

# CARLISLE CITY COUNCIL

**Report to:-**                      **Development Control Committee**

**Date of Meeting:-**              11 June 2010

**Agenda Item No:-**  
**ED.04/10**

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<b>Public</b>	<b>Policy</b>	<b>Delegated: Yes</b>
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<b>Accompanying Comments and Statements</b>	<b>Required</b>	<b>Included</b>
Environmental Impact Statement:	No	No
Corporate Management Team Comments:	No	No
Financial Comments:	No	No
Legal Comments:	No	No
Personnel Comments:	No	No

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**Title:-**                      **PROPOSED TREE PRESERVATION ORDER NO. 251 TUNMIRE COMMON, WETHERAL**

**Report of:-**                **Assistant Director (Economic Development)**

**Report reference:-**      **ED.04/10**

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## **Summary:-**

A Tree Preservation Order was made on the 20 April to protect a group of two Beech trees on Tunmire Common, Wetheral. This report considers objections to the Order and concludes that the Order should be confirmed without modification.

## **Recommendation:-**

It is recommended that the Committee resolve to confirm Tree Preservation Order 251 without modification.

**Christopher Hardman**

Assistant Director (Economic Development)

**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 An existing Tree Preservation Order, Tree Preservation Order 40, was made on 29 June 1979 to protect four Beech trees, including the two that are the subject of this report. However, as part of the ongoing Tree Preservation Order review Tree Preservation Order 40 was identified as a high priority for updating, as two of the trees are no longer in existence, and there is no evidence that the Tree Preservation Order was confirmed thereby rendering it ineffective.
- 1.4 A site visit was carried out to assess the remaining two trees and this indicated that the trees were worthy of statutory protection by means of an updated and enforceable Tree Preservation Order.
- 1.5 A copy of the plan and Statement of Reasons relating to Tree Preservation Order 251 is attached hereto at Appendix 1.
- 1.6 The following made objections to Tree Preservation Order 251.

♦ Mr & Mrs Bell, 152 Greenacres, Wetheral

- 1.7 The letter of objection and Officers reply are attached hereto at Appendix 2.

## **2.0 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 tree to the public amenity of the locality was made.

- 2.2 The tree was assessed using the Tree Evaluation Method for Preservation Orders (TEMPO) system. A score is awarded depending on five factors these being assessments of amenity, remaining longevity, relative public visibility, suitability for preservation, other factors and expediency. This enables the assessment to be objective and meet the criteria for the making of a tree preservation order as set out in the Town and Country Planning Act 1990 and Tree Preservation Orders A Guide to the Law and Good Practice.
- 2.3 The TEMPO assessment found the tree had a score that warranted the statutory protection afforded by a Tree Preservation Order both as an amenity, and due to a number of recent applications to prune it on expediency grounds.

### **3.0 Summary of Objections to Tree Preservation Order 251**

- 3.1 The following objections have been made to the Tree Preservation Order:
- (i) That the Tree Preservation Order is inappropriate due to the damage and risk to people and property caused by falling limbs.
  - (ii) The tree poses a risk to the railway line and children's play area.
- 3.2 In considering the above objections Officers have the following comments to make:
- (i) Responsibility for the tree rests with the tree owner, which is understood to be the Parish Council. It is their duty to ensure that the tree is in a safe condition and to regularly monitor the tree for signs of defects. Where defects are identified that pose a foreseeable risk these should be remedied, and the Tree Preservation Order will not prevent such reasonable works, albeit an application will have to be made to carry out such works. Whilst defects can be identified and the appropriate action taken, it is not possible to take action to prevent branch failure due to unpredictable events such as storms, as has been the case when limbs have recently been blown from this tree. Where such events cause branch failure it is considered an act of God.
  - (ii) As stated at (i) above the tree owner is responsible for the tree, and they are aware of their duties. Both the Parish Council and Network Rail have been informed of the making of the Tree Preservation Order and neither have made any representations.
- 3.3 Members should be aware that Officers have offered advice to the Parish Council on their responsibilities and duty of care in relation to tree matters.

**4.0 Conclusion**

- 4.1 Whilst it is accepted that it will be necessary to consider works to the tree in accordance with good arboricultural practice, the Tree Preservation Order does not prevent this, albeit an application will need to be made.
- 4.2 Having duly considered the objections and having weighed these objections against the present and future value of the trees it is considered that they will provide a significant level of public amenity for a reasonable period of time and therefore merit the protection afforded by a Tree Preservation Order.

**5.0 Recommendation**

- 5.1 It is recommended that the Committee resolve to confirm Tree Preservation Order 251 without modification.

**Christopher Hardman**

Assistant Director (Economic Development)

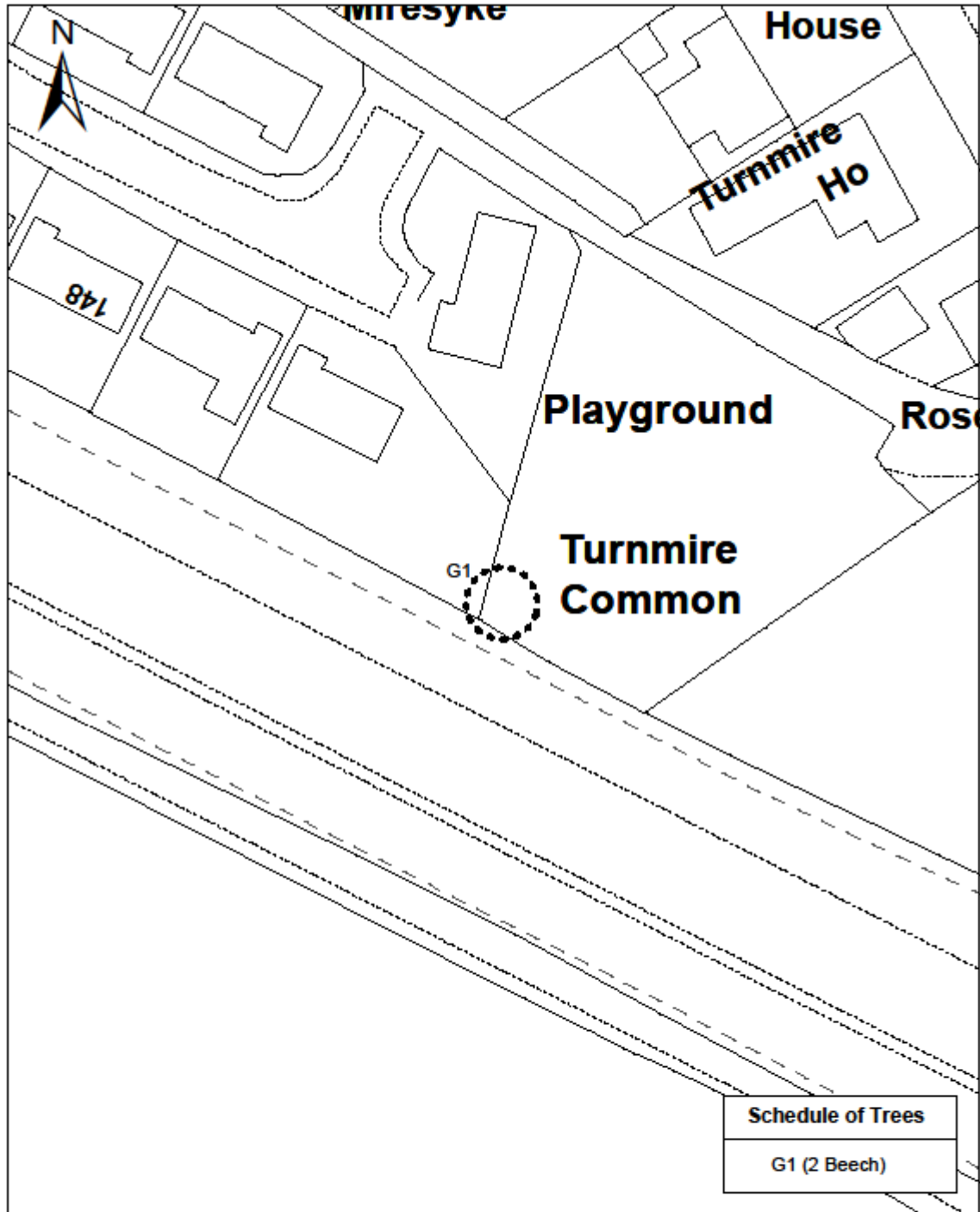
**Contact Officer:**

Charles Bennett

**Ext:**

7535

**Tree Preservation Order 251 Plan  
&  
Statement of Reasons**



# **TREE PRESERVATION ORDER No. TPO 251**

## **TUNMIRE COMMON PLAYGROUND, WETHERAL, CARLISLE**

### **STATEMENT OF REASONS**

By virtue of section 198 of the Town and Country Planning Act 1990 the local planning authority may make a tree preservation order where it appears to the authority that it is expedient in the interests of amenity to make provision for the protection of trees and woodlands in its area.

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, by virtue of their size and location are clearly visible to the public and are considered to be of significant visual amenity and landscape value to the locality and the Wetheral Conservation Area. As such their removal would have a detrimental impact on the area and its enjoyment by the public. Furthermore, the trees have been the subject of a number of applications to carry out works to them under the previous Tree Preservation Order.

Therefore, to ensure the continuation of the visual amenity that the trees provide the Council of the City of Carlisle considers it expedient in the interests of amenity to protect the trees by means of a Tree Preservation Order.

## Letter of objection and Officers reply

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">07 MAY 2010</td> </tr> <tr> <td style="text-align: center;">Sm</td> </tr> </table> <p>Mr MD Lambert Assistant Director (Governance)</p> <p style="text-align: center;"><u>Re: Tree Preservation Order 2009 No. 251</u></p> <p>Dear Mr Lambert,</p> <p>We have received your formal notice of the above tree preservation order. We find this decision to be amazing considering the recent damage caused by falling limbs which in this instance only caused damage to a fence but could have had tragic consequences.</p> <p>On Saturday 3<sup>rd</sup> October, a number of limbs off this tree fell demolishing a fence (see enclosed photographs no 1-5) then again in January another limb fell (photograph no 6) we feel that this tree poses a real danger to the children who use the Turnmire Common Play Park as well as our family and property. You can see on the accompanying photographs the number of limbs that fell off this winter (photograph no 7).</p> <p>We do understand that trees of natural beauty should be protected from damage but in this case safety appears not to be taken into consideration.</p> <p>If this tree was situated in the middle of an empty field, as of which</p>	07 MAY 2010	Sm	<p>152 Greenacres Wetheral Carlisle CA4 8LU</p> <p>3<sup>rd</sup> MAY 2010</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">PLANNING HOUSING SERVICES</td> </tr> <tr> <td style="width: 30%;">REF</td> <td>TPO 251</td> </tr> <tr> <td colspan="2" style="text-align: center;">10 MAY 2010</td> </tr> <tr> <td>RECORDED</td> <td>CN</td> </tr> <tr> <td>SCANNED</td> <td></td> </tr> <tr> <td>PASSED TO</td> <td>CD</td> </tr> <tr> <td>ACTION</td> <td></td> </tr> </table>	PLANNING HOUSING SERVICES		REF	TPO 251	10 MAY 2010		RECORDED	CN	SCANNED		PASSED TO	CD	ACTION	
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there are several in the immediate area then by all means preserve it until it falls over due to old age. However, this tree not only overhangs a children's play area and our property, it overhangs the main Newcastle to Carlisle rail line. At what expense do you preserve beauty, surely safety of the public is of more importance than the aesthetic value of an old beech tree

We would like to see the whole beech tree felled and a number of trees planted in its place. However, this tree is actually two trees joined together, the northerly half is the trunk that creates most danger to the users of the park and to our home and family. As compromise, this half of the tree could be to cut down.

The facts are :-

- Large limbs have fallen off this tree into the park in the past. We seem to remember the middle of the Summer 1999
- More limbs fell off in October 2009
- Another large limb fell in January 2010

I would therefore suggest that there is a great likelihood more will fall as the tree ages.

If you do decide to protect this tree and somebody is injured because of your decision, I believe it would be difficult for you to prove you had considered your duty of care to the people of Wetheral in making your decision knowing this trees history.

Thank you,

Mark and Sara Bell  
01228 561092





1 3rd October 2009





2. 3rd October 2009





3 3rd October 2007





4- 3rd October 2009

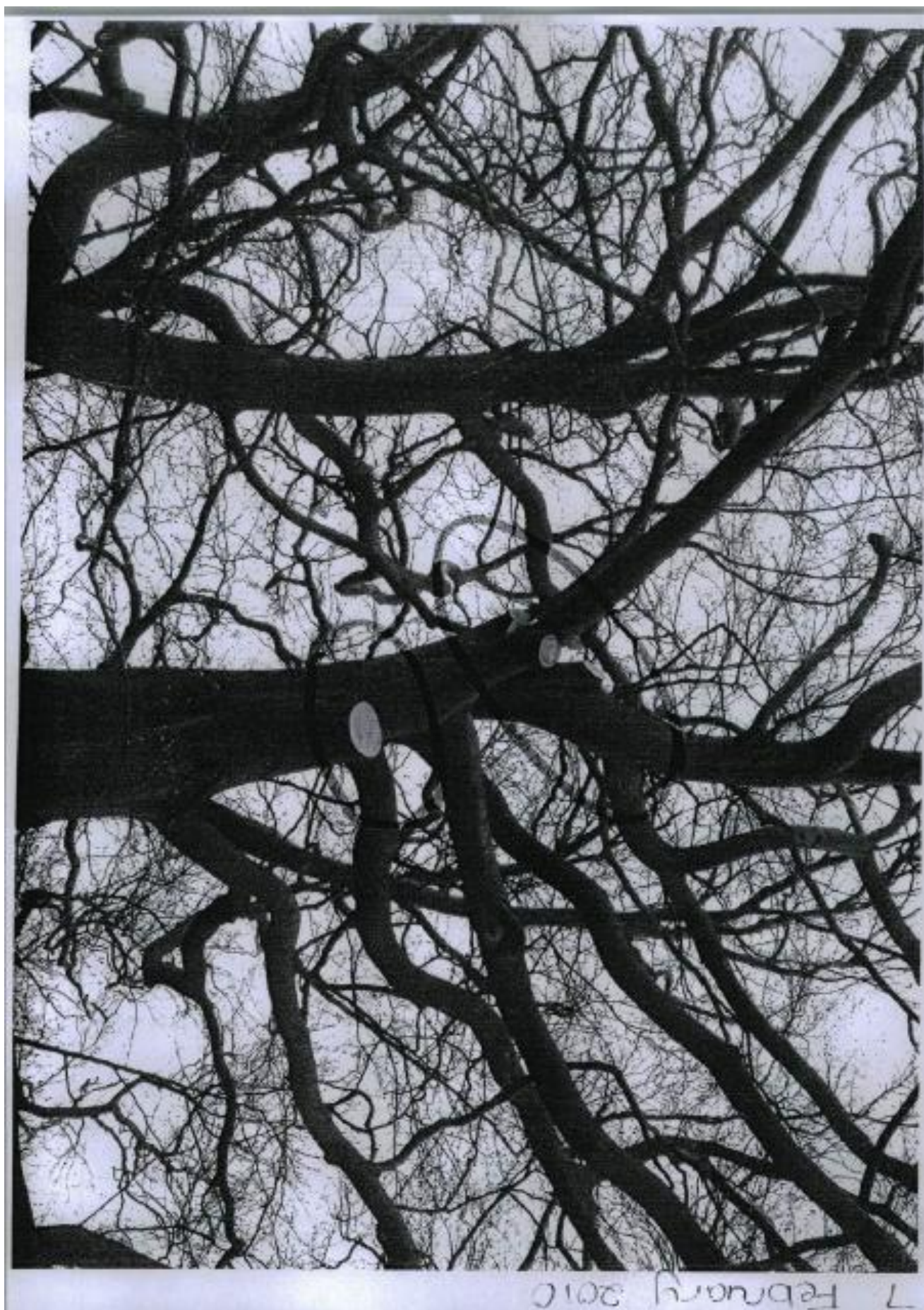














## **Economic Development**

Assistant Director **C A Hardman** BA (Hons) BTP MRTPI

### **Planning Services**

**Civic Centre, Carlisle, CA3 8QG**

Phone (01228) 817000 • Fax Planning (01228) 817199 • Typetalk 18001 (01228) 817000

E-mail Development Control: [dc@carlisle.gov.uk](mailto:dc@carlisle.gov.uk) • Local Plans & Conservation: [lpc@carlisle.gov.uk](mailto:lpc@carlisle.gov.uk) • Building Control: [BC@carlisle.gov.uk](mailto:BC@carlisle.gov.uk)

Mr & Mrs Bell  
152 Greenacres  
Wetheral  
Carlisle  
CA4 8LU

**Please ask for:**

**Direct Line:**

**E-mail:**

**Your ref:**

**Our ref:**

Charles Bennett  
01228 817535  
[charlesb@carlisle.gov.uk](mailto:charlesb@carlisle.gov.uk)

CB/TPO 251

14 May 2010

Dear Mr & Mrs Bell

### **OBJECTION TO TREE PRESERVATION ORDER 251**

I refer to your letter dated 3 May 2010 which has been forwarded for my attention so that I can respond.

I can understand your concerns regard the Beech tree on the playground at Tunmire Common. Whilst the purpose of a Tree Preservation Order is to protect a tree because of the amenity that it provides consideration must be given to the health of the tree and the risks it poses.

Responsibility for the tree rests with the tree owner, who I believe is the Parish Council. It is their duty to ensure that the tree is in a safe condition and to regularly monitor the tree for signs of defects. Where defects are identified that pose a foreseeable risk these should be remedied, and the Tree Preservation Order will not prevent reasonable works, albeit an application will have to be made to carry out such works.

It is not the purpose of a Tree Preservation Order to prevent the removal of a tree until such times as it falls down. As with identified defects within the tree that pose a foreseeable risk, where the whole tree is dangerous then it should be removed, and usually a replacement will be planted. Removing half the tree, as suggested would not be a satisfactory resolution to the problem, as this will increase the exposure of the remaining part of the tree to high winds, increasing the risk of branch failure as the branch structure of the tree has not grown to withstand the forces it is now experiencing.

For the reasons set out above I trust that you are able to withdraw your objection.



INVESTOR IN PEOPLE

Where objections are made to the making of Tree Preservation Orders a decision on their confirmation that is making them permanent, is made by the Development Control Committee. It is my intention, should you wish to maintain your objection, to bring this Tree Preservation Order before the Development Control Committee at its meeting on the 11 June 2010.

The Council operates a right to speak at the development Control Committee for people who make objections to the making of Tree Preservation Orders. If you wish to exercise your right to speak please contact me directly by the 18 May 2010 so that I can make the necessary arrangements.

Yours sincerely

**C Bennett**

Landscape Architect/Tree Officer