

ENFORCEMENT REPORT

Reference Number: 11/00107/ENOTH2
Applicants Name: Osborne Interiors Ltd
Application Type: Enforcement Report
Application Description: Removal of trees
Location: Land adjacent to 12 Cumberland Avenue, Helensburgh

SUMMARY

This report is to bring to Members attention the removal of trees at land adjacent to 12 Cumberland Avenue, Helensburgh covered by TPO 16/04. Members are asked to note the contents of the report.

BACKGROUND AND CURRENT SITUATION

It has been brought to the attention of the planning authority, who were notified by the owners of the site that trees within an area of land adjacent to 12 Cumberland Avenue, Helensburgh, covered by TPO 16/04, were potentially dangerous and should be removed.

The agent on behalf of the owners stated in an e-mail dated 26 April 2011 to the Council that "Recently a number of trees have fallen and two have fallen on property on Fraser Avenue. One of the owners of property on Fraser Avenue has complained and the land owners consider they really have no defence to this complaint. A survey has been done and the land owners have agreed to fund the felling of trees deemed to be dangerous and in accordance with TPO 16/04. This felling is restricted to any tree which, if it fell on its own accord, would fall on adjacent property including Cumberland Avenue."

In notifying the Council it was considered that in total a 20 metre strip of trees adjacent to Fraser Avenue should be removed in the interests of safety.

Under the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas (Scotland) Regulations 2010 it is an offence for any person in contravention of a TPO to cut down, uproot, wilfully destroy a tree or wilfully damage, top or lop a tree in such manner as to be likely to destroy it without the consent of the planning authority.

A TPO may make exemptions to the prohibition of cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the planning authority. Without prejudice to any other exemptions made by the TPO, section 160(6)a of the Town and Country Planning (Scotland) Act 1997 states that nothing in the TPO shall prohibit the uprooting, felling or lopping of trees if, inter alia, it is urgently necessary in the interests of safety.

The owners were asked to meet with the Planning Authority before trees were removed. However, approximately 7 or 8 trees have already been removed from the area.

On Tuesday 3 May 2011 the site was visited by staff of the Planning Department and the Roads and Amenity Services' Service Officer - Grounds & Horticulture, who met with representatives of West Coast Cutters who have been asked to carry out the tree felling works. An inspection of the site was undertaken and a number of potentially dangerous trees identified and recorded. A map of these will be included with the finalised report. It was agreed that certain trees within the 20 metre strip of trees adjacent to the northern boundary of the site adjoining the rear gardens of properties on Fraser Avenue were potentially dangerous and should be removed. Work is currently on-going to remove trees agreed on site by the planning authority.

Under Section 167(1) of the Town and Country Planning (Scotland) Act 1997 if any tree in respect of which a TPO is in force is removed, uprooted or destroyed in contravention of the order then it shall be the duty of the owner of the land to plant another tree or trees of an appropriate size and species. However, under section 167(1)(b) this does not apply to woodland TPOs such as TPO 16/04 where, under section 160(6)a of the Act, it is urgently necessary to remove, uproot or destroy the trees in the interests of safety. On that basis, under the legislation, we cannot require the landowners to undertake a replanting scheme for trees removed for safety reasons without their agreement. Potentially, this may mean that the majority of trees on this site could be removed if they were considered dangerous without any statutory mechanism to ensure replacement planting.

Given the above, the site will continue to be regularly monitored by the local Enforcement Officer and discussions will be on-going with the applicants to try and negotiate a suitable replanting and subsequent management scheme for the long term benefit of this site. Members will be kept updated on the progress of these negotiations.

RECOMMENDATION

It is recommended that Members note the content of this report.

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