

# CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- 29th April 2005

Agenda Item No:-

**A3**

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

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**Title:-** **PROPOSED TREE PRESERVATION ORDER NO. 191:  
AVALON, RICKERBY**

**Report of:-** **Head of Planning Services**

**Report reference:-** **P.16/05**

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## Summary:-

A Tree Preservation Order was made on 7 March 2005 to protect three individual trees and three groups of trees located within the curtilage of Avalon, Rickerby, Carlisle which is located within the Rickerby Conservation Area. The report considers objections to the order made by the owners of the property and concludes that the order should be confirmed.

## Recommendation:-

That Tree Preservation Order 191 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 March this year TPO 191 was made in respect of three individual trees and three groups of trees within the curtilage of Avalon, Rickerby, Carlisle. As they are in the Rickerby Conservation Area 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. 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 7 March 2005 on Mr Clare of Avalon, Rickerby, Carlisle, 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. Letters dated 25 March 2005 (including photographs of trees damaged in the severe storm of January 2005), and 7<sup>th</sup> April 2005 were received from Mr Clare of Avalon, Rickerby, Carlisle objecting to the making of the TPO. Copies of the letters and photographs are reproduced in full and appended to this report.
- 1.4 A number of trees have been removed from the grounds of Avalon, both with and without consent and it is considered that to protect the remaining trees in the interests of amenity, that a Tree Preservation Order be made.
- 1.5 An application to fell five trees in group three has been made and consented under Tree Preservation Order 191, with the condition that two trees, one Oak, and one Ash are planted as replacements at a suitable location within the curtilage of Avalon.



## **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 Tree Evaluation Method for Preservation Orders (TEMPO) method. 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 objective.
- 2.2 The trees are in the Rickerby Conservation Area. It is recognised that trees constitute a significant element in the character of Conservation Areas, and are therefore worth protecting for that reason, whether or not they are worth protecting in their own right. This was recognised by the High Court in *R v Canterbury CC, ex p. Halford*.
- 2.3 In terms of the public amenity value of the trees, the TEMPO assessment found that the trees had good scores and should be protected.
- 2.4 The survey carried out by Carlisle City Council's Landscape Architect/Tree Officer found that the three individual trees (T1, T2, & T3), as well as the trees comprising three groups (G1, G2, & G3) were in good health. There was no apparent rot in the trunks or crowns of the trees and they were free of significant defects.

## **3.0 Objections**

- 3.1 Mr Clare makes the following objections to the TPO in his letter dated 25<sup>th</sup> March 2005:
  - a. the trees in question have not been seen by Council Officers;
  - b. many of the trees are dying;
  - c. some trees are diseased;
  - d. the trees are a danger by virtue that they are shallow rooted and brittle due to lack of water;
  - e. trees have been weakened by the gales;
  - f. it is not possible with certainty to assess the exact degree of brittleness and stability possessed by the remaining trees;
  - g. trees may blow over and block the drive, cause damage or injury;

- h. the two tall trees within G3 are not completely visible to the public and are not therefore a visual amenity;
- i. the Council should be responsible for the cost of managing the protected trees and accept liability for any damage or injury they might cause;
- j. Council Members have not carried out a site visit; and
- k. the trees have caused damage to underground pipes.

3.2 I have the following comments to make on the above objections in Mr Clares letter dated 25<sup>th</sup> March 2005:

- a. the Council's Landscape Architect/Tree Officer visited the site on the 21 February 2005 to assess the trees for their suitability to be included in the TPO;
- b., c & e.  
at the time of the inspection all the trees that are subject to the TPO were healthy and in a safe condition, with no significant structural defects;
- d. trees do not send down deep roots, but root to a depth of approximately 1-1.5m, this is what would be expected of normal root growth. Different species of trees have different physical characteristics, some being more brittle than others. Lack of water is not a significant factor in making trees brittle;
- f. a competent arboriculturalist who will be able to assess their stability using the Visual Tree Assessment criteria should regularly inspect the trees;
- g. a tree that is apparently free from serious defects may suddenly shed a limb or blow over in a severe storm is a risk that cannot reasonably be predicted. Any damage or injury caused would, by definition, be unforeseeable and thus would not render their owner liable in negligence. Regular tree inspections would highlight any serious defects within the tree stock, which could be managed appropriately;
- h. as 2.2 above;
- i. the trees remain the responsibility of their owner, who should carry out regular inspections and when necessary take reasonable action to ensure they do not represent a danger; and
- j. the TPO is only provisional, where objections are raised it is for Members to decide whether or not they visit the site to see the trees for themselves.



- k. tree roots do not seek to damage or destroy drains with the intention of getting a water supply. Where there is already damage to the drains the tree will take advantage of the water seeping from the damage by increasing the root growth in this area, with the possibility that the drain could eventually become blocked by the ingress of roots. The possibility of direct damage to drains as a tree grows is limited and only occurs where the tree is in very close proximity to the drain, approximately 1m or less.

#### **4.0 Late objection**

4.1 Mr Clare has made the following further objections in a letter dated 7<sup>th</sup> April 2005.

- a. global warming will increase the frequency of severe gales, increasing the threats and dangers posed by the trees.
- b. the trees provide excellent cover for burglars.

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

- a. as 3.2(g) above
- b. removal of the trees will not prevent those intent on carrying out criminal activity from doing so.

#### **5.0 Conclusion**

5.1 It is considered that the trees have a significant public and visual amenity value and merit protection by virtue of their location within the Rickerby Conservation Area.

#### **6.0 Recommendation**

6.1 That the Tree Preservation Order 191 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 (LAND AT AVALON, RICKERBY, CARLISLE)

*Insert title  
of Order  
(including  
year)*

# TREE PRESERVATION ORDER, 2005 .

NO 191

*Insert name  
of Council*

The Council of the City of Carlisle  
in exercise of the powers conferred on them by sections 198 [, 201<sup>(a)</sup>] [and] 203 ~~[part 300]~~ of the Town and  
Country Planning Act 1990<sup>(b)</sup>, [and with the consent of the

*Insert name  
of  
appropriate  
authority*

hereby make the following Order:—

### Citation

*Insert title  
of Order  
(including  
year)*

1. This Order may be cited as The City of Carlisle (Land at Avalon, Rickerby,  
Carlisle) Tree Preservation Order 2005 No.191.

### 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 7 March 2005

### Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)<sup>(c)</sup>  
[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<sup>(d)</sup> 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<sup>(a)</sup>;
- (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<sup>(a)</sup>; 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<sup>(b)</sup>.

(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)<sup>(c)</sup>,

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<sup>(d)</sup> 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.49.



(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 have 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] [these trees are planted].

[Order made by virtue of section 300

11. -- This Order takes effect in accordance with subsection (3) of section 300 (tree preservation orders in anticipation of disposal of Crown land).]

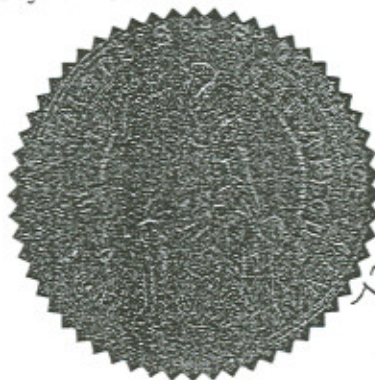
Dated this 7<sup>th</sup> day of March 2005

(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-

  
Head of Legal & Democratic Services



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

[Signed on behalf of the (name of Council)

Authorised by the Council to sign in that behalf]

[CONFIRMATION OF ORDER

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

(month and year)] OR

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

on the day of

(month and year)]

Authorised by the Council to sign in that behalf]

[DECISION NOT TO CONFIRM ORDER

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

(month and year)

Authorised by the Council to sign in that behalf]

[VARIATION OF ORDER

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

(month and year) under the reference number

Authorised by the Council to sign in that behalf]

[REVOCATION OF ORDER

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

(month and year) under the reference number

Authorised by the Council to sign in that behalf]



# **TREE PRESERVATION ORDER No. 191 AVALON, RICKERBY, CARLISLE.**

## **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 individual trees and groups of trees within the Order are highly visible from the surrounding countryside, public roads, footpaths and parkland, provide a significant present and future amenity, and considerably enhance the Rickerby Conservation Area. A number of trees have already been lost, and the loss of further trees will adversely affect the visual and public amenity of the Rickerby Conservation Area. It is felt that a tree preservation order is appropriate to control any further tree works in the interests of visual amenity to the Conservation Area.

# City of Carlisle

Department of Environment and Development

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

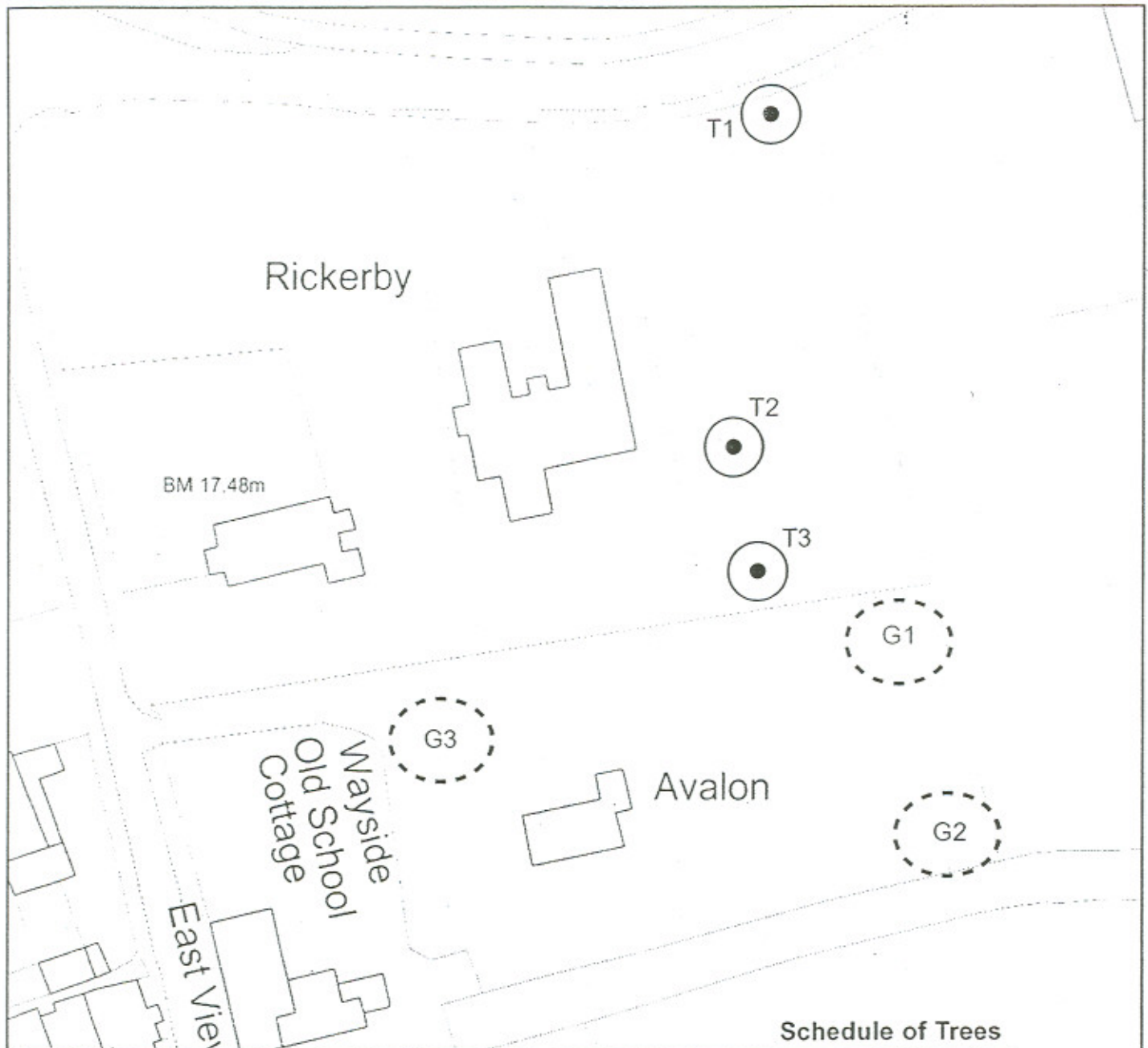
Tree Preservation Order Number 191

Avalon, Rickerby, Carlisle

CARLISLE  
CITY COUNCIL



www.carlisle.gov.uk



## Schedule of Trees

T1 Horse Chestnut

T2 Atlantic Cedar

T3 Sweet Chestnut

### Groups

G1

1 Western Hemlock

1 Sycamore

1 Cherry

2 Lawson Cypress

1 Leyland Cypress

2 Scots Pine

G2

1 Norway Maple

4 Cherry

6 Poplars

2 Birch

1 Sycamore

G3

2 Leyland Cypress

1 Beech

3 Lawson Cypress

1 Weeping Ash

1 Rowan

1 Grand Fir

1 Cedar

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Scale 1:750

Date March 2005

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Head of Planning Services

Alan Eales DipTP MRTPI



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

Article 4

<i>Reference on Map</i>	<i>Description</i>		<i>Situation*</i>
T1	Horse Chestnut	341578E	557064N
T2	Atlantic Cedar	341572E	557022N
T3	Sweet Chestnut	341578E	557008N

**Trees specified by reference to an area**

(within a dotted black line on the map)

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

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

<i>Reference on Map</i>	<i>Description</i>		<i>Situation*</i>
G1	1 Western Hemlock, 1 Sycamore, 1 Cherry 2 Lawson Cypress, 1 Leyland Cypress, 2 Scots Pine.	341578E	556996N
G2	1 Norway Maple, 4 Cherry, 6 Poplars 2 Birch, 1 Sycamore.	341600E	556975N
G3	2 Leyland Cypress, 1 Beech, 3 Lawson Cypress 1 Weeping Ash, 1 Rowan, 1 Grand Fir, 1 Cedar.	341536E	556985N

**Woodlands**

(within a continuous black line on the map)

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

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

# SCHEDULE 2

Article 7

## PART I

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

Provisions of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<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)”;</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 I 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.



**Photographic Evidence**





# JANUARY GALES 2005

NEARLY UNBLOCKED DRIVE



REAR OF HOUSE



REAR OF HOUSE



REAR OF HOUSE



CLEARED DRIVE



Letters of Objection/Representations photographs of storm damage, January 2005



Your REF. MDL/SWTC 3/118

WILSON  
RICKERBY  
CARABLO  
CAMBRIDG  
CA3 9AA  
7<sup>th</sup> APRIL 2005

Dear Sir,

Your letter dated 4<sup>th</sup> APRIL 2005, duly reached me. I note mine, of 25<sup>th</sup> MARCH 2005, will be treated as a formal objection to TPO 191. (What other objectives did you think I had in writing it?) In that connection, I should be grateful if two further items, in support of that objection, could be added to it. ① The increase in global warming will result in greater frequency of severe gales. Threats and dangers posed by excessively large trees, in particular, will show a proportionate increase. TPOs do not prevent such threats and dangers. They enhance them by seeking to preserve the unsupportable.

② The previous owners were warned by the police against planting too many trees. This was after the thwarting of a burglary. The police stated that when the trees matured they would provide excellent cover for burglars and intruders. This situation has come to pass.

It is my earnest wish that Members will visit the site before giving their verdict on TPO 191. I should like members to be aware of this wish. A visit will serve to convince me that democracy & fair play are still alive.

I shall never be able to reconcile myself to the Council not having to accept responsibility for its decisions. I wish to remove trees which are a present, and increasing future danger. Council, by means of a TPO, refuses to allow this. How can I be responsible for any damage to life and property caused by Council refusing permission to remove such a danger?

I note, with very amusement, that the reasons d'etre of your department is to give the Council legal advice. In such a way, we, the payers of OTT Council Tax, contribute to causes against our own interest. In addition, we are ordered to pay for our own legal advice.

You have stated maintenance and liability of / for trees lies with the owner. Please explain to me, bearing in mind that I am forbidden by TPO 191 how I can "maintain" the trees. What do you mean to convey in your use of the word "maintenance"?

Can you confirm, please, that Council will only reach a decision regarding TPO 191 after it has read my letter of 25<sup>th</sup> MARCH 2005 and this supplementary letter? Can you also confirm that it will see the photograph I enclosed with my letter of 25<sup>th</sup> MARCH 2005. As I requested the return of that photograph, can I take it that you have retained it for that purpose, and that its return, to me, will be made after that event? In conclusion, when will Council be considering TPO 191?

Yours faithfully  
B. CLARE

B. CLARE