

# Report to Development Control Committee

Agenda  
Item:  
**A.2**

Meeting Date: 25 November 2016  
Portfolio: Economy, Enterprise, and Housing  
Key Decision: Not Applicable:  
Within Policy and  
Budget Framework YES  
Public / Private Public

Title: CONFIRMATION OF TREE PRESERVATION ORDER 283  
TOWER FARM, RICKERBY, CARLISLE.  
Report of: Corporate Director of Economic Development  
Report Number: ED.34/16

## Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 283 Tower Farm, Rickerby, Carlisle in light of objections to the making of the tree preservation order.

## Recommendations:

Tree Preservation Order 283 Tower Farm, Rickerby, Carlisle be confirmed without modifications.

## Tracking

Executive:	
Overview and Scrutiny:	
Council:	

## **1.0 BACKGROUND**

- 1.1** In July 2016 Carlisle City Council received a formal consultation from the Forestry Commission on a felling licence application at Tower Farm, Rickerby. The proposal included the felling of 16 oak trees along the road between Rickerby and Linstock.
- 1.2** As part of the consultation process the Ward Councillors and the Parish Council were asked for their views. The proposal to fell the trees was not welcomed by either the Ward Members or the Parish Council.
- 1.3** As well as the comments from the Ward Councillors and the Parish Council representations have also been received from Cllr Robson, the Friends of Rickerby Park, and fifteen members of the public expressing their concern about the loss of the trees and supporting the tree preservation order. The representations in favour of the tree preservation order are summarised below;
- (i) The trees are a substantial visual amenity.
  - (ii) The trees enhance the Rickerby Conservation Area.
  - (iii) Removal of the trees would diminish the quality of this section of the Hadrian's Wall National Trail.
  - (iv) The trees add significantly to the local environment and biodiversity.
  - (v) Removing the trees will exacerbate the flooding problems experienced in this area.
- 1.4** Members should note that the responses from the Parish Council and Ward Members did not preclude the felling of trees, rather that the amenity the trees provide should be retained, but where appropriate, for reasons of good management, trees felled and replaced.
- 1.5** Discussions were held between the City Council and the Forestry Commission. A compromise position was agreed on what would be an acceptable level of felling and which trees were to be felled. However, when this compromise was put to the applicant they came forward with a different option. This other option was unacceptable. All the oak trees, not just the 16 scheduled for felling, along this stretch of road were assessed for their suitability for inclusion in a tree preservation order, and found to merit protection. Tree Preservation Order 283 was therefore made to

protect all the 28 oak trees along this stretch of the road. The tree preservation order plan is attached hereto at Appendix 1.

**1.6** One letter of objection to the making of the Order was received by Carlisle City Council. The letter of objection along with the officer's reply is attached hereto at Appendix 2.

**1.7** The objections are summarised below. The officer's reply follows immediately after in *italics*;

- (i) There will be a loss of revenue of £12,500 as the timber cannot be felled.

*Tree preservation orders are made where it is expedient in the interest of amenity. The loss of revenue is not an issue that has to be considered when deciding if the trees merit protection. Compensation may be payable to address the loss of timber value.*

- (ii) Falling trees and branches are a risk to all road users.  
*Where there is a risk of foreseeable failure, of either a branch or whole tree, which could result in harm, the tree preservation order will not prevent work being undertaken to reduce the risk of failure to an acceptable level. However, because one tree in the row shed one limb does not mean that all the trees in the row are dangerous and need to be felled.*

- (iii) An agreed compromise on the felling had been reached between the Forestry Commission, Carlisle City Council, and yourself.

*A compromise on the felling licence application was not agreed with the City Council. A compromise was put forward by the Forestry Commission. However, a different option was put forward by your agent that was unacceptable.*

- (iv) The trees are outwith the Rickerby Conservation Area and therefore the landscape is of 'lower concern'.

*All landscapes matter not just designated landscapes or conservation areas. Policy GI 1 in the adopted Local Plan states that all landscapes are valued for their intrinsic character and will be protected from excessive, harmful or inappropriate development. Hedgerow trees are a key element of this landscape character type. The loss of these trees*

*would have a negative impact on the quality of this landscape, and the approach to the Rickerby Conservation Area.*

- (v) Loss of some trees will not result in a loss of enjoyment of the landscape for walkers on Walkers on Hadrians Wall National Trail.

*When considering whether or not to protect trees an assessment of the amenity value of the trees is carried out. The trees scored highly due to their size and prominent location demonstrating that there would be a loss of amenity. The amenity provided by the trees is intrinsic. Lack of knowledge of the trees existence does not lessen the loss of amenity. Of course there are many local people who walk and drive this route regularly and do have knowledge of the trees.*

- (vi) Walkers' views of some of the trees are obscured by a hedge.

*The hedge between the trees and a stretch of the National Trail does not obscure the trees.*

- (vii) Little account has been made of the amenity by the trees on the opposite side of the road which will lessen the impact of removing 16 oaks.

*As noted above all the trees which were originally considered for removal were assessed for their amenity. Whilst there are trees opposite, that they will remain does not lessen the assessed amenity value of the protected trees, or lessen the negative impact if they were to be removed.*

- (viii) The farm is under good management and the removed trees will be replaced.

*The good stewardship of the farm is not in question. It is the loss of amenity arising from the removal of the trees that has to be considered. The loss of 16 mostly large prominent trees will have a significant negative impact on the amenity of the location. Replacement with small transplants will not replace the lost amenity for many decades.*

- (ix) Three trees require immediate removal and these should be excluded from the tree preservation order.

*All of the trees, when assessed, merited protection by means of a tree preservation order. An application to remove T5, T21, and T28 would be judged on its merits and take account of the condition of the trees. However, the tree preservation order is the only mechanism to ensure replacement, and for that reason the trees must remain protected.*

- (x) The Council will be liable for compensation totalling 100% of the value of the trees if felling is not permitted.

*Compensation may be payable, but it is questionable whether in this instance it would be. Even if compensation was payable it would not be for 100% of the current timber value. It would 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 a refusal to fell the trees, and have to be in excess of £500.00. Neither would it include any depreciation in the value of the trees arising from neglect.*

## **2.0 CONSULTATION**

- 2.1** Ward Members, and the Parish Council were consulted on the felling licence application.
- 2.2** The Parish Council, owners of affected properties, and all those who were known to have an interest in the land, including the Forestry Commission, were consulted on the tree preservation order in accordance with the requirements of The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.2** Wider public consultation was undertaken by erecting a site notice advising of the making of the tree preservation order, and how to object, or make representations in respect of the Order.

## **3.0 CONCLUSION AND REASONS FOR RECOMMENDATIONS**

- 3.1** Tree Preservation Order 283 Tower Farm, Rickerby, Carlisle, should be confirmed without modification.
- 3.2** The oak trees protected by Tree Preservation Order 283 are large prominent trees clearly visible to the public from the road between Linstock and Rickerby, and from Hadrians Wall National Trail. They contribute to the pleasant rural character of the area enhancing the approach to, and exit from, the Rickerby Conservation Area, and are a key characteristic of this 'Low Farmland' landscape character type. Due to their

size, prominent location, and public visibility the trees make a substantial positive contribution to the character and visual amenity of the location.

#### **4.0 CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES**

- 4.1** Helps create a pleasant and healthy environment in which to live and work, engendering a pride in place and contributing to the City Council's Healthy City Agenda.

<b>Contact Officer:</b>	<b>Charles Bennett</b>	<b>Ext: 7535</b>
<b>Appendices attached to report:</b>	<b>Appendix 1: Tree preservation order Plan and Statement Of Reasons</b> <b>Appendix 2: Letter Of Objection and Officer's Replies</b>	

**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:

- **The Town and Country Planning Act 1990; Planning Practice Guidance Tree preservation orders and trees in conservation areas**

#### **CORPORATE IMPLICATIONS/RISKS:**

**Chief Executive's -** None

**Community Engagement –** None

**Economic Development –** None

**Governance –** The validity of the tree preservation order cannot be challenged in any legal proceedings except by way of application to the High Court. An application must be made within six weeks from the date of the confirmation of the tree preservation order.

This tree preservation order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments.

Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. In taking account of all material considerations, including Council policy it is considered that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that

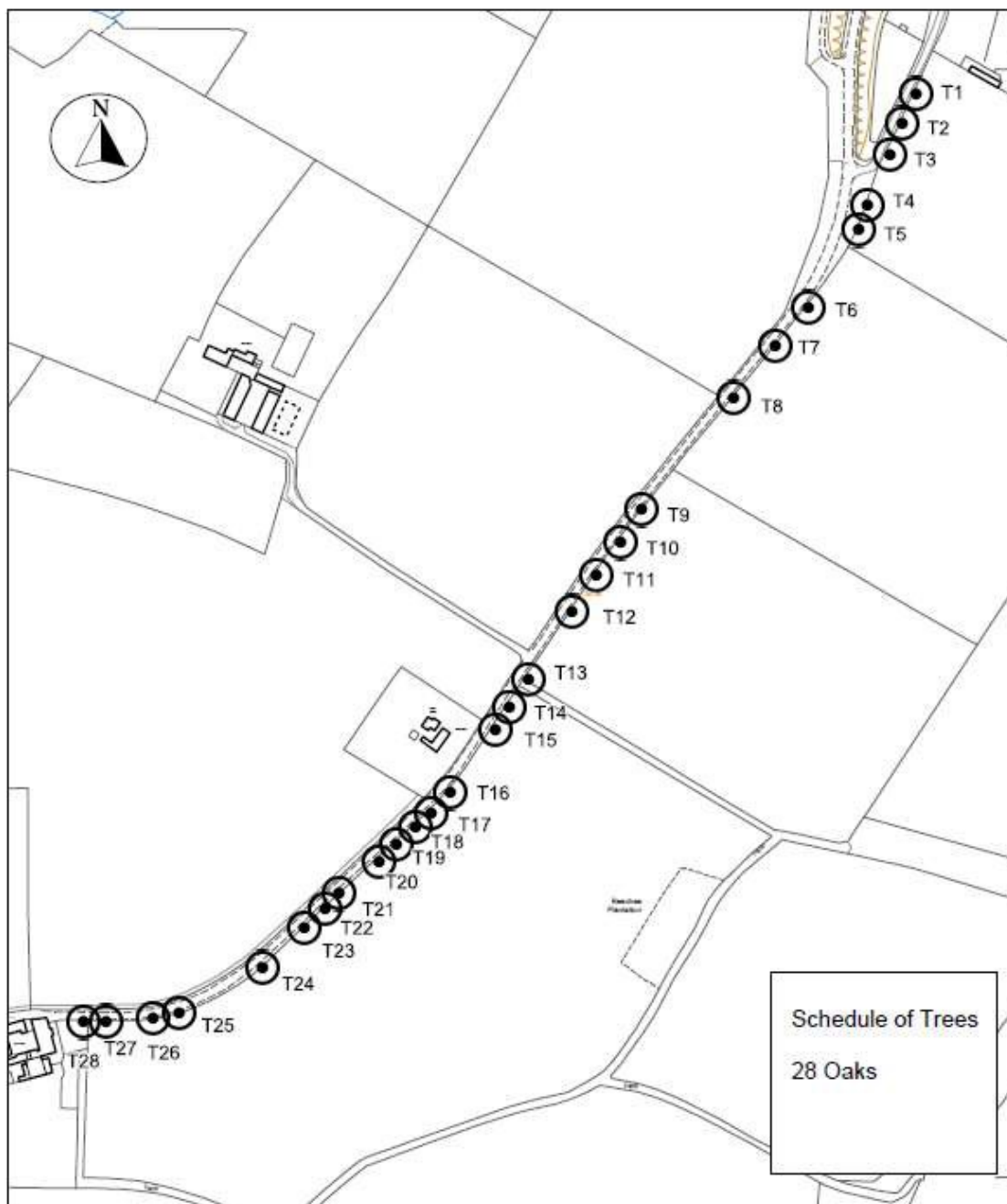
interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the tree preservation order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

**Local Environment** – The tree preservation order by affording protection to these trees will ensure that the significant amenity provided by the trees, the benefit to the local environment and its enjoyment by the public will continue.

**Resources** - Compensation may be payable if a person establishes that loss or damage has been caused or occurred in consequence of the refusal of consent, or the grant of consent subject to conditions, subject to the restrictions and exemptions set out in The Town and Country Planning (Tree Preservation) (England) Regulations 2012. Necessary works to the trees in the interests of safety will not be unreasonably refused.

Compensation may also be payable where works that are in the interests of good forestry practice are refused. However, it would 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 a refusal to fell the trees, and have to be in excess of £500.00. Neither would it include any depreciation in the value of the trees arising from neglect.

PLAN & STATEMENT OF REASONS FOR TREE PRESERVATION ORDER 283



Act 1990 Section 198(1)

**Tree Preservation Order Number 283**  
**Tower Farm, Rickerby, Carlisle**

Scale: 1:4000

Date: September 2016

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 ordnance survey LA100024459

Economic Development, Civic Centre, Carlisle, CA3 8QG





# TREE PRESERVATION ORDER NO. 283

## TOWER FARM, RICKERBY, 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.

The oak trees protected by Tree Preservation Order 283 are large prominent trees clearly visible to the public from the road between Linstock and Rickerby, and Hadrians Wall National Trail. They contribute to the pleasant rural character of the area enhancing the approach to, and exit from, the Rickerby Conservation Area, and are a key characteristic of this 'Low Farmland' landscape character type.

Due to their size, prominent location, and public visibility the trees makes make a substantial positive contribution to the character and visual amenity of the location.

A felling licence application received by the Forestry Commission would see the loss of many of the trees.

Other options considered were not making the Tree Preservation Order. For the reasons stated above it was considered the Tree Preservation Order was appropriate.

**APPENDIX 2**  
**LETTER OF OBJECTION AND OFFICERS' REPLY**

(Please send all correspondence to: [REDACTED])

Tower Farm

Address: c/o The Park, Rickerby, Carlisle, CA3 9AA

M D Lambert  
Director of Governance  
Civic Centre  
Carlisle  
CA3 8QG

RE: Tree Preservation Order 2016 No. 283

LEGAL & DEMOCRATIC SERVICES	
FILE	
28 SEP 2016	
PASSED TO	MDL CC CB
ANSWERED	
MAIL LOG	

Dear Mr Lambert,

I would like to formally object to the Carlisle City Council's proposals to place a TPO (Order 2016 no. 283) on 28 trees on land at Tower farm.

My objection is based on a number of issues as follows:

My original intention was to fell all of the road side trees and I received an offer of £12,500 + VAT for the sale of the timber. The original intention was partly to realise the timber value but also to reduce the on-going burden of falling trees and branches which pose a risk to all road users. I recognise that most of the trees are healthy but almost every year significant branches fall during strong winds in both the winter and summer months – please find pictures attached.

However, having taken professional advice I was persuaded to reduce the proposed felling to 16 trees, recognising that the row of trees has some amenity value. This proposal was considered by the Forestry Commission Woodland Officer and Charles Bennett and a compromise position, very close to my proposal, was offered and agreed.

It came as a surprise having agreed to this position that a TPO was then proposed and put temporarily in place. This action does seem at odds with my stance, which has always been to agree a fair and workable solution.

I would also highlight a number of issues which I also feel are pertinent to your decision regarding the TPO.

- The trees are all outside the Conservation area and as such this suggests that the landscape in this area is of lower concern.
- It has been highlighted that there are a large number of users who enjoy the trees. I would argue that the majority of walkers are on the Hadrian wall trail and as such have no prior knowledge of the trees and as such the loss of some of the trees is unlikely to alter their enjoyment of the landscape.
- Walkers along this stretch of road also use a footpath located in the opposite field. When walking this section views of about half of the trees are obscured by a high hedge.

- I would also suggest that little account has been made of the amenity value of trees in the opposite hedgerow and in the fields and hedgerows of Tower farm. These lessen the impact of removing the 16 trees applied for in the felling licence application.
- I would also highlight that Tower farm has shown good stewardship of the land and landscape and have actively managed and created hedgerows, planted copses of trees and planted individual park land trees. The proposals I have put forward have included a commitment to replace any tree which is to be felled.
- At our meeting with Charles Bennett he recognised that there were 3 trees that did require immediate removal and we would ask that whatever is the result of this enquiry that these trees are not placed within the TPO and are able to be immediately felled (T5, T21 & T28)
- I am also aware that Carlisle City Council is required to pay compensation for the loss in timber value if a TPO is approved. The loss in depreciation of timber value will be 100% if tree felling is not permitted and as such this is a significant potential cost for the council.

I look forward to working with Carlisle City Council to provide a sustainable plan for the short medium and long term.

Best regards,



Elliot Walker



Please address all correspondence to:



**Tower Farm (March 2016)**



**Similar aged trees Rickerby Park (August 2016 drop)**





Tower Farm (drop Sept 2016)



## **Economic Development**

Director **J E Meek** BSc (Hons) Dip TP MRTPI

### **Planning Services**

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

Phone (01228) 817000 • Fax Planning (01228) 817115 • Typetalk please ring 0800 95 95 98

E-mail Development Management:: [EDAdmin@carlisle.gov.uk](mailto:EDAdmin@carlisle.gov.uk) • Planning Policy: [lpc@carlisle.gov.uk](mailto:lpc@carlisle.gov.uk) • Building Control: [BC@carlisle.gov.uk](mailto:BC@carlisle.gov.uk)

Mr Walker  
The Park  
Rickerby  
Carlisle  
CA3 9AA

**Case Officer:**

**Direct Line:**

**E-mail:**

**Your Ref:**

**Our Ref:**

Charles Bennett

01228 817535

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

CB/14 TPO 283

30 September 2016

Dear Mr Walker

### **OBJECTION TO TREE PRESERVATION ORDER 283, TOWER FARM, RICKERBY**

I am writing in response to your letter of objection to Tree Preservation Order 283 Tower Farm, Rickerby, received in this office on the 29 September 2016.

I have summarised your objections below:

- There will be a loss of revenue of £12,500 as the timber cannot be felled.
- Falling trees and branches are a risk to all road users.
- An agreed compromise on the felling had been reached between the Forestry Commission, Carlisle City Council, and yourself.
- The trees are outwith the Rickerby Conservation Area and therefore the landscape is of 'lower concern'
- Loss of some trees will not result in a loss of enjoyment of the landscape for walkers on Walkers on Hadrians Wall National Trail.
- Walkers views of some of the trees are obscured by a hedge.
- Little account has been made of the amenity by the trees on the opposite side of the road which will lessen the impact of removing 16 oaks.
- The farm is under good management and the removed trees will be replaced.
- Three trees require immediate removal and these should be excluded from the tree preservation order.
- The Council will be liable for compensation totalling 100% of the value of the trees if felling is not permitted.

I will respond to each of the elements of your objection in the same order:

- Tree preservation orders are made where it is expedient in the interest of amenity. The loss of revenue is not an issue that has to be considered when deciding if the trees merit protection. Compensation may be payable to address the loss of timber value.
- Where there is a risk of foreseeable failure, of either a branch or whole tree, which could result in harm, the tree preservation order will not prevent work being undertaken to reduce the risk of failure to an acceptable level. However, because one tree in the row shed one limb does not mean that all the trees in the row are dangerous and need to be felled.
- A compromise on the felling licence application was not agreed with the City Council. A compromise was put forward by the Forestry Commission. However, a different option was put forward by your agent that was unacceptable.
- All landscapes matter not just designated landscapes or conservation areas. Hedgerow trees are a key element of this landscape character type. The loss of these trees would have a negative impact on the quality of this landscape, and the approach to the Rickerby Conservation Area.
- When considering whether or not to protect trees an assessment of the trees amenity is carried out. The trees scored highly due to their size and prominent location demonstrating that there would be a loss of amenity. The amenity provided by the trees is intrinsic. Lack of knowledge of the trees existence does not lessen the loss of amenity. Of course there are many local people who walk and drive this route regularly and do have knowledge of the trees.
- The hedge between the trees and a stretch of the National Trail does not obscure the trees.
- As noted above all the trees which were originally considered for removal were assessed for their amenity. Whilst there are trees opposite, that they will remain does not lessen the assessed amenity value of the protected trees, or lessen the negative impact if they were to be removed.
- The good stewardship of the farm is not in question. It is the loss of amenity arising from the removal of the trees that has to be considered. The loss of 16 mostly large prominent trees will have a significant negative impact on the amenity of the location. Replacement with small transplants will not replace the lost amenity for many decades.

- All of the trees, when assessed, merited protection by means of a tree preservation order. An application to remove T5, T21, and T28 would be judged on its merits and take account of the condition of the trees. However, the tree preservation order is the only mechanism to ensure replacement, and for that reason the trees must remain protected.
- Compensation may be payable, but it is questionable whether in this instance it would be. Even if compensation was payable it would not be for 100% of the current timber value. It would 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 a refusal to fell the trees, and have to be in excess of £500.00. Neither would it include any depreciation in the value of the trees arising from neglect.

I hope I have been able to address your concerns and you can withdraw your objection.

However, if you are unable to withdraw your objection the tree preservation order will go before the Development Control Committee who will decide whether or not it should be made permanent.

If the tree preservation order is to be determined by Committee the press and public may attend the meeting. Copies of the Committee Reports and background information (including petitions, letters of objection and support) will be available for those attending. If you wish to know when the application is going to Committee please check online or contact the Case Officer. A list of the forthcoming Committee dates is available on the website. At present it is my intention, if necessary, to take the tree preservation order to the Development Control Committee at its meeting on the 25 November 2016.

The City Council enables, in certain circumstances, objectors and supporters to applications for Planning Permission, Listed Building Consent, Advertisement Consent, Conservation Area Consent and in relation to Tree Preservation Orders a “right to speak” when an application is decided at the Development Control Committee. This right to speak also entitles Applicants or Agents to respond. A copy of the leaflet “Carlisle’s Scheme for Public Speaking at Development Control



Committee” is available from Planning Services or you can access it via the Planning Applications page on the City Council's website: [www.carlisle.gov.uk](http://www.carlisle.gov.uk)

If you wish to register a right to speak it must be done after the date that the Committee schedule is published (i.e. 8 days prior to Committee). The deadline for registering this is 12.00 (noon) on the Thursday before Committee. You cannot register a right to speak ahead of the Committee schedule being published. In order to register please contact either Karen Greig (tel: 01228 817112 email: [Karen.greig@carlisle.gov.uk](mailto:Karen.greig@carlisle.gov.uk)) or

Michelle Little (tel: 01228 817482 email: [michelle.little@carlisle.gov.uk](mailto:michelle.little@carlisle.gov.uk)). Please note that the scheme only allows 5 objectors the opportunity to speak on each application.

Please check the leaflet for full details or contact the Case Officer if you require further information.

Yours sincerely



**C Bennett MICFor**

Landscape Architect/Tree Officer

**Copy to :** Mark Lambert, Director of Governance, Carlisle City Council