

Development Management Sub Committee

26 April 2023

Confirmation of Tree Preservation Order No. 202 (Ravelston Dykes Road)

Item number

Report number

Wards

6 – Corstorphine/Murrayfield

Summary

Tree Preservation Order No. 202 (Ravelston Dykes Road) was made on 18 November 2022 to protect a roadside woodland strip 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 May 2023 to ensure it provides permanent tree protection.

It is recommended that Committee confirms Tree Preservation Order No. 202 (Ravelston Dykes Road) in a modified form to take account of representations.

Links

[Policies and guidance for this application](#) CDP ENV12

Report

Confirmation of Tree Preservation Order No. 202 (Ravelston Dykes Road)

Recommendations

- 1.1 It is recommended that Committee confirms the Order with the modifications described in this report.

Background

2.1 Site description

The site is a communal green area shared by the properties 69 to 85 Ravelston Dykes Road. The nine properties are residential houses, each with a small private garden to the rear, behind which is a large shared space, which falls between the houses and Ravelston Dykes Road. It is within the West Murrayfield Conservation Area. The Order applies to a strip of trees along the west side of the site.

2.2 Site History

In October 2021 the planning authority received 21/05156/TPO which proposed the removal of 12 pine trees. This was submitted as a conservation area notification of tree work, but changed to an application for consent under a TPO by the planning authority as the trees were believed to be covered by TPO 15. The proposal was supported by a management plan for the site which was written in 2004. The application was refused due to the impact on the local amenity, as the trees are very prominent in the landscape from Ravelston Dykes Road.

In June 2022 the planning authority received application 22/03247/TPO which proposed the removal of eight Scots pine, three Sitka spruce and one larch. This application was refused on the same grounds as the previous application.

The refusal of 22/03247/TPO was appealed (appeal ref TWCA-230-2034). In the statement to the appeal, the appellant argued that the trees were not covered by TPO 15 as they were not planted until after the TPO was made and the wording of the Order excluded such trees. Upon reviewing the evidence provided, the planning authority agreed with this position. In order to ensure that the trees were protected pending the appeal outcome, TPO No. 202 (Ravelston Dykes Road) was made. The Order was served on 18 November 2022.

Following the service of the new Order and the Council's acceptance during the appeal that the trees in question had not been included in TPO 15 , the reporter concluded that the DPEA had no remit in the matter.

Main report

3.1 Description of The Proposal

The planning authority received tree work application 22/03247/TPO for the removal of twelve conifer trees from the tree strip adjacent to Ravelston Dykes Road. The application was supported by a management plan from 2004 which proposed the removal of all large conifer species from this strip and replanting with other smaller species. The applicant has been clear that their intention is to complete this management plan and remove all the large conifers.

The Arboricultural Officer was concerned at this proposal, as the conifers are a prominent feature within the local landscape, and their removal would mean a significant loss of local amenity. The tree removals were not justified on arboricultural grounds, but were planned as part of an aesthetic re-landscaping of the site for its private users. The Arboricultural Officer took the position that a change of private aesthetic was not a strong enough reason to remove trees which have significant public amenity value and refused the tree work application.

The applicant appealed to the DEPA and submitted evidence including that the 12 trees in question were not subject to TPO No.15. The Arboricultural Officer reviewed the terms of the Order and agreed with the argument made by the appellant. The trees were still within West Murrayfield Conservation Area so subject to formal protection requiring six weeks notice to be given to the planning authority before the proposed work can commence. This notice is intended to allow the planning authority to consider the proposed work and make a TPO to prevent any work taking place. As six weeks had expired since the submission of the tree work application and it was found that the trees were not covered by a TPO it could be said that the applicant was at liberty to fell the trees as proposed.

The Arboricultural Officers considered the high amenity value of the trees to justify the making of a new Tree Preservation Order to protect the belt of trees from removal. Tree reservation Order No. 202 (Ravelston Dykes Road) was made under delegated power on 18 November 2022. This means that a previous 6 week notice of proposed tree work no longer enables the tree work to be carried out and now the express consent of the Planning Authority is required for felling or other work to the trees. After the Planning Authority conceded that the trees subject to the appeal were not protected by a TPO at the time of the tree work application the DPEA determined that there was no remit for an appeal.

There is sympathy with the applicants that an historic error had been made by the Planning Authority in considering the trees in question as being subject to TPO No.15. The amenity provided by the trees is however considered to justify their protection by an Order.

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 proposal complies 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 woodland strip contains a mix of broadleaved and coniferous trees, ranging in age class from young to early maturity. The taller trees within the strip are highly visible from Ravelston Dykes Road, forming half of an avenue of trees and creating a green corridor through which vehicles and pedestrians pass. The trees also act as a screen – when viewed from within the school to the east, they form a green screen where there would otherwise be a view out to a large house. Some of the trees within the strip are evergreen, so they form an attractive green feature and functional screen all year round. The strip

therefore makes a valuable contribution to the local landscape and has high amenity value.

The making of the Order is expedient because the owners of the trees have expressed their intention to remove all the large conifer species from the strip, which would radically reduce its amenity value.

The woodland is not considered to have cultural or historic interest.

b) Development Plan

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.

In view of the amenity provided by the trees, the requirement to apply a Tree Preservation Order 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 received, from the Tullyveolan Residents Association which represents the collective owners of the site. The full representation has been circulated to members by committee services. Objections were made to the TPO on the following grounds:

- That the work was agreed with the planning authority in 2004;
- That their application 22/03247/TPO constituted a notice of intention to carry out works within a conservation area, and that the planning authority may make a TPO only within six weeks of that notice, and because that six week period expired without a TPO being made, that the residents now have a two year period in which they may proceed with the tree works;

- That the strip of trees should not be classified as a woodland as it is “not a wild area, nor is it a forest” and that it is too small to be considered a woodland, and it is within a garden;
- That the trees are described in the first schedule as “Woodland formed primarily of conifers” although conifers do not form the majority of the trees;
- That the woodland areas have been included in the section of the table entitled “Trees specified individually”, and the “Woodlands” section had been left empty.

The residents have a letter from the Arboricultural Officer written in 2004 in which the Officer raises no objection to a programme of tree works. While the programme appears to relate to the trees subject to the most recent tree work application, the planning authority has no record of these communications and cannot verify the context of the letter or the content of the plan the letter refers to. The letter references TPO 15 and appears to have been written from the position that this TPO covered the trees. The letter did not refer to the granting of consent and contained no conditions or restriction on the length of time any permission would apply which would normally be applied to permission. Additionally, communications from 18 years ago would not restrict the planning authority when making decisions on how to best protect trees today.

The claim that the tree work application constitutes six weeks notice of intent to carry out tree works in a conservation area and therefore the TPO is ineffective because it was not made within six weeks of the application date incorrect and based on a misreading of the legislation. There is nothing which restricts the planning authority to this six week period for making a TPO. A TPO may be made at any time, and then overrides the provisions controlling trees in a conservation area.

It is appropriate to describe a strip of trees of this nature as a woodland strip within an urban space. Within cities, areas of trees do not have to be large or wild to be considered woodland. It is also the case that the trees are not within what would normally be considered a domestic garden, as it is a large greenspace shared by a number of properties which also have smaller individual private gardens. It is common for tree strips of this type to be classified as woodlands within a town and this designation is considered to be an appropriate description, fitting of the category of tree description in the Order which provides for trees to be described with reference to an Area, Individuals, Groups or Woodland.

The final two comments, identifying drafting errors in the first schedule, are accepted as valid, and two modifications are recommended to the TPO in order to correct these errors. The wording “woodland formed primarily of conifers” has been modified to “woodland formed of conifer and broadleaved species”, and the title information in the “Trees specified individually” and “Woodlands” sections are to be reversed.

Conclusion

This woodland strip has significant landscape value contributing to public amenity and the character and attractiveness of the area. The owners have made clear their intention to remove many of the larger trees in the strip. The Order prevents the loss of these trees unless with the consent of the Planning Authority which can ensure that regard is given to the impact on amenity and the environment and that conditions can be used to require replacement tree planting to preserve the character of the woodland as far as possible.

TPO 202 was made under delegated powers to protect the trees from removal unless with the consent of the Planning Authority.

It is recommended that the Tree Preservation Order be confirmed with modifications as described in the “Representations” section above to provide permanent protection to the trees which could otherwise be felled.

The Tree Preservation Order map and Schedule are enclosed at Appendices 1 and 2 and photographs of the trees at Appendix 3.

Financial impact

4.1 The financial impact has been assessed as follows:

Costs are accommodated through existing budgets.

Risk, Policy, compliance and governance impact

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

Equalities impact

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

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

8.1 Pre-Application Process

Not applicable.

8.2 Publicity summary of representations and Community Council comments

The Order was advertised in the local press on 18 November 2022 and displayed at Blackhall Library in accordance with regulatory requirements. A copy was also available to view on the Council's website.

Background reading/external references

- [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

Relevant Policies:**Local Development Plan****LDP Policy ENV12 (Trees)**

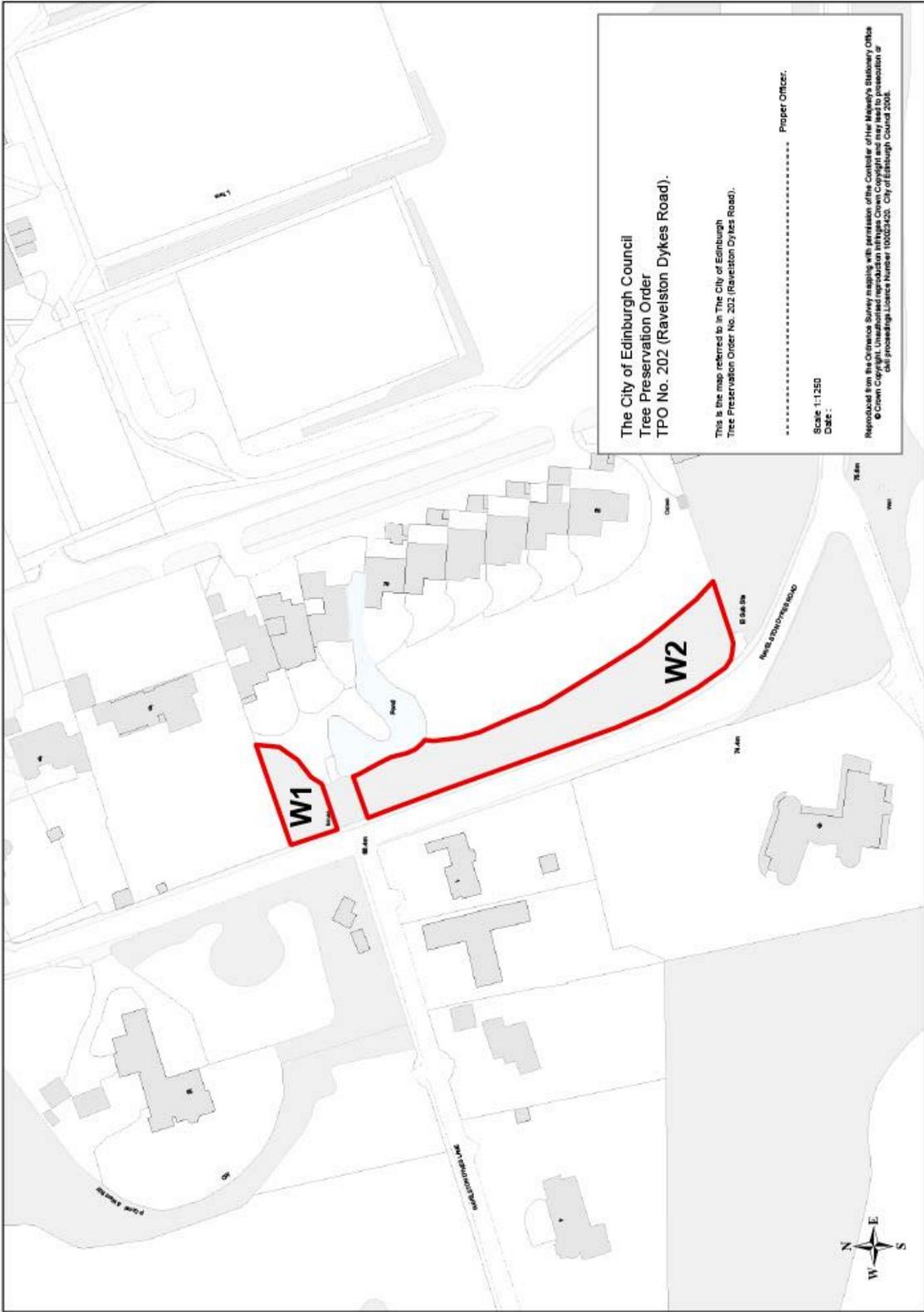
Development will not be permitted if likely to have a damaging impact on a tree protected by a Tree Preservation Order or other tree worthy of retention unless necessary for good arboricultural reasons. Where such permission is granted, replacement planting of appropriate species and numbers will be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



Fig. 1: The tree strip as viewed from the north-east



Fig. 2: Part of the tree strip from Ravelston Dykes Road