

Northern Area Planning Committee 4th July 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 2nd February 2012 at Ford House, Prestbury SK10 4DG. Members are invited to consider the following objections and representations and to determine whether to confirm or not to confirm the Order or confirm the Order with modifications.

SUMMARY RECOMMENDATION:

The Development Management and Building Control Manager recommends that the Northern Area Planning Committee confirm the Tree Preservation Order at Ford House, Prestbury SK10 4DG without modification.

WARD AFFECTED

Prestbury

POLICIES

Saved MBLP Policy DC9 Tree Protection is relevant to this report.

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 and threat to trees could have a significant impact upon the amenity and landscape character of the Conservation area. The confirmation of this Tree Preservation Order will ensure that the Council maintains adequate control over trees of amenity value.

CIRCUMSTANCES

On 23rd December 2010 the Council received a full planning application to demolish Ford House and erect a replacement building for parish offices and 3 apartments associated with the Church, and the construction of 6 town houses and 2 apartments within the grounds of Ford House and alterations to the existing access (App 11/0107M).

The planning application was supported by an Arboricultural Report including a Tree Survey which considered the impact of the development proposal on existing trees within the grounds of Ford House. The report identified that high and moderate category trees comprising a Copper Beech, Horse Chestnut and a number of Yew trees, together with some lower category Holly and Cypress will require removal to accommodate the development. The report proposes that the loss of these trees could be mitigated by a scheme of tree management works within St Peter's churchyard and the Ford House site, together with provision of shared amenity space for the new dwellings to enable the sustainability and management of tree cover within both sites.

The Forestry and Arboricultural Officer is of the view that these trees contribute significantly to the amenity of the area and contribute to the character of the Conservation Area within which they are sited. An assessment also identified that the proximity of the proposed mews townhouses and their social proximity and relationship to various trees would inevitably lead to future requests for regular pruning or felling.

A revised scheme was submitted which relocated the mews townhouses a further 2 metres further west from the trees, and further discussions took place with the Arboricultural Consultant with regard to new planting within Ford House and St. Peters Churchyard.

The Forestry and Arboricultural Officer was of the opinion that the revised scheme and proposals for new planting did not sufficiently mitigate the loss of trees such that the requirements of saved Policy DC9 could be satisfied. In view of the potential tree loss and threat to remaining trees a recommendation was made to the Development Management and Building Control Manager that it would be expedient to make a Tree Preservation Order. Under powers delegated to the Development Management and Building Control Manager a Tree Preservation Order was made on 2nd 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 2nd February 2012. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Prestbury Parish Council and Ward Members for Prestbury.

VIEWS OF THE PARISH/TOWN COUNCIL

Prestbury Parish Council has sent comments by letter dated 7th March 2012 supporting the Order.

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order dated 13th February 2012 from Cheshire Woodlands Arboricultural Consultancy acting on behalf of St. Peter's Parochial Church Church, Prestbury. A copy of the Council's Amenity Evaluation Checklist was sent to the objector at their request. The checklist was used by the Council to assess the amenity of the trees in accordance with Government guidance. The objector refers to the checklist in their reasons for objection which are as follows:

- Planning permission has not been granted and the Council's motivation and reason for serving the Order as set out at Section 2 (a) of their Amenity Evaluation Checklist and items (a) and (e) of the Regulation 3 Notice do not therefore apply.
- All three listed trees in group G1 of the Order, fourteen of the sixteen listed trees in Group G2 and one of the four listed trees in group G3 were identified as being retained on the plans and particulars submitted with the planning application. These trees retain the statutory protection afforded by Section 211 of the Town and Country Planning Act 1990 and cannot be removed or pruned without the consent of the LPA. There is therefore no justification for the Council's suggestions that these trees are under immediate threat.
- The current owners of the land have no intention and never had any intention of removing trees without prior agreement of the Council. This is evidenced by the fact that none of the five trees identified for removal as part of the planning application (two trees in group G2 and three trees in Group G3) have to date been felled. There is therefore no justification for the Council's suggestion that the trees are under 'immediate threat' or at 'risk of being cut down or pruned' The Council's motivation and reasons for serving the Order as set out in section 2 (c) of their Amenity Evaluation Checklist and items (b), (c) and (e) of the Regulation 3 notice do not therefore apply.

- An Irish Yew in Group G1 of the Order and two Holly and four Sycamore trees in group G2 are identified as 'low value' category C trees in the Tree Survey submitted with the planning application. These seven trees are not 'high or moderate quality trees of amenity' and their removal would not have 'a significant impact on the amenity of the area'. The Council's motivation and reasons for serving the Order as set out at section 2 (c) of their Amenity Evaluation Checklist and items (d) and (e) of the Regulation 3 Notice do not therefore apply in respect of these seven trees.
- The Order is unhelpful in respect of the ongoing planning negotiations with the Council.

The Council have received also received further letters of support for the Order from Prestbury Amenity Society and Save Ford House Group.

APPRAISAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS

Objection - Cheshire Woodlands Arboricultural Consultancy acting on behalf of St. Peter's Parochial Church Church, Prestbury

The Regulation 3 Notice included in the letter accompanying the TPO states the Council's reasons for making the Order and included as one of the reasons, the requirement that the Council fulfils its statutory duty under Section 197 of the Town and Country Planning Act 1990. Section 197 allows for planning authorities to ensure when granting planning permission they make adequate provision for the preservation and planting of trees and provides the power to make Orders. The Forestry and Arboricultural Officer acknowledges that whilst planning permission had not been granted, the impact of the proposed development on trees is a material consideration when deciding to give such permission and the Council had to adequately consider the importance of protecting the trees on the site in the event that planning permission may have been given. It is the Forestry Officers advice that in this context and for the other reasons stated in the Regulation 3 notice, the making of the Order is expedient.

The objection suggests that the Order is not justified as the trees are not under immediate threat. Government advice provided in *Tree Preservation Orders – A Guide to the Law and Good Practice (DETR March 2000 – para 3.4; 3.5)* states that it is not necessary for the risk to be immediate, but that certain trees may be at risk from development pressures. The submitted planning application identified a number of high and moderate category trees for removal (a Copper Beech, three Yew and a Horse Chestnut) and that other trees which were shown for retention present an unsatisfactory relationship close to the proposed Mews properties. The Forestry Officer advises for this reason the trees are considered to be under threat.

The Tree Survey submitted with the planning application identified certain individual trees as 'low value' C category. The Forestry and Arboricultural Officer is of the view that whilst some of these trees may be identified within lower category designation, when considered as individual trees, the trees have collective merit as a protected group as designated within the TPO in terms of their overall impact upon the amenity of the area, their contribution to the character of the Conservation Area and association with the original landscaping of Ford House.

The Forestry and Arboricultural Officer has undertaken a reappraisal of the trees including the four Sycamores within G2 of the Order referred to in the objection to the east of the site. Reference is made in the Arboricultural Report supporting the planning application that *'tree cover along the highway frontage along the eastern boundary is the most significant in amenity terms'*. The four Sycamore trees within G2 of the Order are clearly visible from Bollin Grove along the eastern boundary of the site and also contribute to the collective merit of the group. The Forestry and Arboricultural Officer therefore advises that these trees fulfil the criteria for making the TPO.

The Council has undertaken extensive planning negotiations with the applicant over a considerable period to overcome the various objections and complex issues raised. It was considered that until all the required information was received and addressed a recommendation for the refusal of the planning application had to be made following the service of the Order.

CONCLUSION

Following the submission of a planning application for development at Ford House, Prestbury which identified the removal and threat to trees that contribute to the amenity of the area and character of the Prestbury Conservation Area it is considered expedient for the Council to make the TPO in accordance with Section 198(1) of the Town and Country Planning Act.

RECOMMENDATION

That the Cheshire East Borough Council (Prestbury – Ford House) Tree Preservation Order 2012 is confirmed without modification.