

CARLISLE CITY COUNCIL

Report to:- Development Control Committee

Date of Meeting:- 18 December 2009

Agenda Item No:-
DS.101/09

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|---------------|---------------|-----------------------|
| Public | Policy | Delegated: Yes |
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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: | No | No |
| Personnel Comments: | No | No |

Title:- PROPOSED TREE PRESERVATION ORDER NO. 249 LAND
ADJACENT 9 LEYWELL DRIVE

Report of:- Local Plans and Conservation Manager

Report reference:- DS.101/09

Summary:-

A Tree Preservation Order was made on the 1 October 2009 to protect two mature Oak trees in public open space adjacent 9 Leywell Drive, Carlisle. 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 249 Land Adjacent 9 Leywell Drive, Carlisle without modification.

Christopher Hardman
Local Plans and Conservation Manager

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 On 1 October 2009 an enquiry was received about the felling/pruning of Oak trees situated in public open space adjacent 9 Leywell Drive on land that is currently owned by Barratt Homes, but will in due course be handed over to Carlisle City Council.
- 1.3 Having been contacted by the owners of 9 Leywell Drive to discuss the possibilities of work to the Oak trees Barratt Homes contacted the Council to state that they had no objections to any work to the trees subject to them not incurring any costs, and to check if the trees were subject to a Tree Preservation Order.
- 1.4 Taking into consideration the Councils future ownership of these trees the Green Spaces Manager was contacted, who verbally expressed the opinion that he would not want to see the removal of the trees unless there was a justifiable arboricultural reason, and that the trees had been retained as part of the structural landscaping of the development. Subsequently an Officer of the Council visited the site to assess the suitability for statutory protection by means of a Tree Preservation Order.
- 1.5 On the 1 October 2009 Tree Preservation Order 249 Land Adjacent 9 Leywell Drive was made to protect the two large mature Oak trees.
- 1.6 A copy of the plan and Statement of Reasons relating to Tree Preservation Order 249 Land Adjacent 9 Leywell Drive, Carlisle is attached hereto at Appendix 1.
- 1.7 The following made valid objections to Tree Preservation Order 249 Land Adjacent 9 Leywell Drive, Carlisle.
 - ◆ Mr James Murray
- 1.8 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 the trees make to the public amenity of the locality was made
- 2.2 The trees were assessed using the Tree Evaluation Method for Preservation Orders (TEMPO) system. A score is awarded depending on five factors these being assessments of amenity, remaining longevity, relative public visibility, suitability for preservation, other factors 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 gave the trees a score which indicated the trees warranted the statutory protection afforded by a Tree Preservation Order.

3.0 Summary of Objections to Tree Preservation Order 249

- 3.1 The following objections have been made to the Tree Preservation Order:
- (i) The trees are diseased; and
 - (ii) dead branches within the trees are falling into the garden; and
 - (iii) the problems of leaf litter falling into the garden.
- 3.2 In considering the above objections Officers have the following comments to make:
- (i) During the visit to determine if the trees were worthy of statutory protection Officers observed that the tree numbered T2 had an area of decay at its base and a small fungal bracket. However, the existence of decay and fungal brackets alone do not make a tree unsafe, but it is the extent of decay and the effect the particular decay fungi has on the physical properties of the wood that determines the safety of the tree. A visual assessment of the tree indicated that the tree is not in imminent danger of failure under normal circumstances. However, ultimate responsibility for the tree rests with the tree owner, Barratt Homes. However, as a matter of good practice Officers have advised Barratt Homes to carry out a detailed inspection of the tree to assess the extent of the decay and assess the risk.

- (ii) In the document "Tree Preservation Orders A Guide to the Law and Good Practice" 6.2 Dead, Dying and Dangerous trees includes the sentence *In the Secretary of States view, this exemption allows the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree.* In the Officers reply dated 16 October 2009 to the letter of objection the objector is informed that they can remove the dead wood at their earliest convenience.
- (iii) Leaf fall is part of the life cycle of deciduous trees and unfortunately many leaves invariably fall into residential gardens. Whilst this may be an inconvenience this does not outweigh the benefit and public amenity the trees provide. Furthermore, the clearing up of leaves from a garden is considered part and parcel of property ownership and is not a substantive reason for the felling, or inappropriate pruning of a tree.

4.0 Conclusion

- 4.1 Whilst it is accepted that in the future it may be necessary to consider works to the trees the Tree Preservation Order does not prevent reasonable management in accordance with best practice, albeit that the prior consent of the Local Planning Authority is required.
- 4.2 Having duly considered the objections and having weighed these objections against the present and future value of the trees it is considered that the trees provide a significant level of public amenity and therefore merit the protection afforded by a Tree Preservation Order.

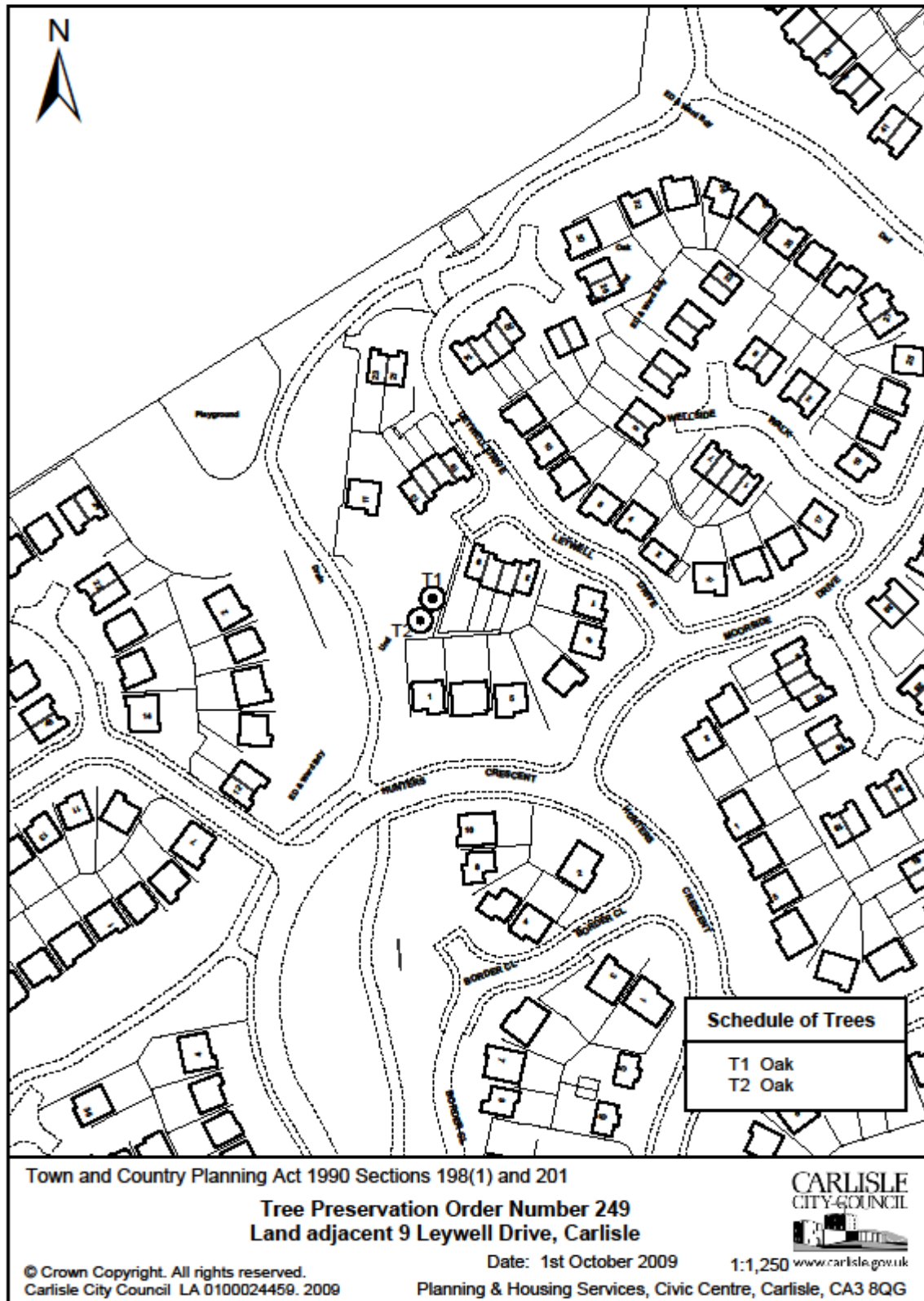
5.0 Recommendation

- 5.1 It is recommended that the Committee resolve to confirm Tree Preservation Order 249 Land Adjacent 9 Leywell Drive without modification.

Christopher Hardman
Local Plans and Conservation Manager

Contact Officer: Charles Bennett **Ext:** 7535

Tree Preservation Order 249 Plan & Statement of Reasons



TREE PRESERVATION ORDER No. TPO 249

LAND ADJACENT 9 LEYWELL DRIVE, 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 form and size are clearly visible from the footpaths and public open space and are in a prominent location. These large mature trees are a significant element in the landscape of the location, and their removal would have a detrimental impact on the public enjoyment of area. The tree is under threat of removal following enquiries relating to their felling.

Therefore, to ensure the continuation of the visual amenity that the trees provide the Council of the City of Carlisle considers it appropriate to protect the trees by means of a Tree Preservation Order.

Letter of objection and Officers reply

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|-----------------------------|---|
| LEGAL & DEMOCRATIC SERVICES | |
| FILE | |
| 15 OCT 2009 RR | |
| PASSED | |
| ANSWERED | |
| MAIL LOG | ✓ |

James Murray.
 9 Leywell Drive
 CARLISLE
 LA1 3TN.
 14/10/2009.

To Mr Egan.

I am writing to object to a T.P.O. that Charles Bennett has requested on the 1/10/2009. We had telephoned Mr Bennett asking if there was a T.P.O. regarding 2 Oak trees overhanging our property on Leywell Drive back in May. We were told there was no order on these trees but needed permission off Barrett Hone as the land still belongs to them. After asking permission for works to be carried out Barretts agreed to this. My wife wanted it in writing that there was no T.P.O. so she phoned Mr Bennett again to get this in writing, he has since been up to property and issued a T.P.O. on the day we telephoned him!

We required these works on trees due to them being diseased and some branches were dead and falling into our garden on a daily basis. Not mention the leaf litter.

We strongly object to this order as we think the trees are an accident waiting to happen and would not forgive Mr Bennett if anything was to happen to our only child and his cousins regarding the trees branches hitting them when landing in the garden. We believe the trees have had a good life and we would be willing to replant replacement trees of a realistic size for position they are in.

P.T.C

We believe Mr Bennett should not have issued this T.P.O to go ahead if he had any knowledge of these trees, or the stress they are causing us as a family.

Ideally the trees should be felled but if not possible, they should be cut back out of our garden as they're not our property. Mr Bennett also told us at a meeting at our property, that he thought if we were to cut back trees to the boundary, this would be too extreme as we would be cutting half the tree back. Therefore it is a bit extreme for us to deal with half a tree overhanging our property that doesn't belong to us.

We strongly object to this order and think it has been issued wrongly.

Yours

James Murray.

Development Services

Planning and Housing Services

Head of Planning and Housing Services: **A C Eales** Dip.TP MRTPI

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Mr Murray
9 Leywell Drive
Carlisle
CA1 3TN

Please ask for:
Direct Line:
E-mail:
Your ref:
Our ref:

Charles Bennett
01228 817535
charlesb@carlisle.gov.uk

CB/TPO 249

16 October 2009

Dear Mr Murray

OBJECTION TO TREE PRESERVATION ORDER 249 LAND ADJACENT 9 LEYWELL DRIVE

I refer to your letter dated 14 October 2009 objecting to Tree preservation Order 249 which has been forwarded to me so that I may respond.

In summary your objections relate to the safety of the trees, being prevented from carrying out work to the trees, and the leaf litter generated by the trees. I will deal with these three issues separately in the order set out above.

At the time of my site visit to determine if the trees were worthy of statutory protection I observed that the tree numbered T2 had an area of decay at its base and a small fungal bracket. The existence of decay and fungal brackets alone do not make a tree unsafe but it is the extent of decay and the effect that the particular decay fungi has on the physical properties of the wood that determines the safety of the tree. A visual assessment of the tree would indicate that the tree is not in imminent danger of failure under normal circumstances. However, as responsibility for the tree rests with the tree owner I have contacted Barratt Homes advising them to have an inspection of the tree carried out to assess the extent of the decay and assess the risk.

Both the Oak trees contain some dead wood, and this is normal for mature trees. An application under the Tree Preservation Order to remove the dead wood will not be required and this can be carried out at your earliest convenience. Any other works to the trees will require an application for consent and should be made on the appropriate form, a copy of which is enclosed.



INVESTOR IN PEOPLE

The Tree Preservation Order does not prevent works being carried out to the trees, albeit that an application for consent must be made to the Council. However, such works must be reasonable and in line with current best practice, and take into the valuable contribution the trees make to the landscape of the area.

Leaf fall by deciduous trees in the autumn is part of their natural lifecycle. Unfortunately many leaves end up in gardens, gutters, and ponds. Although this is an inconvenience the clearing up of leaves is part and parcel of property ownership and is not a substantive reason for the removal of the trees.

For the reasons set out above I trust that you are able to withdraw your objection.

Where objections are made to the making of Tree Preservation Orders a decision on their confirmation, that is making them permanent, is made by the Development Control Committee. It is my intention, should you wish to maintain your objection, to bring this Tree Preservation Order before the Development Control Committee at its meeting on the 18 December 2009.

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 29 October 2009 so that I can make the necessary arrangements.

Yours sincerely

C Bennett

Landscape Architect/Tree Officer