

**Report of City Solicitor**

**Report to Chief Planning Officer**

**Date: November 2013**

**Subject: CITY OF LEEDS TREE PRESERVATION ORDER (NO.19) 2013**

**(LAND AT THE FORMER DEPARTMENT OF WORKS & PENSION SITE, OTLEY ROAD  
LAWNSWOOD LEEDS)**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Weetwood	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. A Tree Preservation Order was made in respect of the above site on 12 August 2013 on a provisional basis.
2. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 the Order will expire if it has not been confirmed (whether or not subject to modification) within 6 months of the date of making.
3. One objection to the Order has been received within the statutory objection period.
4. The Chief Planning Officer is requested to determine whether or not the Order should be confirmed or confirmed subject to modification in light of the objection.

**Recommendation**

5. That the objection be overruled and the Order confirmed in its original form

## **1 Purpose of this report**

- 1.1 To set out the background to the making of the provisional Tree Preservation Order and to note the fact that one objection to the Order have been submitted to the Council
- 1.2 To seek a determination from the Chief Planning Officer that the objection should be overruled in all the circumstances and that the Order be confirmed in its original form.

## **2 Background information**

- 2.1 The Local Planning Authority was first approached in respect of the site by an agent acting on behalf of the current landowner. At this time, however, the Council was under the impression that the site was owned by the Department for Work and Pensions (DWP) and that the agent represented The DWP.
- 2.2 An initial meeting took place on 17th August 2012 to discuss redevelopment options for the site. The need to consider tree retention and the need for an arboricultural report was made clear to the applicant. This meeting was not followed up in terms of the provision of further plans, and / or investigative reports for the Local Planning Authority to consider at the pre-application stage. As mentioned above, the Council believed at this time that the site was owned by The DWP, and as such, benefited from Crown Immunity, meaning that a provisional Tree Preservation Order (TPO) could not be issued without prior agreement.
- 2.3 The Planning Authority was again approached by the agent in March 2013 to have a pre-application meeting to discuss redevelopment proposals. Once again no information regarding trees or tree retention was submitted at this stage, although now it has come to light that a Tree Survey was undertaken in September 2012.
- 2.4 On Monday 24th June 2013, the Council's Tree Officer was contacted by the Forestry Commission (F.C). The F.C had been contacted by a number of local residents concerned that trees had been felled on the site over the weekend and that further felling works were presently taking place. The F.C concern was that the works may require felling license consent under the Forestry Act 1967. The F.C sought to clarify whether the Council had knowledge of the works and if the trees were subject to statutory tree protection. The Council also received a number of complaints from concerned members of the public. At this time, it was still assumed that the site was Government owned and, therefore, subject to Crown immunity
- 2.5 Following the F.C. enquiry, an immediate site visit took place involving both the Tree Officer and Landscape Architect (who was involved with the pre application discussions). It was evident that a large number of trees had been felled (16 in total) with much of the remaining site tree cover marked for removal.

- 2.6 The Tree Officer telephoned the F.C. and was advised that whilst the trees that had been felled did not require a licence, a felling license application would be required to remove any additional trees. It was suggested to the Tree Officer that the F.C considered that this was a development issue that could be considered through the Planning process rather than a felling license and this was conveyed to the agent.
- 2.7 Still under the assumption that the site benefitted from Crown Immunity, both the Council as planning authority and a local Councillor wrote to the DWP voicing concerns as to the tree removal and inviting further dialogue through the planning process.
- 2.8 A letter from the Department of Work and Pensions dated 7th August 2013 to a local Councillor confirmed the intention to fell trees at the site prior to the submission of a planning application and that the site had been sold to a private third party landowner. Due to the change in ownership the site did not benefit from Crown Immunity, and therefore the TPO was made and served on 14th August 2013, to ensure that a full appraisal of the health and status of the trees on site could be made and to protect any mature valuable trees present of high amenity value. A copy of the Order Map Schedule and supporting documents are appended to the report.

### **3 Main issues**

- 3.1 On 13 September 2013 an objection to the Order was received from the owner's planning consultant, supported by an arboricultural report and tree constraints plan.
- 3.2 The grounds of objection have been considered by the relevant Tree Officer and for the reasons given in his comments it is considered that the Order should be confirmed as originally served.

### **4 Corporate Considerations**

#### **4.1 Consultation and Engagement**

- 4.1.1 Tree Preservation Orders are served on landowners on a provisional basis any other party holding an interest in the land other parties and adjoining landowners where any trees overhang their boundary.
- 4.1.2 A minimum statutory objection period of 28 days applies in respect of any Order made.

#### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Human Rights. It is necessary to balance the rights of the landowners against the public interest in the protection of trees provided for by the statutory provisions. Local Planning Authorities have the powers to make Tree Preservation Orders if it appears to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. In the present case the amenity

of the trees is considered on balance to justify the making confirmation of a Tree Preservation Order and to outweigh the rights of the property owners to manage trees without local authority control.

### **4.3 Council policies and City Priorities**

4.3.1 The work of the Sustainable Development Unit forms a vital element of the Vision For Leeds, City Priority Plan and Council Business Plan, the following two of which are relevant to are The aims of maintaining high quality buildings, places and green spaces, which are clean, looked after and respect the City's heritage and of enabling growth of the city whilst protecting its distinctive green character are promoted by the making of Tree Preservation Orders.

### **4.4 Resources and value for money**

4.4.1 There are no resource implications.

### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 The Report is not subject to call in.

4.5.2 The Chief Planning Officer is authorised to take the decision whether to determine Tree Preservation Orders under Part 3 Section 2A of the Constitution (Council non-executive functions).

### **4.6 Risk Management**

4.6.1 There are no specific risks involved.

## **5 Conclusions**

5.1 The grounds of objection have been considered by the Tree Officer and for the reasons given in his comments it is considered that the objection should be overruled and the Order should be confirmed as originally served.

## **6 Recommendations**

6.1 That the Order be confirmed in its original form.

## **7 Background documents<sup>1</sup>**

7.1 City of Leeds Tree Preservation Order (No. 19) 2013 (Land at the former Department of Works & Pension Site, Otley Road Lawnswood Leeds) dated 12 August 2013.

7.2 Objection dated 13 September 2013 and related arboricultural report and tree constraints plan. **(Exempt under Access to Information Rule 10.4(2))**

7.3 The Tree Officer's comments in respect of the objection.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.