

Northern Planning Committee

Date of Meeting: 14th September 2022

Report Title: Cheshire East Borough Council (Wilmslow – Verge opposite 136 – 156 Altrincham Road) Tree Preservation Order 2022

Portfolio Holder: Councillor Toni Fox - Planning

Senior Officer: David Malcolm- Head of Planning

1.0 Report Summary

- 1.1 To inform the committee about the background and issues surrounding the making of a Tree Preservation Order on 28th March on a verge opposite 136 – 156 Altrincham Road; 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.

2.0 Recommendation

- 2.1 The Head of Planning (Regeneration) recommend that the Northern Area Planning Committee confirm the Tree Preservation Order on the verge opposite 136 – 156 Altrincham Road with no modifications

3.0 Reason for Recommendation

- 3.1 Pruning works which do not accord with the requirements of best practice and/or loss of the 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 a linear group of trees of amenity value.

4.0 Background

4.1 Introduction

- 4.2 The trees are located on a Cheshire East Highway maintained verge which provides separation between Altrincham Road (A538) and an access road

- to the front of properties 136 – 156 Altrincham Road. The trees are a prominent and a valued feature in the locality and make an important contribution to the landscape character of the area.
- 4.3 The circumstances are that concerns had been raised over challenges to the Council regards ownership, responsibility and maintenance of the trees, and the impact this could have on the present amenity the trees afford the area. The verge on which the trees stand extends from the junction of Kings Road with the A538 by approximately 160 metres to the southeast and contains a linear group of amenity trees which contribute to the landscape character and sylvan setting of the area, and which provide screening and a buffer between a busy road and residential properties.
- 4.3 Highways presently maintain the land; however, some areas of the verge are known to be registered to a third party. Irrespective of this, Section 263 (1) of the Highways Act 1980 provides that, subject to certain exceptions referred to in Subsection (2), every highway maintainable at public expense, together with the materials and scrapings of it, is vested in the authority who are for the time being the highway authority for the highway. Case Law has established trees planted pre and post adoption are vested in the authority, and that includes all parts of the tree, above ground and the soil the roots occupy. The subsoil beneath the area in question including services, highway apparatus, and tree roots are therefore believed to be vested with the Highway Authority (*Hurst and Another v Hampshire CC [1997] EWCA Cid J0619-4*).
- 4.4 An ongoing dispute regarding ownership of the trees, responsibility for maintenance, and subsequent pruning works which took place which were not considered to accord with best practice contributed to concerns that the remaining trees may be at risk.
- 4.5 An amenity evaluation of the trees established that certain specific trees contributed significantly to the visual amenity and landscape character of the area and that there was a risk of these trees being removed or heavily pruned. Accordingly, it was deemed expedient to make an Order to secure the long term amenity of the area
- 4.6 Under powers delegated to the Head of Planning (Regeneration), a Tree Preservation Order was made on 28th March 2022.
- 4.7 The information contained in this report is divided into three sections:
- Section 5 provides a summary of the TPO service and consultation process.
 - Section 6 provides a summary of the objections/representation made (see Appendix 3 & 4).
 - Section 7 provides the Councils appraisal and consideration of the objection.

5.0 Consultation

- 5.1 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.
- 5.2 The Order was served on Cheshire East Highways and any property whose title deeds extended across the subject area on 28th March 2022. Copies of the Order were also sent to Ward Members and Wilmslow Town Council and a site notice was placed on the verge for the attention of residents.

6.0 Objections/representations

- 6.1 The Council has received five objections to the Tree Preservation Order from residential properties which face south east across the access road towards the trees which have been protected .
- 6.2 Objection 1 - Resident of Altrincham Road objects to the Order and its implementation for the reasons detailed below;
1. *If the Council had kept the trees in good order by pruning and maintaining frequently, they would not be in the mess they are today, they have been allowed to massively overgrow.*
 2. *Amenity Evaluation Checklist, point 5: an error of your answer 'no' to the question 'is there any obvious evidence that the trees are causing an actionable nuisance'.*
 3. *Our property is being damaged (roofs full of moss, lichen and leaves) causing damage to roof and gutters of properties. I have had to replace the roof due to damage caused by the moss from the trees and restructure drainage due to fallen leaves*
 4. *Cars are being damaged by the sap falling from the trees and branches growing around power cables*
 5. *During bad weather/high winds the road becomes dangerous due to falling branches causing damage to vehicles and a danger to traffic on the main Altrincham Road because the Council have not kept up with pruning.*
 6. *The road is dangerous for members of the public and our children to play and cycle on, especially during bad weather*
 7. *According to the RICS some of the trees should be 30m from a house/structure for safety and to reduce risk of root damage, ground heave and subsidence, our houses are 10metres away*
 8. *Error in AEC point 12 – land not owned by Cheshire East, I believe it is on the deeds of my house ownership.*

9. *Error in AEC point 10 b) – the council barely look after the tree so with a TPO they no longer can*
10. *Trees are doing nothing to benefit residents and road users of Altrincham Road. Cheshire East do not want upkeep of the trees and requested the TPO to cut expenditure at cost of residents and our safety*

6.3 Objection 2 - Resident of Altrincham Road objects to the Order and its implementation for the reasons detailed below

1. *Branches have grown over telecoms cables causing issues with internet connection.*
2. *Fallen leaves from branches hanging over drive have blocked gutters and drains leading to flooding during heavy rain*
3. *Fallen branches in high winds have been a serious danger to ourselves, our children and vehicles*
4. *Damage to vehicles parked in driveway from sap*
5. *The TPO states that trees are expected to cause an actionable nuisance*
6. *The trees do not sit on Council land which is contained within our freehold*
7. *The Council have incorrectly answered the question as to whether the trees are causing a nuisance as answer is yes, they are and have caused a nuisance*

6.4 Objection 3 - Resident of Altrincham Road objects to the Order and its implementation for the reasons detailed below.

1. *Concerns of safety to residents from the worry of falling branches*
2. *Leaf litter making paths and driveways slippery and affecting drainage*
3. *Against the TPO as trees should be kept at safe and reasonable size*

6.5 Objection 4 - Resident of Altrincham Road objects to the Order and its implementation for the reasons detailed below.

1. *Damage to property from moss and lichen growth causing roof to leak arising in need to replace roof at cost of £5000*
2. *Catastrophic leak due to blockages in leaves in guttering causing internal damage costing £3000*
3. *Being struck directly by falling dead wood while cleaning car*
4. *Tree sap causing premature deterioration to sun roof and rubber seals of vehicles costing £4100*
5. *Leaf fall is a problem causing cars to mount kerbs and is slippery in winter*
6. *Land is not owned by Local Authority as appears on HM Land Registry documents for property*
7. *Pruning works carried out were agreed and statutory pollard agreed by Highways, retracted by Chris Hudson but then agreed with Local Councillor and Cheshire East*

8. *Trees not suitable for site as suggested, mature Oaks should be a minimum of 30 metres from property, do not provide screening or noise barrier*
9. *Obvious evidence trees causing an actionable nuisance as submitted*
10. *Actionable nuisance is reasonably foreseeable*
11. *Trees are not managed and we believe there is no intention to manage them*

6.6 Objection 5 - Resident of Altrincham Road objects to the Order and its implementation for the reasons detailed below.

1. *Trees cannot be called an amenity, could fall on to properties or the A538 and they are too tall to be close to residential properties*
2. *The trees have been neglected and have grown unchecked and are an actionable nuisance*

7.0 Appraisal and consideration of the objections

- 7.1 Due to a number of points being consistently raised within the objections submitted, the response below has been provided to summarise the main issues which have been repeated:
- 7.2 Having sought clarification from Cheshire East Highways confirmation has been received that the trees are maintained in accordance with the Councils Highway Tree Maintenance and Inspection Policy .
A tree safety survey was carried out on all trees on the verge in June 2020. Trees requiring maintenance or action were individually recorded with works recommendations made and implemented in accordance within recommended time scales.
- 7.3 The issue of what constitutes a 'well maintained' and 'overgrown' tree is subjective. Regular inspection and removal of dead wood are expected routine operations, in addition to crown raising to maintain statutory clearances, and/or reduction of occasional selected branches to clear structures, or to reduce loading. Works in excess of these types of operations are rarely considered necessary unless a significant risk has been identified.
- 7.3 An enquiry to Cheshire East Highways was made to determine the number and nature of customer reports and complaints received regarding trees opposite property numbers 136 to 156 Altrincham Road over the last three-year period (March 2019 – March 2022). In that period five contacts were made in relation to trees in the above-mentioned area of which just two referenced concerns regarding the trees size and safety in terms of dead branches, with one of these reporting a branch failing onto a vehicle. A tree safety survey was subsequently carried out following this report to the Council, with works implemented to address issues identified in accordance with the Councils Tree Risk Management Strategy.

- 7.5 Leaf loss of mature trees cannot be avoided by pruning and tree owners do not have any legal obligation to cut or maintain trees for any other reason than safety. The shedding and natural shedding of twigs and small diameter dead wood of mature trees is also a natural process which often occurs during the winter. Trees containing large diameter dead branches would be identified through inspection procedures as part of the Council's Tree Risk Management Strategy and action taken accordingly where there was an imminent risk of harm. The maintenance of guttering and the roofing of individual properties is the responsibility of the homeowner. Leaf loss and honeydew from aphid infestations from trees is however a seasonal maintenance issue and rarely, if ever, considered a legal nuisance, however a TPO would not normally prevent selective pruning to reduce the severity of such matters or to clear BT cables if an application were submitted to the Council.
- 7.6 The pruning work carried out to the mature Oak located within the highway verge were considered as part of the TPO assessment did not accord with the industry standard as set out in the British Standard, *BS3998:2012 Tree Work – Recommendations* and have had a detrimental impact on the appearance of a high quality and high amenity Oak. Irrespective of the specification that was agreed, works to this tree were not identified as necessary within the submitted Highway Tree Survey Report. Consequently the Tree Preservation Order is considered appropriate and necessary to ensure that all trees are maintained in accordance with best practice to maintain the high amenity value that the trees presently afford the area.
- 7.7 The Order was served in accordance with Government Guidance on those persons interested in the land affected by the Order. A Land Registry Search was also carried out to identify any Title of land on which the protected trees were located. Persons listed within the Title Absolute on the Proprietorship Register were sent a sealed copy of the TPO and Site Notices were displayed in accordance with Government Guidance.

Discussion of the intention to serve a TPO is not deemed appropriate in advance of service for obvious reasons as this can pre-empt the kind of works the Order is intended to control such as pruning and felling works.

- 7.8 Having regard to tree ownership; leasehold information relating to individual properties is not available to view on the Land Registry. The verge is however recorded as being within the boundary of Cheshire East Highways land which they presently maintain. Section 263 (1) of the Highways Act 1980 provides that, subject to certain exceptions referred to in Subsection (2), every highway maintainable at public expense, together with the materials and scrapings of it, is vested in the authority who are for the time being the highway authority for the highway. Case Law has established trees planted pre and post adoption are vested in the authority, and that includes all parts of the tree, above ground and the soil the roots occupy. The subsoil beneath the area in question including

services, highway apparatus, and tree roots are therefore believed to be vested with the Highway Authority (*Hurst and Another v Hampshire CC [1997] EWCA Cid J0619-4*).

- 7.9 An actionable nuisance is defined in law as where the nuisance is causing actual or imminent damage. This ordinarily applies where tree roots are demonstrated as contributing to subsidence issues, or where tree branches are physically touching a property. Cheshire East Highways Claims Team have confirmed that in respect of trees on Altrincham Road no claims tree/property related have been received.

No actionable nuisance has been identified, however where sufficient evidence is presented that damage has occurred, or trees exhibited signs of declining health or condition, the appropriate consent to reduce or remove the risk can be given

8.0. Implications and Recommendation

- 8.1 The service of the TPO is therefore considered necessary as without the protection the Order affords there is a risk of the amenity of the group of trees being destroyed.

9.0 Legal Implications

- 9.1 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, willfully damage or willfully destroy any tree to which the Order relates except with the written consent of the authority.

10.0 Finance Implications

- 10.1 None

11.0 Policy Implications

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

12. Equality Implications

- 12.1 No direct implication

13. Human Resource Implications

- 13.1 No direct implication

14. Risk Management Implications

14.1 No direct implication

15. Rural Communities Implications

15.1 No direct implication

16 Implication for Children & Young People/Care for Children

16.1 No direct implication

17. Climate Change -

17.1 The retention of mature trees where possible is in accordance with the Councils Climate Change Agenda

18. Public Health Implications

18.1 No direct implication

19. Ward Members Affected

19.1 High Legh

20. Access to Information

20.1 The following document is appended to this report

Appendix 1 – Provisional TPO document
Appendix 2 – Amenity Evaluation Checklist
Appendix 3 – Landscape Appraisal
Appendix 4 – TPO location Plan
Appendix 5 – Objection 1 - 5

21. Contact Information

21.1 Any questions relating to this report should be directed to the following officer.

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