

WEST DUNBARTONSHIRE COUNCIL

Report by Chief Officer – Regulatory and Regeneration

Planning Committee: 8 June 2022

Subject: Tree felling within area covered by Brucehill Cliffs Tree Preservation Order

1. Purpose

- 1.1** To advise the Committee of tree felling within the Brucehill Cliffs Tree Preservation Order area and to agree replanting/landscaping proposals for the affected area.

2. Recommendations

- 2.1** It is recommended that the Committee:
- (1) note the replanting/landscaping proposals attached as Appendix 3; and
 - (2) agree the additional condition for planning application DC21/211 in Appendix 2.

3. Background

- 3.1** In September 2021 the Council made a tree preservation order covering a woodland area at Brucehill Cliffs Dumbarton (TPO, WDC13, 2021). This was in response to concerns that proposals for residential development surrounding Craigend House, off Cardross Road would result in the loss of trees. Following a consultation exercise, the Planning Committee of 2 March 2022 confirmed the Tree Preservation Order. Subsequent detailed discussions between the Planning Service and the applicant resulted in the application being amended to minimise tree loss within the Tree Preservation Order area. On 30 March 2022 the Planning Committee approved planning application (DC21/211) – residential development comprising 81 dwellings with associated access, parking, landscaping, open space and drainage on land surrounding Craigend House, Cardross Road, Dumbarton. The application was approved subject to conditions and the Committee report and conditions is contained in Appendix 1 and the additional conditions reported and imposed by the March Planning Committee. The decision notice relating to this development has not been issued by the Council to date.
- 3.2** On 4 April 2022, the Planning Service received reports that trees were being felled on the Cardross Road development site. A planning officer from the Council attended on 4 April and requested that all tree felling

cease. The officer attended again on 5 April and requested that all works on the site cease. It is understood that no further works have taken place on the site since 5 April. The Council received correspondence from the developer on 7 April 2022 apologising for the felling of trees within the Tree Preservation Order area and explaining that this has happened because contractors had been given a superseded plan showing the location of trees to be felled (as previously explained, the plans for the site changed as a result of discussions between the Planning Service and the applicant).

4. Main Issues

Extent of tree loss

- 4.1** The Council requested that the developer undertake a survey to detail the extent of tree loss within the Tree Preservation Order area. The Council has also undertaken its own survey and an agreed position on felled trees has been reached, as set out in within Appendix 3. Thirty-three trees have been felled, one of which was approved for removal as part of planning application DC21/211. This figure includes a number of smaller/younger trees (13) which had not been included in previous tree surveys owing to age/size, but are still protected owing to the woodland nature of the Tree Preservation Order.
- 4.2** The felling of the trees has caused real disappointment and upset within the local community and for officers of the Council who had worked extremely hard to ensure that the trees, some of which are estimated at over 100 years old, were protected. Fourteen representations have been received from members of the public with regard to the felling of trees in the Tree Preservation Order area.

Reporting the tree felling

- 4.3** The Council has made an initial submission to the Procurator Fiscal regarding the felling of trees. If the fiscal decides to pursue a prosecution, under the Town and Country Planning (Scotland) Act 1997, it can be prosecuted summarily or on indictment. If the fiscal decides to prosecute summarily, the maximum fine is £20,000. If the fiscal decides to prosecute on indictment, there is no limit to the fine that may be imposed. There is no maximum fine per tree, although, when deciding on the penalty to be imposed, the court would presumably take into account the number of trees that have been destroyed.
- 4.4** Scottish Forestry has also been advised of the tree felling as Felling Permission, under the Forestry and Land Management (Scotland) Act 2018, may have been required for the tree works undertaken. Whilst development with planning permission would normally be exempt from

requiring felling permission, as the planning permission has not been issued, this is not applicable. Scottish Forestry are investigating the matter. This could result in a separate report to the Procurator Fiscal and a fine of up to £5,000 per tree felled.

Planning Application (DC21/211)

- 4.5** As indicated in paragraph 3.1 the decision notice has not been issued for the above planning application. Council legal advice indicates that, as the decision notice has not been issued, the application could be reconsidered by the Planning Committee. In order to reconsider the matter, the Committee would first have to suspend the Standing Order that prohibits reconsidering matters within six months of the original decision. However, court decisions suggest that a planning authority cannot change its mind in this way unless there has been a change of circumstance since the Committee originally considered the matter. In any event, the planning authority would need to have planning grounds for refusal – so there would need to be material considerations which justify refusal. The conduct of the developer in removing trees would not be a material consideration and so it would not give planning grounds for refusing the application. There do not appear to be any other grounds for refusal, and therefore a decision to refuse or withhold a decision could be appealed. The site is allocated for housing development in the Local Development Plan and housing remains the preferred use for the site from a land use planning perspective. Not issuing the decision notice could also result in the applicant appealing the application to the Scottish Ministers on the grounds of non-determination.
- 4.6** The developer has now submitted replanting proposals and these proposals are set out in Appendix 3. The main features of these proposals are:
- Replanting and aftercare within the TPO area to be undertaken in accordance with a plan to be agreed with the Council, at an overall replacement ratio of 5:1, to be thinned to 3:1 within 10 years. The mix and planting size of the replacement trees is set out in the proposals. The replanting area may extend beyond the area originally covered by woodland;
 - Planting design to be integrated with any additional planting being undertaken along the cliff edge to provide continuity of habitat and green network linkage with the Havoc Hole woodland corner. A thorny species woodland edge mix along the cliff face area is proposed and these species will be replicated throughout the TPO boundary;
 - Specimen planting to be undertaken any time after the tree protection barriers are in place, with bare root planting within the 2022-23 dormant season. Agreement to be reached with the Council re programme and phasing of works to ensure that any planting works is not abortive relative to construction;

- A system of arboriculture supervision and monitoring to be agreed with the Council;
- No further works until tree protection measures are put in place, and no tree work arising's to be removed or relocated within site at this time unless agreed with Council;
- Existing brush to be chipped and used to return nutrients to soil, for mulching and suppress weed growth. This will not occur within woodland area so as to avoid supressing vegetation growth on woodland floor;
- Removal by hand of sycamore sapling growth that has already taken place;
- Heavy sections of felled trees in south corner to be made safe and left in place as deadwood habitat. Some heavy sections to be moved to be utilised within natural play areas within development, with any surplus to be offered to Council for greenspace or education projects;
- No stumps to be removed, ground out or grubbed up, but some will be reduced to ground level to reduce trip hazards.

4.7 The Council's Planning Service and Biodiversity Officer offered comment on initial replanting proposals which are reflected in the proposals set out above. Discussions are ongoing to reach agreement on the final replanting proposals and a verbal update will be given at Committee. For example, an issue still to be resolved is the number of trees to be replanted. The developer has suggested that 75 trees are replanted, based on their initial assessment of 15 tagged trees having been felled. However, there is now an agreed position that 33 trees were felled, albeit some of these trees were too small to be included in initial tree tagging/surveys. Therefore agreement is still to be reached on the appropriate number of trees to be replanted, with the Biodiversity Officer suggesting in the range of 75-100 trees would be appropriate.

4.8 In anticipation of agreement on this and other aspects of the replanting proposals is achieved, it is proposed that the following additional condition is attached to planning permission DC21/211:

- No development shall commence on site, until details of tree replacement proposals shall be submitted for the written approval of the Planning Authority, and implemented within a timescale agreed by the Planning Authority.

5. People Implications

5.1 There are no personnel issues associated with this report.

6. Financial and Procurement Implications

- 6.1** There are no financial or procurement implications associated with this report.
- 7. Risk Analysis**
- 7.1** There are risks associated with refusing or not issuing the decision notice as set out in paragraph 4.6.
- 8. Equalities Impact Assessment (EIA)**
- 8.1** There are no equalities impacts associated with this report.
- 9. Consultation**
- 9.1** The Planning Service has liaised with the Council's Legal Service and Biodiversity Officer during the preparation of this report.
- 10. Strategic Assessment**
- 10.1** This report has no direct impact on the Council's strategic priorities.

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Date: 8 June 2022

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Appendices: Appendix 1: Report to Planning Committee, 30 March 2022: planning application DC21/211, residential development on land surrounding Craigend House, Cardross Road, Dumbarton
Appendix 2: additional conditions for planning application DC21/211

Appendix 3: AC Land Regeneration Tree Replacement Proposals

Background Papers: Report to Planning Committee, 2 March 2022:
Brucehill Cliffs Tree Preservation Order

Wards Affected: Ward 3 – Dumbarton