

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 8 MARCH 2022

**THE ANGUS COUNCIL (MONIFIETH HOUSE, ALBERT STREET, MONIFIETH) TREE
PRESERVATION ORDER 2022 NO. 1**

REPORT BY SERVICE LEAD – PLANNING & SUSTAINABLE GROWTH

Abstract: In terms of Section 160 of the Town & Country Planning (Scotland) Act 1997, The Angus Council (Monifieth House, Albert Street, Monifieth) Tree Preservation Order 2022 No. 1 came into effect on 19 January 2022. 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 (Monifieth House, Albert Street, Monifieth) Tree Preservation Order 2022 No.1 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 Monifieth House occupies a prominent position in Monifieth above Hill Street overlooking the town centre. Monifieth House, a former hotel, has had a number of houses built within the grounds, but still has extensive grounds with a belt of large trees along its south-eastern boundary including Deodar, Western Hemlock, Monkey Puzzle, Beech, Oak, Sycamore and Holly. These trees are widely visible across Monifieth and are characteristic of this older part of town above the raised beach escarpment where there are large houses with mature trees. These contribute to the distinctive skyline of the town especially when viewed from the coast, including from the Angus Coastal Path and Marine Drive.
- 4.2 The council was made aware of an intention to fell two of the trees (Deodar & Western Hemlock) due to concerns from neighbours. Trees on site had a level of protection under conditions attached to planning permission 06/00857/OUT, but this was however considered insufficient. Officers visited the site and discussed the matter with the owner and his tree contractor. This established there is no indication that the trees are an undue risk, and given their contribution towards visual amenity in Monifieth, a tree preservation order (TPO) was considered appropriate to control tree works on the site.
- 4.3 Using delegated authority and under sections 160 and 161 of the Town & Country Planning (Scotland) Act 1997 a TPO was made to preserve the area of trees (A1) given their contribution to the amenity of the area. The TPO came into effect on 19 January 2022. Under section 161 the Order took effect immediately without previous confirmation by the planning authority 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 it is confirmed by the planning authority, whichever first occurs. Under section 161 if the Order is not confirmed within 6-months it expires.

5. CONFIRMATION OF TREE PRESERVATION ORDER

- 5.1 The TPO that has been made remains in force until 19 July 2022 unless it is confirmed by the planning authority. The area of trees is 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 council 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 (Appendix 2). One representation submitted by occupants of properties at 1A and 1B Hill Street offers objection, while a representation submitted by occupants of 1C Hill Street offers support for the TPO. The tree owner has made no representation.

5.4 The representation in objection raises the following points:

- The trees are 50–60 feet in height, have not been maintained, and are overgrown and unsuitable close to houses.
- Healthy branches have fallen from the trees and branches have damaged a fence and greenhouse.
- Many healthy trees were broken and uprooted in the surrounding area during recent storms, therefore there is no guarantee that safety is assured. There is concern that rainwater runs towards the base of the trees and may therefore undermine the root system.
- The trees are on the north side of the houses and block sunlight to that side of the gardens.
- The trees cause dampness compounded by needles blocking gutters and downpipes.
- The fear of branches falling on the houses cause sleepless nights, causes anxiety, and makes a resident frightened to use a back door.

5.5 The representation in support makes the following points:

- The immediate area around Hill Street/ Albert Street and throughout Monifieth is notable for the number of mature trees that are a prominent and attractive characteristic of the area. The Deodar and Western Hemlock are two of the tallest trees in the area.
- The two threatened trees (a Deodar and a Western Hemlock) have an importance in the area and form a link to the past. Both are approximately 150 years old dating back to when Monifieth House was built. Aerial photographs from 1958 show that they were well established in the grounds of the house over sixty years ago.
- Possible historical link between the Western Hemlock and Prince Albert.
- The Deodar and Western Hemlock are in good health and there is no evidence of threat to adjacent properties. The recent storms, Arwen and Barra, provided a stiff test for the trees which proved that they are strong and offer no threat to adjoining properties.
- Trees mitigate the carbon footprint and contribute positively to the air quality thus reducing the risks, particularly to children, of respiratory conditions. The trees also provide a valuable environment for various birds and wildlife.

5.6 In response to the representations, the Deodar and Hemlock trees which are the focus of the objection, are doubtless large, mature trees and substantially pre-date the modern houses at 1A & 1B Hill Street which date from the early 1980s. The houses are located close to the trees, but it is not unusual for trees to be relatively close to buildings in urban areas. It is not good arboricultural practice for these types of trees to be topped through their lifespan as this can lead to structural weakness and a denser canopy increasing risk. There is no evidence from looking at the trees that they have previously been topped. Both the Hemlock and Deodar are mature open grown trees in good health with sturdy well buttressed trunks, which has meant that they have survived recent storms. It is noted that branches have been shed, which is not however uncommon during storm conditions. The owner's tree contractor has indicated that the owner would like to remove "dangerous branches" on the Deodar and Western Hemlock and a site meeting has been arranged to discuss this further. The gardens of both objectors have been visited and the trees discussed on site. The crowns of both the Deodar and the Hemlock contain deadwood which could be removed together with the trimming of broken branches. These along with other potential works will be discussed with the owner and his tree surgeon, and it is important to recognise that the TPO does not prevent the undertaking of approved works to the trees. Trees generally do not cause dampness, but it is acknowledged that houses in proximity to trees require more regular maintenance, but that is not

justification for trees to be felled. It is hoped that inspections carried out by the tree owners' tree contractor together with potential tree works to maintain the trees will provide a level of reassurance to adjacent householders.

- 5.7 The Order has been made on the grounds of visual amenity. While there is an option to include historical interest as an additional reason for the Order, the link to Prince Albert is unconfirmed. It should be noted that responsibility for the survey of the trees remains the responsibility of the landowner, with the council's role being that of the consenting authority where applications to carry out works are submitted.
- 5.8 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 the trees of high amenity value are protected. As indicated above, confirmation of the TPO does not prevent the undertaking of approved works to the trees.

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: JILL PATERSON
EMAIL DETAILS: PLANNING@angus.gov.uk

DATE: 28 FEBRUARY 2022

Appendix 1: Location plan
Appendix 2: Letters of representations
Appendix 3: Planning service presentation