

**REPORT TO BANFF & BUCHAN AREA COMMITTEE – 20 AUGUST 2019****ABERDEENSHIRE COUNCIL TREE PRESERVATION ORDER REVIEW AC TPRO (B&BDC) 15 (2019) CORTES HOUSE, RATHEN****1 Recommendation**

The Committee is recommended to:

- 1.1 confirm the Revocation Order to revoke the existing Tree Preservation Order on woodland surrounding Cortes House, Rathen.**

2 Background / Discussion

- 2.1 This report seeks confirmation of a Revocation Order to revoke an existing Tree Preservation Order, which is the subject of an outstanding objection. The Revocation Order must be confirmed within 6 months of being made or it will lapse. The Map relative to the existing Tree Preservation Order is included in Appendix 1.
- 2.2 As part of the ongoing review of Tree Preservation Orders across Aberdeenshire, the existing Tree Preservation Order at Cortes House, Rathen, made by Banff & Buchan District Council in 1987 was reviewed. The review found the TPO to be outdated and no longer fit for purpose for two reasons; firstly, those areas of woodland along the roadside and visible from the trunk road, are afforded protection under the provisions of the Forestry & Land Management (Scotland) Act and additional legal protection by means of a TPO is considered unnecessary, and secondly, as the trees within the grounds of Cortes House are only visible in the immediate surrounds of the property and therefore have limited significance for the visual amenity of the wider area.
- 2.3 Members will recall a previous Revocation Order, served in June 2017, was considered by this committee on 19th September 2017 as a result of an outstanding objection. The objection was on the grounds that removal of the existing tree protection at a time of uncertainty in forestry law in light of proposals by the Scottish Government to repeal and replace the Forestry (Scotland) Act (1967) and the objector stated their expectation that the Council use their powers to maintain current levels of tree protection at Cortes House and across Aberdeenshire. At that meeting the committee considered that to confirm the Revocation Order to revoke the existing Tree Preservation Order would be premature and that no action should be taken until the implementation of the new framework in 2019. The previous Revocation Order was therefore allowed to lapse.
- 2.4 With the enactment of the Forestry & Land Management (Scotland) Act 2018 and associated Forestry (Exemptions) (Scotland) Regulations 2019 in April of this year, the detail of protection afforded to areas of woodland by this legislation is now known. There are no significant changes to the protection afforded to areas of woodland by this updated legislation and as such it is still

considered to be the most appropriate form of legal protection for the area of woodland around Cortes House.

- 2.5 Another Revocation Order was therefore made on 28th May 2019 and served on the owners of the land, neighbouring proprietors and other interested parties including Scottish Forestry and Rathen, Memsie and District Community Council. The Order was advertised in the local press.
- 2.6 One representation was received in respect of this Order. The issues raised and officer comments are summarised in Appendix 2. A copy of the outstanding objection is attached in Appendix 3.
- 2.7 If the Revocation Order is not confirmed and is allowed to lapse the Tree Preservation Order will remain in force until such time as it is reviewed.
- 2.8 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make. They are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.2 of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to the confirmation of a Tree Preservation Order to which there are outstanding objections.

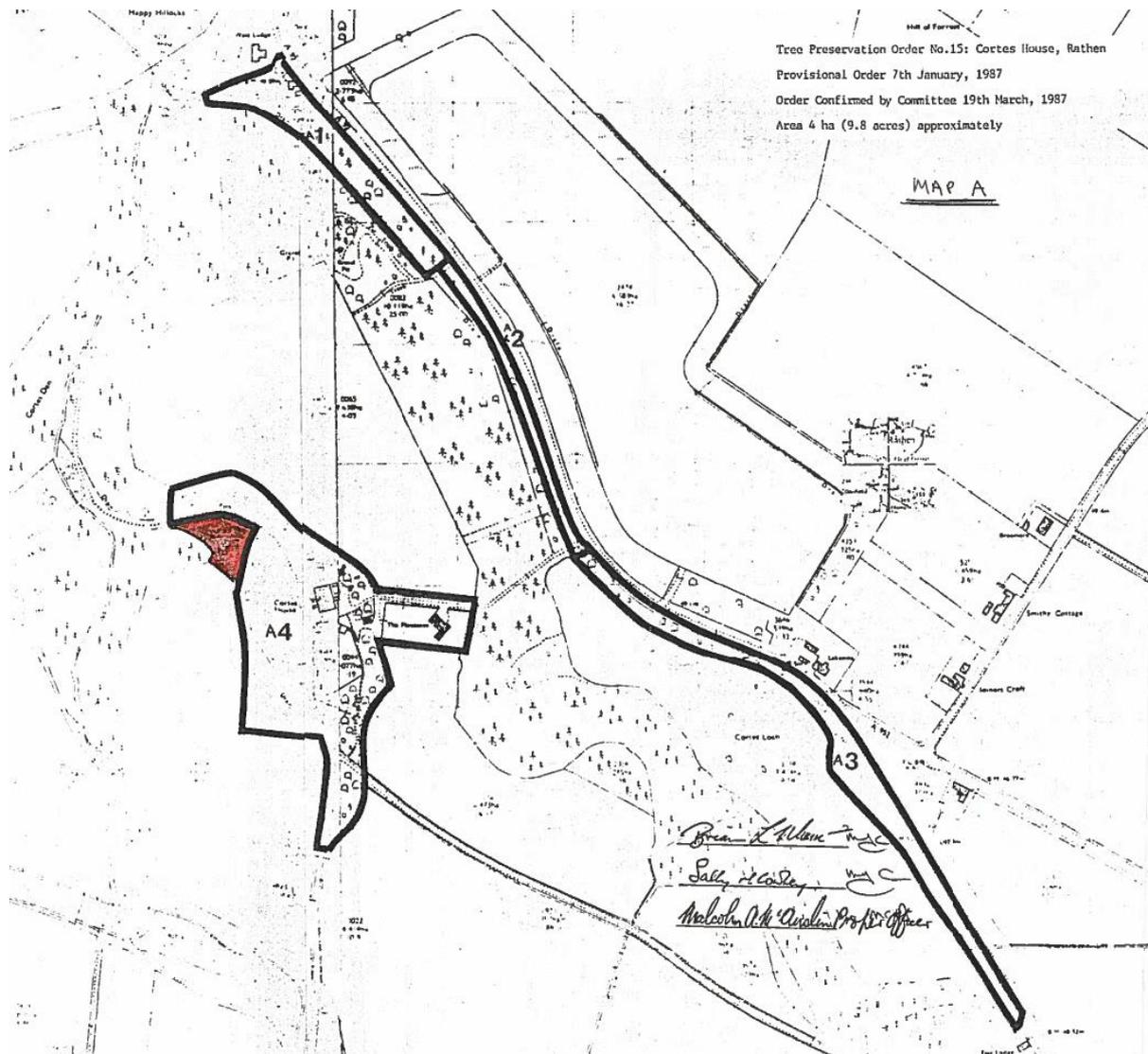
4 Implications and Risk

- 4.1 An equality impact assessment is not required because the recommended actions will not have a differential impact on any of the protected characteristics.
- 4.2 There are no staffing implications.
- 4.3 There are no financial implications to the recommended action. The cost of serving and advertising the Revocation Order has been £180 and has been met from the Environment Line for TPOs (A.P346040). Costs accrue principally from advertisement and postage. If the Revocation Order is not confirmed, a new Tree Preservation Order will require to be served, advertised and registered, the cost of which is expected to be around £500. This would also be met from the existing Planning & Building Standards Environment budget.
- 4.4 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the planning authority has a statutory duty to review its TPOs from time to time. Any representations made in accordance with the Regulations must be considered before an Order is confirmed.

Stephen Archer
Director of Infrastructure Services

APPENDIX 1: Map

Existing Tree Preservation Order: B&BDC TPO 15 (1987) Cortes House, Rathen



APPENDIX 2: Discussion

Background	<p>As part of a review of Tree Preservation Orders across their administrative area, Aberdeenshire Council reviewed the Tree Preservation Order No. 15 (1987), made by Banff and Buchan District Council, and served on woodland surrounding Cortes House, Rathen and considered that long term legal protection by means of a Tree Preservation Order was no longer necessary.</p> <p>Revocation of this existing Tree Preservation Order was therefore proposed.</p>
Outstanding Objection	<p>A representation was received from the owners of an area of the protected woodland. They object to the proposed revocation as they consider the woodland provides shelter and that protection for the native wildlife habitat should be preserved. A copy of the outstanding representation is attached.</p>
Officer Response	<p>As part of the review process the existing Tree Preservation Order was assessed and the woodland was identified to be of high visual amenity. The woodland is considered to be a valuable natural resource and wildlife habitat.</p> <p>However, the existing TPO is considered to be outdated and no longer fit for purpose for the following reasons:</p> <p>Firstly, there is no clear distinction within the woodland along the roadside (Areas A1, A2, A3) of the areas which are included in the TPO and those which are not. All of the trees within this area are subject to the provisions of the Forestry & Land Management (Scotland) Act 2018 and felling permission would be required from Scottish Forestry prior to any significant tree removal being undertaken.</p> <p>Secondly, the woodland within and around the grounds of Cortes House (Area A4) is only visible in the immediate surrounds of the property and therefore is of limited significance to the visual amenity of the wider area. Again this woodland is subject to the provisions of the Forestry & Land Management (Scotland) Act 2018 and felling permissions must be sought prior to removing trees.</p> <p>The controls on felling as set out in the Forestry & Land Management (Scotland) Act 2018 and the associated regulations are considered to be sufficient to ensure the appropriate management and long term retention of woodland within the area around Cortes House. As a result an alternative layer of legal protection in the form of a Tree Preservation Order is no longer considered necessary.</p>
Recommendation	<p>Confirm the Revocation Order to revoke the existing Tree Preservation Order</p>

APPENDIX 3: Representation

Dear Sirs,

**TOWN AND COUNTRY PLANNING(SCOTLAND) ACT 1997 (as amended)
ABERDEENSHIRE COUNCIL
TREE PRESERVATION REVOCATION ORDER B&BDC TPO 15(2017)
Cortes House, Rathen**

I refer to your letter of 4th June 2019 regarding the above. I would like to take this opportunity to object to the Tree Preservation Revocation Order in respect of the trees in the above location, and note my reasons for the objection below.

1. The woodland strip along the roadside belongs to my wife and I and we would prefer the preservation order to be upheld to ensure the woodland behind the strip indicated on the copy of the map, be afforded some shelter from high winds and possible loss of woodland from the elements.
2. The area of woodland surrounding Cortes House is visible to us, and our neighbours and leads directly onto our surrounding forest. These woodlands have been established for at least 50 to 60 years or more. If the existing tree preservation order is to be removed and the trees in that area are felled, we feel our home may be endangered by the loss of the shelter of those trees. At the moment if a large tree comes down due to strong winds, there seems to be a knock on effect in the surrounding area resulting in the loss of more woodland.
3. We live at Den of Cortes, indicated on your maps, and are very lucky to be able to live alongside the may and varied wild animals in these woodlands. There are Roe deer in the woods, who produce at least two young every summer, pheasants, buzzards, woodpeckers, various birds, badgers, a foxes den, hares in the field beside the wood - not a sight you see often and last summer we were fortunate enough to see a pine martin (caught on video). There is also a heron who hunts along the burn which runs through the woods and a surprisingly large number of bats in the surrounding area.

We feel in this day and age protection for such a varied ecosystem should not be removed, protection for the native wildlife habitat should be preserved as there are not many pockets of old woodland left in our area.

