

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 3 MARCH 2020

THE ANGUS COUNCIL (LAND AT 21 CAIRNIEHILL GARDENS, ARBROATH) TREE
PRESERVATION ORDER 2019 NO. 2

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

ABSTRACT

In terms of Section 160 of the Town & Country Planning (Scotland) Act 1997, The Angus Council (Land at 21 Cairniehill Gardens, Arbroath) Tree Preservation Order 2019 No. 2 came into effect on 20 December 2019. The Order preserves trees that are of significant amenity value. It is recommended that the Order be confirmed.

1. RECOMMENDATION

It is recommended that The Angus Council (Land at 21 Cairniehill Gardens, Arbroath) Tree Preservation Order 2019 No.2 be confirmed.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- An enhanced, protected and enjoyed natural and built environment

3. BACKGROUND

3.1 Section 159 of the Town and Country Planning (Scotland) Act 1997 places a duty on planning authorities to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made for the preservation of trees. Section 160 of the Act empowers planning authorities to make an order providing for the preservation of any trees, group of trees or woodlands where it is considered expedient in the interests of amenity and/or where the trees are of cultural or historical significance.

3.2 Angus Local Development Plan Policy PV7 Woodland, Trees and Hedges provides Angus Council's policy on the matter and states:

Ancient semi-natural woodland is an irreplaceable resource and should be protected from removal and potential adverse impacts of development. The council will identify and seek to enhance woodlands of high nature conservation value. Individual trees, especially veteran trees or small groups of trees which contribute to landscape and townscape settings may be protected through the application of Tree Preservation Orders (TPO).

Woodland, trees and hedges that contribute to the nature conservation, heritage, amenity townscape or landscape value of Angus will be protected and enhanced. Development and planting proposals should:

- *protect and retain woodland, trees and hedges to avoid fragmentation of existing provision;*
- *be considered within the context of the Angus Woodland and Forestry Framework where woodland planting and management is planned;*
- *ensure new planting enhances biodiversity and landscape value through integration with and contribution to improving connectivity with existing and proposed green infrastructure and use appropriate species;*
- *ensure new woodland is established in advance of major developments;*

- *undertake a Tree Survey where appropriate; and*
- *identify and agree appropriate mitigation, implementation of an approved woodland management plan and re-instatement or alternative planting.*

Angus Council will follow the Scottish Government Control of Woodland Removal Policy when considering proposals for the felling of woodland.

4. CURRENT POSITION

- 4.1 The woodland on the north side of the junction of Cairnie Road and Cairnie Loan is a prominent feature and visually important. Along Cairnie Road, the mixed predominantly broadleaved woodland occupies a relatively steep embankment which increases its contribution to visual amenity. The woodland comprises a mix of species including beech, horse chestnut, ash, sycamore, holly and pine, with a mix of mature and semi-mature trees.
- 4.2 The planning service was made aware of the intention to fell trees on part of the embankment within the curtilage of 21 Cairniehill Gardens.
- 4.3 Using delegated authority and under Sections 160 and 161 of the Town & Country Planning (Scotland) Act 1997 a Tree Preservation Order (TPO) was made to preserve the area of trees given their contribution to the amenity of the area. The extent of the TPO is identified as area A1 on the plan attached as Appendix 1. The TPO came into effect on 20 December 2019. Under Section 161 the Order took effect immediately without previous confirmation by the Planning Authority in order to safeguard the trees from a risk of felling.
- 4.4 The Order continues in force for a period of six months or until the date the Order is confirmed by the Planning Authority, whichever first occurs. Under Section 161 if the Order is not confirmed within six months it expires.

5. CONFIRMATION OF TREE PRESERVATION ORDER

- 5.1 The Tree Preservation Order that has been made remains in force until 3 August 2020 unless it is confirmed by the Planning Authority. The area of trees are considered to merit protection under the provisions of the Act and their protection is consistent with Policy PV7 of the Angus Local Development Plan.
- 5.2 A period of 28 days was allowed for the making of objections and representations to the Planning Authority. Before deciding whether to confirm the Order, the Planning Authority must take into consideration any objections and representations duly made.
- 5.3 The 28 day period has now expired and two representations have been received. A solicitor has submitted a representation on behalf of the landowners. It is indicated that the landowners were considering selling land where the trees are located to a developer for the erection of a single house. The solicitor suggests that the owner has planted more trees than have been felled. Reference is made to two incidents when a tree fell on a neighbouring property during 2018, and when a branch fell onto Cairnie Loan last year. The solicitor indicates that the landowners are also concerned that the trees will require maintenance and that they may in future affect the wall along Cairnie Loan. Concern is expressed that delay could lead to the sale falling through and that it is only a matter of time before someone is injured.
- 5.4 A developer has objected to the Order advising that he had entered into negotiations to purchase the land for the construction of two houses. He considers that the trees are a burden on the landowner and referred to "near misses" with falling branches. It is suggested that a professional tree surgeon assessed the trees and determined that they have reached the end of their lifespan and are now dangerous.
- 5.5 Both parties have confirmed a desire to fell trees on the land. While there is inconsistency in relation to the number of houses each party anticipates, it is evident that any housing development on the land would necessitate the clearance of woodland from the embankment. The landowners and the developer have been contacted and asked to submit any tree survey report that they have in order that it may be considered. The developer did not respond and the landowners were not able to provide such a report.

- 5.6 Council officers are satisfied that the trees are generally in good condition and those objecting to the Order have provided no evidence to demonstrate that is not the case. As with any woodland area the trees will periodically require maintenance. The trees are generally classed as semi-mature or mature and it is not accepted that they are at the end of their lifespan. The future lifespan of individual trees will vary by age and species but in general terms it is considered to be in the region of 20 to 50 years. In any case, irrespective of their condition, the trees makes a significant contribution to the amenity of the area and confirmation of this Order would enable the Planning Authority to secure appropriate replacement planting in the future as trees reach the end of their useful lifespan. Given the importance of the woodland to the amenity of the area it is recommended that the Order be confirmed.
- 5.7 If the Order is not confirmed it will expire and the trees could be at threat from felling. This would be detrimental to the amenity of the area. Confirmation of the Order will ensure that trees of high amenity value are protected.

6. FINANCIAL IMPLICATIONS

There are no financial implications on the Council as a result of this report.

7. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The recommendation to confirm the Tree Preservation Order has potential implications in terms of the proprietors entitlement to peaceful enjoyment of their possessions (First Protocol, Article 1) and/or in terms of alleged interference with home or family life (Article 8). For the reasons referred to elsewhere in this report justifying the present recommendation in planning terms, it is considered that any such actual or potential infringement of such Convention rights is justified. Any actual or alleged infringement is in accordance with the Council's legal powers under the Planning Acts and is necessary in the general interest for the protection of amenity in Angus. The interference is also proportionate given that the felling of the trees is on the information available, not considered to be one, which would be approved by Angus Council. Further, the interference will be the minimum required to achieve the objective of protecting the amenity of Angus.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

REPORT AUTHOR: KATE COWEY
EMAIL DETAILS: planning@angus.gov.uk

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APPENDIX 1: LOCATION PLAN

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