

Report to Development Control Committee

Agenda
Item:
A2

Meeting Date: 7th June 2019
Portfolio: Economy, Enterprise and Housing
Key Decision: Not Applicable:
Within Policy and Budget Framework
Public / Private Public

Title: TPO 302 NORTH OF TARN LODGE FARM, HEADS NOOK
BRAMPTON
Report of: CORPORATE DIRECTOR OF ECONOMIC DEVELOPMENT
Report Number: ED.23/19

Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 302 North of Tarn Lodge Farm, Heads Nook Brampton in light of representations to the making of the tree preservation order.

Recommendations:

That Tree Preservation Order 302 North of Tarn Lodge Farm, Heads Nook, Brampton not be confirmed.

Tracking

Executive:	
Scrutiny:	
Council:	

1. BACKGROUND

- 1.1** In October 2018 planning application 18/0931 was made for the siting of 16no. holiday lodges and installation of waste water treatment system around the tarn north of tarn lodge, Heads Nook. During consideration of the application a number of issues were raised which were being addressed by the applicant/agent however due to the need for further ecological survey work which could not be undertaken at the time of the application, the application was withdrawn. Concerns still remained about the development and its impact on the trees and therefore as a precautionary measure a tree preservation order (TPO) was placed on the woodland.
- 1.2** Tree Preservation Order 302 is a woodland order which means that it not only protects the existing woodland trees but also any undergrowth/new growth that occurs within the area of the order. A copy of the plan relating to Tree Preservation Order 302 and the statement of reasons are attached hereto at Appendix 1.
- 1.3** One letter of objection and seven letters of support to the making of Tree Preservation Order 302 have been received including one from Friends of the Lake District (CPRE). The letters are contained within the third-party representations.
- 1.4** The objection is summarised below.
- The site is well-managed as recognised by the Forestry Commission
 - Any actions regarding tree works have been done with the best interests of the woodland at heart
 - Cannot see how the assessment has been applied in the first place
 - Intention to put in place a Forestry Commission approved management plan
 - An active shoot is operated from the area including use of the woodland
 - The shoot has been running for over 15 years and will have to be cancelled and a loss of 3.5 jobs because of the placing of this order
 - The loss of income is also causing financial distress
 - I will have to withdraw the wood and lake which are an integral part of the shoot from the 2019/20 season
 - Accusations of felling trees resulting in the TPO are unwarranted
- 1.5** The representations of support are summarised below.
- The trees are mainly mature, well established and native to the area;

- The site mainly comprising mature and veteran trees likely represents ancient woodland and is rich in biodiversity;
- Any loss or damage to the trees would be extremely detrimental to the enjoyment of the area by the public, visual amenity and unique biodiversity;
- Visually, recreationally and ecologically this is an important feature and habitat which deserves our protection and forms an important wildlife corridor linking to other woodland;
- The tarn is an area of natural beauty that sustains a wide range of plants and animals;
- The woodland is highly visible;
- The trees form a beautiful belt of greenery;
- The woodland contains many veteran trees;
- Many species highly likely to be on the site including priority and European protected species;
- Removal of woodland and trees would have a significant negative impact on the local environment and its enjoyment by the public;
- Protection would bring a degree of public benefit;
- The recent and proposed felling as part of the planning application highlights the woodland to be at risk;
- The woodland is of high amenity value due to its visibility, size and form, future potential as amenity, rarity, cultural and historic value for its relationship to nature and response to climate change;
- The woodland is prominent within the landscape. Public footpath 110006 follows the western edge of the woodland;
- The woodland surrounds a glacial depression lake, highly likely that the woodland is ancient;
- The site is within the North Pennines AONB and in the area of Fellfoot Forward Landscape Partnership Scheme;
- Within landscape type 5c as characterised perfectly by this site;
- The site and woodland originate from land that formed Castle Carrock Moor and has remained virtually unchanged;
- The tarn and woodland define the character of Tarn Lodge, the historically managed estate landscape;
- GB Routledge resided at Tarn Lodge and the majority of his specimens contributing to his work were from the Tarn Lodge estate;
- The site contains priority habitat as defined under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006;
- The site is a rarity and unspoilt natural habitat which receives minimal human intervention;

- The trees and site's location are vital to movement and biodiversity within the area;
- Amenity value and future potential as amenity is irreplaceable and worthy of preservation and protection;
- The shape of the cluster of trees is beautiful and the removal of any trees would inevitably ruin the visual impact which many enjoy;
- Removal of any trees would disrupt the ecological balance;
- During a recent visit there was a carpet of bluebells interspersed with wood sorrel and violets. These plants are supported by a humus rich soil provided by annual leaf fall;
- Woodland is always full of many songbirds;
- The woodland has an important relationship with the tarn that it surrounds;
- There is a defined boundary of trees around the tarn which are likely to be descendants of ancient trees;
- Woodland is a precious and important resource in our current battle with climate change.

- 1.6 In consideration of the representations made on this tree preservation order it has highlighted the potential conflicts between tree preservation order and woodland management.
- 1.7 Tree preservation orders are a planning tool to assist in the protection of trees where they may be under threat from development. They should be used as a last resort as good development will not require any damage or loss of trees however it can often be the case that proposed development will seek the removal of trees or impact on future residential amenity that continues to threaten the tree's survival.
- 1.8 In this case, a woodland, the responsibility for management of the woodland remains with the owner, even where a tree preservation order is in place. The responsible body for woodland management and felling of trees is the Forestry Commission. A licence is required for felling that would be of a scale to harm the integrity of the woodland.
- 1.9 Many of the issues raised by those in support of the order are relevant to any woodland and its support of biodiversity through natural growth. On that basis it could be argued that any woodland should also have a tree preservation order placed on it but that would be inappropriate and a misuse of the planning act provisions. The specific circumstances of this woodland need to be considered.

- 1.10 The Forestry Commission is therefore in a good position to consider management of woodland and in this instance has been dealing with the land owner and his arboricultural consultant and considers that the woodland is well-managed in the best interest of the woodland. Given that there are many woodlands in the district and this is one of the well-managed ones it questions the need for a tree preservation order.
- 1.11 On a site visit following the placing of the order it was noticed that one tree had fallen over and needed attention. The tree had fallen through natural processes and there had been no intention to remove it in advance of any planning application.
- 1.12 In the case of this woodland the owner provides pheasant feeding posts which were present on the officer's site visit. The need to chase the pheasants out of the woodland for any local shoot (which happen in several places within the district) means that the beaters may damage some undergrowth/saplings. Whilst this would be unintentional and as a consequence of activities undertaken in the woodland which are not to its detriment, it nevertheless would be damage.
- 1.13 With a woodland tree preservation order all the undergrowth is covered and the council has recently prosecuted a person for clearing of undergrowth in an area covered by a woodland order. It would therefore follow that the council would have to consider prosecution in this instance. It is not the intention of the landowner to commit a prosecutable offence and neither is it the intention of the council to stop activities in the woodland which do not cause harm. It is therefore clear that in this instance a woodland tree preservation order would run counter to the existing activities and management of the woodland.
- 1.14 It is possible to consider if alternative orders are appropriate. A group order or a single order can be made for certain trees within the woodland if considered necessary. This could protect certain trees which would provide maybe the most significant tree cover such as around the edges of the wood however management of such an order proves difficult as clarification is needed every time any work is undertaken in the woodland. This causes frustration and delays not only for the owner and the council but also any neighbouring parties who have interest in the wood as experienced elsewhere. It would not be good management to partially protect trees unless there was a specific threat.
- 1.15 In terms of specific threat, it then reverts back to the interest in the tree preservation order in the first instance, which was as a result of a planning application. The planning application was withdrawn due to the need for additional survey work to be

undertaken and no doubt the planning application will be resubmitted. The application was for the siting of holiday lodges within the woodland benefitting from the woodland and tarn setting. It would not therefore be in the interests of the landowner to destroy the very setting which would make the unique appeal for any lodges.

- 1.16 Lodges are in woodland and water's edge settings in many locations around the country and coexist. Revised proposals will come forward however proper planning would allow for the impact on the trees to be clearly assessed working with the management of the woodland and the Forestry Commission in order to determine whether such a scheme is feasible. Members would be involved in the determination of any such application in this woodland.
- 1.17 In this instance, the placing of a woodland tree preservation order is not appropriate, and it is recommended that the order is not confirmed.

2. CONSULTATION

- 2.1 The Parish Council, owners of affected properties, and 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 A site notice was placed adjacent to the site advising of the making of the tree preservation order, and how to object, or make representations.

3. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 3.1 Tree Preservation Order 302 North of Tarn Lodge, Heads Nook, Brampton should not be confirmed in accordance with the reasoning outlined in section 1 of this report.

4. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

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

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**Appendices Appendix 1 – Tree Preservation Order 302
attached to report:**

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS:

LEGAL - 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.

FINANCE – n/a

EQUALITY – n/a

INFORMATION GOVERNANCE – n/a

TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012

Town and Country Planning Act 1990

The City Council of Carlisle

Land North of Tarn Lodge Farm, Heads Nook, Brampton – Tree Preservation Order 2019 (No.302)

The City Council of Carlisle in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as Land North of Tarn Lodge Farm, Heads Nook, Brampton – Tree Preservation Order 2019 (No.302).

Interpretation

2.— (1) In this Order “the authority” means The City Council of Carlisle

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197

Authorised by the Council to sign in that behalf]

VARIATION OF ORDER

This Order was varied by The City Council of Carlisle on the day of by a
variation order under reference number a copy of which is attached

Signed on behalf of The City Council of Carlisle

.....
Authorised by the Council to sign in that behalf

REVOCATION OF ORDER

This Order was revoked by The City Council of Carlisle on the day of

Signed on behalf of The City Council of Carlisle

.....
Authorised by the Council to sign in that behalf

SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	NONE	

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	NONE	

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
	NONE	

Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
W1	Any trees of any species	353000 555000



Act 1990 Section 198(1)

Tree Preservation Order Number 302
Land to north of Tarn Lodge Farm, Heads Nook,
Brampton

Scale: 1 : 2,500

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ordnance survey LA100024459

Date: April 2019

Economic Development, Civic Centre, Carlisle, CA3 8QG



STATEMENT OF REASONS

TREE PRESERVATION ORDER NO. 302

Land North of Tarn Lodge Farm, Heads Nook, Brampton

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 woodland, by virtue of its size and location is visible to the public and is a prominent feature in the landscape.

It is considered that the loss of any trees within this woodland 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 woodland provides, it is expedient to protect the trees by means of a Tree Preservation Order.