

CARLISLE CITY COUNCIL

Report to:- Development Control Committee

Date of Meeting:- 9 March 2007

Agenda Item No:-

Public	Policy	Delegated: Yes
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Accompanying Comments and Statements

	Required	Included
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. 217
GARTH HOUSE, BRAMPTON

Report of:- Director of Development Services

Report reference:- DS.23/07

Summary:-

A Tree Preservation Order was made on the 6 December 2006 to protect 34 individual trees located along the boundary of Garth House with Greenfield Lane and Longtown Road. The report considers objections to the order made by the owner of the property and concludes that the order should be confirmed without modification.

Recommendation:-

That Tree Preservation Order 217 is confirmed without modification.

Catherine Elliot
Director of Development 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: Tree Preservation Orders: A Guide to the Law and Good Practice

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 document, "Tree Preservation Orders A Guide to the Law and Good Practice" advises that "Tree Preservation Orders 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 Policy E18 of the adopted Carlisle District Local Plan states "Trees which contribute to the amenity and are under threat, will in appropriate cases, be protected by means of Tree Preservation Orders or conditions attached to planning permissions".
- 1.3 Garth House is a Grade II Listed Building located on Greenfield Lane, Brampton. The trees at Garth House have no statutory protection because they are just outside the Brampton Conservation Area and have no existing Tree Preservation Order.
- 1.4 The Owner of Garth House contacted the Local Plans and Conservation Section of Carlisle City Council to discuss their proposals for the lopping of the trees around the boundary of the property, adjacent to Greenfield Lane and Longtown Road.
- 1.5 On the 11 September 2006 the Landscape Architect/Tree Officer visited Garth House in the company of the owner and his tree contractor to discuss the proposed works to the trees.
- 1.6 The Landscape Architect/Tree Officer considered the proposed lopping of the trees inappropriate in terms of the visual amenity the trees currently provide to the area.
- 1.7 Due to the number of trees involved in the proposals and the limited time in which to carry out an amenity assessment of the trees, a temporary Tree Preservation Order was made on the 12 September 2006 to protect the trees until a full amenity survey of the trees could be carried out.

- 1.8 On the 19 October 2006 the Landscape Architect/Tree Officer visited Garth House to carry out the detailed amenity tree assessment. This was done using the Tree Evaluation Method for Preservation Orders (TEMPO) method. The TEMPO method is an objective evaluation method for assessing the suitability of trees for inclusion within a Tree Preservation Order. It is based on the criteria contained within the Department of the Environment and the regions document "Tree Preservation Orders a Guide to the Law and Good Practice".
- 1.9 At this visit the owner of Garth House presented a copy of a tree report commissioned on their behalf by Dr. Anthony Leeming of Skirsgill Estates to the Landscape Architect/Tree Officer. A copy of Dr. Anthony Leeming's tree report is attached hereto at Appendix 1.
- 1.10 During this visit the Case Officer and the owner of Garth House discussed each tree described in Dr. Leemings report whilst visiting each tree in turn. The Landscape Architect/Tree Officer then carried out the TEMPO assessment. Following the assessment a judgement was made that the trees justified the protection afforded by a Tree Preservation Order on the grounds of amenity and expediency.
- 1.11 Tree Preservation Order 217 was served on 6 December 2006 on the owner of Garth House, 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 copy of Tree Preservation Order 217 is attached hereto at Appendix 2.
- 1.12 At the same time the detailed Tree Preservation Order 217 was served, as a matter of good practice and to avoid confusion the emergency Tree Preservation Order was endorsed to the effect that it would not be confirmed, after which it ceased to have any effect.
- 1.13 The owner of Garth House sent a letter of objection dated 26 December 2006. This letter and a copy of the Officers reply to the objections are attached hereto at Appendix 3.

2.0 Assessment of the Trees Amenity Value

- 2.1 In accordance with The Department of Environment Transport and the regions document, "Tree Preservation Orders A Guide to the Law and Good Practice" an objective assessment of the contribution of the trees to the public amenity of the locality was made. This was carried out using the TEMPO system. A score is given to trees depending on five factors including amenity assessment, remaining longevity, relative public visibility, suitability for preservation, 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 high scores and were fully worthy of protection.

3.0 Objections and Representations

- 3.1 The owner of Garth House makes the following objections to the Tree Preservation Order.
- (i) That trees T22 a Lime, and T29 and T31 Beech trees should be excluded from the Tree Preservation Order. T22 due to the close proximity of other trees and T29 and T31 as they are self-seeded and also overcrowding other more important trees in the vicinity.
- 3.2 In considering the above objections Officers have the following comments to make:
- (i) The Department of Environment Transport and the regions document, "Tree Preservation Orders A Guide to the Law and Good Practice" advises Local Planning Authorities to develop ways of assessing the amenity value of trees. Carlisle City Council uses the TEMPO method for this purpose.
 - (ii) The TEMPO assessment clearly indicated that trees T22, T29 and T31 were worthy of protection. Not to include them within the Tree Preservation Order would have been a subjective and inconsistent judgement contrary to best practice and devaluing the whole process. A copy of the TEMPO assessment sheets for T22, T29, and T31 and the TEMPO guidance notes for users is attached hereto at Appendix 4.

4.0 Conclusion

- 4.1 Having duly considered the objections to the inclusion of trees T22, T29, and T31, and weighed these objections against the amenity value of the trees it is considered that the trees have a significant public amenity value and merit the protection afforded by a Tree Preservation Order.

5.0 Recommendation

- 5.1 That Tree Preservation Order 217 is confirmed without modification.

Catherine Elliot
Director of Development Services

Contact Officer: Charles Bennett

Ext: 7535

Appendix 1

Copy of Dr. Leemings Tree Report

V
Visit : To Garth House.
Dr Anthony Leeming.
Skirsgill
Penrith

11 th October 2006.

Report on trees that were under threat and advice therein.

The trees in this report, with one exception are the trees that I wished to pollard. The subsequent action by Charles Bennet now totally precludes this scenario. The initial advice contained here is about managing those trees, accepting that pollarding would not be allowed.

There is also a question about the necessary maintenance, of the lower limbs of all the trees on the south side of the property that overhang a busy public footpath. It would be ludicrous if this necessitated an application, six weeks in advance when it is the local council that insist, quite rightly, that these branches are regularly pruned. Would the order also allow me to keep my drive clear, say 10 feet high, without having to apply.

The initial survey and recommendations:

#1 Sycamore. Seriously overhangs street and would be safer removed.

#2 Beech. No Apparent Problems.

#3 Sycamore. Rot in major fork, may need serious attention in the near future.

#3A Hybrid lime I would like to take this one out as it is well inside the perimeter and would reduce the weight of cover and let more light into the garden, yet it would not be noticeable from the outside when the other trees are in leaf.

#4 Beech. Rot from damage at base of trunk, needs further investigation. Not thought to be too serious.

#5 Lime. N A P

#6 Sycamore. Split ?

#7 Lime. N A P

#8 Horse Chestnut. Major infestation, Bracket Fungus, Needs felling as it represents a serious danger from decayed roots.

#9 Hybrid Lime N A P

#10 Beech. Overhanging fork should be removed to bias the balance back towards the garden.

#11 Sycamore. N A P

#12 Sycamore N A P

#13 Horse Chestnut. N A P

#14 Beech. N A P

#15 Sycamore N A P

#16 No #16

#17 Lime. This or one of its neighbours needs to come out. Trees too close together this size threaten the other large trees nearby.

#18 Horse Chestnut. N A P

#19 Lime. N A P

#20 Beech. Split branch leaning across the road needs removing to be safe.

#21 Lime N A P

#22 Sweet Chestnut. Some centre rotting , but looks fundamentally sound.

2

#23 Beech. Overcrowded, should come out.

#24 Elm. Tree in two sections, left trunk overhanging the road needs to come off.

#25 Beech. Again , one too many , needs to come out to protect the major trees.

#26 Sycamore. N A P

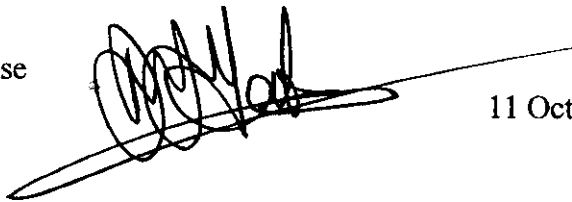
#27 Sycamore. Limb overhanging road and cables, should come off.

#28 Beech. N A P

Addendum: Currently subject to a TPO.

Red Alder. Major fungal infection, fell and burn. Remove body of fungus first and burn.

D J Tate.
Garth House



11 October 2006



Copy of Tree Preservation Order 217

**TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER 2006**

**Town and Country Planning Act 1990
The City of Carlisle (Land at Garth House, Brampton, CA8 1AY) No 217**

The Council of the City of Carlisle, in exercise of the powers conferred on them by sections 198 [201] and 203 of the Town and Country Planning Act 1990 hereby make the following Order—

Citation

1. This Order may be cited as the City of Carlisle (Land at Garth House, Brampton, CA8 1AY) Tree Preservation Order 2006 No.217

Interpretation

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

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 6 December 2006.

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), 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 of the statutory undertaker and the work is necessary—
 - (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;
- (aa) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);
- (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes;

- (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 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; 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.

(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),
- 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 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 to the cutting down, topping, lopping or uprooting of any tree in respect of which this 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).

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

Directions as to replanting

8.—(1) Where consent is granted under this Order for the felling in the course of forestry operations of any 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 has elapsed since the date of the authority's decision or, where such a 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 Forestry 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 a 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]

~~[10.] In relation to the tree[s] identified in the first column of Schedule 1 by the letter "C", being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission 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].]~~

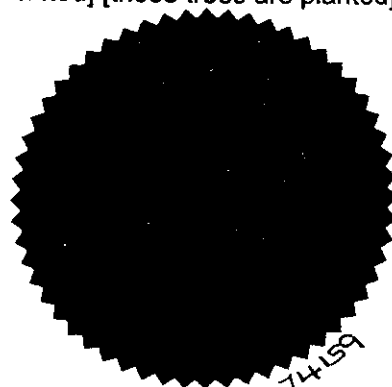
Dated this 6th day of December 2006

[if the Council's Standing Orders require the sealing of such documents:]

[Executed as a Deed by affixing the Common Seal
of the Council of the City of Carlisle]
in the presence of -

John M. Egan

Director of Legal &
Democratic Services



[CONFIRMATION OF ORDER]

[This Order was confirmed by the [] without modification on the [] day of []

OR

[This Order was confirmed by the [], subject to the modifications indicated by [], on the [] day of []

.....
Authorised by the Council to sign in that behalf]

[DECISION NOT TO CONFIRM ORDER

[A decision not to confirm this Order was taken by *[insert name of Council]* on the [] day of *[insert month and year]*

.....
Authorised by the Council to sign in that behalf]

[VARIATION OF ORDER

[This Order was varied by the *[insert name of Council]* on the [] day of *[insert month and year]* under the reference number *[insert reference number of the variation order]*

.....
Authorised by the Council to sign in that behalf]

[REVOCACTION OF ORDER

[This Order was revoked by the *[insert name of Council]* on the [] day of *[insert month and year]* under the reference number *[insert reference number of the revocation order]*

.....
Authorised by the Council to sign in that behalf]

SCHEDULE 1
SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	Horse Chestnut	352676E 561483N
T2	Horse Chestnut	352677E 561480N
T3	Lime	352676E 561474N
T4	Beech	352681E 561469N
T5	Sycamore	352685E 561462N
T6	Horse Chestnut	352686E 561458N
T7	Beech	352688E 561454N
T8	Sycamore	352690E 561449N
T9	Sycamore	352675E 561449N
T10	Lime	352673E 561450N
T11	Lime	352670E 561446N
T12	Sycamore	352665E 561445N
T13	Lime	352644E 561440N
T14	Beech	352638E 561454N
T15	Wellingtonia	352637E 561445N
T16	Lime	352618E 561434N
T17	Beech	352614E 561438N
T18	Sycamore	352611E 561431N
T19	Sycamore	352604E 561430N
T20	Horse Chestnut	352599E 561427N
T21	Beech	352597E 561435N
T22	Lime	352593E 561433N
T23	Horse Chestnut	352589E 561431N
T24	Sycamore	352596E 561427N
T25	Lime	352591E 561424N
T26	Beech	352585E 561423N
T27	Lime	352581E 561426N
T28	Sweet Chestnut	352579E 561433N
T29	Beech	352575E 561439N
T30	Sycamore	352571E 561437N
T31	Beech	352569E 561442N
T32	Sycamore	352568E 561444N
T33	Sycamore	352565E 561449N
T34	Beech	352563E 561455N

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
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NONE

TREE PRESERVATION ORDER No. 217

LAND AT GARTH HOUSE, BRAMPTON, CARLISLE, CUMBRIA

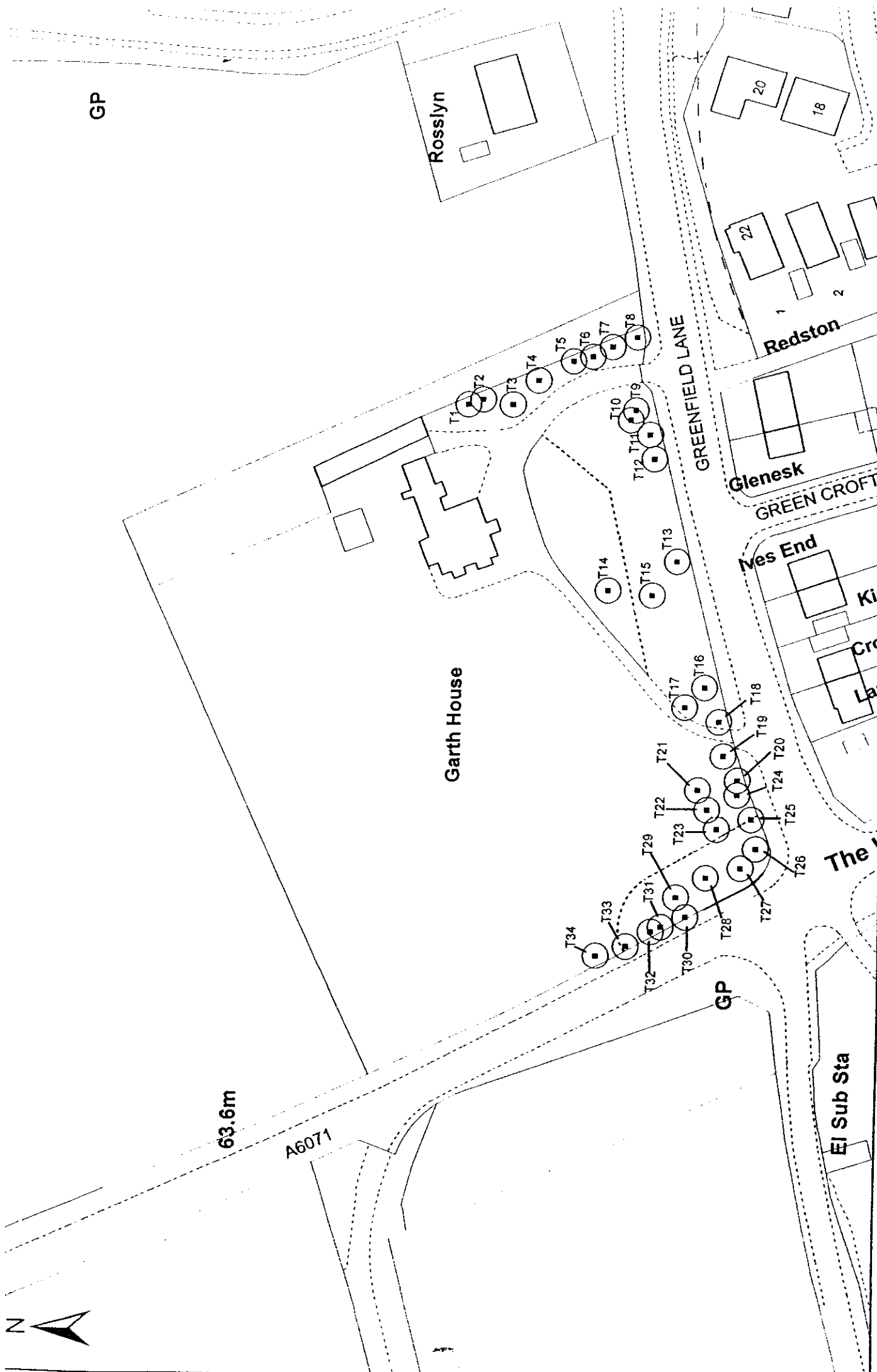
STATEMENT OF REASONS

The guidance set out in the Department of the Environment Transport and the Regions document 'Tree Preservation Orders, A Guide to the Law and Good Practice' states that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

The trees around the garden boundary of Garth House, Brampton, Cumbria are large mature trees that have a significant degree of visual amenity within the local area. They are around the garden boundary of Garth House Grade II listed building and just outside the Brampton Conservation Area.

It is considered that these trees are under threat following an enquiry to check if the trees were protected by either a Tree Preservation Order or within the Brampton Conservation Area with a view to lopping them in half.

The trees are clearly visible from the Longtown Road when approaching from either Longtown or Brampton or along Greenfield Lane. Their removal or inappropriate lopping would result in a significant loss of visual amenity to the locality and they are fully worthy of the protection afforded by a Tree Preservation Order.



Groups of trees
(within a broken black line on the map)

Reference on map	Description (including number of trees in the group)	Situation
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NONE

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
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NONE

SCHEDULE 2

PART I PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1)—</p> <p>(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</p> <p>(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)—</p> <p>(i) after “contain” insert “, as regards each such order”; and</p> <p>(ii) for paragraphs (a) and (b) substitute—</p> <p>(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p>(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.”.</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1)—</p> <p>(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;</p> <p>(ii) after “think fit”, insert— “(including conditions limiting the duration of the consent or requiring the replacement of trees);”; and</p> <p>(iii) omit “subject to sections 91 and 92.”.</p> <p>(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).”.</p> <p>(c) Omit subsections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute—</p> <p>(i) “Any” for the words from “Without” to “any”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</p> <p>(iii) “the consent” for “the permission”; and</p> <p>(iv) “the land to which the order relates” for “the land”.</p> <p>(b) Omit subsections (2) and (3).</p>
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute—</p> <p>(i) “the authority” for “a local planning authority”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</p> <p>(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</p> <p>(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 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.”.</p> <p>(b) Omit subsection (2).</p> <p>(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—</p> <p>(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</p>

		<p>direction or within such longer period as the Secretary of State may allow;</p> <p>(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."</p> <p>(d) For subsection (4), substitute— "(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."</p> <p>(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."</p>
Section (determination appeals)	79 of	<p>(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority".</p> <p>(b) Omit subsection (3).</p> <p>(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 sections 65 or 71."</p> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after "section 78".</p>

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.

**Letter of Objection
and
Case Officers Reply**

LEGAL & DEMOCRATIC SERVICES	
FILE	
28 DEC 2006	
PASSED TO	
ANSWERED	
MAIL LOG	

D J Tate M.B.E.
Garth House
Brampton
CA81AY
26th December 2006.

Re: Tree preservation order 6th December 2006.

Land at Garth House, Brampton, Carlisle. No. 217. 2006.

Att: Director of Legal & Democratic services: JM Egan LLB

Dear Sir,

I am sure you are well aware that on the 19th October last, Mr Charles Bennet revisited Garth House, to carry out a survey on the trees on my property. To ascertain which trees should be part of a new revised preservation order, after the first rather over the top order of the 13th of September.

This has now fortunately been rescinded.

I had a long conversation with Mr Bennet where we discussed at length the advice I had received in the interim from Dr Anthony Leeming of Skirsgill Estates.

He and I surveyed and numbered every tree on the boundary in question and I gave Mr Bennett a copy of the written report, which we discussed in detail as we visited every tree.

There were two trees in serious trouble, one with damage to the bark at the base and another very large lime with massive bracket fungus infection.

Neither of these were included in the latest preservation order, and for all the right reasons will be removed at some point in the near future, before they land on the unsuspecting public.

My concern is that we also verbally agreed that a lime numbered T22 On this latest order should also come out, as its close proximity to three other large mature trees endangers their long term health.

We also agreed that two more trees numbered T29 and T31 should come out. These are self seeded semi mature and like the lime are overcrowding more important trees in their near vicinity.

The biggest disappointment is that having discussed this matter openly and honestly with Mr Bennett, and having agreed this course of action. He then issues an order saying something completely different.

This is not the level of behaviour I expect from a public employee be he one appointed or elected to serve the best interests of the community. Either Mr Bennett has made an honest mistake in the course of his duties, in which case a simple modification to the order would repair the damage.

Or he has been duplicitous and misleading which would be wholly inappropriate.

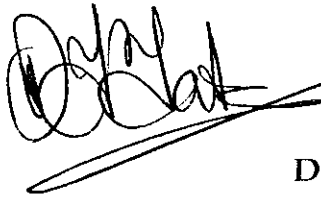
This as you know is not the first time I have been told one thing and then been hit by another involving Mr Bennett.

But I did not call the press the first time we had a misunderstanding, and discussed this all with Mr Bennett. He explained how he felt cornered the first time by his pending vacation and why took the action he did.

The press only got involved when the City Council told the Parish Council that the order only applied to the boundary trees, something patently untrue.

Can we please sort out this matter sensibly along the lines Mr Bennett and I agreed, and then put the matter to rest.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'D J Tate', written over a long, thin horizontal line that extends across the page.

D J Tate,
Garth House.

CC, Judith Prest,
Brampton Parish Council.

Mr Tate M.B.E
Garth House
Brampton
Cumbria
CA8 1AY

Please ask for:

Direct Line:

E-mail:

Your ref:

Our ref:

Charles Bennett
01228 817535
CharlesB@carlisle.gov.uk

CB/TPO 217

02 January 2007

Dear Mr Tate

TREE PRESERVATION ORDER 217 GARTH HOUSE, BRAMPTON

I am writing in response to your letter dated 26 December 2006 concerning T22, T29, and T31 within Tree Preservation Order 217.

As you are aware I visited Garth House on the 19 October 2006 to carry out an amenity survey of the trees around the perimeter of Garth House. This was carried out as part of the process involved with the making of what was to become Tree Preservation Order 217. The reason for assessing the amenity value of the trees is to give a guide as to their worthiness for inclusion within a tree preservation order.

Of course there will be other issues relating to the trees to take account of when considering whether or not to protect a particular tree, such as the report you commissioned from Dr Leeming.

Trees T22, T29 and T31 all scored highly in the amenity assessment indicating that they definitely merit a tree preservation order.

The purpose of a Tree Preservation Order is to protect trees that are an amenity to the area, this is generally taken to be visual amenity. When weighing the issues relating to each tree the amenity value carries considerable weight. The final decision to place these three trees within Tree Preservation Order 217 was taken due to their high score on the amenity assessment.

I have enclosed copies of my assessment sheets for these trees for your records.



INVESTOR IN PEOPLE

The assessment clearly shows the trees merit protection. Therefore, I will not be modifying the Tree Preservation Order prior to confirmation by the removal of trees T22, T29 and T31.

As your letter of the 26 December constitutes an objection to Tree Preservation Order 217, unless you withdraw your objection the decision not to confirm, or confirm the Order with or without modifications will be made by the Development Control Committee. You or your representative has a right to speak at the Committee meeting should you wish.

I will contact you in the near future once I know the date of the Development Control Committee meeting at which the Tree Preservation Order is to be discussed, and provide details of your right to speak.

Yours sincerely



C Bennett

Landscape Architect/Tree Officer

Copy to : Mr John Egan Director of Legal and Democratic Services, Carlisle City Council
Councillor Judith Prest

Copies of TEMPO Assessment Sheets for T22, T29 and T31

And TEMPO Guidance notes for users

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

SURVEY DATA SHEET & DECISION GUIDE

Date: 19/10/06	Surveyor: CB
----------------	--------------

Tree details	Tree/Group No: 22 (17)	Species: LMS
TPO Ref (if applicable):	Location: GANTH HOUSE BARNETON	
Owner (if known):		

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

* Relates to existing context and is intended to apply to severe irremediable defects only

Score & Notes

3

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes

4

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small trees, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes

4

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | | |
|--|---------------|
| 5) Principal components of arboricultural features, or veteran trees | Score & Notes |
| 4) Tree groups, or members of groups important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features | |

Score & Notes

4

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | | |
|-------------------------------|---------------|
| 5) Immediate threat to tree | Score & Notes |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

Score & Notes

5

Fell on Top

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| 15+ | Definitely merits TPO |

Add Scores for Total:

20

Decision:

TPO

Remove To Allow Driveway
Trees To develop 20

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

SURVEY DATA SHEET & DECISION GUIDE

Date: 19/10/06	Surveyor: CB
----------------	--------------

Tree details TPO Ref (if applicable): Owner (if known):	Tree/Group No: 29 (23) Species: Beech Location: Gann House, Brampton
--	--

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

* Relates to existing context and is intended to apply to severe irremediable defects only

Score & Notes

3 Drawn de form due to light.

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes

4

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes

3

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | | |
|--|-----------------------------------|
| 5) Principal components of arboricultural features, or veteran trees | Score & Notes

1 |
| 4) Tree groups, or members of groups important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features | |

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | | |
|-------------------------------|--|
| 5) Immediate threat to tree | Score & Notes

5 for Toppings |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| 15+ | Definitely merits TPO |

Add Scores for Total:

16

Decision:

TPO

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

SURVEY DATA SHEET & DECISION GUIDE

Date: 19/10/06	Surveyor: CB
Tree details TPO Ref (if applicable): Owner (if known):	
Tree/Group No: 31 (25)	Species: Beech
Location: GANTH HALL BARNETON	

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

* Relates to existing context and is intended to apply to severe irremediable defects only

Score & Notes

3 NOTHING OBVIOUS BUT LOW
OBSERVED VIEW

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

Score & Notes

4

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes

3

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | | |
|--|-----------------------------------|
| 5) Principal components of arboricultural features, or veteran trees | Score & Notes

4 |
| 4) Tree groups, or members of groups important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features | |

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | | |
|-------------------------------|---|
| 5) Immediate threat to tree | Score & Notes

5 For Topping |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| 15+ | Definitely merits TPO |

Add Scores for Total:

19

Decision:

TPO

TREE EVALUATION METHOD FOR PRESERVATION ORDERS

TEMPO

Guidance Note for Users

Julian Forbes-Laird

BA(Hons), MICFor, M.Arbor.A, Dip.Arb.(RFS)

Registered Consultant of the Arboricultural Association

Director & Principal Consultant, Forbes-Laird Arboricultural Consultancy Ltd

July 2006

Introduction

Background

The impetus to take a fresh look at existing TPO suitability evaluation methods grew out of the preparation for a local authority of a detailed Method Statement for reviewing Tree Preservation Orders (TPOs) in 2002. The client wanted the Method Statement to include a reliable means of assessing trees for TPO suitability, and asked for a bespoke system.

Having looked closely at what was already available, JFL decided that there was considerable room for improvement, as each of the better-known existing methods has disadvantages.

Accordingly, TEMPO was developed by JFL (whilst working as a Senior Consultant at CBA Trees) as a direct response to the apparent continuing uncertainty about what attributes a tree should have in order to merit statutory protection by TPO.

Overview

TEMPO is designed as a field guide to decision-making, and is presented on a single side of A4 as an easily completed pro forma. As such, it stands as a record that a systematic assessment has been undertaken.

TEMPO considers all of the relevant factors in the TPO decision-making chain. In this connection, it is helpful to revisit the wording of central government advice¹:

‘Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO’

From this, it becomes apparent that most existing methods are inadequate, seeking as they do solely to consider the tree rather than any known threats to its retention. TEMPO corrects this omission by including an expediency assessment within the framework of the method.

Excluding the first section, which is simply the survey record and is thus self-explanatory, TEMPO is a three-part system:

- Part 1 is the Amenity Assessment
- Part 2 is the Expediency Assessment
- Part 3 is the Decision Guide

These parts are set out and function as follows:

Part 1: Amenity Assessment

This part of TEMPO is broken down into four sections, each of which are related to suitability for TPO:

- a) Condition
- b) Retention span
- c) Relative public visibility
- d) Other factors

The first three sections form an initial assessment, with trees that 'pass' this going on to the fourth section. Looking at the sections in more detail:

a) Condition

This is expressed by five terms, which are defined as follows:

GOOD	Trees that are generally free of defects, showing good health and likely to reach normal longevity and size for species, or they may have already done so
FAIR	Trees which have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential or, if they have already done so, their condition is likely to decline. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse
POOR	Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired, and are likely to deteriorate. Life expectancy is curtailed and retention is difficult
DEAD	Tree with no indication of life
DYING/ DANGEROUS	Trees showing very little signs of life or remaining vitality, or with severe, irremediable structural defects, including advanced decay and insecure roothold. Death or catastrophic structural failure likely in the immediate future, retention therefore impossible as something worthy of protection

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. Dead, dying or dangerous trees should not be placed under a TPO, hence the zero score for these categories, due to exemptions within the primary legislation.

A note on the pro forma emphasizes that 'dangerous' should only be selected in relation to the tree's existing context: a future danger arising, for example, as a result of development, would not apply. Thus, a tree can be in a state of collapse but not be dangerous due to the absence of targets at risk.

Where a group of trees is being assessed under this section, it is important to score the condition of those principle trees without which the group would lose its aerodynamic or visual cohesion. If the group cannot be 'split' in this way, then its average condition should be considered.

Each of the condition categories is related to TPO suitability.

b) Retention span

The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' potential retention span.

This factor has been divided into ranges, which are designed to reflect two considerations:

- It has long been established good practice that trees incapable of retention for more than ten years are not worthy of a TPO (hence the zero score for this category); this also ties in with the R category criteria set out in Table 1 of BS5837:2005
- The further ahead one looks into the future, the more difficult it becomes to predict tree condition: hence the width of the bands increases over time

Scores are weighted towards the two higher longevity ranges (40-100 and 100+), which follow the two higher ranges given by Helliwell².

The Arboricultural Association (AA) publishes a guide³ to the life expectancy of common trees, which includes the following data:

300 years or more	Yew
200-300	Common [pedunculate] oak, sweet chestnut, London plane, sycamore, limes
150-200	Cedar of Lebanon, Scots pine, hornbeam, beech, tulip tree, Norway maple
100-150	Common ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear
70-100	Rowan, whitebeam, apple, wild cherry, Catalpa, Robinia, tree of heaven
50-70	Most poplars, willows, cherries, alders and birches

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive. However, it should assist with determining the overall lifespan of most trees, in light of their current age, health and context as found on inspection.

It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection (assuming that it doesn't already).

If a group of trees is being assessed, then the mean retention span of the feature as a whole should be evaluated. It would not be acceptable, for example, to score a group of mature birches based on the presence of a single young pedunculate oak.

A note on the pro forma identifies for inclusion in the less than ten years band trees which are assessed being an existing or near future nuisance, including those clearly outgrowing their context, or which are having an adverse effect on adjacent trees of better quality.

The nuisance element is introduced to cover situations where, for example, a Section 211 Notice has been received by the LPA for removal of a tree causing subsidence damage. In relation to outgrowing context, some common sense is needed here: if the trees are being considered for TPO protection prior to development, and if it is apparent that demolition of existing structures will be a component of this process, then a tree should not be marked down simply because it is standing hard up against one of the existing structures.

As with condition, the chosen category is related to a summary of TPO suitability.

c) Relative public visibility

The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility. The common situation of backland development is one such example.

The categories each contain two considerations: size of tree and degree of visibility. I have not attempted to be too prescriptive here, as TEMPO is supposed to function as a guide and not as a substitute for the surveyor's judgement. However, I have found that reference to the square metre crown size guide within the Helliwell System⁴ can be helpful in reaching a decision.

Reference is made to 'young' trees: this is intended to refer to juvenile trees with a stem diameter less than 75mm at 1.5m above ground level. The reasoning behind this is twofold: this size threshold mirrors that given for trees in Conservation Areas, and trees up to (and indeed beyond) this size may readily be replaced by new planting.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion.

Whilst the scores are obviously weighted towards greater visibility, we take the view that it is reasonable to give some credit to trees that are not visible (and/or whose visibility is not expected to change: it is accepted that, in exceptional circumstances, such trees may justify TPO protection⁵).

Where groups of trees are being assessed, the size category chosen should be one category higher than the size of the individual trees or the degree of visibility, whichever is the lesser. Thus a group of medium trees would rate four points (rather than three for individuals) if clearly visible, or three points (rather than two) if visible only with difficulty.

Once again, the categories relate to a summary of TPO suitability.

Sub-total 1

At this point, there is a pause within the decision-making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c.

The scores from the first three sections should be added together, before proceeding to section d, or to part 3 as appropriate (i.e. depending on the accrued score). Under the latter scenario, there are two possible outcomes:

- 'Any 0' equating to 'do not apply TPO'
- '1-6' equating to 'TPO indefensible'

d) Other factors

Assuming that the tree or group qualifies for consideration under this section, further points are available for four sets of criteria, however only one score should be applied per tree (or group):

- 'Principle components of arboricultural features, or veteran trees' – The latter is hopefully self-explanatory (if not, refer to Read 2000⁶). The former is designed to refer to trees within parklands, avenues, collections, and formal screens, and may equally apply to individuals and groups
- 'Members of groups of trees that are important for their cohesion' – This should also be self-explanatory, though it is stressed that 'cohesion' may equally refer either to visual or to aerodynamic contribution. Included within this definition are informal screens. In all relevant cases, trees may be assessed either as individuals or as groups
- 'Trees with significant historical or commemorative importance' – The term 'significant' has been added to weed out trivia, but we would stress that significance may apply to even one person's perspective. For example, the author knows of one tree placed under a TPO for little other reason than it was planted to commemorate the life of the tree planter's dead child. Thus whilst it is likely that this category will be used infrequently, its inclusion is nevertheless important. Once again, individual or group assessment may apply
- 'Trees of particularly good form, especially if rare or unusual' – 'Good form' is designed to identify trees that are fine examples of their kind and should not be used unless this description can be justified. However, trees which do not merit this description should not, by implication, be assumed to have poor form (see below). The wording of the second part of this has been kept deliberately vague: 'rare or unusual' may apply equally to the form of the tree or to its species. This recognises that certain trees may merit protection precisely because they have 'poor' form, where this gives the tree an interesting and perhaps unique character. Clearly, rare species merit additional points, hence the inclusion of this criterion. As with the other categories in this section, either individual or group assessment may apply. With groups, however, it should be the case either that the group has a good overall form, or that the principle individuals are good examples of their species

Where none of the above apply, the tree still scores one point, in order to avoid a zero score disqualification (under part 3).

Sub-total 2

This completes the amenity assessment and, once again, there is a pause in the method: the scores should be added up to determine whether or not the tree (or group) has sufficient amenity to merit the expediency assessment.

The threshold for this is nine points, arrived at via a minimum qualification calculated simply from the seven-point threshold under sections a-c, plus at least two extra points under section d. Thus trees that only just scrape through to qualify for the 'other factor' score, need to genuinely improve in this section in order to rate an expediency assessment. This recognises two important functions of TPOs:

- TPOs can serve as a useful control on overall tree losses by securing and protecting replacement planting
- Where trees of minimal (though, it must be stressed, adequate) amenity are under threat, typically on development sites, it may be appropriate to protect them allowing the widest range of options for negotiated tree retention

Part 2: Expediency assessment

This section is designed to award points based on three levels of identified threat to the trees concerned. Examples and notes for each category are:

- 'Immediate threat to tree' – for example, Tree Officer receives Conservation Area notification to fell
- 'Foreseeable threat to tree' – for example, planning department receives application for outline planning consent on the site where the tree stands
- 'Perceived threat to tree' – for example, survey identifies tree standing on a potential infill plot

However, central government advice⁷ is clear that, even where there is no expedient reason to make a TPO, this is still an option. Accordingly, and in order to avoid a disqualifying zero score, 'precautionary only' still scores one point. This latter category might apply, rarely for example, to a garden tree under good management.

Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO. However, it is not felt necessary to incorporate such considerations into the method, as it is chiefly intended for field use: these other considerations are most suitably addressed as part of a desk study.

As a final note on this point, it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 15, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes.

Part 3: Decision Guide

This section is based on the accumulated scores derived in Parts 1 & 2, and identifies four outcomes, as follows:

- **Any 0 Do not apply TPO**
Where a tree has attracted a zero score, there is a clearly identifiable reason not to protect it, and indeed to seek to do so is simply bad practice
- **1-6 TPO indefensible**
This covers trees that have failed to score enough points in sections 1a-c to qualify for an 'other factors' score under 1d. Such trees have little to offer their locality and should not be protected
- **7-10 Does not merit TPO**
This covers trees which *have* qualified for a 1d score, though they may not have qualified for Part 2. However, even if they have made it to Part 2, they have failed to pick up significant additional points. This would apply, for example, to a borderline tree in amenity terms that also lacked the protection imperative of a clear threat to its retention
- **11-14 Possibly merits TPO**
This applies to trees that have qualified under all sections, but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'
- **15+ Definitely merits TPO**
Trees scoring 15 or more are those that have passed both the amenity and expediency assessments, where the application of a TPO is fully justified based on the field assessment exercise

Notation boxes

Throughout the method, notation space is provided to record relevant observations under each section. For local authorities using TEMPO, it may even be helpful to include a copy of the TEMPO assessment in with the TPO decision letter to relevant parties, as this will serve to underline the transparency of the decision-making process.

Conclusion

TEMPO is a quick and easy means of systematically assessing tree or group suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey, especially where Area TPOs are being reviewed.

From the consultants' perspective, it is also an effective way of testing the suitability of newly applied TPOs, to see whether they have been misapplied, or it can be used to support a request to make a TPO in respect of trees at risk, for example from adjacent development.

TEMPO does not seek to attach any monetary significance to the derived score: the author recommends the use of the Helliwell System where this is the objective.

CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the Arboricultural Information Exchange www.aie.org.uk

TEMPO has undergone a number of minor revisions since its inception, many of which are due to helpful comments received from users. Any feedback on the method is gratefully received by the author.

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- 4 Helliwell op. cit.
- 5 DETR 2000 op. cit. at para. 3.3 (1)
- 6 'Veteran Trees: A Guide to Good Management', Helen Read, English Nature 2000
- 7 DETR 2000 op. cit. at para. 3.5