

Development Management Sub Committee

6 December 2023

Tree Preservation Order No. 206 (Western Harbour)

Item number

Report number

Wards

13 - Leith

Summary

Tree Preservation Order No. 206 (Western Harbour) was made on 13 June 2023 to protect woodland areas in the interests of amenity. This Order expires after 6 months unless it is confirmed within this time. The Order must be confirmed before 13 December 2023 to ensure it provides permanent tree protection.

Further analysis and consideration of the confirmation of the TPO has brought to the fore the allocation of the site for housing development. When considered in the context of Section 165 of the Act the exposure to a claim for compensation on the loss of housing land value is considered to be a significant risk to the confirmation of the TPO.

It is recommended that Committee do not confirm Tree Preservation Order No. 206 (Western Harbour).

Report

Tree Preservation Order No. 206 (Western Harbour)

Recommendations

1.1 It is recommended that Committee do not confirm the Order.

Background

2.1 Site description

The site is comprised of four plots of land on the Western Harbour totalling around seven acres in size. The site is located to the north of Western Harbour View. As part of a previous development in the area roads have been formed which create the individual areas. The area is characterised by self-seeded trees and some self-formed ponds.

The plots have been left without management for a number of years. They are enclosed by a chain link fence and do not have public access except for the footpaths that pass between them. In the years that the land has been unmanaged it has grown into a young woodland with areas of wetland and a range of birds including some rare bird species. The areas are valued as an urban greenspace by many city residents, some of whom have formed a campaign group to protect the greenspaces from development.

2.2 Site History

The sites are allocated in the adopted Edinburgh Local Development Plan (2016) under site EW 1a Leith Western Harbour for Housing-led Mixed-Use Development. The site forms part of a wider strategic housing allocation to deliver in the region of 3000 new homes.

The Proposed City Plan 2030 continues the allocation of the site for housing led, mixed-use development under Place Policy 4 Edinburgh Waterfront as site EW 1a. The capacity of the wider area is identified is 2,091 residential units.

Outline planning permission was granted in 2002 for a mixed-use development of the wider area (01/03229/OUT). In 2007 detailed planning permission was granted for three of the four plots covered by TPO 206 (07/00007/REM) including a total of 258 housing units. This permission was then amended by 13/00498/FUL. The permission was not implemented and has now lapsed.

In October 2023 a Proposal of Application Notice was submitted for a residential development and associated works on plot W1, the north-west plot. The application was approved subject to additional community consultation (23/06110/PAN).

Main report

3.1 Description of the Proposal

These four plots are development land, and it is expected that applications will be made for residential development in the future. While the land is allocated for housing it is appropriate to consider the protection of the green infrastructure. There is no designation available at this time which can directly protect the ponds or the wildlife, and a Tree Preservation Order could allow the Planning Authority to protect the natural assets on site.

3.2 Determining Issues

Section 160 of the Town and Country Planning (Scotland) Act 1997 states that a planning authority may make an order specifying any trees, groups of trees or woodlands in their district and providing for their preservation if it is a) expedient in the interests of amenity to make that provision, or b) that the trees, groups of trees or woodlands are of cultural or historical significance.

The planning authority must consider any representations made in accordance with the Tree Preservation Order and Trees in Conservation Areas Regulations before the tree preservation order is confirmed.

3.3 Assessment

To address these determining issues, the Committee needs to consider whether:

- a) the making of the Order is expedient in the interests of amenity or whether the trees, groups of trees or woodlands are of cultural or historical significance;
- b) the proposals relationship with the development plan;
- c) equality and human rights issues have been addressed and
- d) any representations received indicates the Order should be confirmed, confirmed with modifications or abandoned.

a) Amenity, Expediency and Cultural or Historic Interest

The trees are all quite young and do not have significant individual merit, however collectively they have a high landscape impact, forming the structure of a natural greenspace with strong visual amenity as well as what appears to be a high ecological value (it has not been possible to undertake any ecological surveys). The site is valued greatly for its amenity by the local community.

The trees are not considered to have cultural or historic interest.

b) Development Plan

The compliance with the Development Plan is not a consideration in the determination on whether to confirm a Tree Preservation Order. However, in this instance it is important to consider the development provisions for this housing allocated site. Both the Local Development Plan and the emerging strategy within Cityplan 2030 allocated the entire site area of the proposed TPO for a housing led development. A Proposal of Application Notice has recently been submitted to progress housing development on part of the site.

Any proposals that come forward would need to comply with the provisions set out within the Local Development Plan including policies on tree retention and biodiversity.

The adopted local development plan indicates the use of the wider site of Leith Waterfront incorporating Wester Harbour for approximately 4,000 residential units and the proposed City Plan for 2,091 residential units, the reduced figure representing the remaining site capacity. However, both plans set out principles for the development of the site to include the provision of open space.

NPF4 requires strong weighting to be given to the climate and nature crises (policy 1), habitat for biodiversity (policy 3), and retention of woodland (policy 6).

The supporting text of Policy Env 12 (Trees) of the Edinburgh Local Development Plan states that where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

Section 165 of the Town and Country Planning (Scotland) Act 1997 states that compensation is liable in respect of any loss or damage incurred in consequence of the refusal of an application where there is a requirement for permission under the order.

Without prejudice to the decision on any future planning application the confirmation of the Tree Preservation Order would expose the Council to the requirements of Section 165 of the Act.

c) Equalities and Human Rights

The proposals raise no equalities or human rights concerns.

The statutory requirement on planning authorities is to make Orders where this is in the interests of amenity. Amenity in this context is interpreted as extending beyond the amenity of an individual party and being of wider public benefit. An Order allows any person to apply for permission to carry out tree pruning, felling etc at any time; at that time the individual circumstances of the case must be assessed and a decision on tree work proposals reached. There is a right of appeal against the decision of a planning authority.

d) Representations

The planning authority is required to consider any objection or representation made within 28 days of making and advertising a Tree Preservation Order. The making of the TPO was advertised in the normal manner.

66 representations were received – 65 comments of support and one objection.

The comments of support included the following themes:

- The visual amenity, and landscape value of the woodlands, in particular with reference to its wildness and natural beauty, in contrast to other greenspaces which are more formal and designed,
- The contribution of the woodlands to wildlife and biodiversity,
- The benefits of the woodlands for the health and wellbeing of residents and visitors,
- The value of the greenspace in the context of the Newhaven/Leith area having limited greenspace and woodland,
- The value of the greenspace as part of the blue/green network,
- The ecosystem benefits of trees including climate change resilience, carbon capture and flood defence,
- The educational value of the sites especially for children and the local school,
- The value of the woodland as an enhancement of a tourist area.

The objection comment raises the following matters:

- The TPO might impede development. The site is allocated for development, permission has been granted previously, and development of the site is important for Edinburgh's housing targets. The TPO could compromise the site's potential for development.
- Rather than protecting the existing trees, it would be better to design in and plant new ones as part of future development.

- The trees are self-seeded and poor quality.
- The trees are shallow rooted. A tree assessment report has been provided which states that the topsoil layer on the site is very thin and lies on top of stones and rubble, therefore, the trees have a shallow rooting area and will be prone to uprooting in wind.

The planning authority has considered these issues. The TPO is not intended to prevent development on site but to ensure that the green assets are properly considered as part of the planning process. Retention of existing, established trees is generally preferable to removal and replanting.

It is acknowledged that the trees are not individually of high merit. However, this does not undermine the value as a collective young woodland. That they are self-seeded does not reduce their value.

It is evident that, due to the site's recent history, it has a stony subsoil base with a thin topsoil layer. The tree species growing are early successional species which are able to grow well in these poor conditions. It is evident from the successful growth of the trees that the stony layer has good water and oxygen availability and is penetrable by roots. It is very common in urban areas for trees to have very poor and limited rooting areas and yet many trees have long lives.

Conclusion

A balance must be made between the protection of the young urban woodland and the development potential of the site which is supported by the development plan. The retention of the young woodland cannot be considered in isolation.

TPO 206 was made under delegated powers to protect the woodlands from removal unless with the consent of the Planning Authority in order to allow further consideration of the importance of the area.

The further analysis and consideration of the confirmation of the TPO has brought to the fore the allocation of the site for housing development. When considered in the context of Section 165 of the Act the exposure to a claim for compensation on the loss of housing land value is considered to be a significant risk to the confirmation of the TPO.

It is recommended that the Tree Preservation Order is not confirmed at this stage.

David Givan

**Chief Planning Officer
PLACE
City of Edinburgh Council**

Appendices

APPENDIX 1 Tree Preservation Order First Schedule

Trees specified individually (marked in green on the map)		
<u>No on map</u>	<u>Description</u>	<u>Situation</u>
	None	

Trees Specified by Reference to an Area (with a continuous black line on the map)		
<u>No on map</u>	<u>Description</u>	<u>Situation</u>
	None	

Groups of Trees (within a broken black line on the map)		
<u>No on Map</u>	<u>Description</u>	<u>Situation</u>
	None	

Woodlands (within a continuous red line on the map)		
<u>No on Map</u>	<u>Description</u>	<u>Situation</u>
W1	Woodland formed of mixed species	On the land at: 1) WESTERN HARBOUR, NEWHAVEN and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID100315; 2) WESTERN HARBOUR, NEWHAVEN and being part of the Titles currently

		<p>registered in the Land Register of Scotland with Title Number MID113122;</p> <p>3) WESTERN HARBOUR, NEWHAVEN and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID197982.</p>
W2	Woodland formed of mixed species	On the land at WESTERN HARBOUR, NEWHAVEN and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID71955.
W3	Woodland formed of mixed species	On the land at WESTERN HARBOUR, NEWHAVEN and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID71955.
W4	Woodland formed of mixed species	On the land at WESTERN HARBOUR, NEWHAVEN and being part of the Titles currently registered in the Land Register of Scotland with Title Number MID71655

APPENDIX 2

Tree Preservation Order Map



**APPENDIX 3
Photographs**



Fig. 1: W1



Fig. 2: W2



Fig. 3: W3