

Development Management Sub Committee

13 March 2024

Confirmation of Tree Preservation Order No. 209 (Greenhill Court)

Item number

Report number

Wards

10 - Morningside

Summary

Tree Preservation Order No. 209 (Greenhill Court) was made on 27 September 2023 to protect two lime trees in the interests of amenity. This Order expires after 6 months unless it is confirmed within this time. The Order must be confirmed before 27 March 2024 to ensure it provides permanent tree protection.

It is recommended that Committee confirms Tree Preservation Order No. 209 (Greenhill Court).

Links

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

Report

Confirmation of Tree Preservation Order No. 209 (Greenhill Court)

Recommendations

a.1 It is recommended that Committee confirms the Order.

Background

2.1 Site description

The site is a modern flatted block and hospital conversion within the Merchiston and Greenhill Conservation Area. The trees subject to the TPO form a pair (T1 and T2) and are to the frontage addressing the street. The area is a quiet leafy street characterised by sandstone villas with small front gardens many of which accommodate trees.

2.2 Site History

13 March 2023 - Tree works Notice 23/01082/TCO was submitted to the planning authority seeking to fell a lime tree, T1. The tree officer evaluated the tree as having public amenity value worthy of protection and advised lesser suitable works. The applicant agreed and confirmed revision to reduce the height of the tree in question by up to 3m and pruned back to allow a 2m clearance to adjacent properties and repair the wall. The decision on this occasion was to not make a TPO permitting the lesser works.

17 August 2023 - further tree works Notice 23/03756/TCO submitted to fell the Lime tree, T1. The recommendation on this occasion was to make a TPO and for it to also cover the other lime tree, T2 because together they provide high amenity value.

27 September 2023 – Making of provisional TPO 209 Greenhill Court.

2 November 2023 - Following the making of the provisional TPO 209, a TPO tree works application 23/06605/TPO was received to fell the two limes T1 and T2 citing “*height and root growth affecting foundations to adjacent buildings*”, The application was supported by two reports:

- a. A stone-mason's report supported with four photographs and
- b. A structural inspection report by consulting engineers.

However no Arboricultural report was submitted.

A site visit was made by the tree officer on 14 November 2023. The trees were seen in the context of other lime trees in the vicinity on the opposite side of the road. The trees T1 and T2 are lapsed lime pollards and despite this, appeared to be in good condition providing public amenity value worthy of a TPO. Minor cracks were visible in the wall associated with both trees and minor displacement outward in the case of T1. However, the trees are capable of being managed by pruning by either crown reduction or cyclical pollard management as high pollards (See BS 3998:2010 Tree works Section 7, 7.10 and Annex C, C.1 and C.2) and minor defects in the wall are capable of remedy without felling the trees. The application was refused.

18 December 2023 - The applicants lodged an appeal against the decision of 23/06605/TPO to the DPEA. The Appeal was dismissed by DPEA on 15 February 2024. (See Background Papers).

15 February 2024 - Further TPO application 24/0744/TPO submitted to reduce height by up to 3m and prune back from flats to give 2m clearance of TPO T1 lime tree. This is pending decision.

It should be noted that prior Notice 17/01099/TCO dated 10.03.2017 had permitted routine tree management including pruning of basal epicormics back from wall and crown reduction to reduce wall pressure, along with removal of major deadwood.

Main report

3.1 Description of the Proposal

The planning authority sought to protect the two limes following the receipt of Tree Works Notice 23/03756/TCO to fell T1 which cited "boundary wall damage" and a works description "*Remove. Ongoing wall movement. Loss of stability causing public safety concern for footway users*". The Notice application was supported by the opinion of a stonemason. The wall in question is a low capped ashlar wall supporting panels of railing between tall, capped pillars.

A site visit was made by the tree officer on 13 September 2023. The tree was seen in the context of another lime with which it formed a pair to the frontage of Greenhill Court and a row of lime trees on the opposite side of the road. The tree, a lapsed lime pollard, appeared to be in good condition and was evaluated as providing public amenity value along with the other lime worthy of TPO. The trees are capable of being managed by pruning without the need to fell. The minor crack in the wall with minor displacement outward, were judged insufficient reason to fell a tree, as it is capable of remedy without felling the tree.

The trees contribute to the cadence of trees along Greenhill Terrace and are important for the character and appearance of the Conservation Area. The recommendation was to make a TPO to protect the trees and the Order was served on the 27 September 2023.

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 trees are mature large specimens often used and suitable for the urban street context. The trees provide a high degree of public amenity value and were under threat of felling. The preservation of the trees in this case was expedient as it was the only means by which the proposed felling could be prevented.

The lime trees feature in a photograph of Greenhill Terrace in the Merchiston and Greenhill Conservation Area Appraisal, page 35 demonstrating that they are important assets within the streetscape.

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.

Two representations were received. One from the applicant (Charles White Ltd.) of 23/03756/TCO acting on behalf of the Greenhill Residents Committee received 26 October 2023 and a second from a Greenhill Court resident received 27 October 2023.

Objection from the applicant

The main issue cited was that the two lime trees were alleged to be causing significant damage to the boundary walls and that potential future damage to the foundation of the adjacent building would be a financial burden on the development.

The tree officer evaluated that the trees are capable of either being crown reduced as done in the past (17/01099/TCO) or, by undertaking a phased programme of works in accordance with British Standard BS 3998:2010 Tree Works (Section 7, 7.10 and Annex C, C.1 and C.2) to establish new higher pollard points and for the tree to then be thereafter managed cyclically as high pollards.

The issue of conflict between trees and masonry walls was also evaluated by the tree officer as capable of mitigation through modification to the wall to alleviate pressure points without loss of the trees.

Representation from a resident of Greenhill Court

The resident stated they are not on the Residents Association committee and are expressing personal opinion. They stated the tree had grown considerably and that they had been advised it was damaging the wall and was a potential danger to the building. The council has the power to make the Order but suggested the council dialogue with those seeking to fell and asked that the case be referred to the Development Management Committee.

Conclusion

The trees are mature lime typical for the urban street context and featured within the Greenhill Terrace in the Merchiston and Greenhill Conservation Area Appraisal. The trees are significant assets contributing to the character and appearance of the streetscape within the Conservation Area. They have not been properly managed as pollards and have lapsed. They are capable of being brought into effective management either periodic crown reduction or establishment of high pollard points while the low wall is capable of being repaired with modifications to alleviate pressure without requiring the felling of the trees.

TPO 209 was made under delegated powers to protect the two lime trees from removal unless with the consent of the Planning Authority.

It is recommended that the Tree Preservation Order be confirmed in order to provide permanent protection.

The Tree Preservation Order Schedule and map 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 27 September 2023 and displayed at Morningside Library, 184 Morningside Road, Morningside, Edinburgh EH10 4PU 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](#)
- [National Planning Framework 4](#)
- [Town and Country Planning \(Scotland\) Act 1997 \(legislation.gov.uk\)](#)
- [The Town and Country Planning \(Tree Preservation Order and Trees in Conservation Areas\) \(Scotland\) Regulations 2010 \(legislation.gov.uk\)](#)
- [Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](#)

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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PLACE

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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.

Appendices

APPENDIX 1 Tree Preservation Order First Schedule

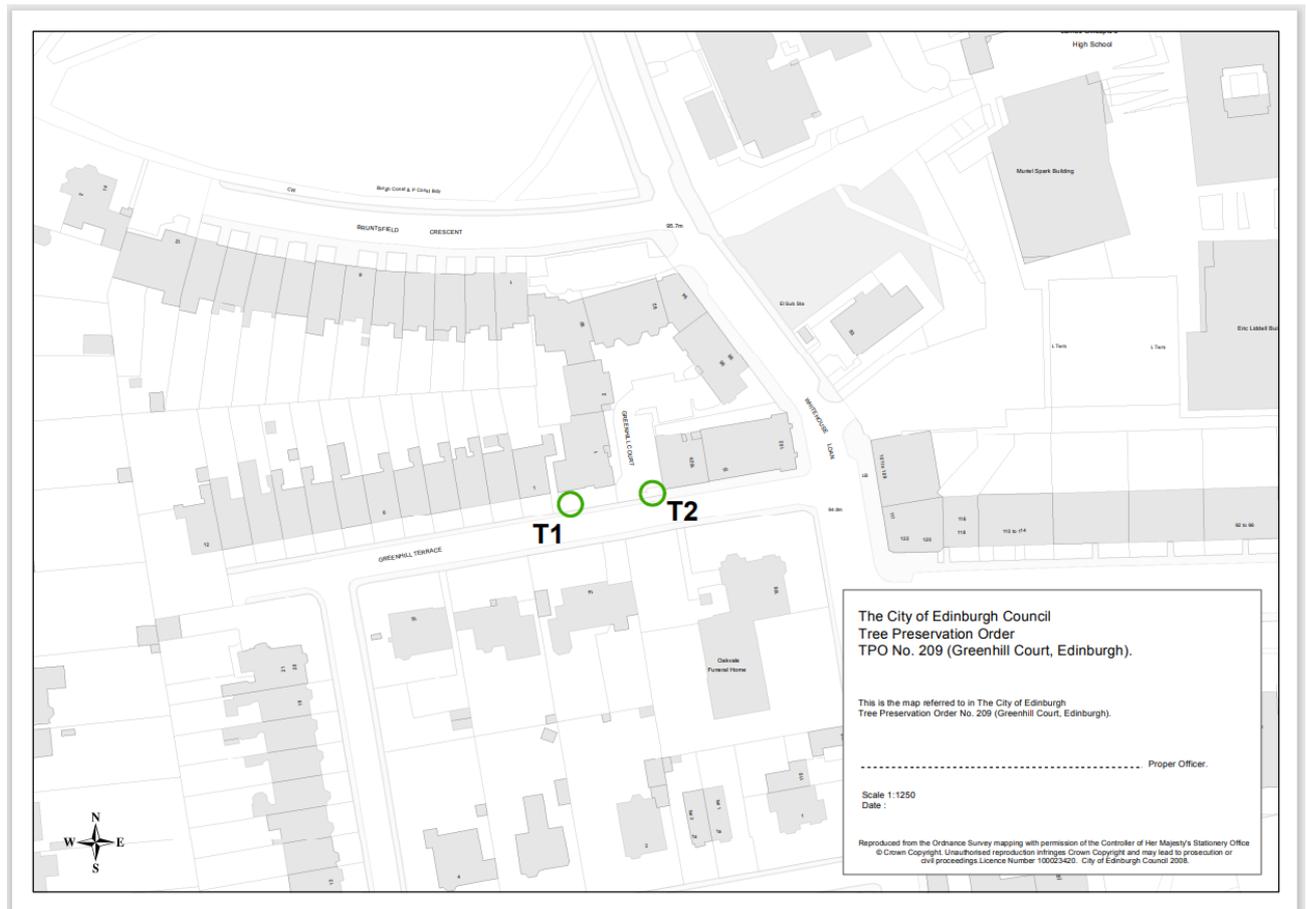
SCHEDULE 1

Trees specified individually (marked in green on the map)		
<u>No. on map</u>	<u>Description</u>	<u>Situation</u>
T1	Lime	On the land at GREENHILL COURT, EDINBURGH and being part of the subjects more particularly described in the disposition in favour of AMA (New Town) Limited recorded in the Division of the General Register of Sasines applicable to the County of Midlothian on 25 July 1995.
T2	Lime	On the land at GREENHILL COURT, EDINBURGH and being part of the subjects more particularly described in the disposition in favour of AMA (New Town) Limited recorded in the Division of the General Register of Sasines applicable to the County of Midlothian on 25 July 1995.
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>
None		

APPENDIX 2

Tree Preservation Order Map



**APPENDIX 3
Photographs**



Figure 1 The lime trees T1 (centre) and T2 (left of centre)



Figure 2 The trees (*left of frame*) in street context, Greenhill Terrace.



Figure 3 The trees (*right of frame*) as seen from junction of Greenhill Terrace and Whitehouse Loan.