

Northern Planning Committee 2nd December 2015

Cheshire East Borough Council (Marton – School Lane) 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 30th June 2015 on land located to the east of School Lane Marton; 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

It is recommended that the Northern Area Planning Committee confirms with modification the Tree Preservation Order on land located to the east of School Lane, Marton.

WARD AFFECTED

Gawsworth

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 15th May 2015 the Council received an outline planning application (App 15/2274m) for up to 27 residential dwellings on land off School Lane, Marton

with all matters reserved except for access. The application was subsequently refused by Northern Planning Committee on 7th October 2015. The application is currently under appeal.

The planning application was supported by an Arboricultural Report which identified the condition and quality of trees within the site.

The site is presently used as agricultural pasture land, and characterised by individual mature trees located around the boundaries of the site, and a single specimen within the centre of the field. The field is located within the Marton village centre, and surrounded by residential properties and three roads (A34, School Lane & Oak Lane)

Eight mature trees including one located off site within the grounds of the property known as The Spinney have been identified for inclusion within the Order. The trees are visually prominent within the immediate area, the wider landscape setting, and complement the sylvan character of the area.

An amenity evaluation of all the trees on the site was carried out as part of the initial site inspection in accordance with Government guidance. The assessment confirmed that the trees contribute 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 30th June 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 upon which the identified trees stand and their Agents where applicable on 30th June 2015. Copies of the Order were also sent to any adjoining landowners who are immediately affected by the Order, Marton Parish Council and the Ward Member for Gawsforth.

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order from Appletons landscape architects and environmental consultants on behalf of

the applicant Hollins Strategic Land LLP. The objector objects to the Order and its implementation for the following reasons:

- The Council has stated that the Order has been made as it is in the interests of amenity that provision for the trees long term retention should be made. It is stated that this has been assessed in accordance with the Councils Amenity Evaluation Checklist. Details of the checklist and the criteria used for making such assessments has not been provided and is therefore deficient in allowing the landowner to judge the merits of the Order.
- Tree T1 (Sycamore) as indicated on the map has a large basal cavity and its long term contribution to the amenity and landscape setting of Marton village in this locality is uncertain. As such we consider that its removal from the Order would be appropriate.
- The making of the Order is considered to be premature given the planning application for development which seeks to resolve issues surrounding any potential impact on trees by development with the relevant officer of the council during the determination process. Trees in relation to proposed access points into the land parcel seek to avoid impacts on trees and it is considered proportionate that any Tree Preservation Order is made following determination of the outline planning application. Accordingly, the making of this order is not expedient in the determination of the planning application and should not be confirmed.

The Council also received an e-mail from the Clerk to Marton Parish Council on behalf of the Parish Council expressing their wholehearted support for the serving of the Order

APPRAISAL AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS

Objection by Appletons on behalf of Hollins Strategic Land LLP

The objector was advised that an Amenity Evaluation Assessment of the trees was carried out by the Council prior to serving the Order in June 2015 in order to determine their condition and contribution to the amenity and local landscape setting. The Council's assessment fully accords with the requirement of Government advice contained in paragraph 008 of Planning Practice Guidance *Tree Preservation Orders and trees in Conservation areas* which states that Council's should assess the amenity value of trees in a structured and consistent way taking into account visibility, individual, collective and wider impact and other factors

The Councils Amenity Evaluation Checklist (AEC) has been adopted in response to Government guidance contained in Planning Practice Guidance –

Tree Preservation Orders and Trees in Conservation Areas. The guidance advises Local Planning Authorities to develop ways of assessing the “amenity value” of trees in a structured and consistent way, and explain to landowners why their trees or woodlands have been protected by a Tree Preservation Order. There is no requirement to include a copy of the AEC with the served Tree Preservation Order documents, however authorities are advised to assess the amenity value of trees and be able to demonstrate protection provides a reasonable degree of public benefit. A copy of the Councils Amenity Evaluation Checklist has since been made available to Appletons.

The presence of the cavity associated with the large mature Sycamore identified as T1 within the Tree Preservation Order was noted in the Tree Survey Report dated April 2015, submitted as supporting evidence in relation to the planning application, and as part of the Councils Arboricultural Officers initial site inspection. The report stated that the cavity does appear to be stable at present, with further assessment required to ascertain structural stability and the potential risk of future failure. The presence of a cavity does not prevent a Local Authority from making a preliminary judgement on whether a tree should be included within a Tree Preservation Order on amenity grounds. A more detailed and considered assessment would then be undertaken before the matter is placed before committee for confirmation. The applicants own Tree Survey Report identified the tree with an estimated remaining contribution in years as 20+, and has only been downgraded to a moderate value specimen (B) because of the cavity. The tree was also depicted as a feature within the Village Green / Open space indicative site layout plan.

It was considered expedient to wait a number of months to undertake a supplementary inspection in order to maximize the opportunity to establish if any decay organisms (fungal brackets) were present. The Sycamore was inspected on the 22nd October 2015; following a detailed inspection it was concluded that the ratio of sound timber to decayed timber was insufficient to consider the tree as a long-term feature. Whilst no fungal brackets were present, basal decay extends down within the tree’s root system and within the central core of the stem to a height in excess of 3.0 metres. With the evidence which is now available it is considered prudent to exclude the Sycamore T1 from the Order

The Tree Preservation Order was served in response to the submission of application 15/2274M, an outline application with access for up to 27 dwellings and car parking. It is not necessary for there to be an immediate risk for there to be a need to protect trees. However, it is recognized that where it is in the interests of amenity to make an order due to development pressures, changes of ownership and/or changes of use of an area of land and the local authority considers it expedient to do so, then provision can be made to serve an order under Section 198 of the Town and Country Planning Act 1990. A TPO does not serve to prevent development; its purpose is to afford protection to trees in the interests of amenity due to development pressures, and a proposed change of use of an area of land. Both the original points of access into the site impacted on trees considered worthy of formal protection;

therefore it was determined that it was expedient under the circumstances to serve a Tree Preservation Order. Following the serving of the Order revised plans were submitted, which made provision for the retention of the previously affected trees.

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 immediate area and the wider landscape. The risk of such development pressures has been recognised in Government advice as an appropriate test of expediency for raising a TPO.

Following the completion of the supplementary inspection of the Sycamore T1 it is accepted that the tree should not be included within the Tree Preservation Order with the order modified at confirmation.

The Council has demonstrated that the remaining 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 immediate area, and the surrounding landscape, it was deemed expedient in the interests of amenity to make a TPO

RECOMMENDATION

That the Cheshire East Borough Council (Marton – School Lane) Tree Preservation Order 2015 be confirmed with modification (removal of T1 from the Order)

