Cheshire East Council

Southern Planning Committee

Date of meeting: 4th October 2017

Report of Emma Hood, Arboricultural Officer, Environmental Planning

Title: Cheshire East Borough Council (Haslington – Winterley, Land to the north of Pool Lane) 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 22nd May 2017 at land to the north of Pool Lane, Winterley; 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 north of Pool Lane, winterley with no modifications.

WARD AFFECTED

Haslington

POLICIES

Cheshire East Local Plan – SE5 - Trees, hedgerows and woodland

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 appeal APP/R0660/W/16/3161426 in relation to application 16/1728N had been allowed and granted outline planning permission for up to 33 dwellings on land to the north of Pool Lane. Reserved matters application 16/5101C was received early in 2017 which prompted requests for an assessment to consider formal protection to trees on the site. The site was found to adjoin a plot of land also granted outline consent for development at appeal APP/R0660/16/3163461 in relation to application 16/3387N for up to 29 dwellings on land to the south of Hassall Road. Land to the west of the above sites, located adjacent to, and accessed from Crewe Road is currently under construction and was approved as part of application 13/4632N. All three sites and one adjoining field were considered in the assessment.

The applications were supported by Arboricultural Reports 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 comprises of mixed agricultural land on adjoining fields on a predominantly flat area of land located between Wheelock Heath and Winterley and is bounded by Pool Lane to the south, Crewe Road to the west and Hassall Rd to the north east.

The trees identified for formal protection are visible from roads abutting the site, with filtered views through existing properties on Pool Lane, Hassall Road and Crewe Road. The location of sites already afforded consent for development in proximity to one remaining agricultural field has lead to local residents raising concerns regards the possible loss of existing mature trees and the Order has been extended to afford long term protection to these trees. Many of the trees covered by the Order represent remnants of tree lined boundaries as recorded on the 1875 ordnance survey map for the Parish of Winterley demonstrating their historical importance and significance to the landscape character of the area.

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 22nd May 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 22nd May 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

Comments were received from local Ward members supporting the service of the Order

OBJECTIONS/REPRESENTATIONS

The Council has received one objection to the Tree Preservation Order from TEP (The Environment Partnership) under instruction from Gareth Salthouse of Emery Planning on behalf of HIMOR Group Ltd. The objection relates to the protection of specific trees in the Order on land which HIMOR Group Ltd has an interest located to the eastern most section of the Order area.

The objection comprises of an eleven paged report and objects to the protection of specific trees; T6, T7, T8, T9, T10, T11, T12 and group G6 within the Order for the following reasons (taken from the concluding statement of report):

- *The management of all trees can be secured through the planning process and the Order therefore has no effect and is not expedient.*

- *All trees covered by the Order are shown as being retained within the context of the proposed development. There is therefore no threat to the trees. There is therefore no justification for the making of an Order and it is not expedient.*

- *All other trees within the objection site are under responsible management and there are no reasonable grounds for inferring a threat to their continued presence and condition. The Order is therefore unnecessary and is not expedient.*

- *The order has limited practical effect in the context of a pending application and is therefore not expedient. The making of an Order prejudices and obfuscates the planning process by introducing a material consideration after outline consent has been granted but before Reserved Matters have been discharged and therefore does not follow the Government's guidance which is that such Orders should be made in connection with the grant of development consent where necessary in addition to planning conditions.*

- *In consideration of these points, an objection is made to the Order and a respectful request that it be revoked or modified to exclude those trees listed in paragraph 3.2.*

APPRAISAL AND CONSIDERATION OF THE OBJECTION

Objection by TEP (The Environment Partnership) under instruction from Gareth Salthouse of Emery Planning on behalf of HIMOR Group Ltd.

A Legal view was sought to clarify the validity of the objection as set out in the report submitted by Emery Planning. The opinion provided was of the view that the case for lack of expediency could be dismissed.

Conditions attached to outline consent do not become live until the permission is implemented and as reserved matters have not yet been granted and the site is not within a conservation area, the TPO secures the protection of the trees and removes the risk of felling or pruning works prior to implementation of any permission.

The illustrative layout may also be subject to changes at the reserved matters stage and it is not uncommon for a less desirable relationship between trees and proposed development to be presented for consideration, therefore the formal protection of the trees adds weight to their importance and relevance to maintaining the landscape character of the area.

With regard to the matter of expediency; the change of use of land in close proximity to development can present a situation where trees can come under threat, or at risk from requests to prune or even remove in the longer term where daylight or seasonal nuisance becomes a factor. Advice from Government is that; '*it may be expedient to make a TPO if the authority believes that there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be imminent'. The Law of Trees, Forests and Hedgerows Second Edition s22.2.8 p573 by Charles Mynors* further clarifies Government advice stating that *; 'it is also perfectly appropriate to impose an order where a development proposal, if implemented, might lead to future pressures from the occupiers of the finished buildings to remove trees'.*

The majority of the protected trees which are the subject of the objection are located within the gardens and on the boundary of properties along Pool Lane. These trees will serve to afford screening of the existing properties from any development in the long term, and while the risk of them being removed may be low, trees do not have to be at risk of being cut down to be deemed at threat from development. As *Mynors The Law of Trees, Forests and Hedgerows Second Edition* states at s22.2.8 p574 *' it is also perfectly appropriate to impose an order where a development proposal, if implemented, might lead to future pressures from the occupiers of the finished buildings to remove trees'.*

A TPO is not a barrier to development and will not prevent development from taking place, in this instance the Order will serve to ensure protection of trees which have already been identified to be retained at Outline, therefore it does not prejudice or obfuscate the planning process and only serves to ensure the long term protection of trees around which the nature of the existing landscape is proposed to change.

The service of the Order follows the granting of the outline consent and 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 in the form of a TPO whereas advice from Government is that; '*if outline permission has been granted, possibly on appeal, without an order having being considered, the matter should be addressed promptly, as problems may occur if the making of the order is left until the details have been submitted…and that where an application is submitted with a detailed layout plan - an application for full planning permission or for the approval of reserved matters, or an outline application but accompanied by an illustrative layout, it should be possible to consider precisely which trees should be retained. (Mynors The Law of Tree, Forests and Hedgerows Second Edition s21.8.7 p552-553.* In addition, Guidance also states that*;* (planning) conditions *should not be used to provide permanent protection; that is more effectively achieved using tree preservation orders (*Mynors The Law of Trees, Forests and Hedgerows Second Edition s21.9.5 p557).

RECOMMENDATION

That the Cheshire East Borough Council (Haslington – Winterley, land to the north of Pool Lane) Tree Preservation Order 2017 is confirmed without modification.