

CARLISLE CITY COUNCIL

Report to:- Development Control Committee

Date of Meeting:- 7 March 2008

Agenda Item No:-

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

Title:- PROPOSED TREE PRESERVATION ORDER NO. 229 LAND
ADJACENT 8 KING GARTH, CARGO

Report of:- Director of Development Services

Report reference:- DS.26/08

Summary:-

A Tree Preservation Order was made on the 16 January 2008 to protect one large Sycamore tree adjacent to 8 King Garth, Cargo, Carlisle. The report considers objections to the order and concludes that the order should be confirmed without modification.

Recommendation:-

It is recommended that Tree Preservation Order 229 is confirmed without modification.

Catherine Elliot
Director of Development 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: Tree Preservation Orders: A Guide to the Law and Good Practice

1.0 Background

- 1.1 The Town and Country Planning Act 1990, Section 198 provides that Local Planning Authorities may make a Tree Preservation Order (TPO) if it appears to them to be “expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”. The Department of Environment Transport and the Regions document, “Tree Preservation Orders A Guide to the Law and Good Practice” advises that “Tree Preservation Orders should be used to protect selected trees and woodland if their removal would have a significant local impact on the environment and its enjoyment by the public”.
- 1.2 Policy CP2 of the Re-Deposit Draft Local Plan states “...The City Council will protect trees and woodlands where appropriate by tree preservation orders and by the use of planning conditions...”
- 1.3 On the 4 January 2008 an informal tree enquiry Ref: 08/0007 TEN was made regarding the protected status of trees on the land adjacent to to 8 King Garth.
- 1.4 On the 9 January 2008 the land adjacent to 8 King Garth, Cargo was the subject of a planning enquiry Ref: 08/0010 ENQ for the erection of a bungalow or two semi-detached dwellings.
- 1.5 The Development Control Case Officer made a site visit and observed that there were three trees on site including the large Sycamore tree that is the subject of this Tree Preservation Order. On returning to the office they contacted the Landscape Architect/Tree Officer to express their concerns about the potential loss of the trees.
- 1.6 Following an assessment of the trees a Tree Preservation Order was made in respect of one Sycamore tree that was surveyed as Tree No. 3 but which became T1 on the subsequent Tree Preservation Order. A copy of the Tree Preservation Order is attached hereto at Appendix 1.
- 1.7 The following individuals made valid objections to Tree Preservation Order 226.
 - ◆ Ms Lisa Graham;
 - ◆ Mr George Newton; and
 - ◆ Ms Lynne Warwick.

1.8 The letters of objection and Officers reply are attached hereto at Appendix 2.

2.0 Assessment of the Trees Amenity Value

2.1 In accordance with The Department of Environment Transport and the regions document, "Tree Preservation Orders A Guide to the Law and Good Practice" an objective assessment of the contribution of the trees to the public amenity of the locality was made. This was carried out using the TEMPO system. A score is given to trees depending on five factors including amenity assessment, remaining longevity, relative public visibility, suitability for preservation, other factors including the principle component of arboricultural features and an expediency assessment. This enables the assessment to be objective.

2.2 In terms of the public amenity value of the tree, the TEMPO assessment found this tree had a score that warranted the statutory protection afforded by a Tree Preservation Order. The TEMPO Assessment sheet is attached hereto at Appendix 3.

3.0 Summary of Objections to Tree Preservation Order 229

3.1 The following objections have been made to the Tree Preservation Order:

- (i) branches have snapped and fallen from the tree and are a risk to children playing in the area;
- (ii) the tree would hinder plans to develop the land;
- (iii) the roots of the tree were poisoned prior to the making of the Tree Preservation Order to make its removal easier, and so the tree will die anyway; and
- (iv) the tree blocks sunlight from the garden.

3.1 In considering the above objections Officers have the following comments to make:

- (i) the removal of existing dead and hung up branches, or any works required on the grounds of safety would not be prevented by the Tree Preservation Order;

- (ii) trees are material considerations when considering planning applications. Section 197 of the Town and Country Planning Act 1990 places a duty on Local Planning Authorities where appropriate to make provisions for the protection of trees. Whilst trees represent a constraint on the use of the land they do not preclude development that is well thought out, considered and meets Planning Policy requirements;
- (iii) the tree owner did not raise his poisoning of the tree at the time of the Landscape Architect/Tree Officer site visit to serve the order on him. Neither was there any evidence of such poisoning e.g. the death of vegetation surrounding the tree, nor the odour of a noxious substance that typically might have been used to kill the tree e.g. diesel, creosote or weed killer. Officers consider that the claims of poisoning the tree are unsubstantiated. If the tree has been poisoned and subsequently dies its removal and replacement can be dealt with at this time. It is not necessary to remove the tree immediately; and
- (iv) whilst there is no legal right of light to a garden it is not unreasonable to expect that the garden receives some sun and a reasonable amount of light. This tree is on the northern boundary of the site and would not block an unreasonable amount of light or sunlight to the garden.

4.0 Conclusion

- 4.1 Having duly considered the objections and representations and having weighed these objections against the amenity value of the tree it is considered that there is a significant public amenity value and the tree merits the protection afforded by a Tree Preservation Order.

5.0 Recommendation

- 5.1 It is recommended that Tree Preservation Order 229 is confirmed without modification.

Catherine Elliot
Director of Development Services

Contact Officer: Charles Bennett

Ext: 7535

Tree Preservation Order 229

**TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER 2008**

**Town and Country Planning Act 1990
The City of Carlisle (Land Adjacent 8 King Garth, Cargo, Carlisle) No 229**

The Council of the City of Carlisle, in exercise of the powers conferred on them by sections 198 [201] and 203 of the Town and Country Planning Act 1990 hereby make the following Order—

Citation

1. This Order may be cited as the City of Carlisle (Land Adjacent 8 King Garth, Cargo, Carlisle) Tree Preservation Order 2008 No. 229

Interpretation

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

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 16 January 2008

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), 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 of the statutory undertaker and the work is necessary—
 - (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;
- (aa) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);
- (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes;

- (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 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; 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.

(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),
- 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 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 to the cutting down, topping, lopping or uprooting of any tree in respect of which this 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).

(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 has 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] [those trees are planted].]~~

Dated this 16th day of January 2008

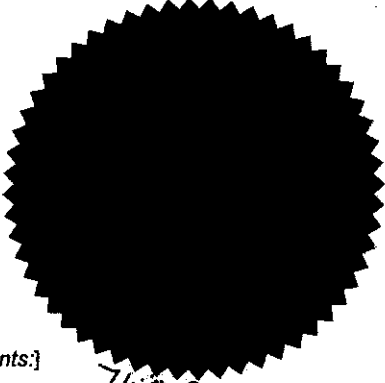
[if the Council's Standing Orders require the sealing of such documents:]

[Executed as a Deed by affixing the Common Seal
of the Council of the City of Carlisle]
in the presence of -

John M. Egan
Director of Regal and Administrative Services

[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the Council of the City of Carlisle]



74570

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

[CONFIRMATION OF ORDER

[This Order was confirmed by the [.....] without modification on the [] day of [.....]]

OR

[This Order was confirmed by the [.....], subject to the modifications indicated by [.....], on the [] day of [.....].]

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

[DECISION NOT TO CONFIRM ORDER

[A decision not to confirm this Order was taken by [.....] on the [] day of [.....]

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

[VARIATION OF ORDER

[This Order was varied by the [.....] on the [] day of [.....] under the reference number [.....]

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

[REVOCATION OF ORDER

[This Order was revoked by the [.....] on the [] day of [.....] under the reference number [.....]

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

Schedule of Trees

T1 Sycamore

Drain

East Farm

King Garth

T1

17.2m

Cherry Garth

BM 18.67m

Eden Farm

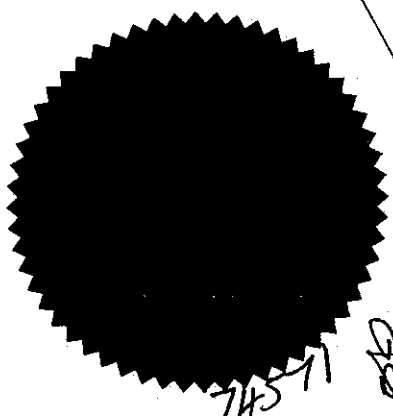
Hazelrigg

Track

Hill View Court

Hill View

West End Farm



John M. Egan
Director of Technical
Administrative Services



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

Date: January 2008

Scale: 1:1,250

Tree Preservation Order Number 229

Land adj 8 King Garth, Cargo, Carlisle

Planning & Housing Services

Civic Centre

Carlisle

CA3 80G

CARLISLE
CITY COUNCIL



TREE PRESERVATION ORDER NO. TPO 229 LAND ADJACENT 8 KING GARTH, CARGO, CARLISLE

STATEMENT OF REASONS

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

The guidance set out in the Department of the Environment Transport and the Regions document 'Tree Preservation Orders, A Guide to the Law and Good Practice' states that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

The tree protected by this Order is a large mature Sycamore tree. The amenity that these trees provide is at risk from the proposals that have been put forward for the development of the land on which the tree stand.

The tree is a large mature specimen of good form. It is in a prominent location and is clearly visible to the public.

Due to its size and prominence the loss of this trees would have a significant adverse impact on the amenity of the area, and its enjoyment by the public. The local planning authority considers that a tree preservation order is the appropriate means to ensure its retention.

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
T1	SYCAMORE	OS Grid Reference: 336393E 559123N

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
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NONE

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

Reference on map	Description (including number of trees in the group)	Situation
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NONE

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
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NONE

SCHEDULE 2

PART I
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED
WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1)—</p> <p>(i) omit— “in such manner as may be prescribed by a development order”, “such” in the second place where it appears, and “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— “Subject to subsections (1A) and (1B), where” for “Where”; “the authority” for “a local planning authority”; “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— “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and</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— “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</p>

	<p>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— "(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."</p> <p>(e) For subsection (5), substitute— "(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>
<p>Section 79 (determination of appeals)</p>	<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> <ul style="list-style-type: none"> (i) "section 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5"; (ii) "consent under a tree preservation order" for "planning permission"; and (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 sections 65 or 71." <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after "section 78".</p>

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.

TEMPO Assessment Sheet

Charles Bennett

To: Graham, Lisa
Cc: Clare Liddle
Subject: RE: Objection to Tree Preservation Order 229 Land Adjacent 8 King Garth, Cargo

Dear Ms Graham

Thank you for your e-mail regarding the above tree preservation order.

As you will be aware with a few exceptions before any work is carried out to the tree you will need to apply for and gain the consent of the local authority.

When I first visited the tree there was at least one branch that had snapped off and was hung up in the crown of the tree. This and any other hung up branches should be removed to remove the risk they pose, you do not require the consent of the local authority to do this.

The removal of other dead wood within the crown of the tree will require the consent of the local authority. However, for a tree in a garden location such as this I cannot see a reason why this would be refused.

Whilst the tree will inevitably block some sun light to the garden you do not have a right to light to your garden. The location of the tree on the northern boundary of the garden means that the loss of light is at a minimum and any pruning of the tree to increase light levels will have little if any effect within the garden as a whole and is likely to be refused. Also the removal of the tree is likely to be refused.

Should you wish to remove the tree or carry out any pruning to the tree you will have to gain the consent of the local authority. The following link will take you to the page on the Councils website from where you can download an application form to carry out work to protected trees.

http://www.carlisle.gov.uk/PDF/PLAN_Application_work_on_tree_covered_by_TPO.pdf

The completed form should be marked for my attention and sent to the address below.

I hope that the removal of dead wood and the risk that it poses will allow you to withdraw your objection to the Order.

The tree preservation order is a temporary order which came into effect on the 16 January 2008. Where objections are made to the making of a tree preservation order the decision whether or not to confirm the order, that is make the order permanent is made by the Development Control Committee. The Council has a Right to Speak policy that allows objectors to speak at the Committee, copy attached. Should you wish to proceed with your objection I will write to you once I know the date of the Development Control Committee at which a decision is to be made on the Order giving you details of the date and times of the meeting.

Please do not hesitate to contact me if I can be of further assistance in this matter.

Yours sincerely
Charles Bennett

Charles Bennett
Landscape Architect/Tree Officer
Local Plans and Conservation
Carlisle City Council
Civic Centre
CA3 8QG
Tel: 01228 817535
Fax: 01228 817199

Cc Clare Liddle, Principle Solicitor, Carlisle City Council



right to speak
v.2.doc

-----Original Message-----

From: Graham, Lisa [SMTP:Lisa.Graham@itv.com]
Sent: Monday, January 21, 2008 5:25 PM
To: charlesb@carlisle.gov.uk
Cc: johne@carlisle.gov.uk

Charles Bennett

From: Graham, Lisa [Lisa.Graham@itv.com]
Sent: 21 January 2008 17:25
To: charlesb@carlisle.gov.uk
Cc: johne@carlisle.gov.uk
Subject: Good Afternoon.doc

Good Afternoon

RE: **TPO on Land Adjacent to 8 King Garth Cargo.**

-

My name is Lisa Graham, my family and I will be moving into 8 King Garth, Cargo within the next couple of weeks. You have just placed a TPO on the big Sycamore Tree in the land adjacent to this property.

I am writing to you to express my concerns over the **Health and Safety issues** regarding this tree. My three children (11, 10 and 1 year old) and their friends will be playing in this area as we plan to make this their **grassed** area of the garden. I know of branches falling into this area, into the field and into the land adjacent, it is **inevitable** there will be more. (Considering the weather we get here).

Another minor point I would like to express is that the tree blocks the sun light (when we get it) from our garden. Perhaps my partner and I could plant some more trees in a suggestion to replace the existing one?

I would appreciate you taking the health and safety factors for my family into consideration and wait with anticipation for your reply.

Kind Regards

Lisa Graham

Mr Newton
Hill View
Cargo
Carlisle

Please ask for:
Direct Line:
E-mail:
Your ref:
Our ref:

Charles Bennett
01228 817535
CharlesB@carlisle.gov.uk
CB/TPO 229

31 January 2008

Dear Mr Newton

**OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 229
LAND ADJACENT 8 KING GARTH, CARGO, CARLISLE**

Thank you for your letter objecting to the making of Tree Preservation Order 229 in which you raise a number of issues that you have with the tree.

Where there are branches that are dead and present a high risk of snapping off and falling down these should be removed. You will need to make an application to remove the dead wood but it is very unlikely that such an application would be refused.

If any branches have snapped off and are hanging in the crown these should be removed. You do not need to apply for consent to remove hung up branches.

Trees, protected or not are material planning considerations and are considered when making a decision on whether or not to allow a planning application. Until such an application is received it is not possible to ascertain the likely effect on the tree.

This tree has a significant amenity value. It is a large mature tree in a prominent location and clearly visible to the public. The loss of this tree would have a detrimental impact on the amenity of the area, something that a small replacement tree would not mitigate for many years, assuming of course it survives to maturity.

Following on from Mr Chris Hardmans site visit on the 16 January 2008 I contacted you on the 17 January 2008. The cut to the branch was discussed and you informed me that the cut was not deep and that the branch was safe.



INVESTOR IN PEOPLE

1

You state in your letter that on the 5th, 6th, and 7th, of January 2008 you poisoned the roots of the tree with the intention of making it easier to take down. I would like to remind you that it is a criminal offence punishable on conviction by a fine of up to £20,000 to destroy a tree protected by a tree preservation order.

The poisoning of the tree raises a number of other concerns.

1. Contamination of the land. I have contacted the Environment Agency who deal with contaminated land issues for advice, and provided details of your claims.
2. Contamination of land used for livestock. This is a matter that DEFRA have an interest in. Again I have contacted them for advice regarding the issue of poisoning the land.

Where objections are made to the making of a tree preservation order the decision on whether or not to confirm it, that is make the order permanent is taken by the Development Control Committee.

The Council operates a right to speak policy for objectors to tree preservation orders. If you wish to exercise your right to speak could you please inform me within the 28 day objection period, and I will make the necessary arrangements for you to address the Committee. A copy of the "Right to Speak" policy is incorporated as an appendix to this letter and is also available on the City Council's website www.carlisle.gov.uk. You will note from the details provided that you are entitled to address the Committee for a maximum of three minutes, though you must confine your comments to relevant matters.

Yours sincerely

C Bennett

Landscape Architect/Tree Officer

GEORGE NEWTON.

HILL VIEW

CARLE

CARLISLE

CAG 4AW

TEL 01228674502

23 JAN 2008

CJC

Dear M^r EGAN.

on The 16TH January 2008 I was handed a tree Preservation Order by Charles Bennett The Landscape Architect Tree Officer in which I am appealing against.

My Reasons are Simply, we purchased the property known as 8 King Genth, Carco CARLISLE on the 4TH of January. IN the Corner of the garden is a large Sycamore Tree (The one in question. ON The 5th, 6th, 7th. of January I poisoned the routes of the Tree as it was my intention to take the tree down my Reasons being.

- a) My Grandchildren were going to be playing in the garden directly underneath the Tree, and we have experienced Branches snapping and coming down.
- b) I would have also liked to put an extension to the house and a double Garage, and the Tree would interfere with that.
- c) As I am a lover of nature I would volunteer to plant a replacement tree further over

As it is such a large tree I intended to take the branches off first and fell most of it up to where the trunk divided. With poisoning the tree I would have expected that to take effect in months, where by I could have then removed the stump easier.

When I was handed the T.P.O. on the 16TH January we had already started taking the branches off the day before. The person contracted to cut it down had gone for a larger chainsaw.

16 There are still dangerous branches hanging down ready to drop off in which I would like permission to do that (take them down.)

I phoned the office at 4pm on the 16TH and spoke to Sheila Davison who was the contact she tried to get hold of Charles Bennett but could not, so she passed me on to Chris.

My worry was from a health and Safety point of view, the person who had been contracted to cut it down had made a cut and I did not know how deep it was or how dangerous it would be. Chris could not tell me who would be liable for any damage if branches fell and hurt someone or thing. He said he would call me back in 1/2 hour he never called.

So I would ask you to please take off the T.P.O.
this particular tree as it will die anyway. I would
still replace it with a tree further over. Could you
tell me who would be liable if any branches snapped
off and damage someone or something. I await your
Reply.

yours

faithfully

George Newton

Ms Warwick
4 Applegarth
Cargo
Carlisle
CA6 4AS

Please ask for:
Direct Line:
E-mail:
Your ref:
Our ref:

Charles Bennett
01228 817535
CharlesB@carlisle.gov.uk
CB/TPO 229

15 February 2008

Dear Ms Warwick

OBJECTION TO TREE PRESERVATION ORDER 229
LAND ADJACENT 8 KING GARTH, CARGO, CARLISLE

Thank you for your letter dated 9 February 2008 received on 13 February 2008 regarding your objection to Tree Preservation Order 229.

At the time of my site visit to assess the trees suitability for inclusion within a Tree Preservation Order there were some branches that had snapped off and remained caught up in the crown of the tree. There was also some dead wood evident within the crown of the tree, although the amount of this is what would be expected of a tree of this size and species.

Neither the removal of the hung-up branches or dead wood would be prevented by the Tree Preservation Order.

Whilst branches and indeed whole trees can fail and fall during storms where this is unforeseeable it is considered an Act of God, and such occurrences are not substantive reasons to remove the tree.

Mr Newton has informed me that he has poisoned the roots of the tree. However, there is no observable evidence to support. Until such time as there is clear evidence that the tree is dying or dangerous due to the alleged poisoning I do not consider it reasonable to fell the tree.

Yours sincerely

C Bennett
Landscape Architect/Tree Officer



INVESTOR IN PEOPLE

Lynne Warwick.

4 APPLEGARTH.

CARCO.

CARLISLE.

9/2/2008

RR.

Dear Mr Egan.

I would like to object to the T.P.O that has been put on the tree at 8 King Gerth. Lisa Graham is a friend, whos children will be playing with mine. This tree has been noted in the past for its branches snapping and falling.

It is passed its best and I would fear for my child's safety playing in the garden at 8 King Gerth. I am also lead to believe that George Newton poisoned the routes of the tree on the 5th January, so the tree will die probably within a year. Again the danger to any children playing in the garden would be at risk as the tree was deteriorating, there is more than my concern in the village.

Yours

faithfully

Lynne Warwick

**Objections to the making of Tree Preservation Order 229
and
Officers Reply**

**TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)
SURVEY DAT SHEET AND DECISION GUIDE**

Date 15/1/08	Surveyor Charles Bennett
--------------	--------------------------

Tree details	Tree No; 3	Species; Sycamore
TPO Ref (if applicable)	Location: Land adjacent 8 King Garth, Cargo	
Owner (if known)		

REFER TO GUIDANCE NOTES FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition and suitability for TPO

- | | |
|---------------------|-------------------------|
| 5) Good | Highly Suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/Dangerous* | Unsuitable |

Scores & Notes 3 Some basal damage and decay as a result of browsing by animals, not significant. Minor dead wood consistent with age and species

*Relates to existing context and is intended to apply to irremediable defects only

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

Scores & Notes 4

*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees.

c) Relative public visibility & suitability for TPO

*Consider realistic potential for future visibility with changed land use.

- | | |
|--|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to public regardless of size | Probably unsuitable |

Scores & Notes 4 Next to road and footpath.

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal component of arboricultural feature, or veteran trees
- 4) Tree groups, or members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above redeeming features

Scores & Notes 1

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- 5) Immediate threat to tree
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

Scores & Notes 5 Planning enquiry and Informal Tree enquiry

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| 15+ | Definitely merits TPO |

Add scores for Total 17

Decision TPO
