

CARLISLE CITY COUNCIL

Report to:- Development Control Committee

Date of Meeting:- 20 August 2010

Agenda Item No:-
ED.19/10

Public	Policy	Delegated: Yes
---------------	---------------	-----------------------

Accompanying Comments and Statements	Required	Included
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
Financial Comments:	No	No
Legal Comments:	No	No
Personnel Comments:	No	No

Title:- PROPOSED TREE PRESERVATION ORDER NO. 253 LAND AT
HARRABY GREEN

Report of:- Assistant Director (Economic Development)

Report reference:- ED.19/10

Summary:-

A Tree Preservation Order was made on the 4 June 2010 to protect an area of woodland on land adjacent Harraby Green. This report considers objections to the Order and concludes that the Order should be confirmed without modification.

Recommendation:-

It is recommended that the Committee resolve to confirm Tree Preservation Order 253 without modification.

Christopher Hardman

Assistant Director (Economic Development)

Contact Officer: Charles Bennett

Ext: 7535

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Tree Preservation Orders: A Guide to the Law and Good Practice

1.0 Background

- 1.1 The Town and Country Planning Act 1990, Section 198 provides that Local Planning Authorities may make a Tree Preservation Order (TPO) if it appears to them to be “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”. The Department of Environment Transport and the Regions document, “Tree Preservation Orders A Guide to the Law and Good Practice” advises that “Tree Preservation Orders should be used to protect selected trees and woodland if their removal would have a significant local impact on the environment and its enjoyment by the public”.
- 1.2 An existing Tree Preservation Order, Tree Preservation Order 32 Harraby Green, was made on 9 May 1980 to protect an area of woodland adjacent Harraby Green. As part of the ongoing Tree Preservation Order review Tree Preservation Order 32 was identified as a high priority for updating as there is no evidence that the Tree Preservation Order was confirmed, thereby rendering it ineffective.
- 1.4 A site visit was carried out to assess the woodland and this indicated that the trees were worthy of statutory protection by means of an updated and enforceable Tree Preservation Order.
- 1.5 A copy of the plan and Statement of Reasons relating to Tree Preservation Order 253 is attached hereto at Appendix 1.
- 1.6 The following made objections to Tree Preservation Order 253.
 - ◆ Ms P Crouch, 37 Chertsey Bank, Carlisle, CA1 2QF
- 1.7 The letter of objection and Officers reply are attached hereto at Appendix 2.

2.0 The Trees Amenity Value

- 2.1 In accordance with The Department of Environment Transport and the Regions document, “Tree Preservation Orders A Guide to the Law and Good Practice” an objective assessment of the contribution of the tree to the public amenity of the locality, and expediency was made.

- 2.2 The tree was assessed using the Tree Evaluation Method for Preservation Orders (TEMPO) system for woodlands. A score is awarded depending on amenity and expediency. This enables the assessment to be objective and meet the criteria for the making of a tree preservation order as set out in the Town and Country Planning Act 1990 and Tree Preservation Orders A Guide to the Law and Good Practice.
- 2.3 The TEMPO assessment indicated that a woodland tree preservation order was defensible.

3.0 Summary Of Objections To Tree Preservation Order 253

- 3.1 The following objections have been made to the Tree Preservation Order:
- (i) Dangerous branches which are liable to topple or break during high winds or bad weather.
 - (ii) Branches are overhanging the house, garden, car parking area and road.
 - (iii) Branches and parts of trees restrict light to the house and garden.
 - (iv) Nuisance caused by leaf fall in the Autumn.
- 3.2 In considering the above objections Officers have the following comments to make:
- (i) Responsibility for the tree rests with the tree owner, who is at present unknown. It is their duty to ensure that the tree is maintained in a safe condition and to regularly monitor the tree for signs of defects. Where defects are identified that pose a foreseeable risk these should be remedied, and the Tree Preservation Order will not prevent such reasonable works, albeit an application may have to be made to carry out such works. Whilst defects can be identified and the appropriate action taken, it is not possible to take action to prevent branch failure due to unpredictable events such as storms. Where such events cause unforeseeable branch failure it is considered an Act of God.
 - (ii) The Tree Preservation Order will not prevent pruning works in accordance with best practice that allow for the reasonable use of the house and garden, albeit an application will have to be made. The tree owner has a duty under The Highways Act 1980 to ensure that vegetation, including trees, do not obstruct the highway. The Tree Preservation Order will not prevent such works as are necessary to comply with The Highways Act being carried out.
 - (iii) As mentioned above, works in accordance with current best practice to allow for reasonable use of the house and garden would not be prevented by the Tree Preservation Order.

- (iv) Leaf fall is part of the natural cycle of a tree's life, and whilst it may be considered inconvenient the clearing up of leaves is just part and parcel of property ownership.

4.0 Representations In Favour Of The Tree Preservation Order

- 4.1 Two telephone calls have been received from residents supporting the Tree Preservation Order, and expressing their concerns over loss of wildlife, birds (both callers mentioned woodpeckers), and erosion of the bank, should the trees and other vegetation be removed.

5.0 Conclusion

- 5.1 Whilst it is accepted that it will be necessary to consider works to the tree in accordance with good arboricultural practice to provide for reasonable living conditions to the adjacent properties, and in compliance with duties under other legislation such as The Highways Act, the Tree Preservation Order does not prevent this, albeit where appropriate an application will need to be made.
- 5.2 Having duly considered all the representations and having weighed the objections against the present and future value of the woodland it is considered that it will provide a significant level of public amenity for a reasonable period of time and therefore merits the protection afforded by a Tree Preservation Order.

6.0 Recommendation

- 6.1 It is recommended that the Committee resolve to confirm Tree Preservation Order 253 without modification.

Christopher Hardman

Assistant Director (Economic Development)

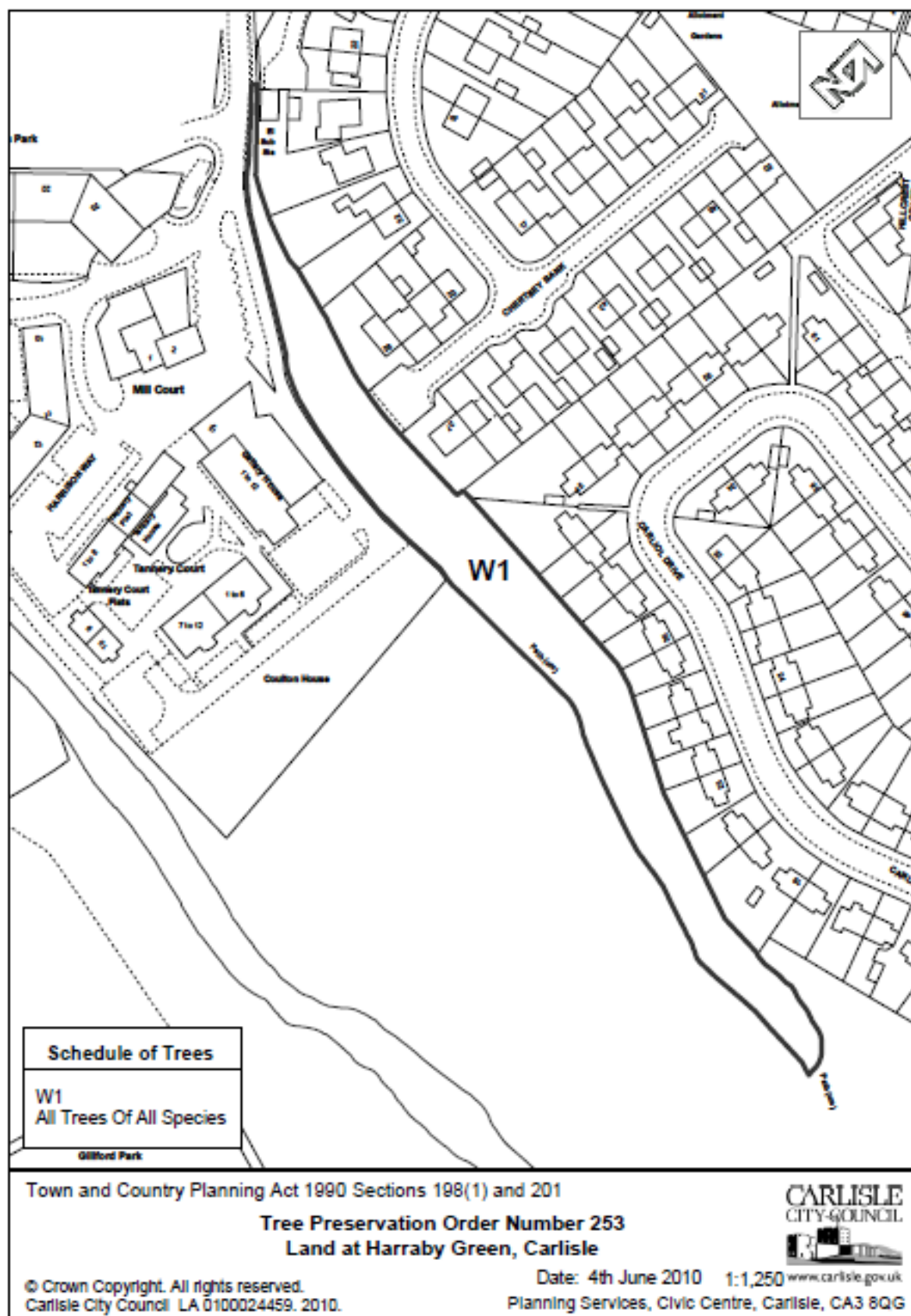
Contact Officer:

Charles Bennett

Ext:

7535

Tree Preservation Order 253 Plan & Statement of Reasons



TREE PRESERVATION ORDER No. TPO 253

LAND AT HARRABY GREEN, CARLISLE

STATEMENT OF REASONS

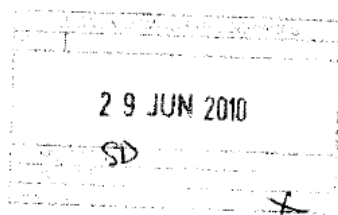
By virtue of section 198 of the Town and Country Planning Act 1990 the local planning authority may make a tree preservation order where it appears to the authority that it is expedient in the interests of amenity to make provision for the protection of trees and woodlands in its area.

The guidance set out in the Department of the Environment Transport and the Regions document 'Tree Preservation Orders, A Guide to the Law and Good Practice' states that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

The trees, by virtue of their size and location are clearly visible to the public both from the adjacent properties and the open space to the west. They are considered to be of significant visual amenity and landscape value and provide a backdrop to the open space and screening of the adjacent dwellings which are situated at the top of the river plain bluff. There have been a number of requests to prune or fell some trees and this Tree Preservation Order will ensure the continuity of this green fringe.

It is considered that the loss of trees would have a detrimental impact on the area and its enjoyment by the public therefore, to ensure the continuation of the visual amenity that the trees provide the Council of the City of Carlisle considers it expedient in the interests of amenity to protect the trees by means of a Tree Preservation Order.

Letter of objection and Officers reply



37 Chertsey Bank,
Carlisle CA1 2QF
Tel. 01228 531 939
26th June, 2010

Mr. M. D. Lambert,
Asst. Director (Governance),
Civic Centre,
Carlisle CA3 8QG

Dear Mr. Lambert,

Tree Preservation Order 2010 No. 253 – Chertsey Bank

I would request permission (in writing please) to lob and prune any trees or bushes that overhang my garden on the following basis.

Dangerous branches which are liable to topple or break during high winds or bad weather.

Branches that overhang my garden or front or house where my car, or family's car or vehicle, or visiting friends vehicles including the road directly in front or my house.

Branches and parts or trees that restrict light both to my house and garden.

The main sycamore directly in front of my house has branches 5 metres over my garden and is approximately one third higher than my house. It does not permit sunlight to the front of my house or my front garden from early afternoon. Not to mention the constant nuisance or endless leaves during Autumn months (nobody minds a few leaves but these are a deluge which can be confirmed by my neighbours).

Also, the trees along the side of my garden are growing rampant (as sycamores do) and will in time shade the garden completely from afternoon and evening sunlight.

Finally, I would respectfully request that if the Council wish to make them "Preserved" then the Council should take responsibility for their maintenance and safety upkeep bearing in mind the residents of adjacent properties.

An inspection of the area in question would be appreciated in order to confirm the above objections.

Yours sincerely,
Patricia Crouch

Patricia Crouch

Economic Development

Assistant Director **C A Hardman** BA (Hons) BTP MRTPI

Planning Services

Civic Centre, Carlisle, CA3 8QG

Phone (01228) 817000 • Fax Planning (01228) 817199 • Typetalk 18001 (01228) 817000

E-mail Development Control: dc@carlisle.gov.uk • Local Plans & Conservation: lpc@carlisle.gov.uk • Building Control: BC@carlisle.gov.uk

Ms P Crouch
37 Chertsey Bank
Carlisle
CA1 2QF

Please ask for:

Direct Line:

E-mail:

Your ref:

Our ref:

Charles Bennett

01228 817535

charlesb@carlisle.gov.uk

CB/TPO 253

30 June 2010

Dear Ms Crouch

TREE PRESERVATION ORDER 2010 NO. 253 - CHERTSEY BANK

I refer to your letter dated 26 June 2010 raising a number of objections to the proposed Tree Preservation Order. I will deal with your concerns in the order they appear in your letter.

- Dangerous branches which are liable to topple or break during high winds or bad weather.

Where branches, or indeed whole trees, are dead, dying, or dangerous they are exempt from the need to gain consent from the local authority to carry out the works necessary to make them safe. It is considered good practice if relying on the exemption to give at least five days prior notice of the works to the Local Authority.

- Branches that overhang your garden or front or house where your car or family's car or vehicle, or visiting friends vehicles including the road directly in front of your house.

There is a duty on tree owners to ensure that their trees do not obstruct the Highway. It is accepted that there should be at least 5.5m clearance above a carriageway to the branches of a tree, and 2.5m clearance above a footpath, again consent is not required to carry out these works. Where the trees cause an obstruction and the owner does not remove that obstruction the Highways Authority can take action to clear the obstruction themselves. However, where trees overhang a private drive, garden or dwelling an application would have to be made to carry out works to the tree to



INVESTOR IN PEOPLE

clear the obstruction/encroachment. Such works where carried out in accordance with best practice, and taking account of the trees amenity, would be unlikely to be refused.

- Branches and parts of trees that restrict light both to your house and garden, and leaves are a constant nuisance.

Unfortunately there is no right of light to a garden, and whilst you have a right of light to your house it is unlikely that you will be able to exercise this in respect of the loss of light caused by the trees. However, it is not unreasonable to expect that you should have reasonable living conditions and an application in accordance with best practice, and taking account of the trees amenity, to prune the trees to allow more light to the garden and property would be unlikely to be refused. Unfortunately leaves are a seasonal nuisance, and clearing them up is considered part and parcel of property maintenance.

Responsibility for maintenance and upkeep of trees protected or otherwise, remains with the trees owners who, as you are aware, are unknown although recent attempts have ben made to identify them.

Should you wish to carry out works to the trees you will need to complete the appropriate application form, copy enclosed. In the meantime I would be more than happy to carry out a site visit to discuss what works are appropriate, and I can be contacted by any of the means above to arrange a mutually agreeable time and date.

For the reasons set out above I hope you are able to withdraw you objections.

Where objections are made to the making of Tree Preservation Orders, and not withdrawn, a decision on the confirmation, that is making the tree Preservation Order permanent, is made by the Development Control Committee.

The Council operates a right to speak at the Development Control Committee for people who make objections to the making of Tree Preservation Orders. If you wish to exercise your right to speak please contact me directly by the 2 July 2010 so that I can make the necessary arrangements. I will then contact you again to let you know the time and date of the Committee meeting at which the Tree Preservation Order will be presented for confirmation.

Yours sincerely

C Bennett

Landscape Architect/Tree Officer