

Report to Development Control Committee

Agenda
Item:
A.3

Meeting Date: 25 November 2016
Portfolio: Economy, Enterprise, and Housing
Key Decision: Not Applicable:
Within Policy and
Budget Framework YES
Public / Private Public

Title: CONFIRMATION OF TREE PRESERVATION ORDER 284 BAY
TREE HOUSE, WETHERAL, CARLISLE.
Report of: Corporate Director of Economic Development
Report Number: ED.46/16

Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 284 Bay Tree House, Plains Road, Carlisle in light of objections to the making of the tree preservation order.

Recommendations:

Tree Preservation Order 284 Bay Tree House, Plains Road, Carlisle be confirmed without modifications.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1.0 BACKGROUND

- 1.1 On 10 October 2016 Carlisle City Council received a notice of intention under section 211 of the Town and Country Planning Act 1990 to fell a lime tree north of the entrance to Bay Tree House, Plains Road, Wetheral, which is within the Wetheral Conservation Area. Officers were aware of the intention to fell other trees at the same time in the neighbouring property, 1 Greenacres, which is outwith the conservation area. Bay Tree House, and 1 Greenacres are within the same ownership.
- 1.2 At a site visit officers observed that the ground around most of the trees at Bay Tree House and 1 Greenacres had been lowered by a considerable extent severing roots and rendering the trees dangerous.
- 1.3 The trees in the gardens of Bay Tree House and 1 Greenacres were assessed for their suitability for protection by means of a tree preservation order. A lime to the south of the entrance to Bay Tree House, and a sycamore in the garden of 1 Greenacres, both unaffected by the excavations, were found to merit protection
- 1.4 Tree Preservation Order 284 was made to protect these two trees. The tree preservation order plan and Statement of Reasons are attached hereto at Appendix 1.
- 1.5 One letter of objection to the making of the Order was received by Carlisle City Council. The letter of objection along with the officer's reply is attached hereto at Appendix 2.
- 1.6 The objections are summarised below. The officer's reply follows immediately after in *italics*;

- (i) Roots are blocking the drains.

Roots will only enter drains where there is existing damage to the drain. They will not themselves seek out or damage drains. Removal of the tree will not resolve the problem of the roots in the drains. This will still have to be dealt with by way of repairing the drains. If a suitable repair is carried out further root ingress will not occur removing the need to fell the tree. Although root ingress is alleged no evidence that the roots are from the protected tree has been provided. There were numerous shrubs and a number of other trees in the area which could be the source of the roots. These have been removed, or are soon to be removed. Furthermore,

whilst CCTV footage has been taken no pictures from within the drains have been provided evidencing the existence of roots there.

- (ii) The garage and utility room are showing signs of damage from root lift.

Roots can cause damage by lifting structures. However, these are invariably lightweight structures such as garden walls, paths, and patios. The roots will not grow in such a manner as to lift heavier structures such as garages and dwellings. Furthermore, such direct damage occurs in close proximity to the tree, usually within a metre or so of the trunk. This is because the roots quickly break down into smaller and smaller roots as they grow away from the tree, and very quickly become too small to cause direct damage of the kind described. The tree is approximately 7m away from the garage, the nearest part of the dwelling to it. Notwithstanding the above, Bay Tree House was built in the early 2000's. The national house building standards in place at that time would have taken account of the existence of the trees and their proximity to the house. The foundations would have been constructed to a standard designed to avoid the likelihood of tree related damage.

2.0 CONSULTATION

- 2.1** All those who were known to have an interest in the land were consulted on the tree preservation order in accordance with the requirements of The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.2** Wider public consultation was undertaken by erecting a site notice advising of the making of the tree preservation order, and how to object, or make representations.

3.0 CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 3.1** Tree Preservation Order 284 Bay Tree House, Plains Road, Wetheral, Carlisle, should be confirmed without modification.
- 3.2** The lime and sycamore trees are large prominent trees clearly visible to the public from Plains Road. They contribute to the pleasant sylvan character of the area enhancing the approach to, and exit from, the Wetheral Conservation Area.

4.0 CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 4.1** Helps create a pleasant and healthy environment in which to live and work, engendering a pride in place and contributing to the City Council's Healthy City Agenda.

Contact Officer: Charles Bennett **Ext:** 7535
Appendices attached to report: Appendix 1: Tree preservation order Plan and Statement Of Reasons
Appendix 2: Letter Of Objection and Officer's Replies

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; Planning Practice Guidance Tree preservation orders and trees in conservation areas

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's - None

Community Engagement – None

Economic Development – None

Governance – The validity of the tree preservation order cannot be challenged in any legal proceedings except by way of application to the High Court. An application must be made within six weeks from the date of the confirmation of the tree preservation order.

This tree preservation order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments.

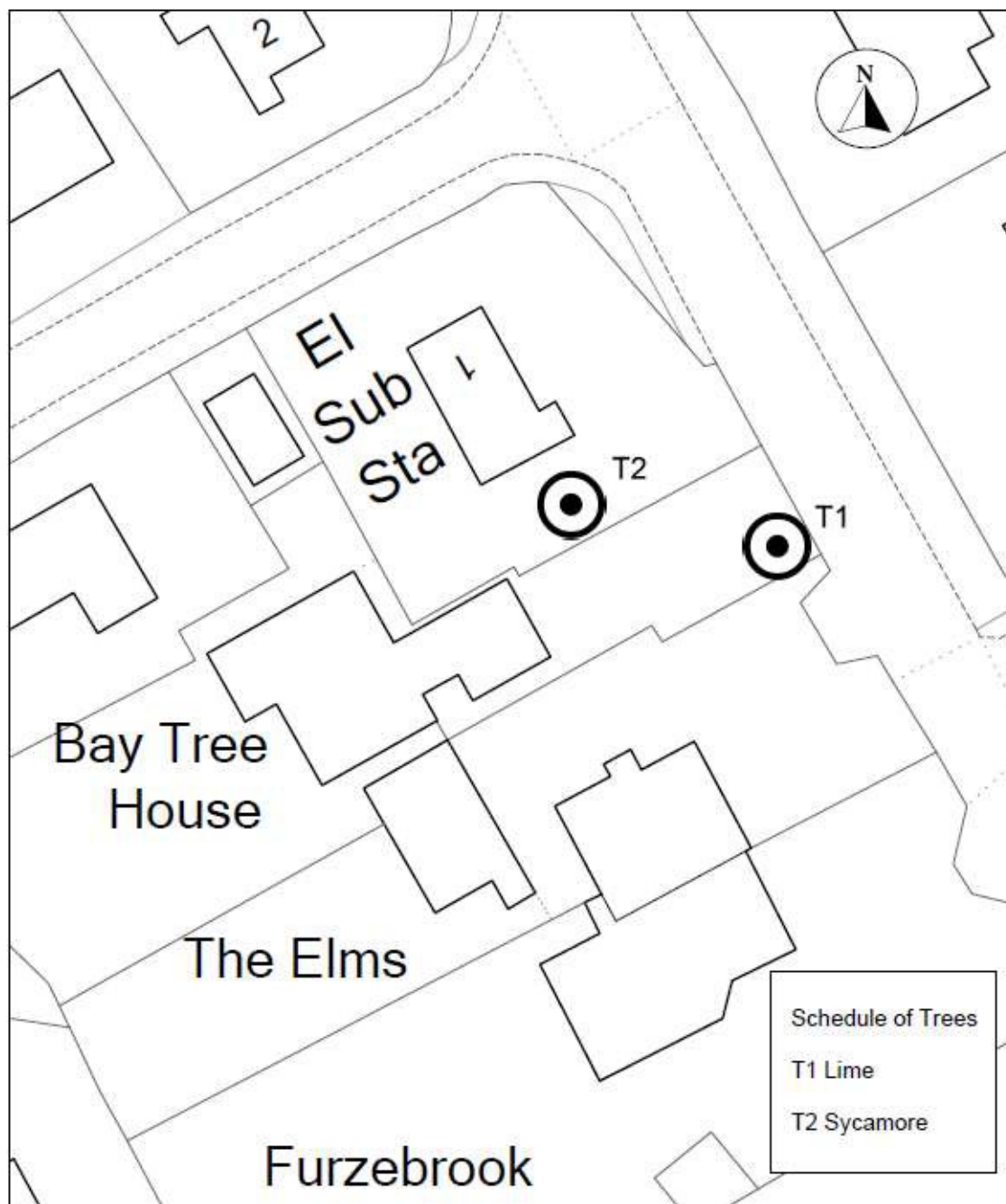
Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. In taking account of all material considerations, including Council policy it is considered that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the tree preservation order is

proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Local Environment – The tree preservation order by affording protection to these trees will ensure that the significant amenity provided by the trees, the benefit to the local environment and its enjoyment by the public will continue.

Resources - Compensation may be payable if a person establishes that loss or damage has been caused or occurred in consequence of the refusal of consent, or the grant of consent subject to conditions, subject to the restrictions and exemptions set out in The Town and Country Planning (Tree Preservation) (England) Regulations 2012. Necessary works to the trees in the interests of safety will not be unreasonably refused.

PLAN & STATEMENT OF REASONS FOR TREE PRESERVATION ORDER 284



Act 1990 Section 198(1)

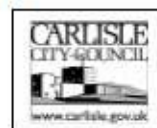
Tree Preservation Order Number 284
Bay Tree House, Plains Road, Greenacres, Wetheral

Scale: 1:400

Date: October 2016

Economic Development, Civic Centre, Carlisle, CA3 8QG

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TREE PRESERVATION ORDER NO. 284
BAY TREE HOUSE, PLAINS ROAD, WETHERAL, 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.

The lime and sycamore trees protected by Tree Preservation Order 284 are large prominent trees clearly visible to the public from Plains Road. They contribute to the pleasant sylvan character of the area enhancing the approach to, and exit from, the Wetheral Conservation Area.

Development on the property and re-landscaping of the gardens could result in the loss of the trees.

Other options considered were not making the Tree Preservation Order. For the reasons stated above it was considered the Tree Preservation Order was appropriate.

APPENDIX 2
LETTER OF OBJECTION AND OFFICERS' REPLY

Bay Tree House
Plains Road
Wetheral
Carlisle
Cumbria
CA4 8LA

MD Lambert
Director of Governance
Civic Centre
Carlisle
CA3 8QG

3rd November 2016

Re: Town and Country Planning Act 1990, Town and Country Planning Act (Tree Preservation) (England) Regulations 2012, Tree Preservation Order: The City of Carlisle (Bay Tree House, Plains Road Wetheral) Tree Preservation Order 2016 No 284

Dear Sir or Madam,

With reference to the above I wish to raise a formal objection to the TPO placed on the sycamore tree (T2 on the plan).

We have instructed an expert to assess the extent of root growth to this tree that encroaches on the adjoining property 1, Greenacres, which is also owned by me. I have experienced severe drain blockage and the garage and back utility area are showing signs of damage from root lift. If this proves to be the case then we will apply to remove the said tree to ensure no further damage is caused.

I would be grateful if you would grant an extension to the 9th November deadline so that I can obtain the full written report and advice regarding the potential ongoing damage.

I anticipate that I will be in a position to comment further during week commencing 21st November and am therefore asking you to extend the deadline until 25th November 2016.

Yours faithfully,

[Redacted Signature]

Craig Nelson

CITY OF CARLISLE	
- 4 NOV 2016	
PROCESSED BY	
DATE	
TIME	

R.F. ANGUS
LIMITED

Tel/Fax: Carlisle 539993

DRAIN CLEARANCE

UNIT 6, ANGUS BUSINESS PARK
WATER STREET, CARLISLE CA2 5AW
E-mail: mail@rfangus.co.uk



DRAIN & PIPEWORK
CLEANING SERVICE

Mobile: 07860 854619



3-11-16

MR. C. NELSON
BAYTREE HOUSE
PLAINS RD
WETHERAL.

DEAR SIR,

WHILE WORKING ON YOUR DRAINAGE
SYSTEM TO CARRY OUT EMERGENCY WORK IT SOON BECAME
APPARENT WITH THE USE OF C.C.T.V THAT MOST OF THE DRAINS
ARE SERIOUSLY ROOT INFESTED.

WE HAVE MADE PROPOSALS FOR THE REMOVAL OF THESE
ROOTS ON A FUTURE VISIT HOWEVER, IN TIME THEY WILL
RETURN AND I FEEL THE LONG TERM SOLUTION WOULD
BE TO REMOVE THE LARGE TREE NEAREST TO THE SIDE
OF THE DRAINING.

KIND REGARDS





Economic Development

Director **J E Meek** BSc (Hons) Dip TP MRTPI

Planning Services

Civic Centre, Carlisle, CA3 8QG

Phone (01228) 817000 • Fax Planning (01228) 817115 • Typetalk please ring 0800 95 95 98

E-mail Development Management: EDAdmin@carlisle.gov.uk • Planning Policy: lpc@carlisle.gov.uk • Building Control: BC@carlisle.gov.uk

Mr Nelson
Bay Tree House
Plains Road
Wetheral
Carlisle
CA4 8LA

Case Officer:

Direct Line:

E-mail:

Your Ref:

Our Ref:

Charles Bennett

01228 817535

Charles.Bennett@carlisle.gov.uk

CB/TPO 284

4 November 2016

Dear Mr Nelson

OBJECTION TO TREE PRESERVATION ORDER 284 BAY TREE HOUSE, PLAINS ROAD, WETHERAL.

I am writing in response to your objection to Tree Preservation Order, 284. I have summarised these below.

- Roots are blocking the drains.
- The garage and utility room are showing signs of damage from root lift.

I will address these in the order they are set out above.

- I note the contents of the letter from Mr Angus concerning root ingress into the drainage system. Roots will only enter drains where there is existing damage to the drain. They will not themselves seek out or damage drains. Removal of the tree will not resolve the problem of the roots in the drains. This will still have to be dealt with by way of repairing the drains. If a suitable repair is carried out further root ingress will not occur removing the need to fell the tree. Although you allege root ingress in the drains you have not provided any evidence that the roots are from the protected tree. There were numerous shrubs and a number of other trees in the area which could be the source of the roots. These have been removed, or are soon to be removed. Furthermore, whilst CCTV footage is mentioned no pictures from within the drains have been provided evidencing the existence of roots there.
- Roots can cause damage by lifting structures. However, these are invariably lightweight structures such as garden walls, paths, and patios. The roots will not grow

in such a manner as to lift heavier structures such as garages and dwellings. Furthermore, such direct damage occurs in close proximity to the tree, usually within a metre or so of the trunk. This is because the roots quickly break down into smaller and smaller roots as they grow away from the tree, and very quickly become too small to cause direct damage of the kind to which you refer. The tree is approximately 7m away from the garage, the nearest part of the dwelling to it. Notwithstanding the above, Bay Tree House was built in the early 2000's. The national house building standards in place at that time would have taken account of the existence of the trees and their proximity to the house. The foundations would have been constructed to a standard designed to avoid the likelihood of tree related damage.

You can apply to remove the tree at any time. But Please be aware that if you are applying to remove the tree on the basis that it is causing structural damage to the property you will need to provide compelling written technical evidence from an appropriate expert, including a description of the damage and possible solutions to support your application.

I hope I have been able to address your concerns and you can withdraw your objection.

However, if you are unable to withdraw your objection the tree preservation order will go before the Development Control Committee who will decide whether or not it should be made permanent.

If the tree preservation order is to be determined by Committee the press and public may attend the meeting. Copies of the Committee Reports and background information (including petitions, letters of objection and support) will be available for those attending. If you wish to know when the application is going to Committee please check online or contact the Case Officer. A list of the forthcoming Committee dates is available on the website. At present it is my intention, if necessary, to take the tree preservation order to the Development Control Committee at its meeting on the 25 November 2016.

The City Council enables, in certain circumstances, objectors and supporters to applications for Planning Permission, Listed Building Consent, Advertisement Consent, Conservation Area Consent and in relation to Tree Preservation Orders a "right to speak" when an application is decided at the Development Control Committee. This right to speak also

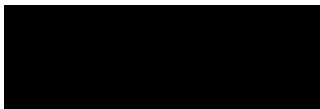
entitles Applicants or Agents to respond. A copy of the leaflet "Carlisle's Scheme for Public Speaking at Development Control Committee" is available from Planning Services or you can access it via the Planning Applications page on the City Council's website:
www.carlisle.gov.uk

If you wish to register a right to speak it must be done after the date that the Committee schedule is published (i.e. 8 days prior to Committee). The deadline for registering this is 12.00 (noon) on the Thursday before Committee. You cannot register a right to speak ahead of the Committee schedule being published. In order to register please contact either Karen Greig (tel: 01228 817112 email: Karen.greig@carlisle.gov.uk) or

Michelle Little (tel: 01228 817482 email: michelle.little@carlisle.gov.uk). Please note that the scheme only allows 5 objectors the opportunity to speak on each application.

Please check the leaflet for full details or contact the Case Officer if you require further information.

Yours sincerely



C Bennett MICFor

Landscape Architect/Tree Officer

Copy to : Mark Lambert, Director of Governance, Carlisle City Council