

# STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

## Report to Planning Applications Committee

16<sup>th</sup> December 2021

<b>TITLE:</b>	<b>To consider confirmation of Tree Preservation Order No. SM.323 – Greywoods, Cheddleton Road, Birchall, Leek</b>
<b>PORTFOLIO:</b>	<b>Planning, Development and Property</b>
<b>OFFICER:</b>	<b>Steve Massey, Arboricultural Officer</b>
<b>WARD:</b>	<b>Leek East</b>

### Appendices Attached –

**Appendix A:** Copy of current provisional TPO No. SM.323.

#### 1. Recommendation

- 1.1 That notwithstanding the objections received, Tree Preservation Order (TPO) No. SM.323 be confirmed without modification.

**Reason for recommendation:** In order to maintain legal protection over significant trees.

#### 2. Executive Summary

- 2.1 Under the Council's Constitution, there are officer delegated powers to confirm a provisional TPO in respect of which no objections have been received. However, where objections are received, Planning Applications Committee must consider and decide whether to confirm the Order, and in doing so must take into account such objections and representations as have been received.
- 2.2 TPO No. SM.323 was made as a provisional Order on 28<sup>th</sup> July 2021, protecting one individual tree and three groups of trees within the garden of Greywoods, as denoted on the TPO plan and listed in the TPO schedule. A copy of the provisional TPO is attached at Appendix A to this report.
- 2.3 An in-principle objection to the TPO was submitted by the executor of the now former owner's estate, essentially on the grounds that the TPO is not required now that previous development proposals have been refused. He also has concerns that the TPO could constrain previously routine maintenance to trees in Group G3, although clarifies that there is no objection to the TPO in relation to the individual tree T1, a mature Copper Beech. These issues are considered in detail at Section 5 of this report.

- 2.4 In addition, objection was received from the owners of a neighbouring property, Aldbury, which is served by a shared access drive running alongside group G3. This objection is made on the grounds of nuisance and danger from fallen leaves, together with lower growth from these trees encroaching onto the shared private drive. These neighbours also have no objection to the protection of the individual tree T1. Again, these issues are considered in detail in Section 5 of the report.
- 2.5 Officers consider that the trees make an important contribution to the character and appearance of this part of Birchall, and to the setting of Greywoods which is regarded as being of locally notable architectural merit. Furthermore, it is considered that the issues and concerns raised in the two objections do not provide overriding reason to discontinue the protection provided by a TPO. In conclusion it is now recommended that notwithstanding the objections received, TPO No. SM.323 be confirmed without modification, in support of the Council's adopted Tree Strategy.

### **3 Background**

- 3.1 An application for outline planning permission for the erection of two new detached dwellings within the curtilage of Greywoods, together with two new accesses, one each onto Cheddleton Road and Birchall Lane, (Ref. SMD/2020/0645) was refused at Planning Applications Committee on 11<sup>th</sup> February 2021. One of the reasons for refusal was concern over the lack of information in the application concerning the retention of existing trees.
- 3.2 A revised application was subsequently submitted (Ref. SMD/2021/0210), seeking outline planning permission for one new dwelling, again with a new access off Cheddleton Road to serve the existing property. Proposed layout was only indicative, but therefore uncertain, and as initially submitted would have required the removal of Group G1 (5 mature Yew trees) and part of Group G3 (mature Limes). Neighbour representations expressed objection to the potential loss of trees, and a Councillor request was received for consideration of making a TPO.
- 3.3 Between the time the new TPO was authorised under delegated powers and the actual Order being issued, the planning application was revised several times to eventually show relocation of the indicative new dwelling position to where it would have no adverse impact on significant trees, Group G1 in particular, and to relocate the proposed new garage to serve the existing dwelling to a position having reduced impact on Group G3. Nevertheless, it was considered appropriate to provide TPO protection for the trees which were considered important to the character of the area and setting of Greywoods. Whilst no officer or committee objection was raised in regard to impact on trees which would have arisen from the finally revised layout, this still remained indicative and could have been subject to further change had outline planning permission been granted. In the event, however, the second application was also refused by Planning Applications Committee, on 12<sup>th</sup> August 2021.

#### 4. Implications

- 4.1 Community Safety - (Crime and Disorder Act 1998) Nil.
- 4.2 Employees Nil.
- 4.3 Equalities This report has been prepared in accordance with the Council's Equal Opportunities policy.
- 4.4 Financial There is no financial liability on this Council arising from making and confirming, or not confirming, a TPO – with or without modification. However, following any subsequent application for consent, anyone suffering loss or damage arising as a consequence of the Council's decision to refuse consent, or to impose conditions when granting consent, may seek compensation from the Council, subject to the provisions of the Town and Country Planning (Trees) (England) Regulations 2012. Any claim must be submitted within 12 months of such an application or subsequent appeal being determined.
- 4.5 Legal Nil.
- 4.6 Sustainability Confirmation of the TPO would appropriately maintain protection over trees of significant local amenity value, in support of local and national environmental protection objectives and the Council's adopted Tree Strategy.

Neil Rodgers  
**Executive Director (Place)**

#### **Background Papers**

TPO SM.323 file

#### **Location**

By request at:  
Staffordshire Moorlands District Council  
Moorlands House  
Leek

#### **Contact**

Steve Massey  
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**Decision:**

**Reason:**

**Interests Declared:**

## 5. Detail and Discussion

Issues raised by the objectors to the TPO are set out below, *with officers' comments following in italics.*

- 5.1 Following the provisional TPO being made, the executor of the estate objected to the Order, stating that as outline planning permission had again been refused it was then intended to sell the property in its entirety, and he advised that the prospective purchaser in turn intended to retain the property as a single dwelling and entire curtilage. The executor's objection therefore suggests that as the potential development threat to the trees no longer exists, there is no longer a need for legal protection over the trees and the TPO should be discontinued.
- 5.2 *Whilst at the time of writing this report it is understood that no appeal has been made to the Planning Inspectorate against the more recent refusal of SMD/2021/0210, it is still within time to do so and this therefore remains a possibility even though the executor and prospective purchaser advised at the time that neither intended to appeal. In addition, the site could be sold again in future, and a subsequent owner may wish to explore or pursue any opportunities for development, which could again raise the potential for impact on the trees, or simply not wish to retain the trees. It is therefore considered appropriate to retain TPO protection by confirming the Order as permanent.*
- 5.3 The executor also raised the issue of the frontage group of trees G2 having long been maintained by the family to keep them tidy and attend to overgrowth, and also pointed out that some of this group have on occasion been pruned, and not particularly attractively so, by Western Power in order to maintain clearance from the adjacent overhead electric cables. He considers that continued TPO protection would impose an unnecessary constraint on such management.
- 5.4 *It is acknowledged that some of the trees within Group G2 are not individually of great quality nor in the best condition, and indeed some of the poorest specimens in this part of the site were deliberately not included in the TPO. However, they are protected as a group for their collective contribution to amenity, rather than as individuals. It remains open to any owner to seek advice about the appropriate management of the trees, and to submit applications for consent under the TPO to carry out any proposed work. This is a basic premise of TPO procedure and is not considered unduly onerous as it is unlikely that work would be needed*

*to the protected trees at frequent intervals. The local planning authority has power to grant consent for work to TPO-protected trees where this is considered to be appropriate and justified. In addition, some basic garden maintenance involving work having no impact on the amenity value of protected trees may, subject to local planning authority verification, be considered so minor in extent as to not require an application. Furthermore, work carried out by or at the request of the electricity licence holder Western Power is dealt with under exemption from TPO procedures, enabling them to maintain clearance from overhead cables as required, subject to informing and gaining permission from the tree owner.*

- 5.5 The executor, together with the owners of Aldbury, object to the TPO on the grounds that it could constrain the on-going need for trimming the lower lateral growth from the Limes trees comprising Group G3, in order to prevent it encroaching over, and obstructing, the adjacent shared private drive. The issue was also raised of the outer lateral branches in the upper crowns of these trees being close to direct encroachment onto the roof of Blackthorne House directly across this shared drive.
- 5.6 *The arboricultural officer held a site meeting with the executor, the prospective purchaser of Greywoods and a representative of the occupiers of Blackthorne House. It was confirmed that periodic removal of small diameter lateral growth from the base and lower stems of the trees in Group G3 (a characteristic on-going maintenance issue with Lime trees) would be considered minor work inconsequential to the wider amenity value of the trees, and notwithstanding the TPO can be carried out periodically as required without requiring application in order to prevent encroachment over the drive at vehicle and pedestrian heights. In addition, an exemption under the TPO allows work to address statutory nuisance, and this would enable minor trimming back of lateral growth to prevent direct encroachment onto the building at Blackthorne House without requiring application. The TPO therefore poses no constraint to such minor routine maintenance matters.*
- 5.7 The owners of Aldbury also object on the grounds that as they are of pension age and one of them has a health issue, fallen leaves from Group G3 create an onerous maintenance problem requiring employment of a gardener to clear them. They further advise that the fallen leaves represent a slip hazard, on one occasion leading to a fracture injury.
- 5.8 *Fallen leaves are an inevitable maintenance issue and potential slip hazard associated with any deciduous trees, protected or otherwise. However, these are normal natural seasonal characteristics, and should not reasonably be held as sufficient justification to allow removal or inappropriate management of protected trees, nor to effectively withdraw TPO protection where considered appropriate.*