

Report

Report to:	Planning Committee
Date of Meeting:	28 August 2018
Report by:	Executive Director (Community and Enterprise Resources)

Subject:	South Lanarkshire Council Tree Preservation Order No. SL50 (2018) 26 Grenville Drive, Cambuslang
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ seek approval to confirm the South Lanarkshire Council Tree Preservation Order No. SL50 (2018) 26 Grenville Drive, Cambuslang

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that Committee confirm the South Lanarkshire Council Tree Preservation Order No. SL50 (2018) 26 Grenville Drive, Cambuslang.

3. Background

- 3.1 Approval was given by Committee on 15 August 2017 in relation to 26 Grenville Drive, Cambuslang to promote a Tree Preservation Order (TPO).
- 3.2 The Order to protect the two mature trees at this site was imposed in order to protect the trees from being removed or harmed by inappropriate tree works. The trees are considered to make a positive contribution to the sense of place, character and amenity in the local area as a result of their size, form and siting. Following an assessment of the site by the Council's Arboricultural Manager, it was recommended that the two trees were protected by the promotion of a TPO and this was agreed to by the Planning Committee at the meeting of 15 August 2017.

4 Current

- 4.1 Following the period of consultation, three letters of objection have been received by the Council in respect of this matter. These were all submitted on behalf of, or by the immediate neighbours of the site, Mr and Mrs Stephen of 24 Grenville Drive, Cambuslang.
- 4.2 The grounds of objection can be summarised as follows:

TPO Procedure and Process

(a) The Council should not be promoting TPOs on trees in private gardens unless there are exceptional circumstances. The owner of 26 Grenville Drive has not made a formal application for a TPO, and the circumstances do not merit the promotion. There are many other large trees in the area which do not have protection and the trees do not fall within the categories set out in the

Scottish Government Guidance on TPOs. In a private garden they do not provide any amenity.

Response: In terms of the legislation and guidance regarding TPOs, the Council is able to make Orders if it appears to be expedient in the interest of amenity and/or where the trees are of cultural or historic significance. Whilst TPOs can be made on trees in close proximity to development sites to ensure that significant trees are protected during construction, it is also good practice for the Council to consider making TPOs on other significant trees where appropriate.

Following an assessment by the Council's Arboricultural Manager and the Planning Service, these trees are considered to merit a TPO as they make a positive contribution to the sense of place, character and amenity of the local area. The other trees in the local area do not make the same level of contribution and are less visually prominent. Public accessibility to trees is not a requirement of a TPO, which are often made on trees located in private land.

The owner of the land on which the trees are located has been aware of this process since the start, and has offered no objections.

(b) Concerns regarding the notification and consultation associated with the TPO. The objector has not been able to comment until this stage, and previous correspondence has not been responded to. The procedures set out in the Scottish Government guidance have been ignored as neighbouring properties have not been individually notified. No notice of the TPO has been posted in the local area.

Response: The legislation and guidance related to TPOs sets out the process for making an Order, and the consultation that is appropriate. There is generally no requirement to notify neighbouring properties directly of a TPO, even where branches may overhang the boundary. The making of the TPO is advertised in the local press, together with details as to how to comment upon it. The Order itself was made available to view at local Council offices.

Given that the neighbours objecting to this TPO had previously been in contact with the Council regarding this process, it was considered appropriate to further notify them of the Order directly, and it is understood that all previous items of correspondence received by the Planning Service, who manage the TPO process, that were related to this process have been responded to.

(c) Concerns over the time taken to promote the TPO since the decision of the Committee. The TPO also has no conditions attached and so it would be at the discretion of the owner at No. 26 to determine how large the trees grow.

Response: The making of the Order was agreed to by the Committee in August 2017; however the 6 week consultation period only commences once the Order has been legally made. The time between the Committee date and formally making the Order was not significant as the trees did not appear to be in immediate danger. Conditions cannot be attached to a TPO and, as with all trees on private land; it is generally a matter for the landowner to maintain their trees.

(d) As the Council is promoting the TPO they will take on some of the responsibility for the trees, despite having no control over them.

Response: The making of a TPO does not transfer responsibility for privately owned trees to the Council. It would be a matter for the landowner to undertake maintenance to the trees on their land to ensure that they are safe and do not adversely impact upon neighbours.

(e) As there are valid objections to the Order, the Committee should not confirm the TPO. The issue is simply a dispute between neighbours regarding a tree which has outgrown its site and there are no other issues at stake. The confirmation of a TPO would not be in the spirit of the legislation.

Response: Whilst it is recognised that there is a neighbour dispute regarding tree T2 and overhanging branches, it is not materially relevant to the making of a TPO. The making of a TPO does not remove the rights of neighbours to cut back overhanging branches, however any work would require the prior consent of the Council.

Response to the Report to Planning Committee of 15 August 2017

(f) The report to designate the TPO was narrow in focus, essentially stating that the trees should not be pruned indiscriminately. The Council has given no explanation or provided any evidence to support of their view that the order was made for the reasons stated in the Committee Report or why the trees in question require protection.

Response: The reasons for the making of the TPO were set out in the report to the Committee on 15 August 2017. It is acknowledged that amenity can be a subjective concept; however, the trees have been inspected by both the Council's Arboricultural Manager and Officers from the Planning Service who have come to the view that these trees merit the protection that a TPO provides for those reasons stated.

(g) The previous Committee report states that the trees are "the most visually prominent in the area", however this statement is subjective and depends on where the trees are viewed from. As they are set back from the road they are not visible further along Grenville Drive, and there are other prominent trees.

Response: It is acknowledged that other trees may appear more visually prominent depending on exactly where you are on the street; however, the two trees in question are considered to be very prominent given their size and position in the front garden and next to the junction of Grenville Drive and Douglas Drive.

(h) The report gives no consideration to damage the tree roots could cause to foundations or underground services. The report also fails to mention that tree T1 is growing through overhead cables and poses a danger.

Response: The impact of the trees on underground services, overhead wires or foundations would not be changed by this Order, and it would be a matter for the landowner and relevant service providers to mitigate any future issues. The making of this TPO would not stop appropriate maintenance from being undertaken and, as such these matters are not considered relevant.

(i) The report states that the promotion of a TPO is necessary "to ensure the future retention of the trees", however the removal of the trees has not been proposed. In addition, they are not "mature oak trees" as the trees were probably planted in the 1920s and likely have another 30 years of growth.

Response: Whilst it is understood that there is currently no proposal to remove the trees, it is possible the future owners of the property would consider removing the trees. The TPO ensures the retention of the trees into the future. The trees have been described as mature oak trees following an assessment by the Council's Arboricultural Manager of their current condition.

(j) The TPO is contrary to the rights of the neighbours and is a breach of both Scottish and European law. The Council has failed to justify the Order and the objectors believe that no reasonable body would have made it for the reasons stated. The grounds stated do not reflect reality and fail to take into consideration the rights of neighbours. The previous Committee report states

that there is “no requirement to carry out an impact assessment”, however the rights of neighbours would be removed by this TPO.

Response: The making of this TPO is in compliance with the relevant legislation and does not impact upon the rights of objectors or neighbours. The reasons for making the TPO were set out on the Committee report of 15 August 2017, which was prepared following a detailed assessment of the trees by the Council’s Arboricultural Manager and Officers from the Planning Service.

There was no requirement to undertake an equality impact assessment as the Order would only relate to a single property, the owner of which has offered no objections. In addition, the Order does not remove the rights of either the owner or neighbours to undertake tree works, so long as they are agreed in advance with the Council.

(k) The position of T2 on the drawing appears to be wrong. The tree is closer to the dwelling than shown on the plan. The diagram also only shows the location of trees with no mention of their height or diameter.

Response: There are only two mature oak trees in the front garden of the property and the plan is considered to clearly indicate those trees protected by this Order. The plan meets the requirements of the legislation in identifying the trees, and there is no requirement to specify tree cover or height.

Size and Maintenance of the Trees

(l) Concerns regarding tree T2, which overhangs the boundary. Tree owners should make sure any growth beyond their boundary is not intrusive to neighbours. The tree owner has not undertaken any maintenance on the trees and refuses to agree to any works being undertaken. The owner is seeking to use the TPO process to prevent work taking place, and the Order would effectively grant rights over neighbouring properties with regards to overhanging branches, removing legal rights to cut overhanging branches.

Response: The owner of the land on which the trees are located is responsible for the general maintenance of trees and should ensure that they do not become a danger to the public. It is also good practice to ensure that the trees do not disturb neighbours, particularly where they are in close proximity to the boundary. The Council can generally only take action on privately owned trees where there is an immediate danger to the public, and cannot normally require owners to undertake maintenance to trees.

As indicated previously, the granting of a TPO does not stop maintenance work being undertaken to the tree, including any works undertaken by neighbours to overhanging branches, however any such work would require the prior approval of the Council. No legal rights are removed by this Order.

(m) Oak trees are more suited to woodland areas, not suburban gardens due to their height and lifespan. While tree T2 has little effect on the blockage of sunlight, privacy or a view from the objector’s property, it has outgrown its location in a residential garden.

Response: Oak trees are not uncommon in gardens, and it is considered that these trees have not outgrown their site. Their size and location help to provide a sense of place and positively contribute to the character of the area. The objector’s comment that the trees do not impact upon sunlight, privacy or views is noted.

(n) Making this Order will not guarantee that appropriate maintenance is undertaken. The property owner has not given any assurances that maintenance will be carried out and the Council does not have the authority to grant permission to have work done on privately owned trees. The TPO will potentially do the opposite of what is intended as the failure to manage its

growth is adversely affecting the amenity of the locality and may be causing the tree to develop in a manner which is detrimental to it and potentially a danger to the public.

Response: As indicated previously, the Council cannot require owners to undertake maintenance on privately owned trees. The Council can, however, provide advice on tree works when requested and can take action in circumstances where trees pose an immediate threat to public safety. Neighbours also have rights with regards to branches that overhang the boundary line, that are not removed by this Order.

The making of this Order will not stop maintenance being undertaken to the trees. The TPO is designed to avoid the felling of the trees or any inappropriate maintenance being undertaken that would harm them. An application for tree works requires to be submitted to the Council for consideration before any works to protected trees can take place, regardless of the ownership of the land on which those trees are sited.

- 4.3 The grounds of objection are noted; however, it is considered that they do not merit the withdrawal, alteration or modification of the Tree Preservation Order, all factors considered. As such, it is recommended that the South Lanarkshire Council Tree Preservation Order No. SL50 (2018) 26 Grenville Drive, Cambuslang is confirmed.

5 Employee Implications

- 5.1 None.

6 Financial Implications

- 6.1 None.

7 Equality Impact and Consultation Arrangement

- 7.1 The order has been advertised in the local press, and made available at the Cambuslang Q&A Office and at the office of the Executive Director, Montrose House, for public inspection.
- 7.2 Consultations have taken place with the Council's Arboricultural Manager. There is no requirement to carry out an impact assessment in terms of the proposals contained within this report.

Michael McGlynn

Executive Director (Community and Enterprise Resources)

7 August 2018

Link(s) to Council Values/Ambitions/Objectives

- Improve the Quality of the Physical Environment

Previous References

- Report of Planning Committee – 15 August 2017

List of Background Papers

- Newspaper Advert, Rutherglen Reformer, dated 02 May 2018
- Objection – Mr Ronald Stephen, 24 Grenville Drive, Cambuslang, G72 8DS, dated 01 June 2018
- Objection – Mr Ronald Stephen and Mrs Irene Stephen, 24 Grenville Drive, Cambuslang, G72 8DS, dated 9 May 2018

- Objection – Mr John Mair on behalf of Mr & Mrs Stephen, 24 Grenville Drive, Cambuslang, G72 8DS, dated 31 May 2018
- South Lanarkshire Council Tree Preservation Order No. SL50 (2018) 26 Grenville Drive, Cambuslang

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Andrew Muir, Planning Officer, Montrose House, 154 Montrose Crescent, Hamilton

Ext: 5058 (Tel: 01698 455058)

E-mail: andrew.muir@southlanarkshire.gov.uk

Tree Preservation Order - No SL50
26 Grenville Drive, Cambuslang



This is the plan referred to in the First Schedule to the foregoing Tree Preservation Order

Schedule : T1 Oak
 T2 Oak

**Community and Enterprise Resources
 Planning & Building Standards Services**

Date: July 2017

Scale: 1:1,000

C.R. Coordinates



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