
NORTH AYRSHIRE COUNCIL

22 February 2023

Planning Report Committee

Title: **Grouping of Trees adjacent to Wildcat Lane and Summerlea Road, West Kilbride**

Purpose: To seek Committee approval regarding the Confirmation of a Tree Preservation Order (TPO) for a group of trees located along Wildcat Road and Summerlea Road, West Kilbride.

Recommendation: That the Committee confirms a Tree Preservation Order (TPO) under S.160 1997 Town and Country Planning (Scotland) Act in the interests of protecting public amenity.

1. Executive Summary

- 1.1 This report updates members on the process of creating a Tree Preservation Order (TPO) on a grouping of Trees along Wildcat Road and Summerlea Road in West Kilbride. The TPO, which was created in September 2022 following the approval from the Planning Committee, was subject to a public consultation period in line with relevant legalisation. The report summarises the representations made and makes recommendations on further action, upon consideration of those representations.
- 1.2 After analysing the representations received, it is recommended that the TPO is confirmed unmodified as the grouping of trees contribute to wider public amenity.

2. Background

- 2.1 The Planning Committee on 28 September 2022 agreed to serve a Tree Preservation Order (TPO) along Wildcat Road (sometimes referred to as Wildcat Lane) and Summerlea Road in West Kilbride. Committee was advised at that meeting that the Council is required to confirm a TPO within 6 months of the Order being created following a consultation period of no less than 28 days.
- 2.2 Prior to the September Committee, independent analysis from an Arboricultural specialist was undertaken to determine the suitability of a TPO on the grouping of trees. It concluded that there was merit in creating a TPO due to the contribution the trees make to public amenity. The analysis separated the trees into two distinct groupings referred to as Compartment 1 which mainly adjoined Summerlea Road and Compartment 2 which mainly adjoined either side of Wildcat Road.
- 2.2 During the consultation period, notice was served on interested parties and an advert was placed in the local newspaper. A consultation period of 28 days started from the

date of the notice (7 October 2022) which attracted three letters of representation (two of objection and one of support).

3. Representations

3.1 The representations are summarised below with the Officer's response.

3.2 Persimmon Homes objected to the creation of a TPO on several grounds including:

- In compartment 2, the creation of a TPO is not required for the trees as they are not at risk
- Should the TPO be created, compartment 1 should be excluded as it would be more appropriate to protect the trees via a planning condition to be included in planning application reference 21/01174/PPM.
- The trees in Compartment 1 are not of sufficient health to be protected as per the representees own assessment which was made as part of their planning application submission.
- The representee has concerns over public safety and amenity (via lighting) and the potential additional time it would take to maintain the trees to protect public safety.

3.3 *Response: the representation is noted. It is considered at that the trees should be considered for protection under the criteria listed in S.160 of the Town and Country Planning (Scotland) Act 1997, namely (a) that it is expedient in the interests of amenity to make that provision and (b) that the trees, groups of trees or woodlands are of cultural or historical significance. It is noted that the independent analysis notes the risk to the trees. However, the decision was made by officers to assess the analyse the trees on their own merit. To determine expediency, it was noted that the independent report states that the woodland as a whole has a "moderate to high amenity value". In response to concerns regarding the health of the trees, the independent report states that the trees in compartment 1 contain dense ivy and show presence of fungal pathogen tar-spot. However, the analysis also notes that this disease of the foliage is of little agricultural concern and all the trees in compartment 1 "display normal vitality".*

3.4 *The concerns over public safety and amenity are noted. However, should there be any immediate risk to public safety, the legislation allows emergency works to take place to trees without permission from the Council if they were protected via a TPO. Some routine maintenance is also be permitted without gaining consent from the Council.*

3.5 *It is accepted that the potential adding of a planning condition may offer some protection to the trees in the future. However, this was considered an undesirable option when determining the suitability of a TPO. Reasons for this include that a planning condition may not offer sufficient protection after any consented development takes place. A TPO would ensure that the trees are protected whatever future land use occupies nearby sites. It is also noted that the trees have been considered as whole and any planning condition would only apply to that within the boundary of any future planning consent.*

3.6 Brisbane Glen Estates Company LTD objects to the creation of a TPO in this instance

for the following reasons:

- For compartment 1 - The representee quotes the Informed Tree Services report, which states that if planning consent is not granted for the adjoining field of Summerlea Road and Wildcat Road, then it would not be expedient to create a TPO and that if the consent was granted then the trees could be protected via carefully worded planning condition.
- For compartment 2 – the trees in compartment 2 do not form part the proposed development and will remain in the ownership of the representee. The representee further states that the trees require regular maintenance due to the nature of the site being close to a main Scottish Water Drain. To carry out this management will lead to “extra bureaucratic delays” being imposed. The representation also highlighted that compartment 2 was located on the North Ayrshire Core Paths Network.

3.7 *Response: It is considered that the trees should be assessed against the criteria set in relevant legislation to determine the suitability of a TPO. Therefore, the suitability of a TPO should be assessed against the value of trees on their own merit and in their current context. The issue of using a planning condition to protect the trees is responded to in para. 3.5. With regards to delays, it is accepted that some works will now be subject to gaining permission from the Council as the Planning Authority. As stated above, should there be an immediate risk to public safety, then the responsible person can carry out appropriate works to ensure trees are made safe. With regards to planned maintenance, it is not considered that it would be a significant burden to seek consent from the Council as part of the wider management of the trees. Advice and support is available from the Council, either by visiting the Council's webpage or by contacting the Planning Services team.*

3.8 A member of the public submitted a response via an elected Member of the Council. The resident suggested that the submitted tree survey that was conducted as part of planning application reference 21/01174/PPM should be considered as it contains valuable information regarding trees which are worthy of protection but not included in the area included within the newly created TPO. A tree of particular concern that the responder feels should be protected is located where Summerlea Road and the A78 meet. The responder also notes that there are many other trees in the area that should be part of the Tree Protection Order including trees that border Summerlea Road and Merlewood Road and then on to Fullerton Drive towards the coast.

3.9 *Response: The response is noted and the overall support for the creation of the TPO is welcomed. It is accepted that there are trees in the vicinity of the TPO which may also contribute to the amenity of the area and are useful landscape features of this part of West Kilbride. With regards to the survey that was conducted as part of the planning application submission, it is accepted that the survey of trees relating to that proposed development provides some useful information. However, the report and assessment was conducted in a manner to satisfy the requirements of submitting a planning application as opposed to the analysis procured by the Council which was carried out solely with gaining an opinion on the suitability of a Tree Preservation Order. It is accepted that there is potential for nearby trees to contribute to public amenity. However, in this instance, the trees highlighted by the resident are considered to be more fragmented than the proposed TPO and the relationship between the trees proposed. If it was considered that these additional trees should be protected, then a*

further TPO would be required. It is considered that creating a TPO as originally proposed would be the most appropriate course of action at this time.

4. Proposals

- 4.1 It is proposed that the Council confirms the Tree Preservation Order unmodified in recognition of the significant contribution the trees and woodland make to public amenity.

5. Implications/Socio-economic Duty

Financial

5.1 None. The TPO can be confirmed within existing budgets.

Human Resources

5.2 None. The TPO can be confirmed within existing staff resources.

Legal

5.3 Should a TPO be confirmed, a notice is required to be written and recorded in the Scottish Land Register.

Equality/Socio-economic

5.4 Assessments carried out highlight impact on wider public amenity.

Climate Change and Carbon

5.5 Trees can make a contribute to carbon sequestration, removing Carbon Dioxide from the Earth's atmosphere.

Key Priorities

5.6 The proposed TPO would align with the Council Plan Priorities of 'Vibrant, welcoming and attractive places' and 'A sustainable environment'

Community Wealth Building

5.7 None.

6 Consultation

6.1 Consultation was carried out as required under the relevant legislation. The comments received were summarised in this report.

James Miller
Chief Planning Officer

For further information please contact **Thom Ledingham, Planning Officer**, on **01294324623**.

Background Papers

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