

CARLISLE CITY COUNCIL

Report to:- Development Control Committee

Date of Meeting:- 28 January 2011

Agenda Item No:-
ED. 04/11

Public

Operational

Delegated: No

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

Title:-

**REVOCATION OF TREE PRESERVATION ORDERS
80 THE SEVERALS, SCALEBY; 94 WELLGATE, SCOTBY;
& 183 BROADWATH HOUSE, BROADWATH**

Report of:-

Assistant Director (Economic Development)

Report reference:-

ED. 04/11

Summary:-

This report considers the revocation of Tree Preservation Orders 80 The Severals, Scaleby; 94 Wellgate, Scotby; & 183 Broadwath House, Broadwath

Recommendation:-

Tree Preservation Orders 80 The Severals, Scaleby; 94 Wellgate, Scotby; & 183, Broadwath House, Broadwath be revoked.

Jane Meek

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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 Authorities are advised to keep their Tree Preservation Order records under review. By making full use of their variation and revocation powers Local Planning Authorities 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 A review of all the current Tree Preservation Orders is in the process of being carried out by Carlisle City Council. A file audit of all the Tree Preservation Orders was carried out as the first stage of the review. This revealed that the Local Authority does not have evidence that Tree Preservation Orders 80, The Severals, Scaleby, 94, Wellgate, Scotby, and 183, Broadwath House, Broadwath were confirmed. Therefore, these Tree Preservation Order may be unenforceable and do not protect the trees as was the intention at the time they were made.
- 1.4 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.
- 1.5 Although unconfirmed, and unenforceable, the Tree preservation Order remains a land charge on the properties where the trees are located, and the file remains in the public domain.

2.0 Assessment of the Tree Preservation Orders

- 2.1 Tree Preservation Order 80 The Severals, Scaleby was made on the 9th January 1997 to protect five Oak trees. However, no record that the Tree Preservation order was confirmed is known to exist, the ability of the Council to enforce the Tree Preservation Order if necessary would be doubtful.
- 2.2 A site visit was carried out to assess the trees and to determine if the trees warranted the making of a new Tree Preservation Order.
- 2.3 The site visit revealed that all the trees remained. The trees, which all remained, were then evaluated using the Tree Evaluation Method for Preservation Orders and it was determined that they remained suitable candidates for protection.
- 2.4 Subsequently Tree Preservation Order 257 was made and later confirmed under the Councils scheme of delegation ensuring the continuing protection of these trees.
- 2.5 Tree Preservation Order 94 Wellgate, Scotby was made in February 1990 prior to the development of the site. No record that the Tree Preservation Order was ever confirmed exists, neither during the file audit was it possible to find a complete copy of the Tree Preservation Order, only a few extracts remaining.
- 2.6 The site visit revealed that only four of the original ten protected trees remain, and one of these is due to be removed leaving just three of the originally protected trees. Consent was given for the removal of all these trees bar one which blew over.
- 2.7 The three remaining trees were assessed using the Tree Evaluation Method for Preservation Orders and it was determined that due to the confined rear garden locations, their limited visibility and short life expectancy these trees were not worthy of statutory protection.
- 2.8 Tree Preservation Order 183 Broadwath House, Broadwath was made on the 23rd March 2004 to protect three trees.
- 2.9 The site visit revealed that only one tree of the original three protected trees remained, and this in a heavily lopped condition following works to the tree to make it safe after the storms of January 2005. No record exists on the file regards the removal of the other two trees.

- 2.10 The tree was assessed using the Tree Evaluation Method for Preservation Orders and it was determined that due to its poor form and condition, and its significantly reduced public visibility that it was not appropriate to make it the subject of a Tree Preservation Order.

3.0 Conclusion

- 3.1 The trees thought to have been protected by Tree Preservation Order 80, The Severals Burnhill, Scaleby remain a significant amenity in the location. The replacement Tree Preservation Order will ensure their continued protection. However, Tree Preservation Order 80 although unenforceable remains on the public record and a land charge against the property and as a matter of good practice should be revoked.
- 3.2 Only four of the thirteen trees thought to have been protected by Tree Preservation Orders 183 Broadwath House, and 94 Wellgate, Scotby remain. None of the remaining trees due, to a combination of poor form and lack of visibility are a significant amenity in the area. However, the two Tree Preservation Orders, although unenforceable remain on the public record and a land charge against the properties and as a matter of good practice should be revoked.

4.0 Recommendation

- 4.1 That Tree Preservation Orders 80 The Severals, Burnhill, Scaleby; 94 Wellgate, Scotby; and 183 Broadwath House, Broadwath be revoked

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