

Northern Area Planning Committee 8th May 2013

COMMITTEE REPORT

PURPOSE OF THE REPORT:

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 5th February 2013 at 9 Jackson Lane, Kerridge, Bollington and to consider the objections and representations made to the TPO and to determine whether to confirm or not to confirm the Order or to confirm the Order subject to modifications

SUMMARY RECOMMENDATION:

The Development Management and Building Control Manager recommend's that the Northern Area Planning Committee confirm the Tree Preservation Order at 9 Jackson Lane, Kerridge, 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 a tree or 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

A Notification of Intent (Application No 12/4442T) dated 12th November 2012 was received on the 15th November 2012 for the felling and removal of a single mature Lime tree located within the rear garden of number 9 Jackson Lane Kerridge. The notification was originally made invalid; a plan indicating the trees position had not been included. The requested detail was provided on the 18th December 2012 with the notification registered the same day.

The reasons expressed within the notification for the removal of the Lime tree related to concerns over its proximity to the applicants, and neighbouring dwellings, and should the tree fall it will cause damage to the properties.

A detailed inspection of the subject Lime tree was undertaken on the 11th January 2013, along with an assessment in accordance with the Council's adopted amenity evaluation checklist, and it was considered that the tree contributes significantly to the amenity of the immediate setting and the sylvan character of the surrounding area. A recommendation was made to the Development Management and Building Control Manager that it would be expedient to make a Tree Preservation Order to protect the Lime. Under powers delegated to the Development Management and Building Control Manager a Tree Preservation Order was made on 5th February 2013.

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 minimum 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 on 5th February 2013. Copies of the Order were also sent to adjoining landowners (7 and 11 Jacksons Lane Kerridge) who are immediately affected by the Order.

OBJECTIONS/REPRESENTATIONS

Two objections have been received to the serving of the Order:-

An e-mail submitted by a Ms Andrew on behalf of the applicant and owner of the Lime (Ms Burgess) was received on the 18th February 2013; objections to the Order were made on the following grounds

- Under the cover of Cheshire East Councils notification acknowledgement letter dated 20th December 2012 it stated that if the applicant had not been advised by the 27th January 2013 that a Tree Preservation Order had not been made, that the tree could be removed in accordance with the

notification. No Tree Preservation Order was issued before this date; therefore Ms Andrew should be entitled to fell the tree if she wishes. On the 5th February 2013 nine days after the deadline set by Cheshire East Council Ms Burgess received notice that a Tree Preservation Order had been served. Ms Burgess does not feel that the Order should stand as it was not issued within the timeframe set by Cheshire East Council and arrangements had already been made for the tree to be felled. Ms Burgess could have arranged to have the tree felled before the Order was received in which case the Tree Preservation Order would have been irrelevant.

The 28 day objection period was extended in order to allow the owner of number 11 Jackson Lane Kerridge, Mrs Lewis to comment; her objections to the Tree Preservation Order was received by e-mail on the 6th March 2013

- We do not want to get rid of this fine specimen but should it fall on our house in high winds it would do a great deal of damage. It is 7 metres taller than the distance from the rear of the properties. We think it must be possible to 'lop' carefully so that it will continue to grow but at least be safe for our properties.

No letters of support of the Order have been received

APPRAISAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS

A Tree Preservation Order may be made at any time, before or after the date on which the six week notice period comes to an end. In this case the Order was made after the six week period had expired with the Lime remaining un-protected for the intervening nine day period, and could have been felled. There is no provision for the six week notification period to be extended; in this case it was merely the practicalities of compiling the documents and the legal formalities which delayed the process.

The reasons expressed within the original notification for the removal of the Lime tree related to concerns over its proximity to the applicants, and neighbouring dwellings, and should the tree fall it will cause damage to the properties.

The Lime tree is of good form, condition and vigour with no obvious signs of serious structural weakness or decay, and is considered to be in scale and appropriate for its location and setting. A visual inspection and the use of a sounding hammer on the main stem and supporting buttress roots (to test for areas of decay) did not reveal any signs of imminent failure. No evidence was submitted as part of the notification to support the view that the Lime tree was dangerous. Officers would be comfortable to accept a new notification of intent to reduce the height of the Lime tree providing the proposed pruning/reduction accords with the requirements of current best practice BS3998:2010 Tree Work – Recommendations. The serving of a Tree Preservation Order does not prevent works taking place on a tree.

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 – 9 Jackson Lane, Kerridge) Tree Preservation Order 2013 is confirmed without modification

Town and Country Planning Act 1990
CHESHIRE EAST BOROUGH COUNCIL
(BOLLINGTON – 9 JACKSON LANE, KERRIDGE)
TREE PRESERVATION ORDER 2013

The Cheshire East Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as **Cheshire East Borough Council (Bollington – 9 Jackson Lane Kerridge) Tree Preservation Order 2013**.

Interpretation

2.— (1) In this Order “the authority” means the **Cheshire East Borough Council**.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this day of

The Common Seal of **Cheshire East Borough Council**

was affixed to this Order in the presence of—

.....

[Signed on behalf of the **Cheshire East Borough Council**

.....

Authorised by the Council to sign in that behalf

CONFIRMATION OF ORDER

This Order was confirmed by **Cheshire East Borough Council** without modification on the
day of

OR

This Order was confirmed by the **Cheshire East Borough Council** subject to the
modifications indicated by on the day of

Signed on behalf of the **Cheshire East Borough Council**

.....

Authorised by the Council to sign in that behalf]

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by **Cheshire East Borough Council** on the
day of

Signed on behalf of the **Cheshire East Borough Council**

.....

Authorised by the Council to sign in that behalf

[VARIATION OF ORDER

This Order was varied by the **Cheshire East Borough Council** on the day of
by a variation order under reference number a copy of
which is attached

Signed on behalf of the **Cheshire East Borough Council**

.....

Authorised by the Council to sign in that behalf]

REVOCATION OF ORDER

This Order was revoked by the **Cheshire East Borough Council** on the day of

Signed on behalf of the **Cheshire East Borough Council**

.....

Authorised by the Council to sign in that behalf

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually

(encircled in black on the map)

Reference on map	Description	Situation
T1	Lime	Standing within the rear garden of number 9 Jackson Lane Kerridge 14 metres from the rear elevation

Trees specified by reference to an area

(within a dotted black line on the map)

Reference on map	Description	Situation
	None	

Groups of trees

(within a broken black line on the map)

Reference on map

Description

Situation

None

Woodlands

(within a continuous black line on the map)

Reference on map

Description

Situation

None



