

Report To: Planning Committee

Date of Meeting: 14th December 2016

Lead Member / Officer: Cllr David Smith
[Lead Member for Environment and Public Realm]

Report Author: Karsten Brußk [Planning Officer]

Title: Confirmation of two Denbighshire County Council Tree Preservation Orders in relation to land in the Meliden area

1. What is the report about?

- 1.1 This report is about Denbighshire County Council Tree Preservation Order Number 03/2016 relating to land at Ffordd Hendre, Meliden (Appendix I) and Denbighshire County Council Tree Preservation Order Number 04/2016 relating to land at Maes Meurig, Meliden (Appendix II).

2. What is the reason for making this report?

- 2.1 The Council made use of powers laid out in Town and Country Planning Act 1990, section 201 (provisional Tree Preservation Orders) on the 9th of August 2016. A decision is required on the Council's intention to confirm above Tree Preservation Orders (TPOs), before the respective provisional TPOs expire at the beginning of February 2017.

3. What are the Recommendations?

- 3.1 Members confirm Denbighshire County Council Tree Preservation Order Number 03/2016 relating to land at Ffordd Hendre, Meliden and Denbighshire County Council Tree Preservation Order Number 04/2016 relating to land at Maes Meurig, Meliden.

4. Report details

- 4.1 Tree Preservation Orders (TPOs) generally aim at protecting individual trees or a group of trees that contribute towards the characteristic of the landscape, provide amenity for the enjoyment of the public, provide habitat for local wildlife, or because of their intrinsic beauty. In legal terms they make it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the local planning authority's permission.
- 4.2 TPOs take no effect unless confirmed by the local planning authority. The Town and Country Planning Act 1990 section 201 allows for provisional Tree Preservation Orders to be made if the concerned trees are under great risk of being subject to damaging works or the imminent threat of being felled. However, section 201 stipulates that those provisional TPOs shall only have effect until the expiration of a

period of six months beginning with the date on which the order was made or the TPO has been confirmed by the local planning authority.

- 4.3 The Council made use of the powers laid out in the Town and Country Planning Act 1990, section 201 on the 9th August 2016. That means that both provisional TPOs in relation to Denbighshire County Council (DCC) TPO number 03/2016 and 04/2016 lose their force on the 9th of February 2017. If Members do not confirm any TPO before the expiration of the six month period, the trees included in both provisional TPOs will not benefit from any future protection, unless a new Tree Preservation Order is being made by the local planning authority.
- 4.4 Notification and publication is a fundamental step in the procedure for making TPOs. The Council was obliged by legislation to allow members of the public, including affected landowners and local residents, to submit representations and objections for a period of 28 days. This period expired on the 14th September 2017.
- 4.5 The Council received a total of 12 representations. They did either refer to a single or to both TPOs. Appendix III contains a summary. Full copies can be viewed by contacting Strategic Planning & Housing in Denbigh by phone [01824 706916] or by email [ldp@denbighshire.gov.uk]. The table below provides a brief statistical analysis:

	Support	Objection
TPO 03/2016 (Ffordd Hendre, Meliden)	5	1
TPO 04/2016 (Maes Meurig, Meliden)	11	1

- 4.6 Both objections were contained in a single representation submitted on behalf of an effected landowner. The objection is primarily based on two trees contained in TPO 04/2016 relating to land at Maes Meurig, Meliden. These are the trees marked with T11 and T12 on the map in Appendix II.
- 4.7 The two grounds of objection were the visual amenity value and potential problems with future site access. It has been established that amenity can refer to the contributions that a tree makes towards the local environment and enjoyment by the public. They should also be from a public place, such as a road or footpath.
- 4.8 Local residents attach some amenity value to these trees as expressed in their support of TPO number 04/2016 and in contacting the Council regarding the urgent need to protect them from wilful damage and removal in autumn 2015. Both trees can be seen from footpath no. 22 which is recorded on the Council's Definitive Map of Public Rights of Way.
- 4.9 If not carefully managed and maintained both trees may potentially limit access to the piece of land in question. It should however be kept in mind that TPOs do not prohibit the cutting down, uprooting, etc. provided that prior consent was sought from the local planning authority. Should there be a need to remove either of the trees to accommodate development in the future, this can be part of reviewing DCC TPO number 04/2016 and/ or be considered in relation to a detailed planning proposal.
- 4.10 The Council may confirm both TPOs either without modification or subject to such modifications as it considers expedient. Officers are of the view that Members should

be aware of the possibility to make pertinent modification to DCC TPO number 04/2016, i.e. removing trees with reference T11 and T12.

- 4.11 Compensation is not payable to an effected party for the making of a TPO. Compensation may be payable for loss or damage caused or incurred in consequence of it refusing any consent under an Order; granting a consent subject to conditions; or refusing any consent, agreement or approval required under a condition for a period of up to 12 months after the date of the Council's decision. If the Council is minded to confirm both TPOs, with or without modification, it can only be challenged on the basis of procedural errors by an objector in the High Court.

5. How does the decision contribute to the Corporate Priorities?

- 5.1 Whilst the decision does not directly contribute towards any of the Council's Corporate Priorities, it can be linked to 'ensuring access to good quality housing' in providing an amenity and recreational value for future residents in the Meliden area. It will support the enjoyment of walking or cycle along footpathno.22 and the wildlife habitat in adjacent fields.

6. What will it cost and how will it affect other services?

- 6.1 There are no costs for confirming both Tree Preservation Orders. If confirmed, both TPOs will be a material planning condition and consent must be sought to carry out any works from the Planning / Development Management team.

7. What are the main conclusions of the Well-being Impact Assessment? The completed Well-being Impact Assessment report can be downloaded from the website and should be attached as an appendix to the report

- 7.1 Retention of a small number of trees will positively contribute towards the amenity value for future residents and the natural environment in the area. The full report is attached in Appendix IV.

8. What consultations have been carried out with Scrutiny and others?

- 8.1 The Council was obliged by legislation to allow members of the public, including affected land owners and local residents, to submit representations and objections for a period of 28 days. A summary of the representations received can be found in Appendix III.

9. Chief Finance Officer Statement

- 9.1 The Council will not incur any additional costs if it confirms the 2 Tree Preservation Orders at Maes Meurig, Meliden, unless of course the decision is challenged on the basis of procedural errors by an objector in the High Court. Equally there is the small risk of being faced with a claim for compensation due to refusal of any consent required under the Order but this risk will be mitigated if the process is well managed by the Council.

10. What risks are there and is there anything we can do to reduce them?

- 10.1 The Council could be challenged on the basis of procedural errors in the High Court, in line with legislative provision.
- 10.2 Just like any other Tree Preservation Order, there is the small risk of being faced with a claim for compensation due to refusal of any consent required under the Order (see TPO Model Order Article 9).
- 10.3 If Members do not make a decision on provisional DCC TPO number 03/2016 and provisional DCC TPO number 04/2016, both will lose its force on the 9th February 2017. This will leave all included trees without any protection.

11. Power to make the Decision

- Town and Country Planning Act 1990;
- Town and Country Planning (Trees) Regulations 1999