

# CARLISLE CITY COUNCIL

**Report to:-** Development Control Committee

**Date of Meeting:-** 24 April 2009

**Agenda Item No:-**  
**DS.31/09**

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**Public**

**Operational**

**Delegated: No**

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## **Accompanying Comments and Statements**

**Required**

**Included**

Environmental Impact Statement:

No

No

Corporate Management Team Comments:

No

No

Financial Comments:

No

No

Legal Comments:

Yes

Yes

Personnel Comments:

No

No

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**Title:-**

**REVOCATION OF TREE PRESERVATION ORDER  
5 DUNCOWFOLD WOODS, WETHERAL**

**Report of:-**

**Director of Development Services**

**Report reference:-**

**DS. 31/09**

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## **Summary:-**

This report considers the reasons for the revocation of Tree Preservation Order 5 Duncowfold Woods, Wetheral

## **Recommendation:-**

Tree Preservation Order 5 Duncowfold Woods, Wetheral be revoked.

**Alan Eales**

Head of Planning and Housing Services

**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: The Town and Country Planning Act 1990; DETR Tree Preservation Orders A Guide to the Law and Good Practice**

## **1.0 Background**

- 1.1 Government guidance contained within the document *Tree Preservation Orders: A Guide to the Law and Good Practice*, paragraph 4.2 states “Local Planning Authority’s are advised to keep their Tree Preservation Order records under review. By making full use of their variation and revocation powers Local Planning Authority’s can ensure their TPO’s are brought up to date when the time is right to do so. There are a number of reasons why, over time, it may become desirable to vary or revoke a Tree Preservation Order.”
- 1.2 Examples of reasons to vary or revoke Tree Preservation Orders are:
- (i) Changes to legislation. The Town and Country Planning Act 1990 and The Town and Country Planning (Trees) Regulations 1999 as amended are the current legislative instruments relating to Tree Preservation Orders; and
  - (ii) changes to best practice guidance and woodland management regimes including woodland grant aid; and
  - (iii) errors within the Tree Preservation Order may come to light after the Tree Preservation Order has been confirmed. When an error comes to light the Local Planning Authority should consider using its variation and revocation powers to put it right.
- 1.3 Tree Preservation Order 5 Duncowfold Woods, Wetheral was made on 24 May 1974 following an application for a felling licence for the felling of the woodland with the intention of returning it to grass. A plan showing the location of Duncowfold woods is attached hereto at Appendix 1.
- 1.4 A further felling licence application was made in January 1980 for the felling of approximately 200 trees.
- 1.5 Following negotiations with the owner an amended licence for the felling of fewer trees and their replacement with a mixture of broad leaved species was agreed, and the proposals implemented.

**2.0 Assessment of the Tree Preservation Order**

- 2.1 Tree Preservation Order 5 Duncowfold Woods, Wetheral was made in May 1974. Once made a Tree Preservation Order must be confirmed within six months otherwise the protection it affords to the trees/woodlands lapses.
- 2.2 A file audit of all the Tree Preservation Orders revealed that the Local Authority does not have evidence that this Order was ever confirmed. Therefore, this Tree Preservation Order may be unenforceable and does not protect the woodland as was the intention at the time it was made.
- 2.3 Whilst it is possible to confirm a Tree Preservation Order after the six month period has expired it is considered bad practice and would cast doubt on the validity of the Order itself.
- 2.4 Duncowfold Woods are classified as Ancient Semi-natural Woodland and have existed as woodland since at least 1600. Such woodland is a finite and valuable ecological resource that requires careful and appropriate management.
- 2.5 Since the last forestry operations were carried out in this woodland in the early to mid 1980's our understanding of the importance of Ancient Woodlands has increased enormously. Today no grants are available to fell and replant with conifers, or to fell and change to pasture, instead grants are available for the management of the woodland to ensure their continuity as semi-natural broad-leaved woodland. Indeed this is the main thrust of the grant system that funds most woodland management programmes and is aimed at ensuring good forestry practice.
- 2.6 The Council's authority to make Tree Preservation Orders arises from The Town and Country Planning Act 1990 s198(1) which states that the local Planning Authority can make Tree Preservation Orders in their area where it is "expedient in the interests of amenity". Neither expediency nor amenity are defined.
- 2.7 When considering amenity the Authority should take account of the visibility of the trees, their individual impact, and the wider impact. Other factors such as the Ancient Woodland status and environmental and ecological considerations also add weight, but on their own would not be sufficient to warrant the making of a tree preservation order.

- 2.8 The Department of Transport and the Regions document "Tree Preservation Orders a Guide to the Law and Good Practice para. 3.4 states "Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO. For example, it is unlikely to be expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management."
- 2.9 Before any tree felling of any significance can be undertaken a felling licence must be applied for and granted by the Forestry Commission. The grant of a felling licence would be subject to re-planting conditions to ensure the continuity of the woodland, in accordance with national forestry policy and good management.
- 2.10 The Council are consulted on felling licence applications, and do where appropriate forward comments to the Forestry Commission on the proposals. Should the proposals be contrary to good forestry practice, and have a significant impact on the local environment and its enjoyment by the public a Tree Preservation Order could be made to ensure the protection of the woodland.
- 2.11 Woodland management does require the removal and replacement of trees. However, Members should be aware that a tree preservation order should not be used to prevent good forestry practice, and the Council could be liable to pay compensation if a situation does arise where good forestry practice is prevented by the existence, or making of a tree preservation order.

### **3.0 Conclusion**

- 3.1 Tree Preservation Order 5 Duncowfold Woods, Wetheral, cannot be enforced and does not provide the protection to the woodland that was the reason for its making.
- 3.2 At the present time it would not be appropriate to make a new Tree Preservation Order in respect of Duncowfold Wood as it would not meet the expediency test required by virtue of The Town and Country planning Act 1990 s198(1)

### **4.0 Recommendation**

- 4.1 That Tree Preservation Order 5 Duncowfold Woods, Wetheral be revoked

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Appendix 1  
Location plan of Duncowfold Wood

