

Development Management Sub Committee

Wednesday 22 February 2017

Confirmation of Tree Preservation Order No. 184 (Seafield Avenue, Edinburgh)

Item number	4.7
Report number	
Wards	A22 – Leith Links

Summary

Tree Preservation Order TPO No. 184 (Seafield Avenue, Edinburgh) was made on 17 October 2016. This Order expires after 6 months unless it is confirmed within this time. The Order must be confirmed before 17 April 2017 to provide permanent protection for the trees.

A number of objections against and representations for the making of the Order have been received. These are appended to and discussed in the report.

It is recommended that Committee confirm Tree Preservation Order No. 184 (Seafield Avenue, Edinburgh).

Links

[Policies and guidance for this application](#) LDPD, LEN12

Report

Confirmation of Tree Preservation Order No. 184 (Seafield Avenue, Edinburgh)

Recommendations

1.1 It is recommended that Committee confirms the Order.

Background

2.1 Site description

The site on which the trees are growing is a narrow strip of land approximately two metres wide and 70 metres long situated between an un-adopted section of road on Seafield Avenue and the rear boundaries of properties on Pirniefield Gardens/Pirniefield Grove. Present on the land are a row of trees, a hedge and some grasses and herbaceous plants planted by adjacent occupiers on Seafield Avenue.

The trees comprise a closely spaced linear group of 10 beech and two sycamore trees at the southern end of the line set slightly further apart. The trees are large mature specimens but the group of beech have had their crown spread restricted by adjacent trees in the group. The trees have been subject to a significant amount of pruning which has resulted in some further restriction to their crown size.

A Lombardy poplar at the southernmost tip of the land is not included in the Order due to its poorer form.

This site is not within a conservation area.

2.2 Site History

17 October 2016 Tree Preservation Order, TPO No.184 (Seafield Avenue, Edinburgh) made and served.

Main report

3.1 Description Of The Proposal

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

In early October, a number of correspondences were received stating that two trees from an historic line of trees were to be felled and the work programmed to be carried out by an arboricultural contractor. Concern was also expressed that further work to or felling of the remaining trees may follow and that the trees were of value to the character of the area.

The requests were considered in accordance with the Council's Tree Preservation Order guidance and the site was visited by officers. It was clear that the trees were a prominent and attractive feature in the locality. In view of the reported scheduled removal of trees, it was considered that the making of a Tree Preservation Order to provide planning control over tree work would be expedient in the interests of amenity. TPO No.184 (Seafield Avenue, Edinburgh) was made on 17 October 2016 on the grounds that the trees collectively contribute to the attractiveness and character of the locality. A Tree Preservation Order was made to allow the Council to prevent tree removal where it would harm amenity and to require replacement planting as a condition of any consent for tree work.

The Order protects two individual sycamore trees and a linear group of 10 beech trees. They are a highly visual feature of the locality and contribute to its attractiveness and character.

3.2 Determining Issues

Is it expedient in the interests of amenity to confirm the Tree Preservation Order and if so 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?

Objections/support other representations to the Order timeously received.

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 is expedient;
- b) the proposal complies with the Development Plan;
- c) equality and human rights issues have been addressed; and
- d) any representations received require the Order to be abandoned, confirmed or confirmed with modifications.

a) Amenity and Expediency

The trees in question are considered to be of high amenity value due to their prominence in the locality. They are visible between and above houses in the surrounding area and contribute to the wider landscape where large mature trees are generally infrequent outside areas of larger open space. They also provide an attractive setting for the Edwardian properties on Seafield Avenue and provide the street with a particular character. The two sycamores are fine individual specimens, while the beech trees are generally of poorer individual form but contribute collectively to amenity.

The expediency in making the Order is supported in view of the stated intention of two adjacent residents to remove two of the beech trees and consequently the potential removal of further trees.

A Tree Preservation Order does not preclude works to trees which may be necessary for safety or for other reasons 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. An Order also allows a planning authority to grant consent, subject to conditions which can secure replacement tree planting to provide for the long term continuity of amenity.

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

b) Development Plan

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

In view of the interest in development on the site and the amenity provided by the trees, the proposal is considered to comply with the development plan.

c) Equalities and Human Rights

The proposals raise no equalities or human rights concerns.

d) Representations

Twelve representations were made in connection with the Order. Seven were in support of the Order on the grounds that:

- the trees are a general amenity to the area.
- the trees are part of the special character of Seafield Avenue.
- wildlife value.

Five were objecting to the Order. All the objectors made reference to negative impacts the trees were having on their own property due to:

- blocked drains.

- preventing plants from growing.
- bird droppings.
- leaf fall.
- wasps.
- encroaching trunks and branches.
- trees grown too large for an urban area.
- roots displacing patio slabs, kerb stones and may damage foundations.
- loss of daylight.

The following objections were also raised:

- amenity is not defined and that attractiveness and character is abstract.
- the Order is not proportional or just.
- the planning authority is acting for the owner of the trees.
- the trees are not inspected.
- risk from failure of branches or whole tree.

Requests were also made to amend the Order in respect of:

- work required in the interests of safety.
- work required to prevent or abate a nuisance.
- certain trees not making a significant impact.

The statutory requirement on planning authorities is to make Orders where this is in the interests of amenity. Amenity in this context is interpreted as being amenity beyond the strict amenity of an individual party and being of wider public benefit. An Order allows any person to apply for permission to carry out tree pruning, felling etc at any time; at that time the individual circumstances of the case must be assessed and a decision on tree work proposals reached. There is a right of appeal against the decision of a planning authority.

The majority of representations objecting to the Order related to the detrimental impact that trees were having on the objector's own property. While obviously such issues are a matter of some importance for the individuals concerned the purpose of a Tree Preservation Order is, as previously explained, to bring the felling, lopping etc. of trees under planning control. The making of the Order is not about the prevention of all work taking place but equally it is not about the detailed assessment of the concerns of tree owners and adjacent occupiers of the trees. Consequently the objections to the Order on the grounds of various problems being experienced due to the trees are not pertinent to the issue of whether it is in the interests of amenity that the trees should be subject to protection under an Order.

Other representations raised issues of safety and lack of tree inspections. Where a planning authority makes a Tree Preservation Order it does not assume responsibility for the tree. The owner is still responsible for their own trees. The planning authority does not carry out a detailed inspection of the tree but will take into account how the overall health and condition is reflected in the appearance of a tree.

The abstract nature of the term character, lack of a definition of amenity, whether the Order is proportionate and just and whether the Planning Authority was acting on behalf of the tree owner were raised. The application of these concepts in respect of the Order is in relation to the consideration of wider public interest and the character of an area. The Order has been made in accordance with the requirements of Tree Preservation Order and Trees in Conservation Area Regulations 2010 and used for the purpose intended by the Town & Country Planning (Scotland) Act 1997. Taking this into account and the case that it was expedient in the interests of amenity the Order is considered to be proportionate and just. The Planning Authority does not act on behalf of an owner or any individual party. It acts on the merits of the case.

Two objectors raised questions over the suitability of some specific trees being included in the Order on the grounds that one was of poorer form due to previous cutting back for overhead services and that two trees at the very northern end of the group of 10 beech trees could be removed from the Order without any adverse effect on the visual impact of the group as a whole. The objectors requested that the Order be modified to exclude these trees.

There was also a request to amend the Order to exclude from its control work required in the interest of safety or to prevent or abate a nuisance. A site visit was carried out to look at the question of whether certain trees should be removed from the Order. It was noted that one tree had been cut back specifically to provide clearance from overhead cables. This and other previous pruning had adversely affected the appearance of the tree but its individual value is secondary to its contribution to the collective value of the group. The removal of the two most northerly tree of the group from the Order, while leaving a continuous line of eight trees would result in a significant diminution of the group as a whole. The individual form of the two trees is not generally perceptible when viewing the group as a whole and therefore there is not considered to be any grounds for leaving these two trees out of the Order.

As regards the proposals to introduce exemptions to the Order for work required in the interest of safety and work required to prevent or abate a nuisance, there are already exemptions within the Order for work immediately required in the interest of safety or to prevent or abate a nuisance subject to providing certain notice to the Council. None of the representations received require the Order to be abandoned or modified.

Conclusion

The trees in question are of high amenity value and the Tree Preservation Order is expedient in the interests of amenity. The objections to the Order have been assessed and are not considered to provide grounds which outweigh the merit of the Order or support abandoning or modifying the Order.

In order to provide long term protection to the trees in question, it is recommended that the Tree Preservation Order be confirmed.

The Tree Preservation Order map and Schedule are enclosed at Appendices 1 and 2 and copies of representations at Appendix 3.

Financial impact

4.1 The financial impact has been assessed as follows:

Costs are accommodated through existing budgets.

Risk, Policy, compliance and governance impact

5.1 Provided Tree Preservation Orders are confirmed 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 17 October 2016 in accordance with regulatory requirements.

Twelve representations were received. A full assessment of the representations can be found in the Assessment section.

Background reading/external references

- [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 (ENV12).

Date registered

N/A

Drawing numbers/Scheme

N/A

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Links - Policies

Relevant Policies:

Local Development Plan

LDP 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



Appendix 2

Tree Schedule

SCHEDULE 1

Article 2

Trees specified individually (marked in green on the map)		
<u>No on map</u>	<u>Description</u>	<u>Situation</u>
T1	Sycamore	
T2	Sycamore	

Trees Specified by Reference to an Area (with a continuous black line on the map)		
<u>No on map</u>	<u>Description</u>	<u>Situation</u>
None		

Groups of Trees (within a broken black line on the map)		
<u>No on Map</u>	<u>Description</u>	<u>Situation</u>
G1	Row of 10 beech trees	

Woodlands (within a continuous red line on the map)		
<u>No on Map</u>	<u>Description</u>	<u>Situation</u>
None		

Appendix 3

Representations

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