

CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- 29 April 2005

Agenda Item No:-

A2

Public	Policy	Delegated Yes
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Accompanying Comments and Statements

Environmental Impact Statement:

No

No

Corporate Management Team Comments:

No

No

Financial Comments:

No

No

Legal Comments:

No

No

Personnel Comments:

No

No

Title:-

**PROPOSED TREE PRESERVATION ORDER NO. 190:
29 THE GREEN, DALSTON**

Report of:-

Head of Planning Services

Report reference:-

P.15/05

Summary:-

A Tree Preservation Order was made on 16 February 2005 to protect two Scots pine trees within the Dalston Conservation Area, located within the rear garden of 29 The Green, Dalston. The report considers objections to the Order, and concludes that the Order should be confirmed.

Recommendation:-

That Tree Preservation Order 190 is confirmed.

Alan Eales

Head of Planning Services

Contact Officer: Charles Bennett

Ext: 7535

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None

1.0 Background

- 1.1 The Town and Country Planning Act 1990, Section 198 provides that Local Planning Authorities may make a Tree Preservation Order (TPO) if it appears to them to be "expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area". The Department of Environment Transport and the Regions (DETR) Good Practice Guide advises that "TPO's should be used to protect selected trees and woodland if their removal would have a significant local impact on the environment and its enjoyment by the public".
- 1.2 In February this year TPO 190 was made in respect of two Scots pine trees in the rear garden of 29 The Green, Dalston, Carlisle. The trees were assessed as a result of a notification to fell the trees under Section 211 of the Town and Country Planning Act 1990 as they are in the Dalston Conservation Area. The trees were visually inspected using an objective assessment of the amenity value of the trees, an assessment of the trees' health and a judgement made that the trees justified making a TPO on the grounds of amenity.
- 1.3 The Order was served on 16 February 2005 on Ms Eastburn of 29 The Green, others who have an interest in the land affected by the Order and adjoining landowners. The aforesaid were given 28 days to submit any representations or objections. A letter dated 1 March 2005 was received from Ms Eastburn of 29 The Green, Dalston objecting to the making of the TPO. A copy of the letter is reproduced in full and appended to this report.
- 1.4 Late objections and representations were received from Mrs Auld, Clerk to Dalston Parish Council. Cllr Crookdake, Carlisle City Councillor, Dalston Ward, Mr Holt, Hon. Treasurer Dalston Lawn Tennis Club, Mr Dinning, Chairman Dalston Recreation Committee. Ms Eastburn, 29 The green, Dalston. Copies of the letters are reproduced in full and appended to this report.

2.0 Assessment of the Trees' Amenity Value

- 2.1 In accordance with the DETR's Good Practice Guide an assessment of the contribution of the trees to the public amenity of the locality was made using the TEMPO system. A score is given to trees depending on five factors including amenity assessment, remaining longevity, relative public visibility and suitability for TPO and other factors and an expediency assessment. This enables the assessment to be objective.
- 2.2 In terms of the public amenity value of the trees, the TEMPO assessment found that the trees had good scores and should be protected.
- 2.3 The survey carried out by Carlisle City Council's Landscape Architect/Tree Officer found that the two trees that comprise Group 1 (G1) were mature specimens aged approximately 50 years old. The trees were in good health and had suffered only minor damage in the January 2005 storms. There was no rot apparent in the trunk or crown of the trees and only some minor dead wood that was consistent with the age and growth habits of Scots pine.
- 2.4 A planning application 99/0964 granted consent for a new recreation hall. The hall will dominate the view when entering the recreation ground. The existing mature trees at 29 The Green, Dalston will screen and soften the view of the new hall. Carlisle City Council wish to see existing mature trees retained to screen and soften new developments. The value of trees in such situations is recognised by Carlisle City Council in its adopted supplementary planning Guidance 'Trees on Development Site' as follows:

"Trees are natural features in an ever changing environment. They can soften the impact of new development, contribute to its overall character, help to hide unsightly views.....".

2.5 In addition, Carlisle District Local Plan has the following relevant policies:

Policies E9 - "Landscaping schemes will be required for development permitted on the periphery of settlements in order to fully integrate the development with its settlement and the surrounding countryside";

Policy E18 - "Trees which are under threat, will, in appropriate cases, be protected by means of Tree Preservation Orders, or conditions attached to planning permissions"; and

Policy E19 - "In considering proposals for new development the City Council will where appropriate require the retention of existing trees, shrubs, hedges and other wildlife habitats, and the replacement of any environmental feature lost to development. Landscaping schemes to be implemented by the applicant will be required as part of most planning applications".

2.6 The trees are in the Dalston Conservation Area. It is recognised that trees constitute a significant element in the character, and are therefore worth protecting for that reason, whether or not they are worth protecting in their own right. This was recognised by the High Court in *R v Canterbury CC, ex p. Halford*.

3.0 Objections and Representations

3.1 Ms Eastburn makes the following objections to the TPO in her letter:

- a. one of the Scots pines was damaged in the January 2005 storms;
- b. branches break off the tree intermittently;
- c. the roots have the potential to damage the foundations of the proposed extension at 29 The Green, Dalston;
- d. roots cause a problem for road maintenance; and
- e. the Parish Council did not object to the felling of the trees.

3.2 I have the following comments to make on the above objections:

- a. the Council's Landscape Architect/Tree Officer visited the site on the 26 January 2005 and made a visual assessment of the health and safety of the trees. It was observed that a small number of minor branches had blown off during the recent storms, but the trees remained in a safe and healthy condition;
- b. removing the dead wood and crown thinning to reduce the weight and wind resistance of the branches can reduce the risk of branches blowing off and naturally occurring dead wood falling to the ground. Work that Carlisle City Council considers a more appropriate course of action and would not object to;
- c. planning application 04/0975 was granted for the demolition of existing garage and external store, erection of a new garage with utility room and one en-suite bedroom above. The design and construction of the extension will take into account the proximity of the trees. Tree roots will not cause damage to the extension as they will not be able to penetrate the new foundations.
- d. only a minimal amount of damage to the road surface has occurred due to the trees. Where there is damage caused by the trees, the road surface could be repaired without the need to fell the trees.
- e. Ms Eastburn notified Carlisle City Council of her intention to fell the trees under Section 211 of the Town and Country Planning Act 1990, as she is required to do as the trees are within the Dalston Conservation Area. It is the policy of Carlisle City Council to seek the comments of the Parish Council on proposals to fell or prune trees in such circumstances. The Parish Council did not object to the felling of the trees, but agreed that the trees should be replaced with more suitable native species to prevent the site becoming too bare. Carlisle City Council does not have the power to condition the replacement of the trees if they were removed and considered that the most suitable way to prevent the site becoming too bare was to retain the existing mature trees.

3.3 Six late objections/representations were received.

3.4 Mrs Auld, Clerk to Dalston Parish Council:

- a. requested to know why the TPO had been made;
- b. the trees not particularly good specimens and are not of much benefit in relation to the public amenity of the Recreation Ground entrance; and
- c. they had no objection to the trees being removed when consulted on the time of the application to fell the trees within the Conservation Area, subject to their replacement.

3.5 I have the following comments to make on the above objections:

- a. the TPO was made in response to a notification of intention to fell the trees;
- b. the trees are the only mature trees at the entrance to the recreation ground, will provide screening and help soften the view of the new recreation hall; and
- c. Carlisle City Council does not have the power to condition the replacement of the trees if they were removed and considered that the most suitable way to prevent the site becoming too bare was to retain the existing mature trees.

3.6 Mr Holt, Hon. Treasurer Dalston Lawn Tennis Club:

- a. considers the trees to be a hazard;
- b. wants Carlisle City Council to accept all liability in relation to the trees; and
- c. the trees are not a public amenity, but a public liability.

3.7 I have the following comments to make on the above objections:

- a. the trees have been assessed in respect of their safety and at the time of the inspection were found to be safe and free of significant defects;
- c. the trees remain the responsibility of their owner at all times, even after a TPO has been placed on them. It is good practice for tree owners to have their trees regularly inspected for health and safety purposes; and
- d. the trees are a public amenity as the only trees at the entrance to the recreation ground, will provide screening and soften the view of the new recreation hall.

3.8 Cllr. Crookdake, Carlisle City Councillor, Dalston Ward (29th March 2005):

- a. the trees are not enhancing the area and are of no particular merit;
- b. the trees are not suitable to the area or the garden; and
- c. the trees are a problem being so close to the road.

3.9 I have the following comments to make on the above objections:

- a. the trees are within the Dalston Conservation Area. It is recognised that trees provide a significant contribution to the character of conservation areas and are therefore worth protecting for that reason, even where they are not of particular merit in themselves;
- b. the trees do not dominate the property or the garden, and are typical of trees in such exposed areas; and
- c. the minor damage to the road caused by the trees could be repaired during the construction of the new recreation hall and if carried out to a good standard similar damage should not recur.

3.10 Mr Dinning, Chairman Dalston Recreation Committee:

- a. the trees are a problem to the roadway.

3.11 I have the following comments to make on the above objections:

- a. if the overhaul of the roadway is carried out to a high enough standard the roots will not be a future problem. This could be achieved without the need to remove the trees.

3.12 Ms Eastburn 29 The Green, Dalston:

- a. the trees are spaced closely together and one of the trees is leaning considerably, the branches are broken and in a poor state;
- b. both trees have been significantly weakened by the severe storm;
- c. will the Council accept responsibility for damage to persons or property; and
- d. the only way to keep the trees safe would be to prune 60% of the branches, which could cause the tree to quite easily become diseased.

3.13 I have the following comments to make on the above objections:

- a. the trees are growing as a group and it is not unusual to see trees planted close together. The tree on the windward side is windswept, a character of trees growing in this area and is sheltering the tree on the leeward side;
- b. at the time of the tree inspection for the making of the TPO the trees were found to be safe and free of significant defects;
- c. the trees remain the responsibility of their owner who should have them inspected on a regular basis; and
- d. the trees do not require a reduction of 60% to ensure their safety. Removal of dead wood and a light crown thin of 15% would be appropriate. This would ensure the shape of the tree was retained and that they continued to be an amenity to the area.

3.14 Cllr. Crookdake, Carlisle City Councillor, Dalston Ward (11th April 2005):

- a. the new landscaping for the recreation hall will provide ample screening.
- b. the tree roots are damaging the entrance road.
- c. the Council could be liable to pay compensation in respect of damage caused by the trees.

3.15 I have the following comments to make on the above objections:

- a. the new landscaping for the recreation hall will, by the very nature that it is new, with small trees and shrubs, provide no effective screening.
- b. see 3.2(d)
- c. see 3.9(c)

4.0 Conclusion

4.1 It is considered that the trees have significant public amenity value and merit protection by virtue of their location within the Dalston Conservation Area, and the benefits that will be gained from the trees screening and softening the view towards the new recreation hall.

To the Chairman and Members of the
Development Control Committee

P.15/05

5.0 Recommendation

5.1 That the Tree Preservation Order 190 is confirmed.

Alan Eales
Head of Planning Services

Contact Officer: Charles Bennett

Ext: 7535

TPO 190

Town and Country Planning Act 1990

THE CITY OF CARLISLE (29 THE GREEN DALSTON)

Insert title
of Order
(including
year)

TREE PRESERVATION ORDER, 2005 NO 190

Insert name
of Council

The Council of the City of Carlisle
in exercise of the powers conferred on them by sections 198 [, 201^(a)] [and] 203 [and 200] of the Town and
Country Planning Act 1990^(b), ~~and with the consent of the~~ ~~XXXXXX~~

Insert name
of
appropriate
authority

hereby make the following Order:—

Citation

Insert title
of Order
(including
year)

1. This Order may be cited as The City of Carlisle (29 The Green Dalston)
Tree Preservation Order 2005 No 190

Interpretation

Name of
Council
making the
Order

2. In this Order "the authority" means the Council of the City of Carlisle
and unless the context otherwise requires, any reference in this Order to a numbered section is a reference
to the section so numbered in the Town and Country Planning Act 1990.

[Application of section 201

Insert date

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this
Order and, accordingly, this Order shall take effect provisionally on 16 February 2005

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)^(c)
[or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and
subject to article 5, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful
destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so
specified, except with the consent of the authority and, where such consent is given subject to conditions,
in accordance with those conditions.

Exemptions

5. (1) Nothing in article 4 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory
undertaker, where the land on which the tree is situated is operational land^(d) of the statutory
undertaker and the work is necessary—

(a) Under section 199(1), tree preservation orders generally do not take effect until confirmed, but a direction may be given under section 201
for an order to take provisional effect immediately.

(b) Where the Order is to be made under the sections cited and section 300 of the Town and Country Planning Act 1990, all those provisions
should be cited, as should the fact of the consent of the appropriate authority. As to the circumstances in which the consent of the Forestry
Commission is required (and should be cited) see section 200(1) of that Act.

(c) Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping of
trees which are dying, dead or have become dangerous, or the undertaking of those acts in compliance with obligations imposed by or
under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. Subsection (7) of that section
makes section 198 subject to section 39(2) of the Housing and Planning Act 1986 (c.63) (saving for effect of section 2(4) of the Opencast
Coal Act 1958 on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c.10) (licences
under that Act to fell trees comprised in a tree preservation order).

(d) See section 263 of the Town and Country Planning Act 1990.

(e) S.I. 1995/418.

- (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995^(e);
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991^(a); or
- (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989^(b).

(2) In paragraph (1), "statutory undertaker" means any of the following –

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
- a relevant airport operator (within the meaning of Part V of the Airports Act 1986)^(c),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984^(d) to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewerage undertaker,
- the Civil Aviation Authority or a body acting on behalf of that Authority,
- the Post Office.

Applications for consent under the Order

6. An application for consent for the cutting down, topping, lopping or uprooting of any tree in respect of which his Order is for the time being in force shall be made in writing to the authority and shall–

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application.

Application of provisions of the Town and Country Planning Act 1990

7. (1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2)

(a) 1991 c.59, see section 72.

(b) 1989 c.29.

(c) 1986 c.31.

(d) 1984 c.12.

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of the Schedule.

Directions as to replanting

8. (1) Where consent is granted under this Order for the felling in the course of forestry operations of a part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to—

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9. (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article—

- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person —

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forest Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article—

"development value" means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

~~[Application to trees to be planted pursuant to a condition~~

~~1. It is the intention of the Council to identify in the first column of Schedule 1 of the Order the trees to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 307 of the Act) and to include appropriate provision for preservation and planting of trees. This Order takes effect as from the time when [that tree is planted] [those trees are planted].~~

~~[Orders made by virtue of section 309~~

~~1. This Order takes effect in accordance with subsection (3) of section 309 of the Act in anticipation of disposal of Crown land.]~~

Dated this 16th day of February 2005.

(month and year)

(if the Council's Standing Orders require the sealing of such documents:)

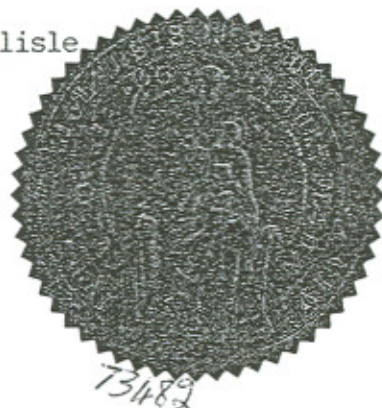
[The Common Seal of the (name of Council) Council of the City of Carlisle was hereunto affixed in the presence of-

M. H. H. H.

LEGAL SERVICES MANAGER

(if the Council's Standing Orders do not require the sealing of such documents:)

[Signed on behalf of the (name of Council)



Authorised by the Council to sign in that behalf]

[CONFIRMATION OF ORDER

[This Order was confirmed by the (name of Council) without modification on the day of

(month and year)] OR

[This Order was confirmed by the (name of Council) subject to the modifications indicated by (state how indicated)

on the day of

(month and year)]

Authorised by the Council to sign in that behalf]

[DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by the (name of Council) on the day of

(month and year)

Authorised by the Council to sign in that behalf]

[VARIATION OF ORDER

This Order was varied by the (name of Council) on the day of

(month and year) under the reference number

Authorised by the Council to sign in that behalf]

[REVOCATION OF ORDER

This Order was revoked by the (name of Council) on the day of

(month and year) under the reference number

Authorised by the Council to sign in that behalf]

SCHEDULE 1
SPECIFICATION OF TREES
Trees specified individually
 (encircled in black on the map)

Article

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
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NONE

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
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NONE

Groups of Trees

(within a broken black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
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G1

2 x Scots Pine

336860E
549584N

Woodlands

(within a continuous black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
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NONE

* complete if necessary to specify more precisely the position of the trees.

SCHEDULE 2

Article 7

PART I

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications

Provisions of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	(a) In subsection (1) – (i) omit – "in such manner as may be prescribed by a development order," "such" in the second place where it appears, and "as may be so prescribed"; and (ii) substitute "matters relevant to tree preservation orders made by the authority" for "applications for planning permission". (b) In subsection (2) – (i) after "contain" insert ", as regards each such order"; and (ii) for paragraphs (a) and (b) substitute – "(a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.". (c) Omit subsections (3) and (4) (as required by section 198(4)).
Section 70 (determination of applications: general considerations)	(a) In subsection (1) – (i) substitute – "Subject to subsections (1A) and (1B), where" for "Where"; "the authority" for "a local planning authority"; "consent under a tree preservation order" for "planning permission" where those words first appear; and "consent under the order" for "planning permission" in both of the other places where those words appear; (ii) after "think fit", insert – "(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and (iii) omit "subject to sections 91 and 92,". (b) After subsection (1) insert – "(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting)." (c) Omit subsections (2) and (3).
Section 75 (effect of planning permission)	(a) In subsection (1) substitute – (i) "Any" for the words from "Without" to "any"; (ii) "consent under a tree preservation order" for "planning permission to develop land"; (iii) "the consent" for "the permission"; and (iv) "the land to which the order relates" for "the land". (b) Omit subsections (2) and (3).
Section 78 (right to appeal against planning decisions and failure to take such decisions)	(a) In subsection (1) substitute – (i) "the authority" for "a local planning authority"; (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear; (iii) "consent under such an order" for "planning permission" in the second place where those words appear; (iv) for paragraph (c) substitute – "(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,". (b) Omit subsection (2) (c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute – "in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served – (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow; (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant." (d) For subsection (4), substitute – "(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)." (e) For subsection (5), substitute – "(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question."
Section 79 (determination of appeals)*	(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority". (b) Omit subsection (3). (c) In subsection (4), substitute – (i) "section 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5"; (ii) "consent under a tree preservation order" for "planning permission"; and (iii) "the authority" for "the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71." (d) Omit subsections (6) and (6A). (e) In subsection (7), omit the words after "section 78".

*Section 79 was amended by the Planning and Compensation Act 1991 (c. 34), section 18 and Schedule 7, paragraph 19.

PART II
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,
AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order—

- (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order—

- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

(1) Where the authority—

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

Section 79

(1) On an appeal under section 78 the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

.....
(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

.....
(7) Schedule 6 applies to appeals under section 78.

City of Carlisle

Department of Environment and Development

Town and Country Planning Act 1990 Sections 198(1) and 201

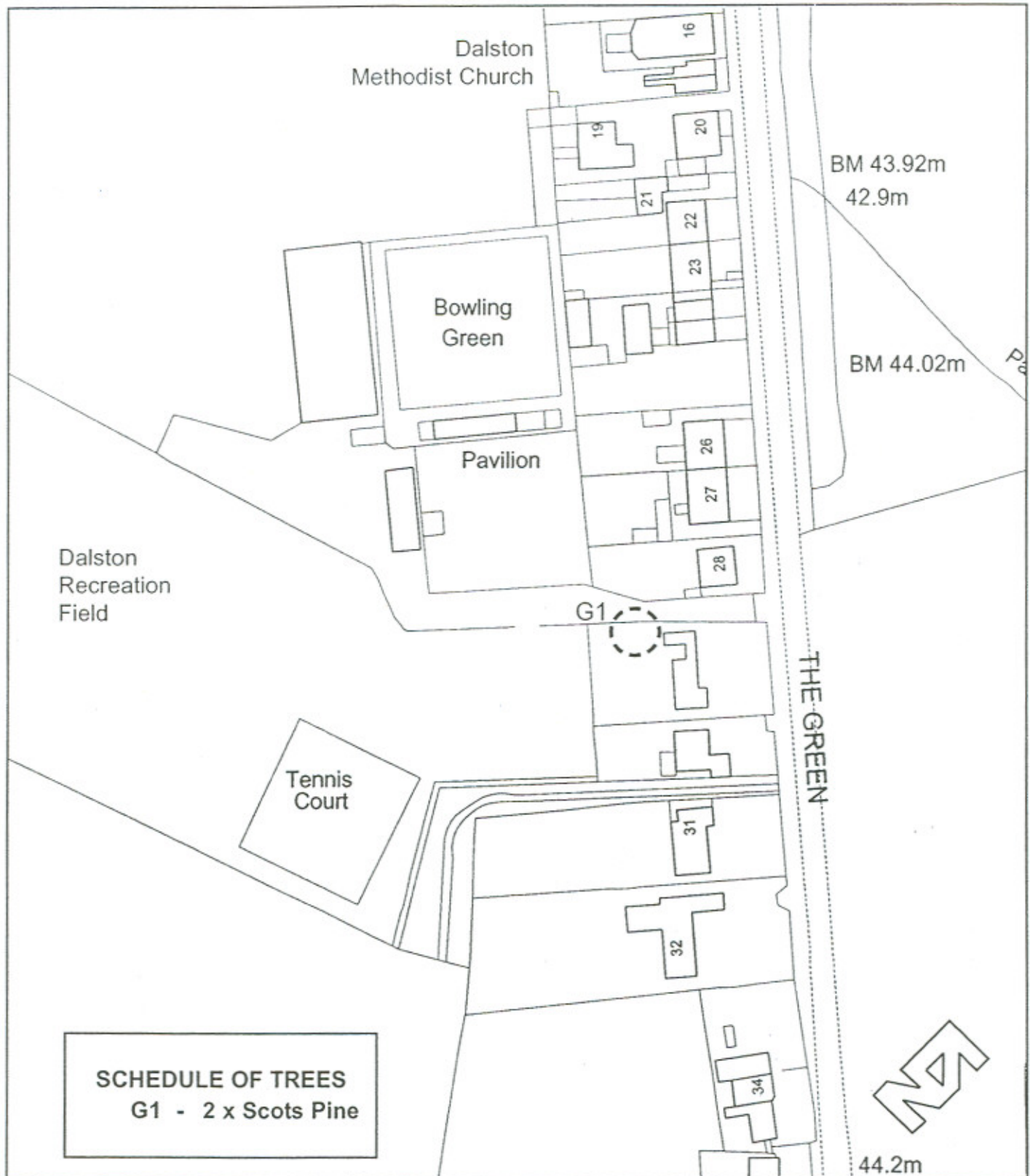
Tree Preservation Order Number 190

29 The Green, Dalston.

CARLISLE
CITY COUNCIL



www.carlisle.gov.uk



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Scale 1:1250

Date January 2005

Grid Ref 336860E 549584N

Carlisle City Council
Civic Centre • Rickergate • Carlisle • CA3 8QG
Head of Planning Services
Alan Eales DipTP MRTPI

TREE PRESERVATION ORDER No. 190- 29 THE GREEN DALSTON.

STATEMENT OF REASONS

The guidance set out in the document "Tree Preservation Orders: a Guide to the Law and Good Practice" (DETR March 2000) states that tree preservation orders should be used selected trees if their removal would have a significant impact on the local environment and its enjoyment by the public.

Carlisle District Local Plan Policy E18 states that trees which contribute to amenity and are under threat, will, in appropriate cases, be protected by means of Tree Preservation Orders.

The group of two Scots pines stands on the northern boundary of the rear garden of 29 The Green Dalston and the entrance/exit to the Recreation Field, and is within the Dalston Conservation Area. The trees are in a prominent location and are the only trees that are of a visual and public amenity value at the entrance to the Recreation Ground. The trees are under threat from building works to 29 The Green (planning application 04/0975) and the submission of a Section 211 notice to fell them. The Council consider it expedient to gain control over the management of these trees to ensure the continuity of the visual amenity to the area.

15 FEB 2005

Photographic Evidence



Letters of Objection/Representations

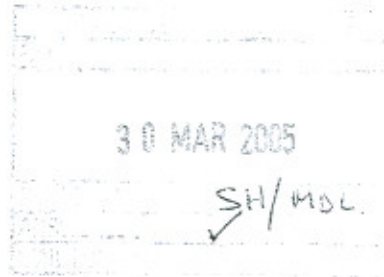
A4 refers



Dalston Tennis Club

Rose Bank
Curthwaite
Wigton
Cumbria
CA7 8BG

J.M.Egan,
Head of Legal & Democratic Services,
Civic Centre,
Carlisle,
Cumbria,
CA3 8QG.



25th March 2005

Dear Sir,

Re: Tree Preservation Order 2005 NO 190

Further to your letter to our Secretary dated 16th February 2005, the matter was discussed at our AGM on 15th March.

It is the opinion of the Dalston Tennis Club that if there is any question as to the health and or safety of the said trees listed in the above order that the order should be lifted and the trees cut down.

It is our opinion that in the event of either of these trees falling down in either the direction of the Tennis Club or the children's recreational area, that they would reach areas often populated by children and therefore should be considered as a hazard.

As there is a possibility of either of these trees falling into the areas of the Tennis Club, I have contacted our Public Liability Insurers asking about our liability if such a situation occurred. Our Insurance is arranged by The Lawn Tennis Association as part of our membership of that Organisation. They inform me that as the people on whose land the trees are have requested to take them down, and this has been refused by the regulatory body concerned, the matter of liability is not clear.

If the Council is going to uphold this order we would insist that The Council gives Dalston Tennis Club a clear undertaking that they will accept all liability in respect of any claim resulting from any of the trees falling within the grounds of Dalston Lawn Tennis Club.

In light of the above we can only maintain that the trees in question are not in fact a public amenity but a public liability.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Edward T.G. Holt'.

Edward T.G. Holt

Hon Treasurer

For & on behalf of Dalston Lawn Tennis Club

A4 refers

Mulberry House
29 The Green
Dalston
Carlisle
CA5 7QB

28 MAR 2005

SH

✓

Mr S Halstead
Legal and Democratic Services
Civic Centre
Carlisle
CA3 8QG

23rd March 2005

Dear Mr Halstead,

Re: Tree Preservation Order 190

I am writing in response to Mr Charles Bennett's letter, dated 4th March 2005, and would like to confirm that I still wish to proceed with my objection to the Tree Preservation order ref: 190.

Unfortunately, because of family commitments, I cannot attend the meeting on 1st April, but I thought the enclosed photographs may be helpful for the committee in reaching its decision.

As you can see the trees are spaced very closely together and one of the trees is leaning considerably; its branches are all very heavy, broken and in a poor state at the top of the tree. Following the recent storms and the number of branches that fell off, we believe that both trees have been significantly weakened and we are extremely concerned at the potential damage to ourselves, our children and anyone accessing the recreation area along the lane. It is an extremely popular area, and in terms of liability of insurance, do we assume that the council will take full responsibility in the light of any damage to person/s or property in the likely event of any part of the tree falling down should the Tree Preservation order remain?

Our other option is to prune back the damaged branches, but as you will be aware, Scots pine trees do not take kindly to heavy pruning and are prone to disease. To make the largest of the Scots pine "safe", I would say that 60% of the branches would need to be pruned, to the extent that the tree could quite easily become diseased.

For the reasons given above, we believe that the only safe and sensible course of action is to fell both trees and we await your decision.

Yours sincerely,

Cheryl Eastburn

Cheryl Eastburn

I

Mulberry House
29 The Green
Dalston
Carlisle
CA5 7QB

03 MAR 2005

SH

✓

1st March 2005

J M Egan
Head of legal and Democratic Services
Civic Centre
Carlisle
CA3 8QG

Dear Mr. Egan,

Your Reference: PG3/117 TPO 190

I am writing with reference to the above Tree Preservation Order.

When I first contacted Mr Bennett at Carlisle City Council, I stated that I wished to take down the two Scots Pine Trees for two main reasons. Firstly, that one of the Scots Pine is in a damaged state following the January Storms; branches have been broken and are snapping off the tree intermittently. Secondly, that we are about to start building work to the property which is very close to the second Scots Pine. We are extremely concerned at the potential damage that could be caused by the roots and the very real possibility of the tree/branches falling onto the new building.

I would like to clear up a point that Mr Bennett has put in his report, (statement of reasons), for not allowing us to fell the trees. Mr Bennett states that they are the only trees in a prominent location and are of public amenity value. The whole of the Green, the Recreation ground and surrounding areas are covered in trees and provide amenity value, we also have three other trees in our garden bordering on the recreation ground. The Scots Pine trees border the access road to the Recreation ground, the roots cause a real problem to the road maintenance and the branches falling off haphazardly have become a health and safety issue.

Finally, I believe that Mr Bennett has contacted the Parish Council to see whether they objected to my proposal and that they had no objections whatsoever to the trees being felled. Also, I would like to state that once the building work has finished I would look to replacing the trees with another in a more suitable position.

I look forward to receiving your comments.

Yours Sincerely,


Cheryl Eastburn.

Ashbridge
Stockdalewath
Carlisle
Cumbria CA5 7DP

29th March 2005

Mr Charles Bennet – Landscape Architect / Tree Officer
Carlisle City Council
The Civic Centre
Rickergate
Carlisle CA3 8QG

PLANNING SERVICES
REF: 14 TREE B
1 APR 2005
RECORDED
SCANNED
PASSED TO
ON

170 190

Dear Mr. Bennet

CB/14 TREE B – Ref: Mrs. Eastburn, 29 The Green, Dalston.

Mr and Mrs Eastburn have approached me as their City Councillor, to assist with their request to cut down two pine trees in their back garden.

In return they will purchase and plant one mature large tree and one mature smaller variety of tree, the reason being the size of the back garden.

The area is a conservation area. The present trees are not enhancing the area and are of no particular merit.

The House was a Police House with the occupants here today and gone tomorrow as they were moved by the Cumbria Constabulary. The Trees were stuck in the ground with no thought for their suitability to the area, or the garden.

I have spoken to the Chairman of the Recreation Committee who own the road adjacent to Mr & Mrs Eastburn's property and he has told me that he has a problem with trees being so near to his road.

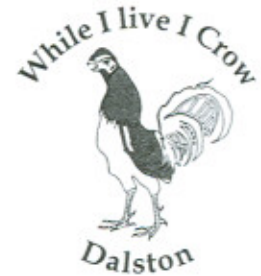
Speciman Trees would greatly enhance the area. Mr & Mrs Eastburn will undertake to sign that they will agree to the conditions on which the trees may be removed.

Yours Sincerely

Lucy Ann Crookdake

Lucy Ann Crookdake
Carlisle City Councillor
Dalston Ward.

DALSTON PARISH COUNCIL



Mrs E. Auld – Clerk

Bannerdale Unthank Dalston Carlisle Cumbria CA5 7BA

Tel: 01228 712920; Fax: 01228 712920; Email: liza@carlisle-city.gov.uk

11th March 2005

Mr J M Egan
Head of Legal & Democratic Services
Carlisle City Council
Civic Centre
Carlisle
CA3 8QG

Dear Mr Egan

TREE PRESERVATION ORDER 2005 NO 190 – 29 THE GREEN, DALSTON

Further to the formal Notice regarding the above Tree Preservation Order, Dalston Parish Council would like to be informed as to why this Order has been made on the two Scots Pine at this property. They are not particularly good specimens and are not of much benefit in relation to the public amenity of the adjacent Recreation Ground entrance..

When consulted regarding the felling of the trees, Dalston Parish Council had no objection to the proposal. It was agreed, however, that the trees should be replaced with more suitable species, in perhaps an improved location, to prevent the site becoming too bare.

Yours sincerely

Mrs E Auld
Clerk

Walkmill House
Riverside
Dalston
Nr. Carlisle
Cumbria

30th March 2005

Mr. Charles Bennet
Carlisle City Council
The Civic Centre
Carlisle
Cumbria

PLANNING SERVICES	
REF	11 TREEB TP 190
- 1 APR 2005	
RECORDED	
SCANNED	
PASSED TO	CB
ACTION	RIO

Dear Mr. Bennet,

29 The Green, Dalston Nr. Carlisle, Cumbria.

As Chairman of the Dalston Recreation Committee, Mrs. Eastburn of the above address has approached me, regarding two Pine Trees in the rear garden of the above property.

They border the fence adjacent to our road entering the Recreation Field.

We are at present well on the way to building a large Recreation Hall for indoor activities and this will entail the overhaul of the roadway and parking etc.

Mrs. Eastburn's request to cut down and remove the roots of the two Pine Trees in question was put to the Recreation Committee at our last meeting and we have no hesitation in granting her request, particularly because the roots of these trees are a problem to the roadway.

The expence of surfacing all the entrance area is considerable and the removal of the trees would ensure a problem free road.

We understand that the Eastburns will be planting two trees to replace the two pines to be removed. They will consult us on the position of the two new trees.

We know that this is a Conservation Area.

Please will you consider our request.

Yours sincerely



Allan Dinning
Chairman Dalston Recreation Committee.

Ashbridge
Stockdalewath
Carlisle
Cumbria CA5 7DP

11th April 2005

Mr. C. Bennett
Landscape Architect/Tree Officer
Carlisle City Council
The Civic Centre
Carlisle
Cumbria CA3 8QG

PLAN	TPO 190
DATE	13 March 2005
BY	CB R10
REMARKS	13/04

Dear Mr. Bennett

Tree Preservation Order 190, 29 The Green, Dalston, Carlisle, Cumbria.

Thank you for your letter regarding the two pine trees.

The landscaping carried out once the new Recreation Hall is finished will provide ample Trees to enhance the area.

You will note that you yourself have brought to the planning Committee's notice that the tarmac is being undermined at the entrance to the Recreation ground by the two trees in question.

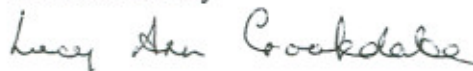
Some of the parking spaces are going to have to be moved on the Recreation ground and the entrance resurfaced to a high standard

Please find enclosed the comment from the Parish Council regarding the two trees.

The two trees in question could also undermine the extension to the property. If this happens it is possible that the Council could be liable for compensation in future bearing in mind that the matter has been brought to the attention of the Planning Committee.

We should be grateful if you could reconsider the placing of the order and that the owners of the property are willing to purchase mature trees to replace these two nondescript pines.

Yours Sincerely



Lucy Ann Crookdake

CB/14 TREE B 29 The Green – fell two Scots Pine trees – Tree Preservation Order 2005 No 190 made – agreed that a letter be sent to Carlisle CC to ascertain why the Order had been made on the two Scots Pine at the property. They were not thought to be particularly good specimens, nor were they of much benefit in relation to the public amenity of the adjacent Recreation Ground entrance.

04/1377 Dalston Recreation Field, The Green – renewal of application 99/0964 for: Recreation Hall to provide accommodation and facilities for youth, sport and community groups – application withdrawn. Work had commenced based on approved application 99/0964.

04/1203 Kingswood Educational Study Centre, Greensyke, Cumdivock – operational development comprising:

- a) Retention of dining/function hall and teacher's common room; underground caving system and proposed shelter; boundary fence; souvenir shop; air handling plant room; and, drainage layout;
- b) Formation of challenge course; quad bike track and shelter; low ropes and nightline course; archery enclosure and shelter; new access road and parking layout; planted soil bund; and, a climbing wall;
- c) Installation of external lighting system

The Clerk reported that a copy of a letter from P Wilbraham to Carlisle CC Planners dated 10/02/05 had been received, a copy of MAS Environmental preliminary report (07/03/05) on proposed planning controls relating to noise issues for Carlisle CC Planners, indicating a full conclusion would require a site visit and additional noise monitoring and a further copy communication (08/03/05) regarding the lack of data on which to base an appropriate condition from Mr Wilbraham. It was suggested that proper consultation, in line with due democratic process, was not possible prior to the Carlisle CC Development Control meeting on 1st April 2005 and that it would continue to be difficult to obtain acceptable noise measurement conditions. Resolved, proposed Mr Craig, seconded Mr Kelsey, that because of the lack of progress in producing a satisfactory workable Management Code, as required by the Planning Inspector in his report dated 10th June 2004 for similar developments on the Cumdivock site, planning application 04/1203 should be recommended for refusal – 7 in favour, 2 against, 3 abstentions. Mrs Dalton and Mr Auld agreed to represent the Parish Council and speak at the meeting on 1st April regarding the Kingswood application.

05/0086 George Graham & Sons, Bishops Mill – conversion of mill into two dwellings and erection of pair of semi-detached dwellings – resolved to comment as follows: All the elevations facing the road (North and East) should be finished in stone. The developers should revisit the design of the elevations of the pair of semi-detached dwellings in application 05/0086 and the conversion of the mill annexe into one dwelling in application 05/0107. It was felt in both cases that the fenestration was out of character and should be sympathetic with the mill, which was a building of industrial and archaeological significance in Dalston village. The preference was for the conversion of the mill annexe into one dwelling rather than the erection of a pair of semi-detached dwellings, but no observations were made on the conversion of the mill into two dwellings.

05/0107 George Graham & Sons, Bishops Mill – conversion of mill annexe into one dwelling.

05/0101 Clipston M.O.T. Centre, Unit 1A, Barras Lane – change from bus garage and workshop to MOT centre and repairs – no observations.

05/0127 26 Sowerby Wood – two storey extension to provide living room, snooker room with 2no. bedrooms and bathroom above (revised application) – no observations.

05/0145 Orchard House, Buckabank – change of use of part of dwelling and store to form one bedroom holiday cottage and erection of 1.6m boundary wall to roadside – no observations.

05/0154 Indian King Cottage, 23 The Square – erection of sunroom – no observations.

05/0172 Beech House, Stockdalewath – strip and re slate roof with minor alterations to roof trusses to improve access for storage in loft including skylights (LBC) – no observations.

05/0170 40 Lingy Close – renewal of temporary permission for siting of mobile home – no observations.