

# Report to Development Control Committee

Agenda  
Item:  
**A.2**

30<sup>th</sup> April 2021

Meeting Date:

Portfolio:

Economy, Enterprise, and Housing

Key Decision:

Not Applicable:

Within Policy and  
Budget Framework

Public / Private

Public

Title:

TPO 310 LAND WEST OF TANGLEWOOD, CUMWHINTON

Report of:

CORPORATE DIRECTOR OF ECONOMIC DEVELOPMENT

Report Number:

ED.14/21

## **Purpose / Summary:**

This report considers the confirmation of Tree Preservation Order 310 on Land West of Tanglewood, Cumwhinton considering representations to the making of the tree preservation order.

## **Recommendations:**

That Tree Preservation Order 310 be confirmed with modifications as shown in 2.4.

## **Tracking**

Executive:	
Scrutiny:	
Council:	

## 1. BACKGROUND

- 1.1 The trees in question are situated on land between Cringles Farm and Tanglewood when exiting the village of Cumwhinton on the C1040 link road to the A6.
- 1.2 In September 2020, planning application 20/0602 was submitted for the siting of 3no. detached houses on this land. This application was submitted by the applicant of Cringles Farm with the land being in their ownership. This application was determined in accordance with the provisions of the Carlisle District Local Plan 2015-2030 (relevant policies SP1, SP2, SP6, HO2, HE3, G11, G13, G16, CM4, CC4, CC5, IP2, IP3, IP4 and IP6) along with the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG). The Supplementary Planning Documents 'Achieving Well Designed Housing', 'Trees and Development' and 'Affordable and Specialist Housing' were also material planning considerations.
- 1.3 The application was refused on 16<sup>th</sup> December 2020, with the following conclusion:  
*'The site is not considered to be physically connected to the existing settlement (being separated from it by a belt of trees); it does not integrate well with the existing settlement; and it leads to an unacceptable intrusion into the open countryside. Whilst most trees on the site would be retained, six would be removed to facilitate the development. The removal of these trees, which form part of an important group which has a high amenity value, and which make a positive contribution to the locality, would have an adverse impact on landscape character. The erection of dwellings on the site, near the trees, is also likely to lead to pressure to remove some of these trees in the future. In addition, a hedge runs along the southern site boundary, adjacent to the road, and this makes a positive contribution to the rural character of the site. The removal of the part of the hedge and the creation of two new accesses would also have an adverse impact on landscape character'*  
*'In light of the above, the proposal is considered to be contrary to Criterion 3 of Policy HO2 (Windfall Housing Development), Policy G11 (Landscapes), Policy G16 (Trees and Hedgerows) and Criterion 2 of Policy SP6 (Securing Good Design) of the adopted Carlisle District Local Plan 2015-2030'*
- 1.4 Section 197 of the Town and Country Planning Act 1990 places a duty on local planning authorities to ensure, whenever it is appropriate, adequate provision is made for the preservation of trees. The local authority may make a tree preservation order where it appears to the authority that it is expedient in the interests of amenity.

- 1.5 Following refusal of the application, an assessment of the trees was undertaken using the Forbes-Laird Tree Evaluation Method for Preservation Orders (TEMPO) with 20 trees being identified as being suitable for protection due to their prominent size, location, public visibility and contribution to the pleasant rural character of the area.
- 1.6 A copy of the plan relating to Tree Preservation Order 310 and the statement of reasons, are attached hereto at Appendix 1

## 2. CONSULTATION

- 2.1 The Parish Council, owners of affected properties, and all those who were known to have an interest in the land (according to Land Registry searches) were consulted on the proposed Tree Preservation Order, in accordance with the requirements of The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.2 Two letters of objection (outside of the 28-day consultation period) have been received. The letters are contained within the third-party representations.
- 2.3 The objections and our response are summarised below.
- 'The TPO has not been issued correctly': This relates to the issuing of the notification to landowners who are shown on Land Registry searches. The Local Authority do all in its power to notify interested parties of their intentions and can only do so according to the information available. The placing of a site notice covers our legal duties in this instance.
  - 'Trees 16,17,18,19,20 need to be on a separate TPO due to the landowners not being notified': A TPO can cover several landowners and the Local Authority notified landowners according to land registry records.
  - 'The original TPO lapsed': There has not been a previous TPO in place
  - 'Other trees in the area, why are they not subject to TPO?': The Local Authority would only seek to protect trees if it is expedient to do so, taking amenity value, retention span, public visibility and any threat or work to the trees that would not be in accordance with good arboricultural practice.
  - 'The TPO will hinder the management of the trees; who is liable should a tree fall into the road? the TPO might prevent property insurance if trees cannot be maintained'. A Tree Preservation Order is made to protect specific trees. The Order prevents cutting down, topping, lopping, uprooting, wilful damage, or destruction. Owners of protected trees must not carry out, or cause or permit the carrying out of any of the prohibited activities **without the written consent of the local authority**. There is a free application process that takes 8 weeks.

The responsibility for management of the trees remains with the owner, even where a tree preservation order is in place. It is important that trees are inspected regularly by the owners to ensure they remain safe and healthy. The application process is intended to encourage good tree management, which will help to maintain and enhance the amenity provided by protected trees. Arboricultural advice from competent contractors and consultants, or the authority, will help to inform tree owners of their responsibilities and options.

As with unprotected trees, owners are responsible should a tree damage other property. Owners have a duty to ensure their property is correctly insured should such damage occur.

- 'T20 located in the grounds of Rosehill be excluded from the Order due to the tree overhanging The Brambles, causing loss of light. Objector wishes to lop/top the tree'. The TPO will not prevent work being carried out on this tree. Once an application for necessary work is approved, the applicant would have two years to carry out the work to British Standards.

- 2.4 Further advice was sought from James England of GIS Solutions, who is a qualified Arboricultural Consultant and Chartered Forester. His report can be seen in Appendix 2. In summary, James recommends that all trees in the Order are protected without including T2 and T13, with recommendation to fell both. The revised plan is Appendix 3

### **3. CONCLUSION AND REASONS FOR RECOMMENDATIONS**

- 3.1 The Local Authority is sufficiently concerned that should the Order not be confirmed, work could be undertaken to the trees that would not preserve their health and longevity. The statement of reasons is valid and appropriate in this case.

### **4. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES**

- 4.1 Trees are an extremely important part of our countryside that help to 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.

### **5. RECOMMENDATION**

- 5.1 It is recommended that Tree Preservation Order 310 be confirmed with modifications to omit trees T2 and T13.

**Contact Officer: Sue Stashkiw**

**Ext: 7175**

<b>Appendices</b>	<b>Appendix 1 – Tree Preservation Order 310</b>
<b>attached to report:</b>	<b>Appendix 2 – GIS Solutions Report</b>
	<b>Appendix 3 – Amended TPO Plan</b>

**Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:**

- **None**

#### **CORPORATE IMPLICATIONS:**

**LEGAL** - The Council has responsibility for ensuring that appropriate and adequate provision is made for the preservation of trees. This means that it may make a tree preservation order where it appears expedient in the interests of amenity. In this instance, a review of the relevant trees has been conducted and officers consider that a Tree Preservation Order is necessary. Members are now being asked to consider whether that Order should be confirmed, in the light of the representations which have been made.

This Tree Preservation Order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including residents, who have made representations, have the right to a fair hearing and to this end the Committee must consider 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.

Once made, 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.

**FINANCE – n/a**

**EQUALITY – n/a**

**INFORMATION GOVERNANCE – n/a**

**TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)  
REGULATIONS 2012**

**Town and Country Planning Act 1990**

**The City Council of Carlisle**

**Land Adjacent to Tanglewood, Cumwhinton, Carlisle CA4 8LD – Tree  
Preservation Order 2020 (No.310)**

The City Council of Carlisle in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

**Citation**

1. This Order may be cited as the Land Adjacent to Tanglewood, Cumwhinton, Carlisle CA4 8LD – Tree Preservation Order 2020 (No.310).

**Interpretation**

2.— (1) In this Order “the authority” means The City Council of Carlisle

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

**Effect**

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, 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 the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to 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 the tree is planted.

Dated this 17<sup>th</sup> December 2020

The Common Seal of the City Council of Carlisle was affixed to this Order in the presence of



70343 -

S.R. Brown - Principal Clerk

#### CONFIRMATION OF ORDER

This Order was confirmed by The City Council of Carlisle without modification on the      day of

OR

This Order was confirmed by The City Council of Carlisle, subject to the modifications indicated by      , on the      day of

Signed on behalf of The City Council of Carlisle

.....  
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 City Council of Carlisle on the      day of

Signed on behalf of The City Council of Carlisle

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



### **VARIATION OF ORDER**

This Order was varied by The City Council of Carlisle on the  
variation order under reference number

day of by a  
a copy of which is attached

Signed on behalf of The City Council of Carlisle

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

### **REVOCATION OF ORDER**

This Order was revoked by The City Council of Carlisle on the day of

Signed on behalf of The City Council of Carlisle

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

## SCHEDULE

### Specification of trees

#### Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Oak	OS Grid Ref. 344527 552803
T2	Oak	OS Grid Ref: 344544 552797
T3	Oak	OS Grid Ref: 344550 552788
T4	Oak	OS Grid Ref: 344557 552787
T5	Oak	OS Grid Ref: 344555 552778
T6	Oak	OS Grid Ref: 344564 552792
T7	Oak	OS Grid Ref: 344563 552802
T8	Oak	OS Grid Ref: 344568 552803
T9	Oak	OS Grid Ref: 344576 552799
T10	Oak	OS Grid Ref: 344584 552802
T11	Oak	OS Grid Ref: 344575 552779
T12	Beech	OS Grid Ref: 344581 552778
T13	Oak	OS Grid Ref: 344591 552775
T14	Oak	OS Grid Ref: 344602 552773
T15	Oak	OS Grid Ref: 344611 552769
T16	Oak	OS Grid Ref: 344609 552765
T17	Oak	OS Grid Ref: 344630 552765
T18	Oak	OS Grid Ref: 344626 552779
T19	Oak	OS Grid Ref: 344598 552826
T20	Oak	OS Grid Ref: 344714 552769

#### 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>
[A1]	None	

#### Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
[G1]	None	

#### Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[W1]	None	

# STATEMENT OF REASONS

## TREE PRESERVATION ORDER NO. 310

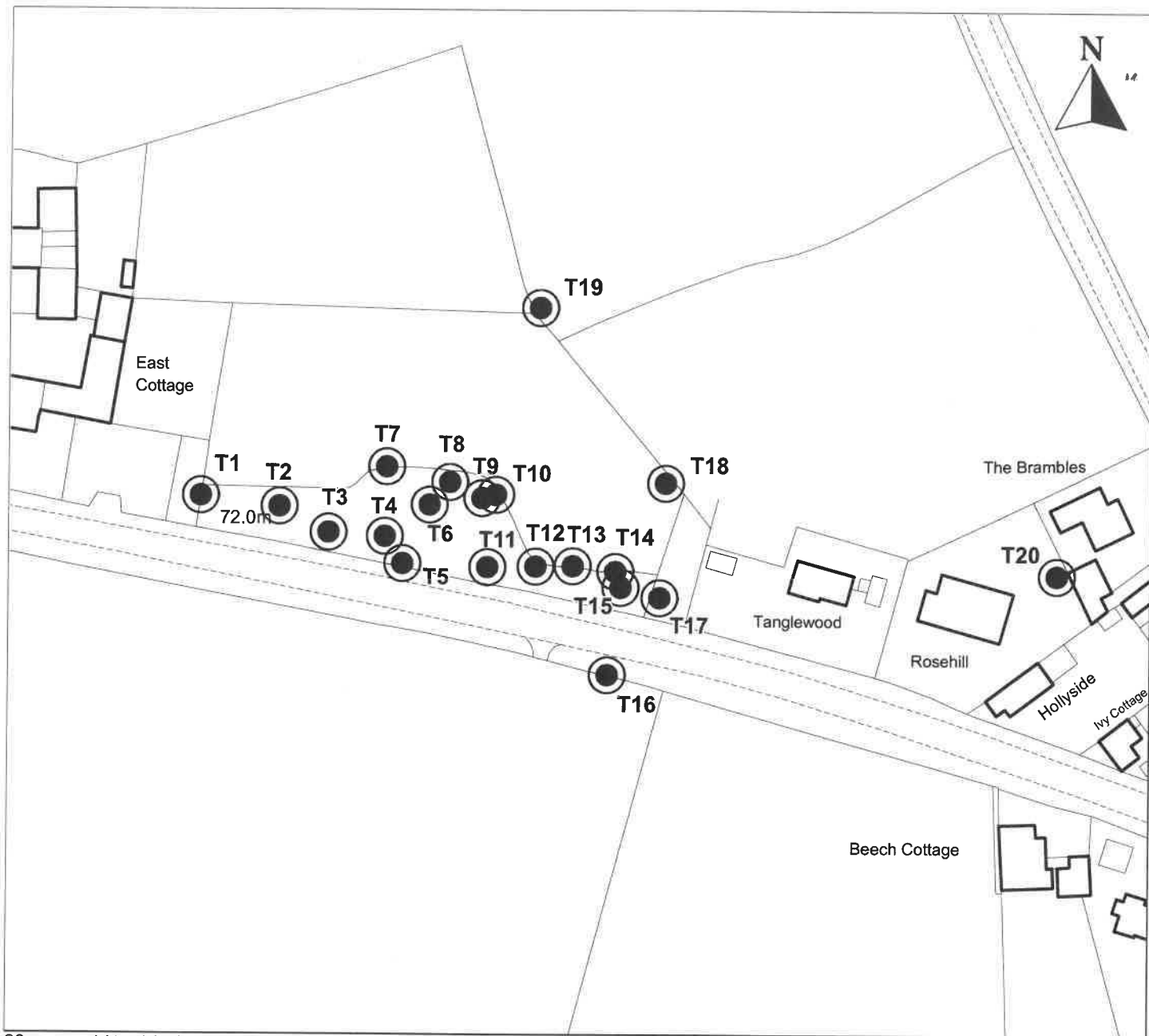
### LAND ADJACENT TO TANGLEWOOD, CUMWHINTON, CARLISLE CA4 7DL

Section 197 of the Town and Country Planning Act 1990 places a duty on local planning authorities to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made for the preservation of trees. The local authority may make a tree preservation order where it appears to the authority that it is expedient in the interests of amenity.

The 20 trees are protected by this tree preservation order. All trees are prominent and visible to the public realm and contribute to the pleasant rural character of the area.

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

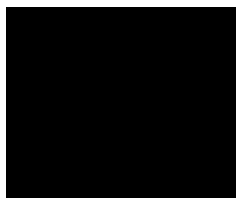
It is considered that the most appropriate way to protect these trees for the future is by means of a tree preservation order.



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Act 1990 Section 198(1)

**Tree Preservation Order Number 310**  
**Land Adj. Tanglewood, Cumwhinton, CA4 8LU**



**Schedule of Trees**

T1 - T11: Oak  
 T12: Beech  
 T13 - T20: Oak

Scale: 1:1250

November 2020

Economic Development  
 Civic Centre  
 Carlisle  
 CA3 8QG

**CARLISLE**  
**CITY COUNCIL**



[www.carlisle.gov.uk](http://www.carlisle.gov.uk)



## Tree Assessment at Cumwhinton.

**Site:**

Land west of Cringles Farm, Cumwhinton

**Development Proposal:**

To develop the existing fields and construct three new residential dwellings. The proposal includes creating new vehicle accesses from public road. It would importantly involve removing trees to facilitate the development and constructing and running underground services through the new vehicle accesses.

**Assessment:**

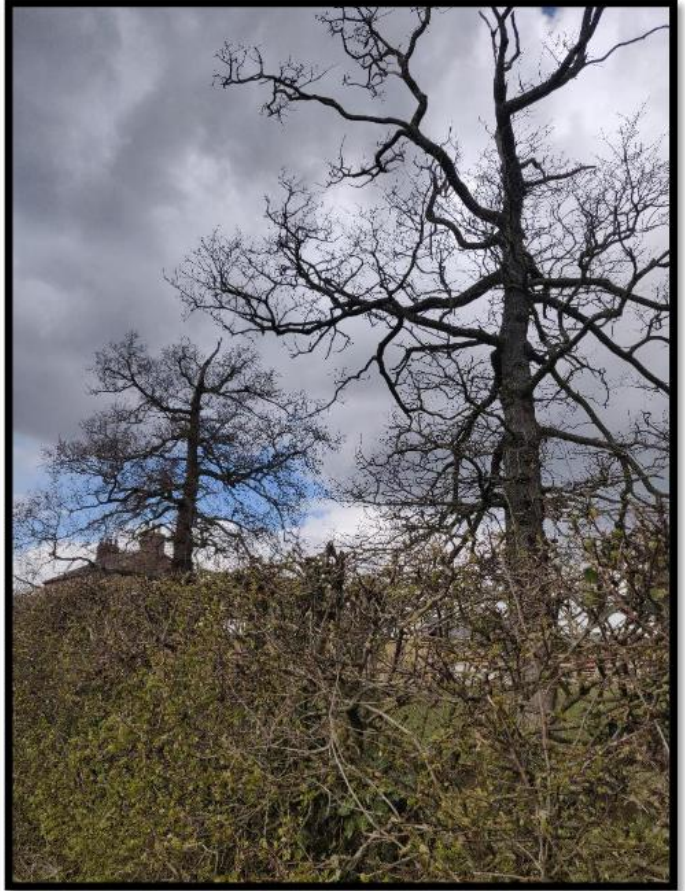
For completeness I have had a look from the public road at the trees. I have read all the associated documents and largely agree with the surveyor's assessments. There are several trees that would fit into to category B under BS5837:2012, which would have an expected life span of at least 20 years.

Whilst observing from the road I noted that there had been some recent tree felling as shown below. Left is looking towards Tanglewood and the right-hand picture is looking northwards towards Group 2 on Lowther Forestry tree plan.





**Tree No. 1961 (left) 1962 (right)** - both are oak trees and were assessed as 1961 being category C and 1962 being category U.



Tree 1961 has dieback from the top but the rest of the tree appears healthy and requires careful monitoring. Tree 1962 is in a poor condition and shows a significant amount of deadwood and should be removed.



**Tree No. 1973** - beech tree would be category U as it has severe crown dieback as shown below. There was lots of deadwood noted and the tree exhibits poor vitality. The top proportion of the tree is dead and it should be felled given its close proximity to the road.



**Tree No. 1974 & 1975** - oak trees that were assessed as category C as both exhibit deadwood and have minor defects.





**Group G2** - A number of the trees in G2 are in poor condition with severe dieback and deadwood present. The two trees shown with the red arrow should be felled due to their poor condition.



## Summary & Recommendations:

1. I would advise that Tree No's 1973, 1962 and the two trees in group 2 (As highlighted with the red arrows) could be removed.
2. The rest of the trees on the site are largely all category B trees and are worthy of protection. I would agree with the survey carried out by Lowther.
3. The proposed development of three properties doesn't fit well within the site with the group of trees. The properties will exert undue pressure on the retained trees that should be retained due to their BS5837 assessment category. Any owners are likely to want to remove these trees which as a group are important not just on the landscape but in the locality. The trees will dominate the front gardens and really the development in its current form isn't suitable for the site given the high value trees on the site and the current size of them. Even moving the properties back to the north so that they are at the back of the field edge, would have limited improvements. The driveways would still be a concern, given they would need to be constructed through the tree protection zone (TPZ).

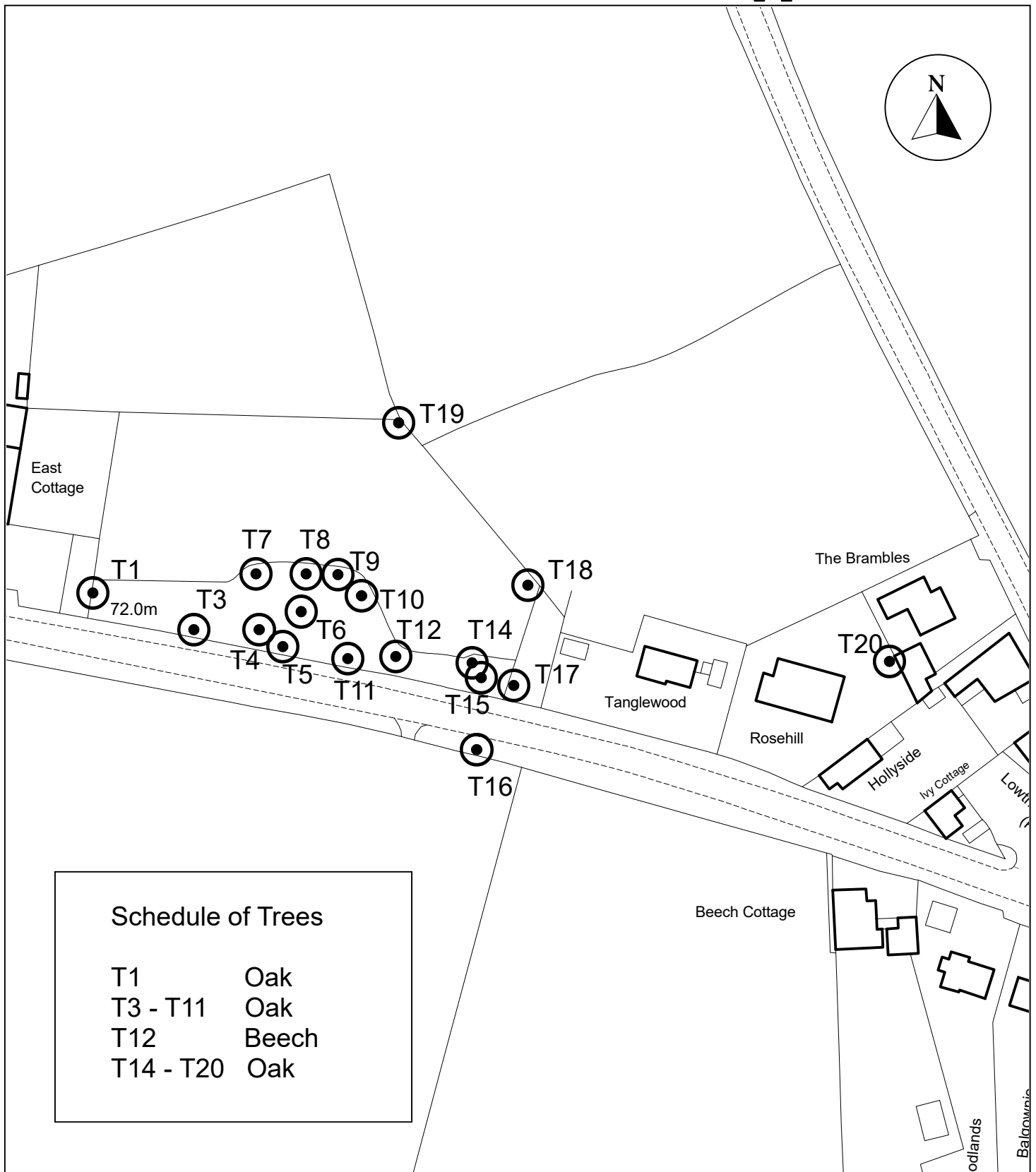
## Conclusions:

I would say that based on our survey that the Tree Preservation Order is appropriate for the site but I would omit trees T2 and T13 from the order.

**James England NDF, BSc(Hons)For, MicFor,  
Arboricultural Consultant & Chartered Forester**



13/04/21



Act 1990 Section 198(1)

**Tree Preservation Order Number 310**  
**Land adj. Tanglewood, Cumwhinton,**  
**Carlisle, CA4 8LU**

Scale: 1 : 1250

Date: April 2021

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Economic Development, Civic Centre, Carlisle, CA3 8QG