

Cheshire East Council

Southern Planning Committee

Date of meeting: 5th July 2017

Report of Emma Hood, Arboricultural Officer, Environmental Planning

Title: Cheshire East Borough Council (Brereton – Land to the south west of Newcastle Road South) Tree Preservation Order 2017

PURPOSE OF THE REPORT:

To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 13th March 2017 at land to the south west of Newcastle Road South; to consider representations made to the Council with regard to the contents of the TPO and to determine whether to confirm or not to confirm the Order.

SUMMARY RECOMMENDATION:

The Head of Planning (Regeneration) recommend that the Southern Area Planning Committee confirm the Tree Preservation Order at land to the south west of Newcastle Road South with no modifications.

WARD AFFECTED

Brereton Rural

POLICIES

Congleton Borough Adopted Local Plan – PS8 and PG5 Open Countryside, Cheshire East Draft Local Plan – SE5 - Trees, hedgerows and woodland, and Brereton Neighbourhood Plan – Policy 6.4 Protect the Rural Environment. ENV02 Open landscape views and ENV04 Biodiversity and Geodiversity are relevant to the making of the Order.

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 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

The circumstances are that planning application 16/6168C was submitted in December 2016 seeking planning permission for a new residential development of 6 dwellings to facilitate accessible living, comprising 4 detached and 2 semi detached properties.

The application was supported by an Arboricultural Report which identified trees within the site and categorised them in terms of their condition and contribution to the amenity of the area.

The proposed development site comprised of .57 hectares of equestrian grazing located to the south west side of Newcastle Road South (A50) and located within open countryside.

The trees identified for formal protection are clearly visible and prominent on the skyline from Newcastle Road South (A50) and can be seen from Brereton footpaths 19 and 16. Trees afforded protection represent a tree lined boundary as recorded on the 1875 ordnance survey map for the Parish of Brereton demonstrating their historical importance and significance to the landscape character of the area.

In considering the application concern was raised that the proposed development had presented an indirect threat to trees identified to be retained in respect of social proximity and associated post development concerns.

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 13th March 2017.

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 objects 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 13th March 2017. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Brereton Parish Council and the Ward Member.

VIEWS OF THE PARISH/TOWN COUNCIL

No comments have been received.

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order from the owner of the field adjacent to Willow Cottage and the applicant for the planning permission. The objector objects to the Order and its implementation for the following reasons:

- Extensive works have been taken to improve what was a neglected site; 'the ponds cleaned such that they are now teeming with wildlife, established a dedicated newt area and replanted hedgerows, the trees have been carefully nurtured back to a healthy state and bird boxes have been added to attract birds.'
- The action to make a TPO has been taken hastily based on a planning application that was submitted (and subsequently withdrawn) and without any site meeting or in-depth discussion regarding the field and the trees therein
- Being presented with a TPO is completely unfair. The trees are not at threat of being cut down as you suggest on your tick box form and no offer of help has been offered to ensure the good work we have done will continue
- Your motivation for the TPO is driven from a place (as stated on your own check sheet) that the trees are under threat of development and at risk of being taken down. This is not correct – the trees were always on the plan and never under threat. Plus, as a result of the planning application being withdrawn your reasons for protecting the 3 trees are therefore not valid.
- Your second reason for protecting the trees is stating that they are on an old tithe map for Brereton. I would be happy to accept the TPO if the map materialised (Provided 24th April 2017) and every tree on that map was placed under the same order. Not randomly picking on three of my trees.
- As mentioned on the telephone I now feel victimised by the Local Authority due to the manner in which they have dealt with the planning application and your order has added to this feeling of being penalised rather than supported for what we are trying to achieve on the site.

APPRAISAL AND CONSIDERATION OF THE NOTIFICATION

Objection by the owner of the field adjacent to Willow Cottage

- The process followed in the making of the TPO accords with Government Guidance and there is not a requirement to take into account the history or restoration of a site prior to making a Tree Preservation Order.
- The submission of a planning application in an area of open countryside where impacts on trees have been identified is one which would trigger an

assessment for considering formal protection. The withdrawal of a planning application may be done for a number of reasons but would not necessarily remove the risk to trees as the site may be subject to further amended applications. Protection of the trees at this time will ensure that due consideration is given to them in any subsequent applications and revised layout plans.

- Prior discussion of the intention to serve a TPO on the owner of land identified for development is not considered appropriate for obvious reasons.
- Trees do not have to be at risk of being cut down to be deemed at threat from development, the change of use of land in close proximity to development presents a situation where trees are likely to come under threat from requests to prune or even remove in the longer term where day light or seasonal nuisance becomes a factor.
- The trees are located on the 1875 Ordnance Survey map and a link to the Cheshire Records web site was provided to the objector on 24th April. The identification of the historical importance of the trees serves only to demonstrate that they have been part of the landscape character of the area for a substantial period of time.

The trees identified for formal protection are located within the site edged red of the area proposed for development and it has been demonstrated by the Council's Amenity Evaluation Checklist that the trees contribute significantly to the amenity of the area

- The decision to afford long term protection of trees is made following a transparent and considered process that accords with Guidance, the objection being to preserve the long term amenity of important trees.
- Further contact was made by e-mail and telephone to the objector to offer to meet on site to discuss her objections but no reply has ever been received.

RECOMMENDATION

That the Cheshire East Borough Council (Brereton – Land to the south west of Newcastle Road South) Tree Preservation Order 2017 is confirmed without modification.