

CARLISLE CITY COUNCIL

Report to:- Development Control Committee

Date of Meeting:- 23 April 2010

Agenda Item No:-
DS. 23/10

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
58 CAVENDISH TERRACE, CARLISLE & 77 HALL MOOR
COURT, WETHERAL**

Report of:-

Assistant Director (Economic Development)

Report reference:-

DS. 23/10

Summary:-

This report considers whether the Tree Preservation Orders 58 Cavendish Terrace, Carlisle and Tree Preservation Order 77 Hall Moor Court, Wetheral should be remade and revoked or simply revoked.

Recommendation:-

Tree Preservation Orders 58 Cavendish Terrace, Carlisle and Tree Preservation Order 77 Hall Moor Court, Wetheral be revoked.

Christopher Hardman

Assistant Director (Economic Development)

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 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 Order 58 Cavendish Terrace, Carlisle, or Tree Preservation Order 77 Hall Moor Court, Wetheral 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 58 Cavendish Terrace, Carlisle was made on the 2nd November 1983 to protect a group of five Lime trees.
- 2.2 A site visit was carried out on 18 March 2010 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 there are a total of eight Lime trees within Group 1 which is indicated on the plan that accompanies the Tree Preservation Order as the land within the broken line. A copy of the plan is attached at Appendix 1
- 2.4 It is not known which of these eight Lime trees were the intended recipients of the protection afforded by the Tree Preservation Order, and this could give rise to confusion should an application be made to carry out works to these trees.
- 2.5 Furthermore, as 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.
- 2.6 Local Authorities have the powers to make Tree Preservation Orders where it appears expedient in the interest of amenity. These trees being large prominent trees clearly visible to the public have a significant amenity value. However, although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO, for example, if there is no threat to the trees.
- 2.7 A search of the Tree Preservation Order file, and the Tree Works in the Conservation Area file revealed no applications to prune or fell these trees, neither is it clear what threat to the trees prompted the making of the Tree Preservation Order in the first instance. Therefore, the expediency test cannot be met and it is considered inappropriate in this instance to make a new Tree Preservation Order.
- 2.8 Members should be aware that the trees protected by Tree Preservation Order 58 Cavendish Terrace are within the Stanwix Conservation Area. As such should the owner of the trees wish to carry out work to them, they must give six weeks prior notification of their intentions to the Local Authority. This allows time to consider whether the works are acceptable or not, and if not a Tree Preservation Order can be made to ensure that only appropriate works can be carried out.

- 2.9 Tree Preservation Order 77 Hall Moor Court, Wetheral was made on the 4 September 1989 to protect two Ash trees. A copy of the plan is attached at Appendix 1
- 2.10 Correspondence in the Tree Preservation Order file indicates that consent has been granted to fell both trees. A site visit was carried out on the 18 March 2010 to determine if the trees had indeed been removed, and if not if they warranted a new Tree Preservation Order.
- 2.11 The site visit revealed that both trees had been removed.

3.0 Conclusion

- 3.1 Tree Preservation Order 58 Cavendish Terrace, Carlisle does not protect the trees that it was intended to. The Tree Preservation Order is unenforceable, but remains a land charge and a public record. Furthermore, it would not be appropriate to make a new Tree Preservation Order to protect these trees as the expediency test cannot be met. However, the trees are also protected by virtue of their location within the Stanwix Conservation Area and will remain so requiring the trees owner to give six weeks prior notification of intention to carry out works to them.
- 3.2 Both trees that were intended to be protected by Tree Preservation Order 77 Hall Moor Court, Wetheral have been removed, and the Tree Preservation Order, would, if any trees that it was intended to protect remained, be unenforceable. However, the Tree Preservation Order remains a land charge and a public record

4.0 Recommendation

- 4.1 That Tree Preservation Orders 58 Cavendish Terrace, Carlisle, and Tree Preservation Order 77 Hall Moor Court, Wetheral be revoked

Christopher Hardman

Assistant Director (Economic Development)

Contact Officer: Charles Bennett

Ext: 7535

Tree Preservation Order Plans
Tree Preservation Order 58 Cavendish Terrace



