

# Development Management Sub Committee

Wednesday 04 August 2021

## Confirmation of Tree Preservation Order No. 195 (82 Newbattle Terrace, Edinburgh)

Item number

Report number

Wards

Ward 10 – Morningside

### Summary

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Tree Preservation Order TPO No. 195 (82 Newbattle Terrace, Edinburgh) was made on 18 February 2021 to protect a mature sycamore tree in the interests of amenity. This Order expires after 6 months unless it is confirmed within this time. The Order must be confirmed before 18 August 2021 to ensure the Order provides permanent protection for the trees.

It is recommended that Committee confirms Tree Preservation Order No. 195 (82 Newbattle Terrace, Edinburgh).

### Links

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[Policies and guidance for this application](#)

CDP ENV12

# Report

## Confirmation of Tree Preservation Order No. 195 (82 Newbattle Terrace, Edinburgh)

### Recommendations

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1.1 It is recommended that Committee confirms the Order.

### Background

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#### 2.1 Site description

The site consists of the garden ground and large detached residential property (approx. 0.11 ha), which contain several individual, mature trees to the west and east of the property. The tree in question, a mature open grown sycamore is located in the north west part of the site towards the corner on Newbattle Terrace and Eden Lane. This site is within the Grange Conservation Area.

Photographs of the tree taken from Google Street View are provided in Appendix 3.

#### 2.2 Site History

6 June 2006 - planning application (reference 06/01825/FUL) for an extension to the existing house was withdrawn after the advice was given that the application would be refused.

24 February 2020 – preapplication consultation for the subdivision to accommodate a new dwelling (reference 20/00907/PREAPPP).

17 August 2020 – Notice of intent received to fell the sycamore tree to accommodate the extension of the property (reference 20/02366/TCO). Withdrawn after applicant was advised the felling of the tree should be dealt with as part of any planning application for the development.

11 January 2021 – Notice of intent received to fell the sycamore tree (reference 21/00088/TCO) due to negative impact on amenity of the occupier.

18 January 2021 – TPO No.195 made due to concern that, without a TPO being made, the tree could be felled upon the expiry of the statutory 6 weeks-notice (reference 21/00088/TCO) for tree work in conservation areas.

## Main report

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### 3.1 Description of The Proposal

This report deals with the confirmation of Tree Preservation Order TPO No.195. (82 Newbattle Terrace, Edinburgh).

A request for pre-application advice (20/00907/PREAPP) in respect of a proposed new building was received in 2020. Advice was given that the proposed development would lead to the loss of a large sycamore tree (which is the subject of this report) and perhaps others and unless it was shown that the trees were not worthy of retention, the proposals would not be supported.

There have since been two notifications of intent to fell the sycamore tree. The first (reference 20/02366/TCO) was on the grounds that the tree was in the way of a proposed building extension. The notice was withdrawn after the applicant was advised that the felling of the tree should be dealt with as part of a planning application for the development.

A second notification (reference 21/00088/TCO) of intent to fell the tree was received. The reason given was that the tree was having a negative impact on the amenity of the owner. The notice would have allowed the tree to be felled on the expiry of 6 weeks from the date of the notice. The tree was considered to be a prominent specimen contributing significantly to amenity. The effect on the amenity of the owner was not considered to outweigh the amenity provided by the tree. The applicant's agent was advised that the proposal would result in a Tree Preservation Order being made and was offered the opportunity to withdraw the notification as an alternative to making the Order. This was declined.

The Tree Preservation Order was made under delegated powers on 18 January 2021 to provide protection for the sycamore tree, a mature open grown specimen which is very prominent and considered to contribute significantly to the attractiveness and character of the locality. A Tree Preservation Order allows the Council to prevent tree removal where it would harm amenity and allow it to impose conditions on any consent for tree work including replacement planting.

### 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 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 proposal complies with the development plan;
- c) equality and human rights issues have been addressed; and
- d) any representations received require the Order to be abandoned, or confirmed with modifications.

#### **a) Amenity and Expediency**

The tree in question is of amenity value due to its prominence in the locality and its open grown form. The tree appears in reasonable health and condition with considerable future life expectancy and likely to be an attractive, enduring feature in the locality.

The expediency in making the Order relates to the receipt of a notice of intent to fell the tree which would allow the proposed work to be carried out after the expiry of 6 weeks. After consideration of the notice, there was not considered to be any grounds that would outweigh the amenity value of the tree and justify its felling. The only mechanism a planning authority has to provide long term protection to trees is through the use of a Tree Preservation Order. If the Order is not confirmed the tree can be felled after the expiry of six months from the making of the Order.

The making of the Tree Preservation Order was therefore expedient in the interests of amenity.

The tree is not considered to be cultural or historic significance.

#### **b) Development Plan**

Policy 'ENV 12' of the Edinburgh Local Development Plan 2016 states that where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

In view of the amenity provided by the tree, the proposal complies with the development plan.

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. One representation was timeously received and this was from the owner's agent objecting to the Order on the grounds that

- the tree is not special in terms of its species or prominence as it is obscured by a high wall and other features including the flats at Eden Terrace,
- that the removal of the tree would enhance the residential amenity of both the owner's garden ground by removing a cause of shading and sticky sap fall and bird droppings onto a patio and cars. It would also remove shading of and blocked views from the adjacent flats at Eden Terrace.

The issues raised in the objection have been considered. It is not the case that a tree has to be special to warrant the making of a TPO, simply that making an Order must be expedient in the interests of amenity or that a tree have cultural or historic value. The tree in question is an open grown tree so has had an opportunity to develop a full balanced crown. It is also situated in a prominent location where it can readily be readily seen from the public realm. The tree is valuable as part of the collective contribution trees make to the character and amenity of the locality but also as an individual open grown specimen.

While it is acknowledged that large trees cause shade and debris falling from trees and along with bird dropping can cause a nuisance to residents, these are not normally reasons to justify the felling of trees which contribute to wider amenity. The objection in respect of the disputed visual prominence of the tree has also been considered but the premise that the tree is obscured by high walls and building and that the majority of passers-by would be unaware of this tree unless looking up, is not considered a reasonable assessment of the value of the tree. Pictures of the tree can be seen at Appendix 3.

## Conclusion

The sycamore tree in question is of significant amenity value and contributes to the attractiveness and character of the area. The making of the Tree Preservation Order was expedient as otherwise the tree could have been felled after 6 weeks. The confirmation of the Order is necessary to prevent the felling of the tree. There are no grounds presented which would outweigh providing protection under a Tree Preservation Order to the tree,

It is recommended that the Tree Preservation Order be confirmed.

The Tree Preservation Order map and Schedule are enclosed at Appendices 1 and 2.

## **Financial impact**

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### **4.1 The financial impact has been assessed as follows:**

Costs are accommodated through existing budgets.

## **Risk, Policy, compliance and governance impact**

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5.1 Provided Tree Preservation Orders are confirmed in accordance with statutory legislation, the level of risk is low.

## **Equalities impact**

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### **6.1 The equalities impact has been assessed as follows:**

The application has been assessed and has no impact in terms of equalities or human rights.

## **Sustainability impact**

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### **7.1 The sustainability impact has been assessed as follows:**

This application is not subject to the sustainability requirements of the Edinburgh Design Guidance.

## **Consultation and engagement**

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### **8.1 Pre-Application Process**

Not applicable.

## **8.2 Publicity summary of representations and Community Council comments**

The Order was advertised in accordance with regulatory requirements. Copies were not displayed in the local library and at the Planning and Building Standards reception in Waverley Court due to COVID restrictions but electronic copies could be requested by email.

### **Background reading/external references**

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- [Planning guidelines](#)
- [Edinburgh Local Development Plan](#)
- [Scottish Planning Policy](#)

## Statutory Development

### Plan Provision

Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders (ENV12).

### Date registered

N/A

### Drawing numbers/Scheme

N/A

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## Links - Policies

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### Relevant Policies:

#### Local Development Plan

#### LDP Policy ENV12 (Trees)

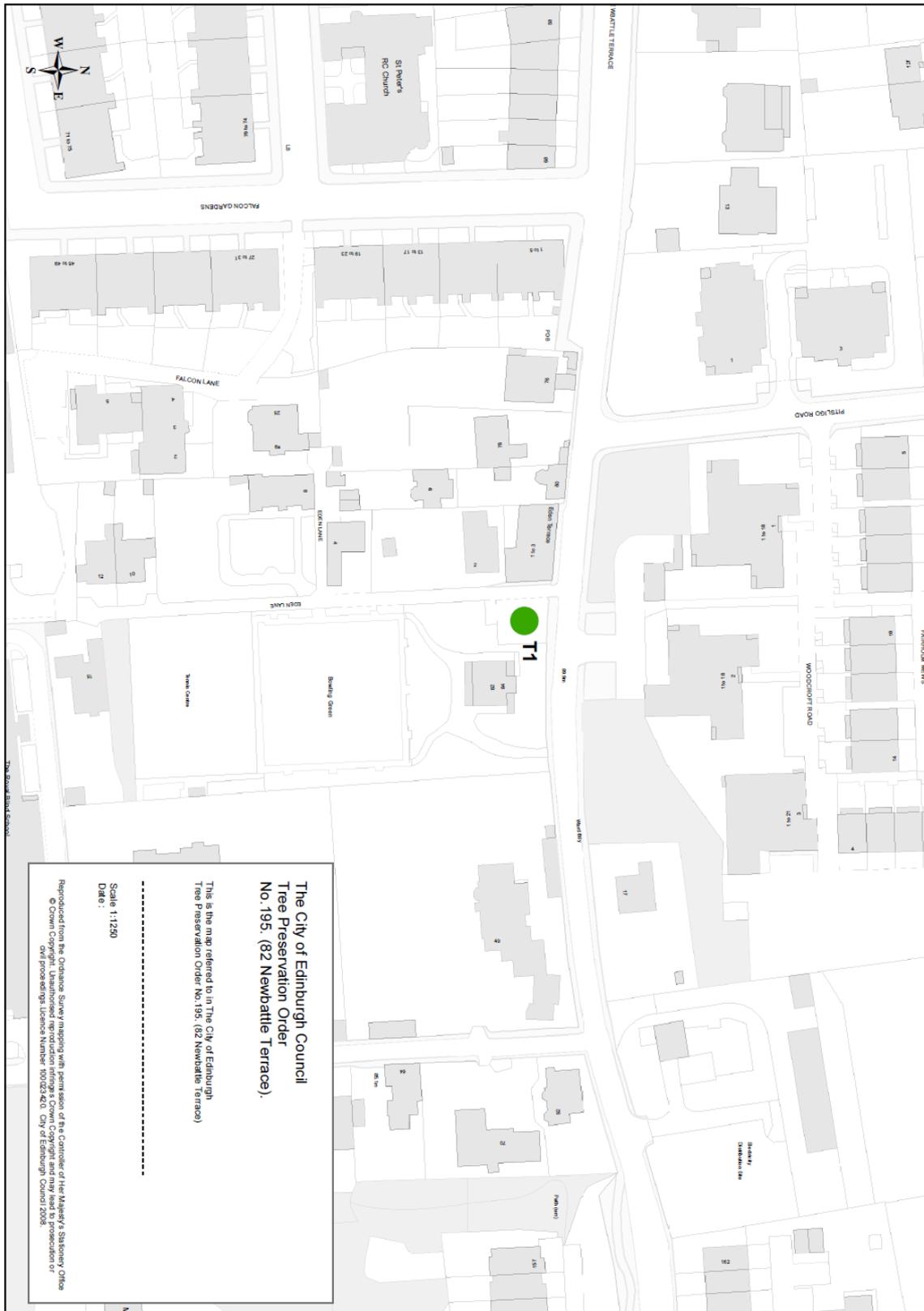
Development will not be permitted if likely to have a damaging impact on a tree protected by a Tree Preservation Order or other tree worthy of retention unless necessary for good arboricultural reasons. Where such permission is granted, replacement planting of appropriate species and numbers will be required to offset the loss to amenity.

This policy recognises the important contribution made by trees to character, biodiversity, amenity and green networks. In assessing proposals affecting trees, the Council will consider their value, taking into account status such as Tree Preservation Order, heritage tree, Ancient Woodland and Millennium Woodland, and information from tree surveys.

Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.

# Appendix 1

## Tree Preservation Order Map



# Appendix 2

## Tree Schedule

<b>Trees Specified Individually (marked in green on the maps)</b>		
<b>No. on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Sycamore	
<b>Trees Specified by Reference to an Area (within a solid black line on the map)</b>		
<b>No. on Map</b>	<b>Description</b>	<b>Situation</b>
	None	
<b>Groups of Trees (within a broken black line on the maps)</b>		
<b>No. on Map</b>	<b>Description</b>	<b>Situation</b>
	None	
<b>Woodlands (Within a red line on the maps)</b>		
<b>No. on Map</b>	<b>Description</b>	<b>Situation</b>
	None	

# Appendix 3

## Photographs

Sycamore tree looking west on Newbattle Terrace



Sycamore tree looking east on Newbattle Terrace

