

CARLISLE CITY COUNCIL

A4

Report to:- Development Control Committee

Date of Meeting:- 1st April 2005

Agenda Item No:-

Public	Policy	Delegated Yes
<hr/>		
Accompanying Comments and Statements		
Environmental Impact Statement:	Required	Included
	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.10/05**

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 made by the owners of the property and concludes that the Order should be confirmed.

Recommendation:-

It is recommended that Tree Preservation Order 190 should be 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. Copies of the letter 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, other factors and an expediency assessment. This enables the assessment to be more 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 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.

3.0 Objections

- 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 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.

4.0 Conclusion

- 4.1 It is considered that the tree has significant public amenity value and merits protection.

5.0 Recommendation

- 5.1 It is recommended that the Tree Preservation Order 190 should be 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)

TREE PRESERVATION ORDER, 2005
NO 190

*Insert title
of Order
(including
year)*

*Insert name
of Council*

*Insert name
of
appropriate
authority*

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 ~~xxx~~]

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^(a);
- (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 Schedule.

Directions as to replanting

8. (1) Where consent is granted under this Order for the felling in the course of forestry operations of part of a woodland area, the authority may give to the owner of the land on which that part is situated ("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]~~

~~18. In relation to the tree[s] identified in the first column of Schedule by the letter "C" being for tree[s]
[tree[s] 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].]~~

~~[Orders made by virtue of section 300]~~

~~14. This Order takes effect in accordance with subsection (3) of section 300 (tree preservation orders 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:)

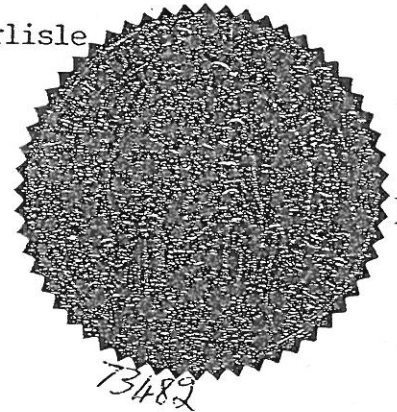
[The Common Seal of the (name of Council) Council of the City of Carlisle
was hereunto affixed in the presence of-

Mahmoud

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

9

Authorised by the Council to sign in that behalf]

Arti

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

Reference on Map

Description

*Situation**

NONE

Trees specified by reference to an area

(within a dotted black line on the map)

Reference on Map

Description

*Situation**

NONE

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

Reference on Map

Description

*Situation**

G1

2 x Scots Pine

336860E
549584N

Woodlands

(within a continuous black line on the map)

Reference on Map

Description

*Situation**

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)	<p>(a) In subsection (1) –</p> <p>(i) omit –</p> <p>“, in such manner as may be prescribed by a development order,”,</p> <p>“such” in the second place where it appears, and</p> <p>“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 –</p> <p>“Subject to subsections (1A) and (1B), where” for “Where”;</p> <p>“the authority” for “a local planning authority”;</p> <p>“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 –</p> <p>“(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 –</p> <p>“(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.</p> <p>(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 –</p> <p>“(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</p> <p>(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.”.</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 –</p> <p>“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 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 –</p> <p>“(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).”.</p> <p>(e) For subsection (5), substitute –</p> <p>“(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 79 (determination of appeals)*	<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 –</p> <p>(i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part 1 of Schedule 5”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission”; and</p> <p>(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.”.</p> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78”.</p>

*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

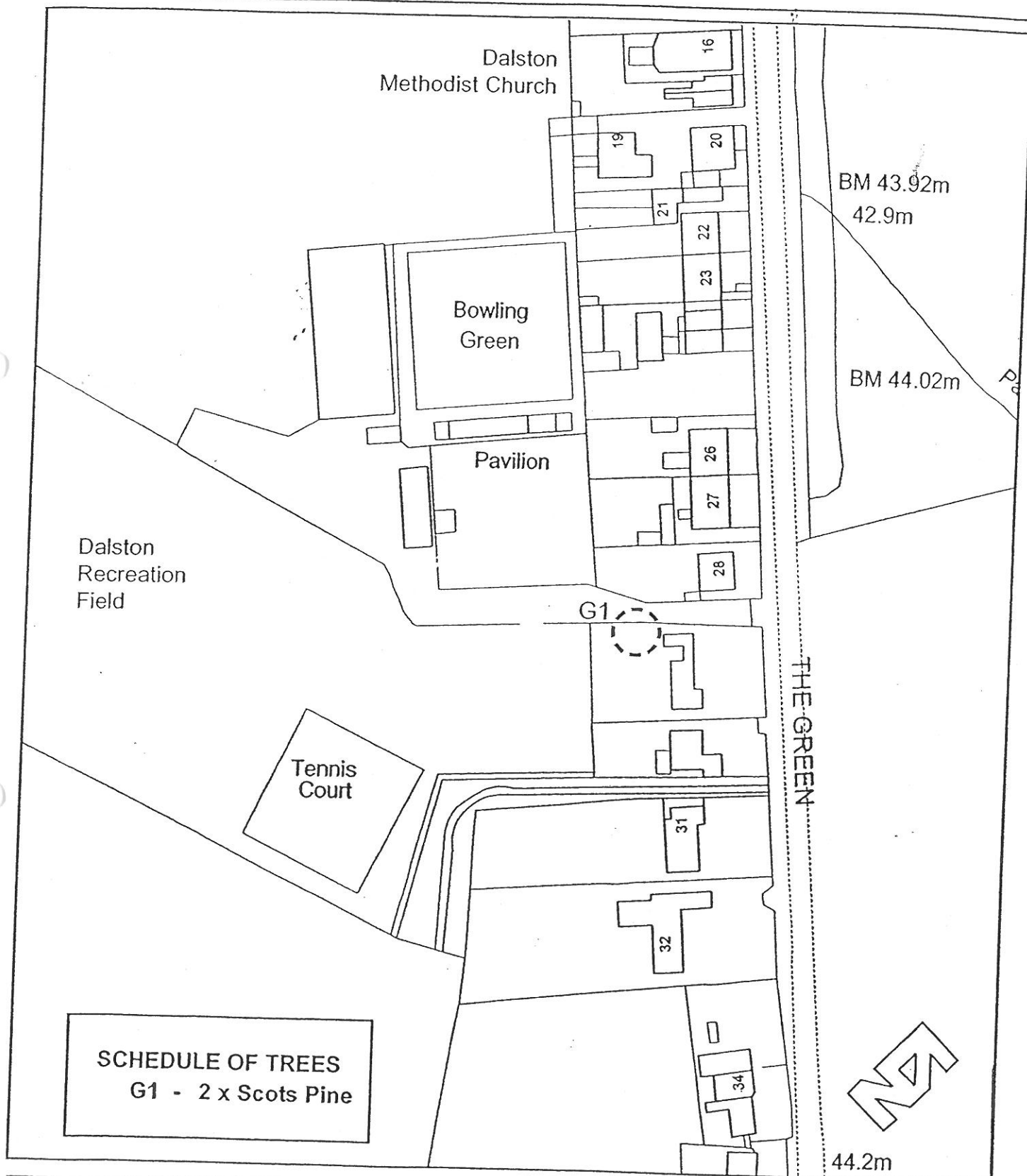
Department of Environment and Development

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

Tree Preservation Order Number 190

29 The Green, Dalston.

CARLISLE
CITY COUNCIL



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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



Ms Eastburn Letter of Objection

Mulberry House
29 The Green
Dalston
Carlisle
CA5 7QB

02 MAR 2005

S.H.

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.