

Cheshire East Council

Southern Planning Committee

Date of meeting: 8th July 2015

**Report of Chris Hudson, Principal Forestry and Arboricultural Officer,
Environmental Planning**

**Cheshire East Borough Council (Goostrey – Land to the north of Main Road)
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 9th March 2015 on agricultural land designated as open countryside to the east of residential properties on Swanwick Close and Sandy Lane and to the north of properties on Main Road and Sheer Brook to the west; 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 on land north of Main Road, Goostrey

WARD AFFECTED

Dane Valley

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 28th November 2014 the Council received an outline application (14/5579C) for residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing) on land to the north of Main Road, Goostrey. The planning application was supported by an Arboricultural report which identifies the condition and quality of 44 individual trees, 10 tree groups and 3 hedgerows within the application site; the main species being listed as Oak, Crack Willow and Hawthorn.

A formal request was received on 15th January 2015 from a resident of Swanwick Close applying for a TPO to be raised to protect trees within the site.

The site comprises of agricultural land, in three fields bounded by existing hedgerows and individual and groups of trees. Mature trees line the Shear Brook boundary to the east and south east and to the north west. An existing TPO made in 1975 protects trees to the rear of several properties in Swanwick Close and to the east along Sheer Brook. The new Order will ensure the continuation of tree protection along the Swanwick Close boundary, in addition to other trees which are prominent on the skyline, visible from a Public Right of Way (Goostrey F12), a permissive path to the north east and which contribute to the landscape setting of Swanwick Hall, a Grade II Listed Building.

The planning application shows the proposed internal access road will require the loss of three protected Oak trees within an established field boundary (G2 of the TPO) to the south west of the site. The removal of an early mature Field Maple and mature Hawthorn will also be necessary to achieve the proposed access off Main Road.

Three linear groups of Oak located on the south west and eastern field boundaries of the site, together with two individual mature Oak trees have been identified for protection. The trees are visually prominent within the immediate area and wider landscape, both from the public and permissive footpaths and as filtered view and glimpses from Sandy Lane and Main Road.

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 9th 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 9th March 2015. Copies of the Order were also sent to any adjoining landowners who are immediately affected by the Order, Goostrey Parish Council and Ward Members for Dane Valley.

OBJECTIONS/REPRESENTATIONS

The Council has received two objections to the Tree Preservation Order from FPCR who are Agents acting for Gladman Developments Limited and Louise Wild of Courtlands, Sandy Lane, Goostrey.

Gladman Developments Limited objections are:-

- Although not given as a specific reason, it is considered that the making of this TPO is inappropriate as the trees subject to the Order are not considered as being under threat from the proposed development at the present time and the majority are shown to be retained by the scheme if granted planning permission. The layout clearly shows that the more significant trees are to be retained and incorporated into the proposals.
- Some of the trees are not clearly visible to the wider public. Many of the trees of the Order have limited wider public benefit as their positions within the site are only viewed by a limited number of local residents. An independent TEMPO evaluation has been undertaken to demonstrate these findings.

The objector has further stated that they wish to inform the Council that the development proposals seek to retain the majority of tree cover on the site and that the majority of trees are not under threat from removal. Two trees at the entrance to the site have been accepted by the Council for removal and that three individual Oaks within G2 of the Order will be lost for the main access road. Gladman Homes have no jurisdiction over Trees T1 and G1 which are located within private gardens and the design of the proposed development allows for adequate separation from these trees that would avoid any pressure for pruning or removal.

Retained trees within groups G2 and G3 contain both B (Moderate) and C (Low) Category trees. The design of the development allows for adequate separation from development to safeguard the trees from any pressure to prune or remove.

The objectors TEMPO evaluation (Tree Evaluation Method for Tree Preservation Orders) has assessed that trees T1 and Group G1 are suitable for protection by a TPO and that trees T2, G2 and G3 do not merit a TPO under the evaluation.

Ms Wild's objections are:-

- The Oak tree in my garden and I have no intention of destroying the tree.
- The tree is in dire need of maintenance work.
- There is no threat due to the proposed development as it is on my land.

Ms Wild requested a copy of the Officers Report promoting the service of the Order

APPRAISAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS

Objection by FPCR on behalf of Gladman Developments Limited

A formal written response was sent to the objector on 1st May 2015. With regard to the first objection, it is evident that the threat to trees is evident from the removal of three Oak trees within group G2 to accommodate the internal access. The risk or threat to trees need not be imminent and where there are development proposals there is a specific duty on planning authorities under Section 197 of the Town and Country Planning Act to make Tree Preservation Orders.

The current application is for outline with all matters reserved save for access therefore whilst some trees may not be currently at risk from the indicative proposals this can be subject to change and amendment at reserved matters stage.

The trees are located in an area designated as open countryside and the site is located adjacent to Goostrey footpath 12 from which the trees are clearly visible. A permissive footpath to the south east which is subject to an application for a permanent redirection of the Public Right of Way enables enhanced views of the protected trees in addition to filtered views and glimpses from Sandy Lane and Main Road.

The Councils Arboricultural Officer considers that the TEMPO assessments have failed to provide sufficient arboricultural information to justify the calculation downgrading certain trees for inclusion within the TPO. The assessment includes scores which have been crossed out and provides no detailed justification for some of the scores calculated for certain specific definitions. The evaluation has also failed to take into account the realistic potential for future visibility of trees with change in land use and their overall condition which has resulted in their value being downgraded.

Objection by Ms Wild

A formal written response was sent to Ms Wild on 23rd April 2015. Whilst the Oak tree is located outside the application site, the tree forms part of a continuation of a linear group of trees and an existing Tree Preservation Order the rear of Swanwick Close. It is recognised that the objector has no intention of destroying the tree, however parts of the tree overhang the site and therefore the Order enables the Council to ensure that the proposed development and any possible changes to it will ensure the tree will not be harmed and its retention secured in the longer term for the benefit of the amenity of the area.

An inspection of the tree confirms some deadwood within the trees' crown and the objector has been advised that this can be removed without consent.

A copy of the statement promoting the Order has been sent to Ms Wild as requested.

CONCLUSION

In the context of this development proposal, the Order identifies which trees the authority considers to be important in terms of their contribution to the amenity of the area. The risk of such development pressures has been recognised in Government advice as an appropriate test of expediency for raising a TPO.

The Council has demonstrated that the trees contribute significantly to the visual amenity of the area and the Order allows for retained trees to be protected and ensures that full consideration is given to the retention of trees in any future development of the site and to give weight to such conditions or otherwise as part of any development proposals.

In the light of the submitted planning application indicating the change of use of land and the impact on trees which contribute significantly to the visual amenity of the area, was deemed expedient in the interests of amenity to make the TPO.

RECOMMENDATION

That the Cheshire East Borough Council (Goostrey – Land to the north of Main Road) Tree Preservation Order 2015 be confirmed without modification