

Development Management Sub Committee

Wednesday 25 May 2016

Confirmation of Tree Preservation Order No. 179. (41 Howden Hall Road, Edinburgh)

Item number	4.2
Report number	
Wards	Liberton/Gilmerton

Summary

A Tree Preservation Order (TPO No 5, 2007 (41 Howdenhall Road)) was made under delegated powers on 30 August 2007. The Order was not confirmed at the time and the temporary protection provided by the Order lapsed after 6 months. Because of changes in land ownership and in view of the high importance of the trees to amenity a similar replacement Tree Preservation Order (Tree Preservation Order No. 179 (41 Howden Hall Road, Edinburgh) was made on 2 December 2015. One objection to the Order has been received and is assessed within this report. It is recommended that Committee confirm Tree Preservation Order No. 179 with the proposed modifications.

Links

Policies and guidance for this application	CO19, SO2 SO4,
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Report

Confirmation of Tree Preservation Order No. 179. (41 Howden Hall Road, Edinburgh)

Recommendations

- 1.1 It is recommended that Committee confirm the Order with modifications as described below.

Background

2.1 Site description

The property, St Catherine's, 41 Howden Hall Road, is a Category B listed building (Item No. LB28122, dated 14 December 1970) which lies in approx 17,128 square metres of ground which is mostly lawn, historic specimen trees and areas of planted and regenerating woodland and trees. It currently operates as a Toby Carvery.

2.2 Site History

13 June 2007 – planning application for change of use of the listed building to offices and erection of 159 one, two and three bedroom flats (07/02506/FUL). Application refused because of adverse impact on setting of listed building, lack of affordable housing and impact on trees.

30 August 2007 - Tree Preservation Order No. 5, 2007 (41 Howdenhall Road) was made under delegated powers. It was made in response to planning application 07/02506/FUL in order to provide protection to the trees on the site and ensure that trees could not be removed without the Planning Authority having the opportunity to have regard to the effect of any proposed tree removal. However, the Order was not confirmed due to an administrative oversight. This came to light in 2015 following an enquiry from a representative of the Liberton & District Community Council. Part of the land in question was being marketed for sale. A land search revealed that the ownership of the land had changed since the original Order had been made and it was not considered appropriate to confirm the Order without the new owner having been served with the Order and provided with an opportunity to make representations.

24 October 2008 - Change of use of the Balmwell from hotel/public house to offices, erection of 70, one and two bed flats and 29, three/four bed - townhouses and semi-detached houses (08/03776/FUL). Application withdrawn.

Main report

3.1 Description Of The Proposal

This report deals with the confirmation of a Tree Preservation Order.

Tree Preservation Order No. 179. (41 Howden Hall Road, Edinburgh) was made under delegated powers. This became effective on 7 December 2015. The Order identified nine individual trees and two groups of various species as being of importance to amenity. The Order must be confirmed by the Planning Authority within six months of it being made (2 June 2016) or the Order falls.

One objection to the Order has been received. A copy of the objection is attached. Any objection must be considered by the Planning Authority prior to a decision on whether to confirm the Order and if so whether to confirm it with modifications.

3.2 Determining Issues

Having regard to the reasons for making the Order and the objection to the Order, is it expedient in the interests of amenity to confirm the Tree Preservation Order and should the Order be modified?

Does the proposal comply with the development plan?

If the proposals do comply with the development plan, are there any compelling reasons for not approving them?

If the proposals do not comply with the development plan, are there any compelling reasons for approving them?

3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) the trees within the scope of the Order contribute to amenity and whether the making of the Order it is expedient;
- b) the proposal complies with the Development Plan;
- c) the terms of the Objection to the making of the Order outweigh the case for an Order or require the Order to be modified; and
- d) equality and human rights issues have been addressed.

a) Amenity and Expediency

The trees in question are considered to be of high amenity value due to their prominence on the A701 road, their contribution to the wider landscape and their contribution to the setting of St Catherine's, or the Balmwell as it is known. Each of the nine trees identified in the Order are considered to make an individual contribution to amenity and include large mature parkland trees of considerable age (200 years +). The two groups of trees identified in the Order, which contain many species, collectively make a high contribution to amenity and there are a number of fine specimens within the groups.

In 2015, the site was publicly marketed as a development opportunity.

Without a Tree Preservation Order the trees would have no planning protection and trees could have been removed without the consent of the Planning Authority. A Tree Preservation Order does not preclude development but it does ensure that, by giving statutory protection to trees, the planning authority has the opportunity to assess any activity which may remove or damage trees and the environmental impact and effect on amenity which may arise.

The confirmation of the Order is considered expedient in the interests of amenity.

b) Development Plan

Policy 'ENV 12' states that where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

In view of the continued interest in development on the site and the amenity provided by the trees, a TPO is considered to comply with the Development Plan.

c) Objection to the Order

An objection to the making of the Order was submitted on behalf of the owner of the trees and timeously received. This can be seen in full at Appendix 2. The principal grounds of objection are summarised below.

- There is sufficient existing tree protection by virtue of planning control and policy and the Development Management Process;
- The trees do not make the contribution to amenity which warrants an Order;
- Some trees are in poor or hazardous condition and should not be included in the Order;
- The Order is unclear as to which trees within the two group areas are protected. This is because the numbers of trees given within each group do not match the actual numbers on the ground and that the tree species listed in the Order are not all present;
- The Tree Preservation Order is in conflict with the promotion of economic growth.

A Tree Preservation Order is not an alternative to or in conflict with the Development Management process. Its purpose is to secure the temporary and long term protection of trees whether this is part of the Development Management process or otherwise.

As described at 3.3 a) above the trees are considered to be of high amenity value due their visual prominence and their historic interest.

A number of trees are classified as 'U' in the tree survey which accompanied the objection to the order. It is assumed that this refers to the British Standard BS5837:2012 classification of 'unsuitable for retention'. This standard and its classifications apply to trees and their juxtaposition with development. While the classification is useful it is only directly applicable in the context of site development i.e. which trees are suitable for retention close to new development. There is no reasoning provided in the tree survey to indicate that trees marked U require to be removed in their current context. It is accepted that some of these trees appear to be in poorer health or condition but it is not unusual or unreasonable that some such trees will fall within the scope of an Order which contains hundreds of trees. It is not practical to exclude a few individual trees from wooded areas.

The objection pointed out that there appeared to be inaccuracies in the species and species numbers listed within the First Schedule of the Order and that, by including the numbers of each species there was uncertainty as to whether some trees within the specified groups were subject to the Order. This part of the objection is accepted. To address this the Order can be modified to update the species list and to use 'Area' designations to protect all trees of the desired species within the area boundary

The use of a Tree Preservation Order to protect the attractiveness and character of the site and the locality is not in conflict with promoting economic growth.

d) Equalities and Human Rights

The proposals raise no equalities or human rights concerns.

Conclusion

The trees and groups of trees are of high amenity and the Tree Preservation Order is expedient in the interests of amenity and should be confirmed to provide long term protection to the trees. There are no matters raised in the objection that outweigh this conclusion. It is necessary to modify Group 1 and Group 2 of the Order to take account of the objection relating to inaccuracies and lack of clarity identified in the First Schedule of the Order. It is also appropriate to remove some smaller trees and a mature single holly tree (T7) in poor and declining health in the central part of the site, from the Order.

It is recommended that the Tree Preservation Order be confirmed subject to modification in accordance with the details below.

3.4 Modifications to the Order

Group 1 - Change the Group designation to an Area and remove alder, ash, holly, cypress, rowan, thorn and whitebeam from the current species list as these are either missing or do not make a significant contribution to amenity. The Area designation will protect all trees of the species remaining in the species list.

Group 2 - Change the Group designation to an Area and remove alder from the species list as this is not present but include Holm oak (single specimen) and maple which were missed from the original Order. It is also proposed that the boundary line of this Area is modified to exclude the finger encroaching west into the centre of site. Remove single tree T7 from the Order.

The Tree Preservation Order map is enclosed at Appendix 1.

Financial impact

4.1 The financial impact has been assessed as follows:

There are no financial implications to the Council.

Risk, Policy, compliance and governance impact

5.1 Provided planning applications are determined in accordance with statutory legislation, the level of risk is low.

Equalities impact

6.1 The equalities impact has been assessed as follows:

The application has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

7.1 The sustainability impact has been assessed as follows:

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

Consultation and engagement

8.1 Pre-Application Process

Not applicable.

8.2 Publicity summary of representations and Community Council comments

The Order was advertised on 7 December 2015.

One objection was received as describe in the report.

Background reading/external references

To view details of the application go to;

- [Edinburgh City Local Plan and Rural West Edinburgh Local Plan](#)
- [Planning guidelines](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

Statutory Development**Plan Provision**

Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

Date registered

N/A

Drawing numbers/Scheme

N/A

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Links - Policies

Relevant Policies:

Relevant policies of the Edinburgh City Local Plan.

Policy ENV12 Trees

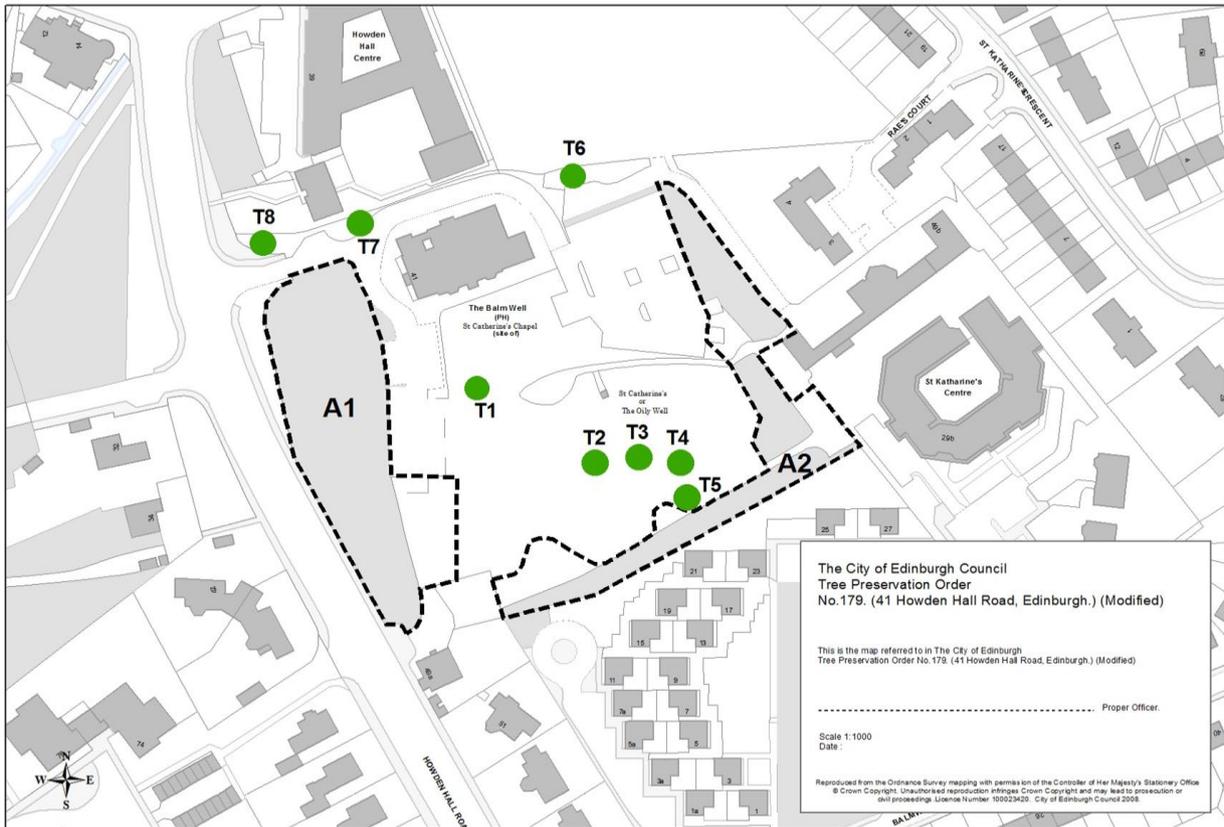
Development will not be permitted if likely to have a damaging impact on a tree protected by a Tree Preservation Order or other tree worthy of retention unless necessary for good arboricultural reasons. Where such permission is granted, replacement planting of appropriate species and numbers will be required to offset the loss to amenity.

This policy recognises the important contribution made by trees to character, biodiversity, amenity and green networks. In assessing proposals affecting trees, the Council will consider their value, taking into account status such as Tree Preservation Order, heritage tree, Ancient Woodland and Millennium Woodland, and information from tree surveys.

Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

Appendix 1

Tree Preservation Order Map (as modified)



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Appendix 2

Letter of objection

See Attached

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