

REPORT TO ENVIRONMENT AND GENERAL PURPOSES COMMITTEE

LOBBYING FOR THE PROTECTION OF TREES

Report Reference E-22-03
Meeting Date 6th June 2022
Agenda Item 9
Prepared by Town Clerk



1.0 BACKGROUND

The council's Environmental Policy sets the objective of supporting the conservation of trees, hedgerows, ponds and streams. In adopting the action plan for 2022, the committee agreed to undertake lobbying of both Cheshire East Council and the government to increase the protection of trees and reduce felling/unnecessary husbandry.

The Planning and Licensing Committee had previously written to Cheshire East Council concerning the addition of an informative to its decision notices for works to trees. In the response (received since the last Environment and General Purposes Committee meeting) it was noted that:

- Informatives concerning work being undertaken during nesting season are routinely added to decision notices but that work is able to be undertaken during bird nesting season
- The request for an informative to request replanting of trees felled in the conservation area (through notices under s211 of the Town and Country Planning Act 1990) would be considered as the council develops its Tree and Woodland Strategy which will develop policies encouraging both new and replacement tree planting.

Trees are formally protected in two principal ways¹:

Tree Preservation Orders are an order made by a planning authority to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the trees being damaged, felled or lopped without the consent of the planning authority. The planning authority can refuse consent for work to be undertaken to a protected tree and can condition that the owner must plant a replacement if felled.

Trees within a Conservation Area are protected by s211 of the Town and Country Planning Act 1990 which requires owners to give notice to the planning authority of intended work to any tree (with a girth above 7.5cm) to the planning authority. The planning authority may then make a TPO to protect the tree, consent to the works or allow the notice to expire (giving deemed consent). Under a s211 notice the authority cannot refuse consent or place conditions – the only control the authority has is to make a TPO and the application would then be resubmitted and assessed as a TPO application.

An additional protection was recently introduced in the Environment Act 2021 which places a duty on highway authorities to consult the public before felling trees on urban roads (non classified, 30/40 mph) although exceptions apply, for example for dead or dangerous trees or felling required to deliver a planning permission.

¹ There is also legislation which governs forestry / mass felling.

2.0 LOBBYING CHESHIRE EAST COUNCIL

Cheshire East Council is limited in its power to protect trees by the legislative framework and it is noted that Cheshire East Council has stated it is developing a Tree and Woodland Strategy through which it has stated it will consider adding replanting informative to decision notices on s211 notices. It is noted that some s211 notices have been allowed to expire (where a decision is not issued by CEC and works can proceed) due to the lack of staff resource meaning not all applications can be appraised. The town council could meet its objective by:

- Seeking to ensure that the CEC Tree and Woodland Management Strategy includes provision to increase the protection of trees through its planning powers e.g. the addition of informatives on decision notices of s211 applications and addition of an informative encouraging applicants to use Arboricultural Association accredited tree surgeons.
- Seeking a policy change at CEC that where, in response to the publicity period for a s211 notice, a parish council requests a TPO or questions the necessity of works, that the notification be subject to an officer appraisal and not be allowed to expire without the council issuing an approval or protecting the tree.
- Seeking the proactive making of TPOs to protect trees within Knutsford. The council had sought to do this previously but a lack of buy in from members (to identify trees which should be protected) meant this was not delivered.
- Seeking CEC to delegate the function of making TPOs and/or determining tree works applications to the Town Council; this would mean the Town Council would make the legal orders on behalf of CEC and/or determine applications on behalf of CEC. This would have legal, financial and resource implications (particularly for determination of applications) which would need to be fully explored but the Local Government Act 1972 allows the delegation of a function from one authority to another.

The committee should determine if it wishes to progress these and/or alternative policy changes. The council would then seek one/all of the Cheshire East Council ward members for Knutsford to submit a notice of motion to the council to secure a debate on the policy changes at the Environment and Communities Committee (of which Cllrs Dean and Abel are members).

3.0 LOBBYING THE GOVERNMENT

Some legislative changes which could meet the council's objectives would be:

- An amendment to s211 of the Town and Country Planning Act 1990 to enable planning authorities to require replanting of trees through notices under this Act where it is not suitable for protection under a TPO but a replacement would be in the interests of the amenity of the Conservation Area. This would enable Cheshire East Council to require replanting for trees which are felled in the Conservation Area which it is unable to do at present.

- An amendment to s198 of the Town and Country Planning Act 1990 to enable parish councils to make Tree Preservation Orders. This would enable the Town Council to make Orders preserving trees rather than it being solely a planning authority which has the power.
- A legislative provision which sets a default position of protection for any tree above a certain girth.

The committee should determine if it wishes to progress these and/or alternative legislative changes. In the first instance the council would raise the matter with the MP and relevant ministers. This could then also be raised as a motion for the Cheshire Association of Local Councils to take to the National Association of Local Councils seeking it be incorporated in its national lobbying efforts.

4.0 OBTAINING TREE PRESERVATION ORDERS

As outlined in section two, a Tree Preservation Order (TPO) is a legal order which protects a tree or group of trees. A planning authority may make an order if it appears to be expedient in the interests of amenity. This places two key tests:

Amenity Government guidance advises authorities to develop ways of assessing amenity. The guidance states that trees should normally be visible from a public space or accessible by the public and that the importance of the individual tree/group warrants its protection by virtue of its size/form; future potential; rarity, cultural or historic value; contribution/relationship to the landscape and/or contribution to the character/appearance of a conservation area.

Expediency Government guidance states that whilst trees may merit protection on amenity grounds it may not be expedient to make them the subject of a TPO. It advises:

- it is unlikely to be necessary for trees under good arboricultural or silvicultural management
- it may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area
- it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution

Cheshire East Council has previously advised it would not ordinarily make Orders for trees which are under its ownership/control on the basis that by virtue of being maintained by the authority they are considered under good arboricultural management. The expediency test is the primary obstacle to making TPOs.

Should the committee wish to put forward trees for new TPOs it is strongly recommended a targeted approach is followed. For example, ward members/a working group would identify trees which they consider warrant protection. Trees would be scored based to determine a select priority list of the most TPO'able trees which would initially be put forward to Cheshire East Council. The list could be monitored to identify potential risk which may meet the expediency test, e.g. a planning application or property sale.

5.0 DECISIONS REQUIRED

The committee should determine what Cheshire East Council policy changes it wishes to secure and seek to secure a debate on these at the Environment and Communities Committee.

The committee should determine what legislative changes it wishes to secure and utilise available opportunities to seek these (e.g. via NALC, MP, consultations etc)

The committee should consider how/if it wishes to secure additional the making of additional TPOs in Knutsford.