

**Cheshire East Council**

**Northern Planning Committee**

**Date of meeting: 14<sup>th</sup> February 2018**

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

**Title: Cheshire East Borough Council (Bollington – Mill Lane path to the east of Ingersley Vale) 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 30th October 2017 at land to the east of Ingersley Vale; 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 Northern Area Planning Committee confirm the Tree Preservation Order at land to the east of Ingersley Vale with no modifications.

**WARD AFFECTED**

Sutton

**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 outline planning application 15/2354M was granted on 2<sup>nd</sup> December 2016 for 13 dwellings on the former bowling green and pavilion at Ingersley Vale in Bollington. Application 17/1531M associated with a variation of Condition 3 of the approved application was submitted and refused on 13<sup>th</sup> June 2017 and become the subject of appeal APP/R0660/W/17/3179760 which has since been allowed granting planning permission for 11 no. 2.5 storey and 2 no. 2 storey residential houses. The site has been the subject of much public interest and a request to consider formally protecting trees on the site was first received 4<sup>th</sup> April 2017.

The application was supported by an Arboricultural Report by Mulberry Tree Management Consultants 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 the former Bowling Green and Pavilion located on Ingersley Vale. The redundant bowling green is presently bordered by trees along much of the north eastern and north western boundary with the south western boundary abutting the Bollington Conservation Area.

An amenity evaluation of all the trees on the site was carried out in accordance with Government guidance. The assessment found one oak tree to be worthy of long term protection as it contributes to the visual amenity and landscape character of the area, with identified long term growth potential and it was therefore 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 October 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 30<sup>th</sup> October 2017. Copies of the Order were also sent to adjoining landowners who are immediately affected by the Order, Sutton Parish Council, Bollington Parish Council and Ward Members.

## **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 Mr Carl Salisbury of Mulberry Tree Management Consultants acting on behalf of Mr Bowman. The objection comprises of a three paged report and relates to the protection of the oak tree for the following reasons (taken from section 4 Conclusion of report):

- *Taking all the points detailed above into account we feel that the Council has completely ignored Government advice in protecting a tree that does not fulfil the criteria outlined to identify trees worthy of a Tree Preservation Order. On that basis we object to the Order and respectfully suggest that it cannot be confirmed*
- *In addition to the above information our client has asked us to add that the Council's Tree Officer has agreed that the tree only has moderate value*
- *The recent planning application ensures the retention of the tree for the long term.*

- *In summary therefore, we object to the Order in that the Order seeks to protect a tree that is unworthy of protection and is contrary to Government advice. For these reasons, detailed above we formally object to the Bollington – Mill Lane Path to the east of Ingersley Vale Tree Preservation Order 2017 and we trust that you will consider these objections before deciding to confirm the Order.*

## **APPRAISAL AND CONSIDERATION OF THE OBJECTION**

### Objection by Mulberry Tree Management Consultants.

The decision to afford long term protection of the tree was one made following consideration of information submitted with the reserved matters application and the impact of development on trees identified to be retained. In addition the Council received support from local residents for the protection of the tree as concern had been expressed over its long term retention within the new development.

The tree has been rigorously assessed and has been demonstrated to have amenity value as evidenced in the Council's Landscape Appraisal and Amenity Evaluation Checklist which is appended to this report. In terms of the suggestion that the Council has failed to adhere to Government Guidance; visibility of the tree has clearly been demonstrated from adjacent roads and public rights of way in the landscape appraisal, the existing size and form of the tree is such that it makes a clear contribution to the amenity of the area, and the tree report submitted in the reserved matters application by Mulberry Tree Management actually identifies its estimated remaining contribution as being between 60 and 80 years, therefore it is clear that the tree has future potential as an amenity. The presence of the tree on the 1875 Ordnance Survey provides a historical record which clearly demonstrates that it has been part of the landscape character of the area for a substantial period of time. The tree contributes to the character and appearance of the conservation area as well as providing a screening function between the development and land to the west of the site.

In respect of the comments made by the Senior Arboricultural Officer where he concurred that the tree was of moderate value; BS5837 Trees in relation to design, demolition and construction – Recommendations categorises a tree of Moderate quality (B) category as one; 'with an estimated remaining life expectancy of at least 20 years'. The assessment as to whether the tree was appropriate for a TPO found that the tree exhibits good vitality for a tree of its size and age, and while it has been subjected to past pruning there is nothing to suggest that it is in declining condition or contains any serious defects that will compromise its longer term retention.

The predicted estimated life expectancy is some what subjective in that it is impossible to predict that a tree in this condition will be unsuitable for retention beyond 40 years and it is the Council's view that it is not unreasonable for moderate 'B' category trees to be afforded protection where it can be demonstrated that their physiological condition and form is such that their life expectancy will exceed 20 years and that they present a significant contribution to the amenity of the area.

While the retention of the tree in the approved development layout is acknowledged, trees do not have to be at risk of being cut down to be deemed at threat from development. For example; 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 light attenuation or seasonal nuisance becomes a factor.

The Council is of the view that its assessment of the tree fully accords with Government advice contained in Planning Practice Guidance *Tree Preservation Orders and Trees in Conservation Areas* and the making of this Order is therefore deemed to be expedient as it affords long term protection of a tree with amenity value which contributes to the landscape character of an area.

## **RECOMMENDATION**

That the Cheshire East Borough Council (Bollington - Mill Lane path to the east of Ingersley Vale) Tree Preservation Order 2017 is confirmed without modification.