN PLANNING COMMITTEE

**Date of meeting:** 6<sup>th</sup> June 2012

**Report of:** Development Management and Building Control Manager

**Title:** To confirm the Tree Preservation Order at Manor Lodge, Manor Court Crewe CW2 6PG

### **1. PURPOSE OF THE REPORT:**

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 1<sup>st</sup> February 2012

### **2. SUMMARY RECOMMENDATION:**

The Development Management and Building Control Manager recommends that the Southern Area Planning Committee instruct the Borough Solicitor to confirm the Tree Preservation Order at Manor Lodge, Manor Court, Crewe CW2 6PG subject to modification to exclude the Yew tree within G3 of the Order.

### **3. WARD AFFECTED**

Crewe South/Wistaston

### **4. POLICIES**

Policy BE.2 concerning Design Standards for new development and NE5 referring to the integration of Trees Woodlands and Hedgerows of the Crewe and Nantwich Replacement Local Plan 2011 (Saved Policies ) are relevant to the making of the Order

### **5. FINANCIAL IMPLICATIONS**

None

### **6. 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.

## **7. 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.

## **8. CIRCUMSTANCES**

On 16<sup>th</sup> December 2011 the Council received an outline application for the demolition of the existing bungalow and the erection of five two storey dwellings on land at Manor Lodge, Manor Court, Crewe (App 12/0037N). The application proposed the removal of a number of low category trees and identified high and moderate category trees for retention. An assessment of the proposed scheme identified that the footprint of the proposed development in relation to those trees shown for retention and their position to the south of the proposed dwellings would create an overbearing and oppressive impact and would detract from the reasonable enjoyment of those properties, which would inevitably lead to future requests for regular pruning or felling. Reports were also received from local residents that tree felling had been undertaken within the site prior to the submission of the planning application and this gave cause for concern that the remaining trees may have been under threat.

In the light of these factors, an amenity evaluation of the trees was undertaken and a recommendation made to the Development Management and Building Control Manager that it would be expedient to make a Tree Preservation Order on certain trees. Under powers delegated to the Development Management and Building Control Manager a Tree Preservation Order was made on 1<sup>st</sup> February 2012.

## **9. 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 1<sup>st</sup> February 2012. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Wistaston Parish Council and Ward Members for Wistaston and Crewe South.

## **10. VIEWS OF THE PARISH/TOWN COUNCIL**

Wistaston Parish Council has sent comments by letter dated 17<sup>th</sup> February 2012 supporting the Order and requesting that they would like to see it take effect formally.

## **11. OBJECTIONS/REPRESENTATIONS**

Two objections have been received; the first from Mr and Mrs Holdsworth of 210 Manor Way, Crewe and the second is from Dr Mary Swords, the daughter of Mrs Sime the current occupier of Manor Lodge. Whilst Mr and Mrs Holdsworth do not support the proposed development in Manor Court they have expressed concern about the imposition of a Tree Preservation Order on trees within their property. Mr and Mrs Holdsworth have stated that their intention is to improve the group of trees within the small wooded area through rejuvenation or judicious pruning to create a better environment and it has never been their intention to remove any of the trees. In order to preserve a more open aspect to the wood, they have requested a variation to the Order to allow for the removal of the Yew tree (forming part of Group G3 of the Order) and some limited pruning to the Horse Chestnut (also within Group G3).

Mr and Mrs Holdsworth have also raised issues of equity and fairness. This matter is currently being addressed through the Council's complaints process. A letter dated 21<sup>st</sup> May 2012 has been sent to Mr and Mrs Holdsworth in response to these issues.

Two letters have been received from Dr Swords (dated 1<sup>st</sup> March and 16<sup>th</sup> April 2012). Dr Swords objects to the Order for the following reasons:

The Tree Preservation Order extends to a number of trees which consist of undistinguished garden specimens mostly planted by Dr Swords parents and some forest trees which should not be encouraged within gardens.

Is it normal for Preservation Orders to be issued for trees of this nature within the vicinity of Manor Lodge.

How many Tree Preservation Orders have been issued in the last 5 years on properties adjacent to Manor Lodge.

How many Tree Preservation Orders have been issued in the last 5 years on properties within 500metres of Manor Lodge.

The service of the Order seeks to imply some wrong doing in respect of a Willow tree prior to the service of the Order.

The Tree Preservation Order is being used as a proxy for opposition to development of the site.

Dr Swords has also raised matters of procedure in respect of prior notification of site access onto the property and issues of equity and fairness. These matters are currently being addressed through the Council's complaints process. Letters have been sent to Dr Swords dated 5<sup>th</sup> April 2012 and 8<sup>th</sup> May 2012 in response to these issues.

The Council have received a further 37 letters in support of the Order from residents on Balmoral Avenue, Collinbrooke Avenue and Manor Way. Most these letters have been submitted in the form of a copied standard layout with the main text of the letter referring to the Individual impact, wider impact and visibility that the protected trees provide. Reference is made to the recent planning application in the letters and also includes an additional paragraph for individuals to make their own individual comments on the trees.

## **12. APPRAISAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS**

### Objection - Mr and Mrs Holdsworth – 210 Manor Way, Crewe

It is accepted that the group of trees within their property located adjacent to the boundary of their property are currently under good management however in considering the recent planning application the Arboricultural Officers role was to assess both trees within and in certain cases those trees immediately adjacent to the development site as Government advice states in '*Tree Preservation Orders - A Guide to the Law and Good Practice (March 2000)*' (para 5.), Local Authorities may require details of trees on adjacent land which may be affected by the development. In this regard it was noted that the Arboricultural Report submitted in support of the planning application did not consider or evaluate any of those trees immediately adjacent to the application site.

An assessment of the impact of the proposed development was carried out and it was concluded that the position of proposed development would have had a long term detrimental impact upon the group of Ash and Horse Chestnut within 210 Manor Way which would lead to future requests to excessively prune the trees by new residents of the proposed development. The relationship of trees and their attributes can significantly affect potential land use, in particular shading by trees on new buildings and lack of natural light to rooms and gardens. To ensure adequate garden space avoid unnecessary excessive pruning by future residents of the new development, it was concluded that the protection of the trees was therefore necessary to avoid such future conflicts and ensure greater control over the pruning of the trees that overhang the development site.

After further consideration the Arboricultural Officer accepts that the Yew tree within group G3 does not form a composite part of the protected group and its value is limited in this regard. It is therefore recommended that this tree should be excluded from the Order.

The objectors request for some limited pruning of the Horse Chestnut is noted. Such pruning could be agreed as part of an application for consent under the Tree Preservation Order.

A letter dated 22<sup>nd</sup> May 2012 has been sent to Mr and Mrs Holdsworth in answer to their letter of complaint dated 9<sup>th</sup> May 2012.

### Objection – Dr Mary Swords

Local Authorities are required to assess the amenity value of trees in a structured and consistent way in accordance with Government guidelines contained in *Tree Preservation Orders - A Guide to the Law and Good Practice (March 2000)*. An assessment of the amenity value of the trees within and adjacent to the site was carried out using the Council's Amenity Evaluation Checklist which identified that the trees made a positive contribution to the visual amenities of the locality. The assessment also selectively excluded some trees within the site which were not considered to be of significant amenity value.

Most trees that are protected by a Tree Preservation Order are often described as 'forest trees' and many of these trees are located within private gardens. It should be noted that the protected trees are located around the edge of the Manor Lodge garden and do not conflict with the existing property. Whilst the protected trees currently conflict with the existing development proposal, the Tree Preservation Order cannot be used merely as a tool to prevent development. A subsequent amended layout has been submitted for discussion, which respects the protected trees but has not been formally submitted by the applicant's Agent. Therefore the argument that the trees are unsuitable for a private garden should not be given significant weight.

A letter (dated 8<sup>th</sup> May 2012) has been sent to Dr Swords in answer to the questions regarding the number of TPOs that have been issued within the vicinity of Manor Lodge. The letter included a map showing all the TPOs adjacent to Manor Lodge together with an accompanying list providing the name and date of service of the Orders.

There is no implication of wrong doing by the Council in respect of the removal of the Willow tree prior to the planning application, but it is not uncommon for trees to be removed from planning application sites. Such removal often leads to complaints by members of the public and requests for Tree Preservation Orders which happened in this particular case.

It is not the case that the TPO "is being used as a proxy for opposition to legal development". The presence of trees on the site is deemed a material consideration as part of a planning application, but they remain one of a wide range of material considerations which require consideration as part of the planning process, however the grant of planning permission can override the protection of a TPO.

### Letters in support of the Order

Letters in support of the TPO refer to the valuable amenity the trees provide, that they are highly visible to the wider public, provide privacy to adjoining neighbours, form a natural extension to the woodland character surrounding Gresty Brook and contribute to the wider landscape character of the area. Reference is also made to the abundance of local wildlife present which the trees provide a habitat supporting bats, numerous species of birds, foxes and badgers. Letters have also expressed concern about the loss of trees on the site prior to the submission of the planning application and the remaining trees presenting heavy shade to any proposed dwellings.

One letter of support has also identified a typographical error within the First Schedule which refers to the location of T2 to the rear of No.14 Manor Way. This should read No.214 Manor Way.

### **13. CONCLUSION**

In the light of the reports received that trees were being removed from the Manor Lodge and the threat to trees which contribute to the amenity and character of the area, it is considered it was expedient for Cheshire East Council to make the TPO in accordance with Section 198(1) of the Town and Country Planning Act. Following further consideration of the representations and objections received, the view is taken that one of the trees initially protected should be excluded from the Order and the First Schedule amended to reflect the typographical error.

### **RECOMMENDATION**

That the Cheshire East Borough Council (Crewe – Manor Lodge, Manor Court) Tree Preservation Order 2012 is confirmed subject to the modification of the plan and First Schedule to exclude the Yew tree from Group G3 and amending the situation of T2 within the First Schedule of the Order from No.14 to No.214 Manor Way