

## **Northern Area Planning Committee 13<sup>th</sup> June 2012**

### **COMMITTEE REPORT**

#### **PURPOSE OF THE REPORT:**

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 8<sup>th</sup> December 2011 at Hall Hill, Moss Brow, Bollington

#### **SUMMARY RECOMMENDATION:**

The Development Management and Building Control Manager recommend's that the Northern Area Planning Committee instruct the Borough Solicitor to confirm the Tree Preservation Order at Hall Hill, Bollington without modification.

#### **WARD AFFECTED**

Bollington

#### **POLICIES**

Saved Former Macclesfield Borough Council Policy DC9

#### **FINANCIAL IMPLICATIONS**

None

#### **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.

#### **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.

#### **CIRCUMSTANCES**

On the 2<sup>nd</sup> December 2011 reports were received from local residents living adjacent to Hall Hill, Bollington, that tree felling was taking place on the site, 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 to protect those trees which remained on site. Under powers delegated to the Development Management and Building Control Manager a Tree Preservation Order was made on 1<sup>st</sup> February 2012.

## **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 objections 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 8<sup>th</sup> December 2012. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Bollington Parish Council and Ward Members Bollington.

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

Bollington Parish Council has sent comments by e-mail dated 18<sup>th</sup> January 2012 supporting the Order and requesting that they would like to see it take effect formally.

## **OBJECTIONS/REPRESENTATIONS**

Four objections have been received to the serving of the Order, the first from Property Planning & Regeneration Ltd on behalf of the Land Owners Mr S Sinclair, and Mr H Cumberbirch. A second representation has also been received on behalf of Mr H Cumberbirch from Cheshire Woodlands Arboricultural Consultancy. The final two objections have been received from individual residents living adjacent to the Hall Hill site; Dr E Clayton of 17 Hall Hill, Bollington, and Mr R Egerton 19 Hall Hill Bollington

The detail outlined within the letter submitted by Planning Property & Regeneration Ltd on behalf of the two Land Owners strongly objects to the Order for the following reasons:

- Many of the trees are not of a quality to warrant formal preservation by virtue of their quality, condition, species, and form.
- Trees within the site are causing damage to third party property, particular in respect of properties 17 & 19 Hall Hill.

- Trees within the site are causing a negative impact upon the amenity value of the properties situated on the boundary of Hall Hill property.
- The site has historically benefitted from the previous Tree Preservation Order, which has rightly sort to protect two mature trees on the site. Placing an Order across the whole site is an unrealistic aspiration. The site is open and due to lack of maintenance by the previous owner has become overgrown. The site requires management in the interests of public safety and security.
- The site is considered to be a positive community asset, which is used by all sections of the community for access to local schools. Currently access to the site is unrestricted. Legal advice taken by the landowners has strongly advised that access to the site should be stopped in order to reduce the risk of future prosecution. Placing a Tree Preservation Order across the whole site is likely to result in the loss of community access to this site.
- The site is currently being promoted for development, the placing of a Tree Preservation Order may sterilise the future development of the site, thus having a negative impact on the local communities ability their local needs in the future.
- The respective landowners have commissioned Enzygo Environmental Consultants to prepare a tabulated Tree Survey Schedule (TSS) in accordance with BS5837:2005. We believe that this work should be completed before any new Tree Preservation Orders are considered.

The letter of objection submitted by Cheshire Woodland Arboricultural Consultancy on behalf of Mr H Cumberbirch only objects to the Order on the following grounds.

- H Cumberbirch and Son Builders have no intention and never had any intention of removing trees on land in their ownership without prior agreement of the Council, which is evidenced by the fact that there has been no felling on of trees on the southern part of the site throughout the ongoing planning negotiations
- In the absence of any tree felling on the southern part of the site, on land currently in the ownership of H Cumberbirch and Son Builders Ltd, there is no justification for the Councils suggestion that the trees are under immediate threat or not currently under good arboricultural or silvercultural management
- In the absence of any threat to the trees currently in the ownership of H Cumberbirch and Son Builders Ltd, there is no risk of the amenity afforded being destroyed and a TPO is not therefore required to maintain the amenity of the area.

- The Council's reasons for making the Order in respect of the land currently owned by H Cumberbirch and Son Builders Ltd are not justified and therefore it was not expedient to make the Order.
- The Order prejudices the ongoing planning negotiations with the Council, and constraints the future management of the trees on the affected land.

The private residents Dr Clayton and Mr Egerton who live at 17 and 19 Hall Hill respectively have both raised objections to the individual trees located on the southern boundary of the site immediately adjacent to their respective garden boundaries, and not the remaining trees covered by the Area Order.

Dr Clayton's specific objections are on the following grounds.

- The Tree Preservation Order prevents any remedial action being taken as and when required.
- The two trees, Ash rear of number 15 Hall Hill and the Sycamore rear of number 19 Hall Hill present a clear possibility of danger to the property.

Mr Egerton's detailed objections have been made on the following grounds.

- The tree is a Sycamore, but not a good specimen particularly when viewed from Albert road or the garden of 19 Hall Hill
- The location of the tree has encouraged moss growth on the roof of number 19 Hall Hill previously. The removal of the moss was by the way of manual scraping of the roof tiles, a time consuming, dirty, and precarious task but necessary to prevent further damage. The tree has been professionally pruned but this has not proved to be entirely successful as the moss has begun to return.
- The position of the tree, so close to the properties of number 19 & 17 is inappropriate due to its size and type. Further pruning is not practical and does not appear to offer a permanent solution.

The Council have received a further 17 letters in support of the Order from residents on Hall Hill, Oliver Close, Moss Brow, Moss Lane, Gregg Avenue, Bollington Cross, Springbank and Ashbrook Road. An overview identifies the trees on the Hall Hill site contributing significantly to the character of the area providing great benefit in terms of visual prominence and a wildlife haven.

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

Prior to the serving of the Tree Preservation Order subject of this report two separate Orders already existed on the Hall Hill site, this included a single mature Sycamore protected by a 2003 Tree Preservation Order and three groups of trees and two individual specimens protected by a 1988 Tree Preservation Order.

The Area Tree Preservation Order classification is an alternative way of specifying trees which are scattered throughout a site. Initially this designation was used as an emergency measure, until the trees could be reclassified following a subsequent and more detailed site inspection. It was concluded that the initial Area designation was considered appropriate in order to reflect the diversification of categories throughout the whole site. The use of individual group or woodland classifications was considered impractical.

The trees have been assessed in accordance with the Councils Amenity Evaluation Checklist and it was considered expedient in the interests of amenity to make provision for the trees long term retention. The trees were assessed as a collective presence rather than individual specimens.

It is accepted that the Ash and Sycamore located to the rear of the properties 15 and 19 Hall Hill present a moderately poor social proximity to the adjacent private dwellings. The Ash presents an open and exposed canopy with evidence of historic branch failure and un-authorised pruning noted on the ground. The serving of Tree Preservation Order does not preclude or prevent any remedial action being taken providing any proposed works are subject of an application, with a detailed specification of works included in accordance with BS3998:2010 Tree Work - Recommendations. It is envisaged that a suitable pruning specification can be provided to address both the safety concerns and maintenance issues raised by the adjacent residents.

The issue of un-authorised casual access onto the site by local residents has not been altered by the serving of the Tree Preservation Order. Any landowner has a duty of care to ensure trees within their ownership are maintained in a safe condition. Should an application be received to remove or prune a tree or trees because they are structurally un-sound, if the evidence provided is proven correct upon inspection, pruning or removal could be expedited under exempted works. The northern aspect of the site remains open with a number of desire line footpaths established across the undulating sloping aspect of the site.

No details have been provided in respect of the Tree Survey commissioned by the respective landowners at the time of writing this report.

The Strategic Planning and Housing Manager has identified the land at Hall Hill designated as Green Belt outside the settlement of Bollington within the Macclesfield Local Plan 2004. It is also designated as an area of proposed area of open space under Policy RT6 - although this proposal has never come to fruition.

The new Cheshire East Local Plan will replace the current development plan and provides an opportunity to review current policies. In terms of Settlement Hierarchy, Bollington is counted as being a Local Service Centre - and so is in the third tier of settlement beneath the 'sustainable towns'. Unlike its larger neighbours, no town Strategy will be prepared at this stage and it is most unlikely that any area in or around Bollington will feature as a 'strategic site' within the Core Strategy.

Consequently it will be in the later detailed stages of the Local plan that any changes (if at all) will be made to the policy framework that applies in the area. The current assumption, confirmed in the new Framework, is that Green belt land should remain permanently open. It is only in exceptional circumstances and via the Local plan that any alteration should be made. As a result the presumption should be that this land will remain as green belt. It is possible that future consideration of policy in Bollington necessitates an exceptional alteration to the green belt - but that is a position that cannot be properly judged at this time - and there are of course other sites that could be considered on the edge of the town if a need arose. Therefore for the purposes of the Tree Preservation order the assumption should be made that the land will remain green belt.

Should this position alter an objective Arboricultural Assessment could be provided, as part of a detailed Development Brief.

It is accepted that none of the trees felled prior to the serving of the Tree Preservation Order were located on land within the ownership of Mr H Cumberbirch and Son Builders Ltd, this information was not available at the time of the site inspection, and the initial compilation of the Amenity Evaluation Checklist with landownership details obtained at a later date following a Land Registry search and compilation of the Tree Preservation Order.

The two parcels of land in separate ownership are intrinsically linked by a common 100 metre boundary, with a distinctive heavily wooded wildlife corridor extending from the southern aspect of the site under the ownership of Mr Cumberbirch following a small stream and valley extending north to the boundary with Dean Valley County Primary School. There is no discernible alteration in the characteristic of the tree cover where the two areas of land ownership meet. Whilst there appears to be no immediate threat, it would appear prudent to include the parcel of land registered to Mr H Cumberbirch and Son Builders Ltd

## **CONCLUSION**

Under the Town and Country Planning Act 1990, a local planning authority may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area (Section 198 (1)).

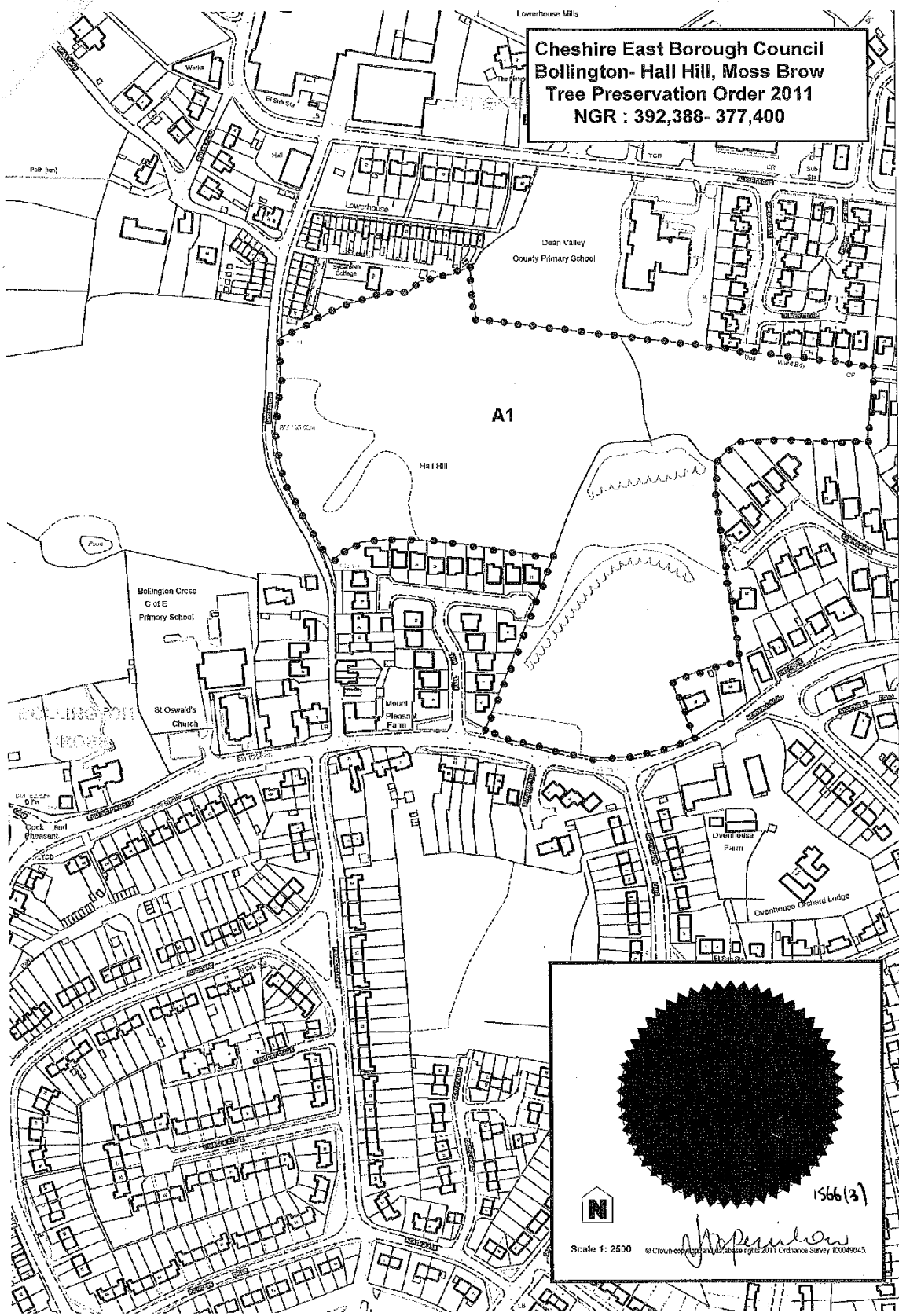
Following consideration of the representations and a further inspection of the site and taking into account the circumstances which generated the formal protection, it

is considered it was expedient for Cheshire East Council to make the Tree Preservation Order.

## **RECOMMENDATION**

That the Cheshire East Borough Council (Bollington – Hall Hill, Moss Brow) Tree Preservation Order 2011 is confirmed without modification

Cheshire East Borough Council  
Bollington- Hall Hill, Moss Brow  
Tree Preservation Order 2011  
NGR : 392,388- 377,400



1566(3)

**N**

Scale 1: 2500

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