



Report to Development Control Committee

Agenda
Item:
A2

22nd October 2021

Meeting Date:

Portfolio:

Economy, Enterprise, and Housing

Key Decision:

Not Applicable:

Within Policy and
Budget Framework

Public / Private

Public

Title:

TPO 312 SONEGARTH, MORTON PARK, CARLISLE

Report of:

CORPORATE DIRECTOR OF ECONOMIC DEVELOPMENT

Report Number:

ED37/21

Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 312 on Land at No.2 and No.4 Stonegarth, Morton Park, Carlisle considering representations to the making of the tree preservation order.

Recommendations:

That Tree Preservation Order 312 be confirmed.

Tracking

Executive:	
Scrutiny:	
Council:	

1. BACKGROUND

- 1.1** The trees in question are situated within front gardens of No.2 and No.4 Stonegarth, Carlisle.
- 1.2** Both trees are mature oaks that may have formed part of an old field hedgerow prior to the council development and will be over 100 years old.
- 1.3** 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 to do so in the interests of amenity value and/or if trees are in danger of being damaged or felled.
- 1.4** An application to protect 1no. mature oak tree situated in the front garden of No.4 Stonegarth was received in May 2021 from the landowners, Riverside Housing. This was in response to concerns received from the new owners of No.6 Stonegarth who were wanting to trim the tree and were also concerned about potential damage being caused by root growth into drains and foundations.
- 1.5** A full Tree Inspection Survey was commissioned by Riverside and carried out in March 2021 by qualified Tree Specialists 'Treewise Solutions Ltd'. A full visual ground inspection and quantified tree risk assessment was undertaken, and this report can be seen in Appendix A.
- 1.6** A site visit was made by us to assess the merits of making this tree the subject of a Tree Preservation Order, as recommended in the report. During the site visit, it became clear that 2 oak trees at No.2 and No.4 Stonegarth provided an important contribution to the street scene and are both prominent and visible to the public realm along the northern end of Stonegarth.
- 1.7** A copy of the plan relating to Tree Preservation Order 312 and the statement of reasons, are attached hereto at Appendix B

2. CONSULTATION

- 2.1** Local councillors, residents of No2, 4 and 6 and Riverside Housing 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 have been received in respect of the tree situated in the front garden of No.4. The letters are contained within the third-party representations.

2.3 The objections and our response are summarised below.

- 'The tree is actually touching the fence and roots are causing the block paving of No.6 Stonegarth to lift' – Development should not be undertaken within the root protection area of a tree unless a permeable cellular 'no dig' system is used that allows the roots to receive essential nutrients.
- 'Large overhanging branches span the full width of No.6 driveway and reaching No.8' - The report recommends crown lifting of 5 metres from ground level; pruning a 3-metre clearance from buildings, which should address these concerns
- 'potential public safety issue from falling branches' - The report also recommends the removal of deadwood and that the tree is put on an annual inspection regime to allay any fears of new defects being missed.
- Damage to vehicles from falling sap, blowing debris having to be swept up and lack of light into properties. – The tree is over 7 metres from the property. Urban trees are vital in stabilising the environment and providing clean air, as well as providing essential habitat for wildlife

2.4 The responsibility for the management of 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. There is an application process that is intended to encourage good tree management, which will help to maintain and enhance the amenity provided by protected trees.

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 overhanging branches that may not be in the best interests of the health of the trees or in accordance with British Standards, Tree work 3998:2010. 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 environment 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.

Contact Officer: Sue Stashkiw

Ext: 7175

Appendices **Appendix A – Treewise report**
attached to report: **Appendix B – TPO**

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 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 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.

FINANCE – n/a

EQUALITY – n/a

INFORMATION GOVERNANCE – n/a

Tree Inspection Survey

4 Stonegarth
Carlisle CA2 6NR

On Behalf of

Riverside



2 Estuary Boulevard

Estuary Commerce Park

Liverpool, L24 8RF

Report by



TreeWise Solutions Ltd.

Moorhouse Courtyard

Warwick on Eden

Cumbria CA4 8PA

March 2021

Tree Inspector

Mr Kendall Rigg

HND Arboriculture, M Arbor A, QTRA Licensed User, LANTRA-accredited Professional Tree Inspector

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1.0 SCOPE

We are currently carrying out a planned Tree Inspection Survey on the communal sites owned by Riverside. We were informed that a complaint had been made by the private homeowner of No 6 Stonegarth, in respect of an Oak tree within the front garden of the Riverside property and No 4 Stonegarth. Whilst in the area, we arranged for our inspector to visit the site and inspect the tree. Our Inspector attended site on Thursday 25th March 2021.

The results of the Inspection are detailed below, along with the recommendations. The Tree Location Plan, Tree Schedule, Photos and a copy of the solicitor's letter are contained in the Appendices.

2.0 TREE SURVEY

2.1 Survey Method

A full 'Visual Ground Inspection' and Quantified Tree Risk Assessment (QTRA) of the tree was carried out. All observations were made from ground level, without detailed investigations using probing or invasive techniques. The weather during the surveys was clear and the visibility was very good.

The data is collected using the TreeWise software on a Tablet PC and generally consists of

- Tree Survey Data (species, height, measurements etc)
- Tree Inspection Data (defects, targets, condition, comments, risk assessment etc).
- Works Recommended in line with the inspection findings.

2.2 The Quantified Tree Risk Assessment

The Quantified Tree Risk Assessment (QTRA) system applies established and accepted risk management principles to tree safety management. QTRA is a target-led method that looks initially at the likelihood of there being people or property in the vicinity at the time of any tree failure. Where necessary, the tree or branch is then considered in terms of both impact potential (size) and probability of failure. Values derived from the assessment of these three components are used to calculate the probability of significant harm occurring.

The system thus provides the strongest case for only treating trees where an unacceptable level of risk of harm is identified. The system moves the management of tree safety away from labelling trees as either 'safe' or 'unsafe' and thereby away from requiring definitive judgements of either tree surveyors or tree managers. Instead, QTRA quantifies the risk of significant harm from tree failure in a way that enables tree managers to balance safety with tree values and to operate to a predetermined limit of reasonable or acceptable risk. Quantified Tree Risk Assessment is the Registered Trade Mark of Quantified Tree Risk Assessment Ltd.

2.3 Tree Survey Details

The Tree Survey details are contained in the Schedule in Appendix II.

3.0 TREE INSPECTION REPORT

The Oak tree is located in the front garden of No.4 Stonegarth and is located to the North of the property.

It was measured with a laser at 7.4m from the house frontage to the closest point to the stem. The tree height was measured 4 times in two different locations using a laser measuring device and height was recorded at 15.5m.

In terms of its crown spread, it has a southern, foreshortened and houseward crown spread of 4.4m, westerly over the tenant garden of 6m, easterly over neighbouring garden (No.6 Stonegarth) of 8m and northly over the highway of 7m with an aggregate crown spread of 14m diameter.

The tree has a stem diameter of 96cm, measured at 1.5m from ground (DBH). Forestry Commission data collected since 1922 informs us that English Oak with a stem diameter of 90cm is +/- 100 years old. Typically, what this means is that an Oak of this size will be at least 100 years old. In most cases the tree is older and in the case of hedgerow Oak trees they can be considerably older. The restrictive growing conditions that a tree is placed under in the built environment can greatly reduce a trees' ability to increase in size and it is our considered opinion that this tree is approximately 120 - 140 years of age.

The tree's characteristics are such that it is very reasonable to assume that this Oak tree is the remnant of an old field hedgerow and it was retained, probably with many more Oaks at the time, as part of the original council development plan. The houses are of a style and structure that suggests they were built mid 1950's, although, this would need to be validated by a land registry search.

Approximately 80% of the predicted root zone, (using the Root Protection Area (RPA) calculations as set out in BS:5837;2012 Trees in relation to design, demolition and construction - $96\text{cm} \times 12 = 11.52\text{m}$ radial protection) is covered in hard standings. This constitutes a concrete path, flagged patio, front garden of No.4 Stonegarth, full block paved front garden of No.6 Stonegarth, flagged pedestrian highway, grass verge and tarmac road to North. This amount of hard standing, greatly reduces a trees' access to available water / nutrients and consequently reduces the rate at which a tree grows, which further supports our opinion on the tree's age.

The tree has had numerous works carried out in the past, with large stem wound occlusions indicating historic crown raising. More recently, in the last 15 years, works have included foreshortening of radial growth, a reduction in crown height and crown thinning works. The tree was reduced to approximately 12m in the past and, judging by the diameter of the re-growth, this work was carried out approximately 10 - 15 years ago with regrowth of approximately <12cm in diameter and 3 - 4m in length.

Past crown thinning works have resulted in a proliferation of epicormic arisings throughout the mid crown region, as the tree has naturally attempted to replace photosynthetic material that was arbitrarily removed in an effort to achieve an aesthetic appearance. Crown thinning as a practice has become much un-used as it always results in the tree adding more growth than was removed. Furthermore, the removal of large diameter secondary growth back to the main stem, which creates large diameter wounding, is largely no more supported under the guidance as set out in BS:3998;2010 Recommendations for tree work.

Reference has been made in the solicitor's letter to a Tree Survey Mortgage Report recommending the retention of the tree's current height in order to achieve some sort of control over the root system. Although it is well documented that crown loss through pruning or storm damage can have a resultant effect on the death of tree roots, there is no written, peer-reviewed evidence that would support the notion of control. The root system is below ground level and therefore not visible. It is known and proven, that trees respond through dynamic adaptation in both a localised and asymmetrical reaction, that is controlled by the trees' needs, rather than any desire over where tree roots should or shouldn't grow.

Other than a small amount of deadwood, typical for the size, age and species and its location, there are no external indications of defects, be they structural or physiological, that indicate there is a reasonably foreseeable risk of harm or damage.

4.0 RECOMMENDATIONS

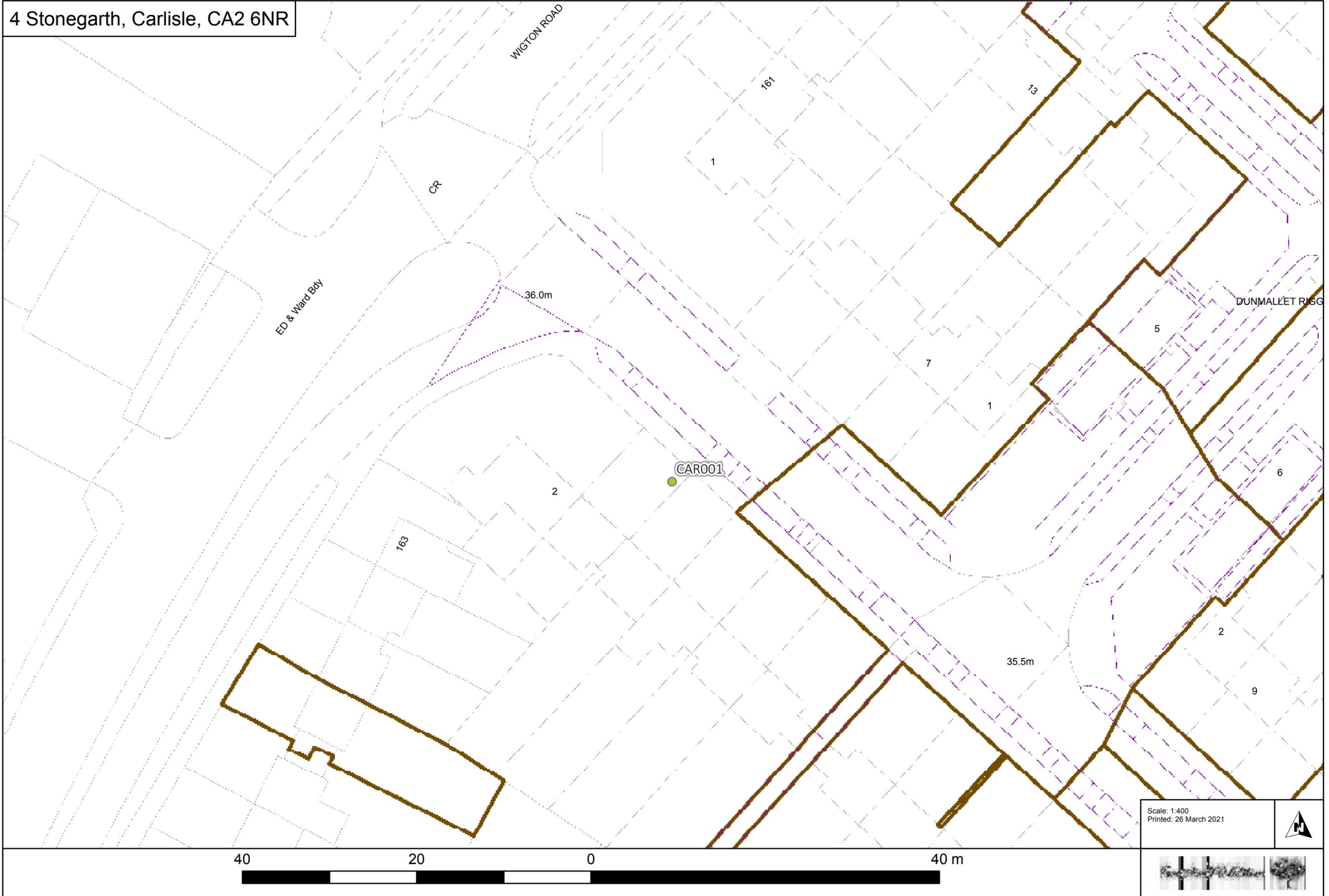
The Inspector has made recommendations that the tree be placed on an annual inspection regime, to allay any fears of new defects being missed.

He has also recommended that the deadwood be removed from the tree and that the over ground clearance of the tree be raised to 5m from ground level, with a minimum clearance from the roof line of 3m.

He finally notes that the tree is visibly one of the oldest in the local treescape, it is highly visible and of a species that is known to be long lived. It is our recommendation that the tree be noted to the Local Authority and an application for a Tree Preservation Order be made.

The full list of works is contained in the Schedule in Appendix II.

4 Stonegarth, Carlisle, CA2 6NR



Scale: 1:400
Printed: 26 March 2021



Appendix II
CAR0001 Tree Schedule

Feature Name	Species	Owner	Planting Year	Height (m)	DBH (cm)	Crown Spread (m)	Targets	Defects	Inspection Report	Priority	Work	Inspector's Comments	QTRA Score
CAR0001	English Oak	Tenant Front Garden	1900	16	96	14	2 Bus Routes, Building - Residence, Bus Stop, Driveway, Footpath-Highway, Garden, Road, Telephone Wires	Deadwood (Minor), Epicormics, Old Pruning Wounds, Previously Reduced, Root Compaction, Trifurcates at 5m	See Written Report	High	Crown Lift to 5-8m	Crown lift to 5m.	30,000
											Deadwooding (1-Light)	Remove deadwood above 2.5cm in diameter x 20cm in length, ensure that no live cambium is damaged while carrying out deadwooding, Hand tools only to be used for the works.	
											Prune Back from Building	Prune to allow 3m clearance from building roof line.	
											Remove Epicormics	Remove stem epicormics to a height of 5m.	
Other (Specify)	Contact Local Authority and apply for TPO status for this highly visible and locally significant tree, in order to afford it the statutory protection its size, age and prominence warrants.												

Appendix III - Photos



Appendix III - Photos



Appendix III - Photos



Appendix III - Photos



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Appendix III - Photos



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Appendix III - Photos



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WE DON'T ACCEPT SERVICE OF DOCUMENTS BY EMAIL

The Riverside Group Limited
2 Estuary Boulevard
Estuary Commerce Park
Speke
Liverpool
L24 8RF

Our Ref: IC/IC/8011
Your Ref: Alex Keegan
Date: 2 December 2020

FAO: Legal Department

Dear Sirs,

Your Client: The Riverside Group Limited
Our Client: Mr James Hunter and Mrs Diane Hunter
Property: 6 Stonegarth , Carlisle, CA2 6NR and 4 Stonegarth, Carlisle, CA2 6NR

We are acting for Mr and Mrs Hunter who purchased the property at 6 Stonegarth on the 27 November 2020.

We note from Office Copy entries that the Riverside Group Limited owns the neighbouring property, namely 4 Stonegarth, Carlisle CA2 6NR and the property is currently rented.

Our client's mortgage valuation survey revealed that there is a mature oak tree (60-70m high) in the neighbour Number 4 Stonegath's front garden which is 7 metres of front elevation of our client's property. The Survey Report recommended that the tree near to the property be restrained at current height to minimise possible damage by root growth to drains and foundations. The Survey Report also stated that a tree report is necessary.

We have been instructed by our client's lender to specifically write to you and request from you to take necessary action in order to ensure that the tree at the Riverside property does not cause damage to our client.

We should therefore be grateful if you could arrange a Tree Report to be prepared at Riverside's costs and ensure that necessary steps are taken in order to avoid any damage to our client's property.

We look forward to hearing from you.

Yours faithfully,

Isil Cowan
Wragg Mark-Bell Solicitors Ltd
Email: ic@wraggmarkbell.co.uk

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

Town and Country Planning Act 1990

The City Council of Carlisle

**Land at Nos. 2 and 4 Stonegarth, Morton Park, Carlisle CA2 6NR – Tree
Preservation Order 2021 (No.312)**

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 Land at Nos. 2 and 4 Stonegarth, Carlisle CA2 6NR – Tree Preservation Order 2021 (No.312).

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

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	338096 554846
T2	Oak	338103 554842

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	

SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
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[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

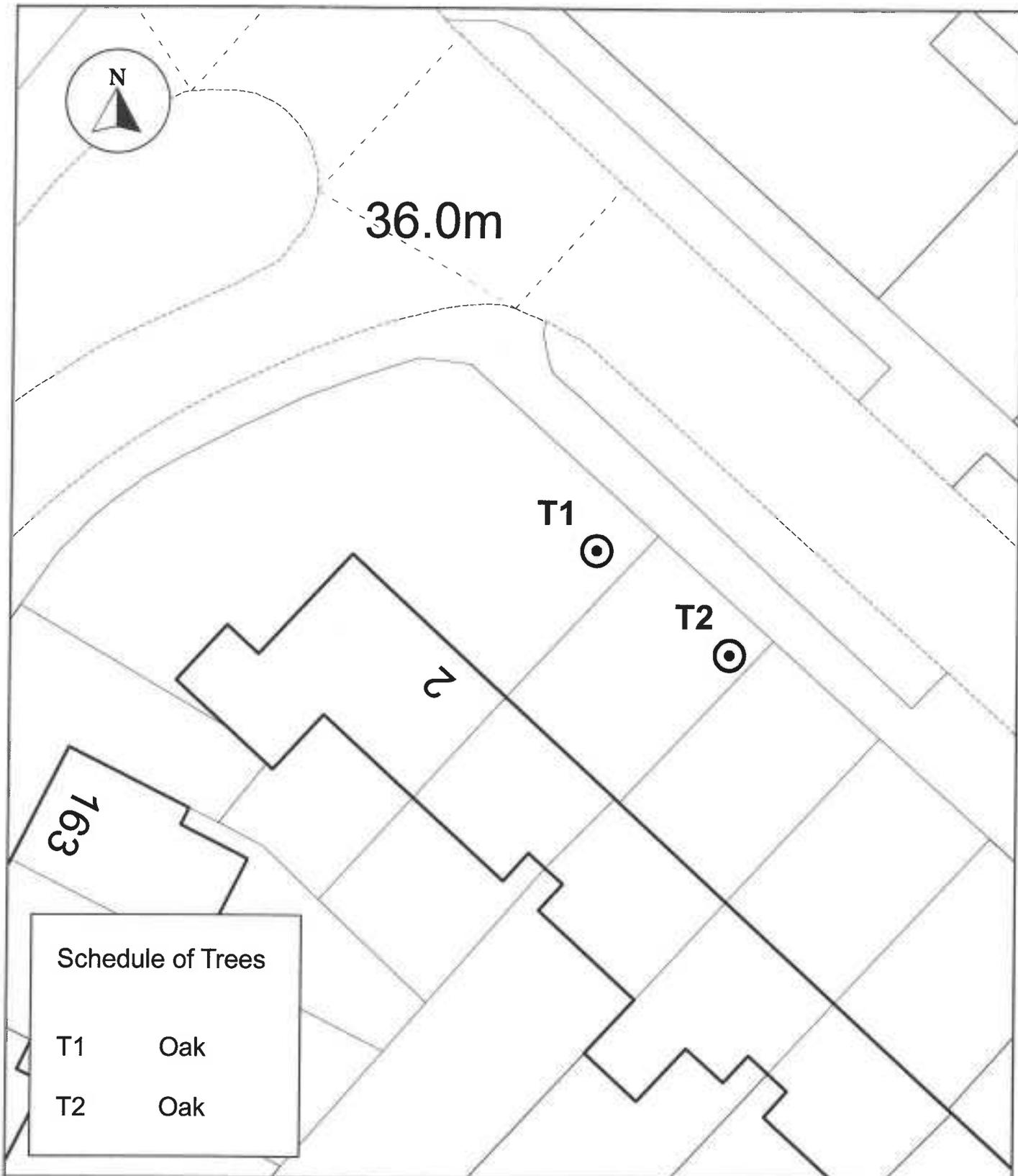
TREE PRESERVATION ORDER NO. 312

LAND AT NOS. 2 AND 4 STONEGARTH, MORTON PARK, CARLISLE CA2 6NR

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 two mature Oak trees are prominent and visible to the public realm and positively contributes to the street scene along the northern end of Stonegarth.

Due to the substantial contribution and amenity value it is considered that the most appropriate way to protect the tree for the future is by means of a tree preservation order.



Act 1990 Section 198(1)

**Tree Preservation Order Number 312
2 and 4 Stonegarth, Carlisle, CA2 6NR**

Scale: 1 : 250

Date: June 2021

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ordnance survey LA100024459

Economic Development, Civic Centre, Carlisle, CA3 8QG

