

Development Management Sub Committee

21st August 2024

Confirmation of Tree Preservation Order No. 212 (59 Fountain Hall Road)

Item number

Report number

Wards

15.00 Southside / Newington

Summary

Tree Preservation Order No. 212 (59 Fountain Hall Road) was served on the 3rd April 2024 to protect 'All trees consisting of Cedar, Cherry, Lawsons Spruce and Yew in the interests of amenity'. This Order expires after 6 months unless it is confirmed. The Order must be confirmed before 3rd October 2024 to ensure it provides permanent tree protection.

It is recommended that Committee confirms Tree Preservation Order No. 212 (59 Fountain Hall Road).

Recommendations

1.1 It is recommended that Committee confirms the Order.

Background

2.1 Site description

Fountain Hall Road is a semi quiet street with a verdant character and a number of prominent trees set within generous back gardens. The property is a well-proportioned dwelling with a sizeable front and rear garden. The trees, subject of this order are located within the rear garden along the southern boundary and consist of Cedar, Cherry, Lawsons Spruce, and Yew. These trees provide a high level of amenity on the northern aspect from St Alban's Road, adding to the seasonal character due to their evergreen nature.

The area between St Alban's Road and 59 Fountainhall Road is quite well developed with a number of properties to the rear of No. 59. The presence of trees helps to create a verdant character, offsetting the built form and acting as a screen between dwellings. In this regard, they play an integral part of the character of the street scene.

The trees subject to this TPO are within the Grange Conservation area.

2.2 Site History

19th February 2024 - A tree works notice submitted to the Council is for works to trees at the rear of 59 Fountainhall Road, Reference: 24/00778/TCO for the pruning of:

T1 Cedar. Crown reduce by 5m.

T2 Cedar. Crown reduce over rear boundary by 2m.

T3 Lawsons Cypress reduce height by up to 5m.

9th March 2024 - After negotiation with the Council Tree officer, the applicant submitted a modified series of reduced tree works.

15th March 2024 - Site visit undertaken by Tree Officer to inspect trees and consider the proposal in the context of the trees condition.

3rd April 2024. - proposed and amended works did not go far enough to secure the long-term viability of the trees and a TPO 212 *59 Fountainhall Road* was served.

Other works relating to two sycamores and a broken branch within the Cherry submitted within the same notice and were not objected to, these works could proceed without further permissions.

Main report

3.1 Description of the Proposal

After a site visit from the Tree Officer, it was concluded that the proposed work, as first applied and subsequently amended, would still have a detrimental impact on the condition of the above trees. No supporting evidence provided at the time demonstrated the need to carry out the work to the proposed extent. A minor reduction in the specification was submitted by the applicant but they did not go far enough to secure the long-term viability of the trees and so the Council made the decision to serve TPO 212.

A site visit was made by the Tree officer, but it was evident that the trees were not in a condition that warranted the full extent of the proposed works and recommended the withdrawal of the notice. Following this, confirmation was received from the applicant, who wished to keep the notice active rather than withdraw.

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 group of trees are a significant feature from St Alban's Road and sit prominently on the skyline above the dwellings which back onto 59 Fountain Hall Road. The Cedars are a focal point from the road frontage giving the appearance of age and maturity to what would be relatively new properties. The trees are less prominent from Fountainhall Road but no less important to the wider street scene and offer a verdant back drop to the house as a collective of trees from within and around the dwelling.

It is expedient to serve and confirm the Order as any significant pruning will impact individually on the trees and risks their long-term health, as well as reducing the amenity these trees provide and subsequently reducing the character of the whole area as one of verdant views and mature trees.

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 conduct 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 email was received from a resident. No other response or comments/objections were made to the Order. The questions raised have been addressed below.

- Why has this TPO been issued given we are already in a tree conservation area?

The TPO was served following the submission of a notice under the Conservation area for pruning of trees within the curtilage of the property. The Council can only respond in one of two ways which is to allow the work to go ahead or to object and the Council has to serve a TPO (tree preservation order) to object. The Council did object to the proposed work as the pruning of the tree would have a detrimental effect on the trees and the character and amenity of the site.

- What additional restrictions are in place in a TPO by comparison to a tree conservation area?

The trees remain protected in almost the same way as previous and work can be applied for and agreed but if the Council do not agree with the proposed work, then it can refuse the application. In the same way as a planning application, the applicants can then appeal that decision.

- Why specifically has this property been chosen for a TPO, when most of the rear boundaries between Fountainhall Road and St. Albans Road have matured trees?

See first response above.

- The tree conservation area is enough to protect these trees. There is nothing exceptional about these trees in comparison to the many other trees within the Grange Conservation Area and certainly do not merit a TPO in their own right. Due to the wording of the TPO, as the trees are not named any tree of the named species are protected regardless of their age. This feels far too broad a categorisation, protected trees should be named and labelled on the map to prevent any saplings of these species being added to the TPO assuming it is held in perpetuity.

The TPO appropriately includes just the pertinent trees within the order which provide the highest level of amenity and so it's not considered necessary to modify the order on this occasion. Due to the nature of the area order it would only cover the identified species and would not cover any saplings that may subsequently grow up.

Conclusion

The trees are principal features of the site which help to create a good level of amenity between the properties and from St Alban's Road and Fountainhall Road, adding seasonal character and creating an attractive roofline of vegetation between dwellings.

TPO 212 was made under delegated powers to protect the tree/s from significant pruning unless with the consent of the Planning Authority. It is recommended that the Tree Preservation Order be confirmed 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.

Consultation and engagement

6.1 Publicity summary of representations and Community Council comments

The Order was advertised in the local press on 15 March 2024 and displayed at Moredun 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](#)
- [National Planning Framework 4](#)

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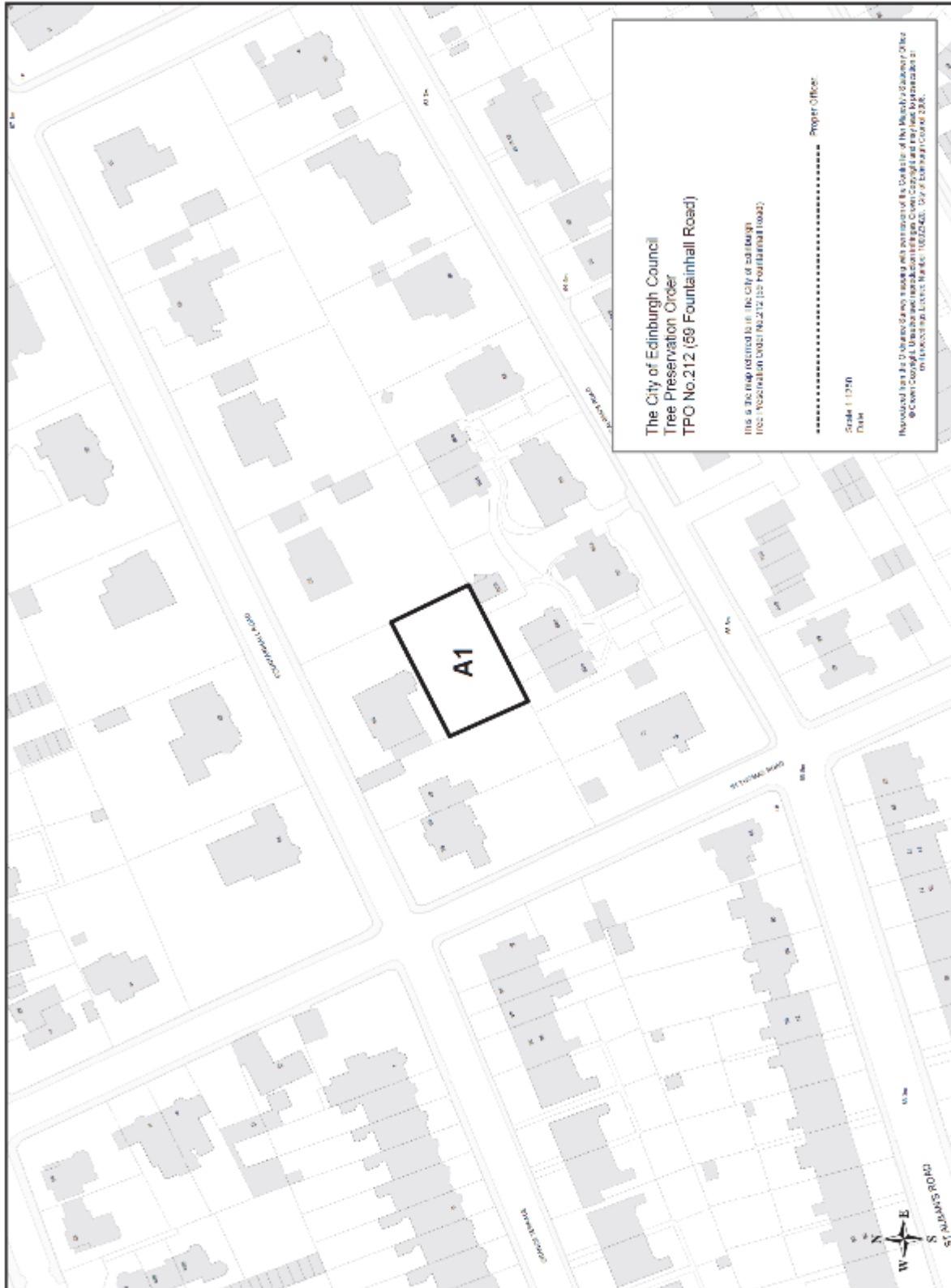
Appendices

APPENDIX 1

Tree Preservation Order First Schedule: Original

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>
A1	All trees consisting of Cedar, Cherry, Lawsons Sp. And Yew.	

APPENDIX 2 Tree Preservation Order Map



APPENDIX 3 Photographs

Fig 1. View of trees from St Albans Road.



Figure 2 – Further views of trees from St Albans Road.

