

## **Cheshire East Council**

### **Southern Planning Committee**

**Date of meeting: 10<sup>th</sup> June 2015**

**Report of: Emma Hood, Arboricultural Officer, Environmental Planning**

**Title: Cheshire East Borough Council (Wybunbury – Main Road/Pinfold Corner) Tree Preservation Order 2015**

### **PURPOSE OF THE REPORT**

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order (TPO) on 9<sup>th</sup> March 2015 at land off Main Road/Pinfold Corner, Wybunbury; to consider the objections and representation made to the TPO and to determine whether to confirm or not to confirm the Order or to confirm the Order subject to modification.

### **SUMMARY RECOMMENDATION**

The Head of Planning (Regeneration) recommends that the Southern Area Planning Committee confirms the Tree Preservation Order at land off Main Road/Pinfold Corner, Wybunbury

### **WARD AFFECTED**

Wybunbury

### **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 of trees 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 the Tree Preservation Order will ensure that the Council maintains adequate control over trees of amenity value in its administrative area.

## **CIRCUMSTANCES**

On 20th December 2014 the Council received an outline planning application to construct up to forty dwellings on land located to the north of Main Road, Wybunbury. (App.14/0128N).

The application was supported by an Arboricultural Report which provided an assessment of the environmental and amenity values of all the trees within the application site and the arboricultural implications of the proposed development.

The proposed development site is located on the western edge of Wybunbury adjacent to the B5071 which borders the area to the south and west and is the main road that runs through the village. The site is bordered by Pinfold Farm to the north western corner and agricultural land to the north, with one residential property and its garden located to the south east of the site adjacent to the site boundary. A public right of way bisects the site and joins the footpath that runs across to Wybunbury Moss SSSI which is located only 65 meters to the east of the site.

The trees are prominent along the northern field boundary of the site and are clearly visible from Main Road and from Wybunbury Public Right of Way; footpaths No's 10,13, 4 and No.7 as it joins the B5071.

An amenity evaluation of all the trees on the site was carried out in accordance with Government guidance. The assessment confirmed that the trees contributed to the visual amenity and landscape character of the area and in the light of this assessment it was considered expedient to make an Order to protect the trees.

Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 9<sup>th</sup> March 2015.

## **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 owners/occupiers of the land and their Agents on 9<sup>th</sup> March 2015. Copies of the Order were also sent to any adjoining landowners who are immediately affected by the Order, Wybunbury Parish Council and Ward Members for Wybunbury.

## **OBJECTIONS/REPRESENTATIONS**

The Council has received two objections to the Tree Preservation Order from Katherine Else of Barton Willmore who represent the interests of the Church Commissioners for England in respect of their land holdings within Cheshire East. The objector objects to the Order and its implementation for the following reasons:

- There is not a threat to the loss or harm of the trees; As although planning application (14/0128N) is currently being progressed the trees identified in the Order are not at risk through the planning proposal as they are shown to be retained within an area of open space.
- The TPO would impinge on the current arable farming of the land adjacent to the south, as well as have implications for continued grazing or farming of the field to the north that is not owned or controlled by the church commissioners.

## **APPRIASAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS**

### Objection by Barton Willmore on behalf of The Church Commissioners for England

Government advice states that it is not necessary for there to be an immediate risk for there to be a need to protect trees. However, where it is considered to be in the interests of amenity to make an order due to development pressures, or where there would be a significant impact on the amenity of the area or changes of ownership, then provision can be made to serve an Order.

An Amenity Evaluation Assessment was carried out prior to serving the Order and determined that the trees offered exceptional landscape value in respect of their location in an area designated as open countryside, visible from many vantage points and less than 65 meters from the boundary of Wybunbury Moss SSSI.

Whilst the application at this stage is 'Outline', the parameters indicated may be subject to change and amendment, so with this in mind it is not unreasonable for the Local Authority to ensure the long term protection of trees.

The process of applying for consent to carry out tree work does not have any costs associated with it, so any reasonable requests for maintenance such as ensuring that adequate clearance above ground level is maintained for the purpose of agricultural operations is likely to receive consent. A TPO would serve only to ensure that appropriate tree work operations are undertaken and would not prohibit reasonable requests to undertake work so the objection based on the TPO being detrimental to agricultural operations is not valid.

The Order is considered to be necessary as the test for expediency has been met in accordance with Government advice, and the Council has demonstrated and recognised that the trees make a significant contribution to the visual amenities of the area. The Order allows the trees to be protected and ensures that full consideration is given to ensuring that adequate mitigation is secured as part of current and future development proposals.

## **CONCLUSION**

In the light of the planning application received where trees have been identified as providing a contribution to the visual amenity of the area; the Council must give full consideration to the impact of any development proposal on those trees, it is therefore considered expedient for Cheshire East Council to make the TPO in accordance with Section 198 of the Town and Country Planning Act.

## **RECOMMENDATION**

That the Cheshire East Borough Council (Wybunbury – Main Road/Pinfold Corner) Tree Preservation Order 2015 be confirmed without modification