

# CARLISLE CITY COUNCIL

Report to:- **Development Control Committee**

Date of Meeting:- **14 November 2008**

Agenda Item No:-

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**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. 235 LAND  
ADJACENT THE HORSE AND FARRIER, WIGTON ROAD,  
CARLISLE**

Report of:- **Director of Development Services**

Report reference:- **DS.144/08**

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## Summary:-

A Tree Preservation Order was made on the 3 September 2008 to protect a group of eight Lime trees on land adjacent The Horse and Farrier, Wigton Road, Carlisle. The report considers objections to the order and concludes that the order should be confirmed without modification.

## Recommendation:-

It is recommended that the Committee resolve to confirm Tree Preservation Order 235 without modification.

**Alan Eales**

Head of Planning and Housing 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 CP3 of the Carlisle District Local Plan 2001 – 2016 states that The City Council will protect existing trees and woodlands where appropriate by tree preservation orders and by the use of planning conditions...”
- 1.3 Enquiries regarding the development of land adjacent The Horse and Farrier have been received in Carlisle City Council planning department.
- 1.4 A prominent group of eight Lime trees is located along the boundary of the site adjacent Wigton Road. These trees were assessed for their suitability for statutory protection by means of a tree preservation order using the TEMPO method.
- 1.5 Tree Preservation Order 235 Land Adjacent The Horse and Farrier, Wigton Road, Carlisle was subsequently made on the 3 September 2008 to protect the group of Lime trees. The Order took immediate effect as a provisional Order, and will lapse if not confirmed within six months of the date it was made.
- 1.6 A copy of Tree Preservation Order 235 is attached hereto at Appendix 1.
- 1.7 The following made valid objections to Tree Preservation Order 235.
  - ◆ Ms Kate McClean, DPP, The Exchange, 3 New York Street, Manchester M1 4HN. The objection is detailed in a report dated September 2008 prepared by an arboricultural consultancy.
- 1.8 The letter of objection and Officers reply are attached hereto at Appendix 2.

1.9 The request is made that the Council will give careful consideration to the points raised in the objection, and that the tree preservation order in this case is not confirmed.

## **2.0 The Tree's 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.

2.2 The trees were assessed using the Tree Evaluation Method for Preservation Orders (TEMPO) system. A score is given to trees depending on five factors these being assessments of amenity, remaining longevity, relative public visibility, suitability for preservation, other factors and expediency. This enables the assessment to be objective and meet the criteria for the making of a tree preservation as set out in the Town and Country Planning Act 1990 and Tree Preservation Orders A Guide to the Law and Good Practice.

2.3 The TEMPO assessment found this group of trees 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) the Council has not had sufficient regard to the longevity of the trees; and
- (ii) the Council has not had sufficient regard to the future management of the trees in light of their past management; and
- (iii) the future management of the trees will result in a periodic severe loss or reduction of the trees individual size and of its impact as an amenity to the locality within which it stands; and
- (iv) the Council has not taken proper account of the trees future potential as an amenity, which will continue to make a significant contribution for a

substantial period in the future, as well as their suitability to their setting and context taking account of any proposed future development of the site.

**To the Chairman and Members of the  
Development Control Committee**

**DS.144/08**

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

- (i) the future longevity of the trees was assessed as part of the TEMPO assessment at Part 1 b). The Arboricultural Association publishes a guide to the life expectancy of common trees and gives the life expectancy of Limes as 200 – 300 years. This group of protected Lime trees are estimated to be 60 –70 years old giving a minimum remaining life expectancy of 140 years. It was considered that in light of their past management, the need for future management, and their location a retention span of 40 – 100 years scoring four points was appropriate
- (ii) consideration was given to the future management of these trees at Part 1 a) of the TEMPO assessment. The group of trees are not imminently dangerous, but although their health is good the defects arising from their past management will require remedial works or intervention. The trees therefore scored Fair and were awarded three points
- (iii) the past management regime of the group of trees will influence their future management. However, it is not appropriate to undertake a one size fits all regime of once topped keep topping. Any works required to maintain the trees should be addressed to each tree individually and be evidence based. This evidence based methodology for seeking consent to work on protected trees is now required by virtue of the Town and Country Planning (Determination of Appeals by Appointed Persons)(Prescribed Classes)(Amendment)(England) Regulations 2008. Other options for managing the trees that allow for the continuity of the visual amenity they provide are available and must be considered
- (iv) these large trees are a highly visible landscape feature that will provide screening, and soften the visual impact of any development of this site making them particularly suitable to their present, and possible future setting and context. Trees are a material consideration in any planning application. Should an application be forthcoming for this site the constraints the trees impose must be accounted for in the proposal thus ensuring the trees can be retained as a viable landscape feature.

**To the Chairman and Members of the  
Development Control Committee**

**DS.144/08**

#### **4.0 Conclusion**

- 4.1 Whilst it is accepted that in the future it may be necessary to consider works to the trees within the group of eight Lime trees the Order does not prevent reasonable management, albeit that the prior consent of the Local Planning Authority is required.
- 4.2 Having duly considered the objections and having weighed these objections against the present and future amenity value of the trees both in their present and possible future setting and context it is considered that the trees will provide a significant level of public amenity for a reasonable period of time and therefore merit the protection afforded by a Tree Preservation Order.

#### **5.0 Recommendation**

- 5.1 It is recommended that the Committee resolve to confirm Tree Preservation Order 235 without modification.

**Alan Eales**

Head of Planning and Housing Services

**Contact Officer:** Charles Bennett

**Ext:** 7535

**Tree Preservation Order 235**

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

**Town and Country Planning Act 1990  
The Council of the City of Carlisle (Land adjacent to the Horse and Farrier, Wigton Road,  
Carlisle)2008 No.235**

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 the Horse and Farrier, Wigton Road, Carlisle) Tree Preservation Order 2008 No.235

**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 3 September 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~~**

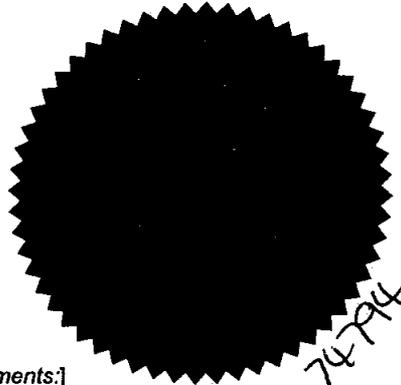
~~[10.] In relation to the tree[s] identified in the first column of Schedule 1 by the letter “C”, being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees)), this Order takes effect as from the time when [that tree is planted] [those trees are planted].]~~

Dated this 3rd day of September 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

*[Handwritten signature]*  
.....]



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

[Signed on behalf of the *[insert name of Council]*

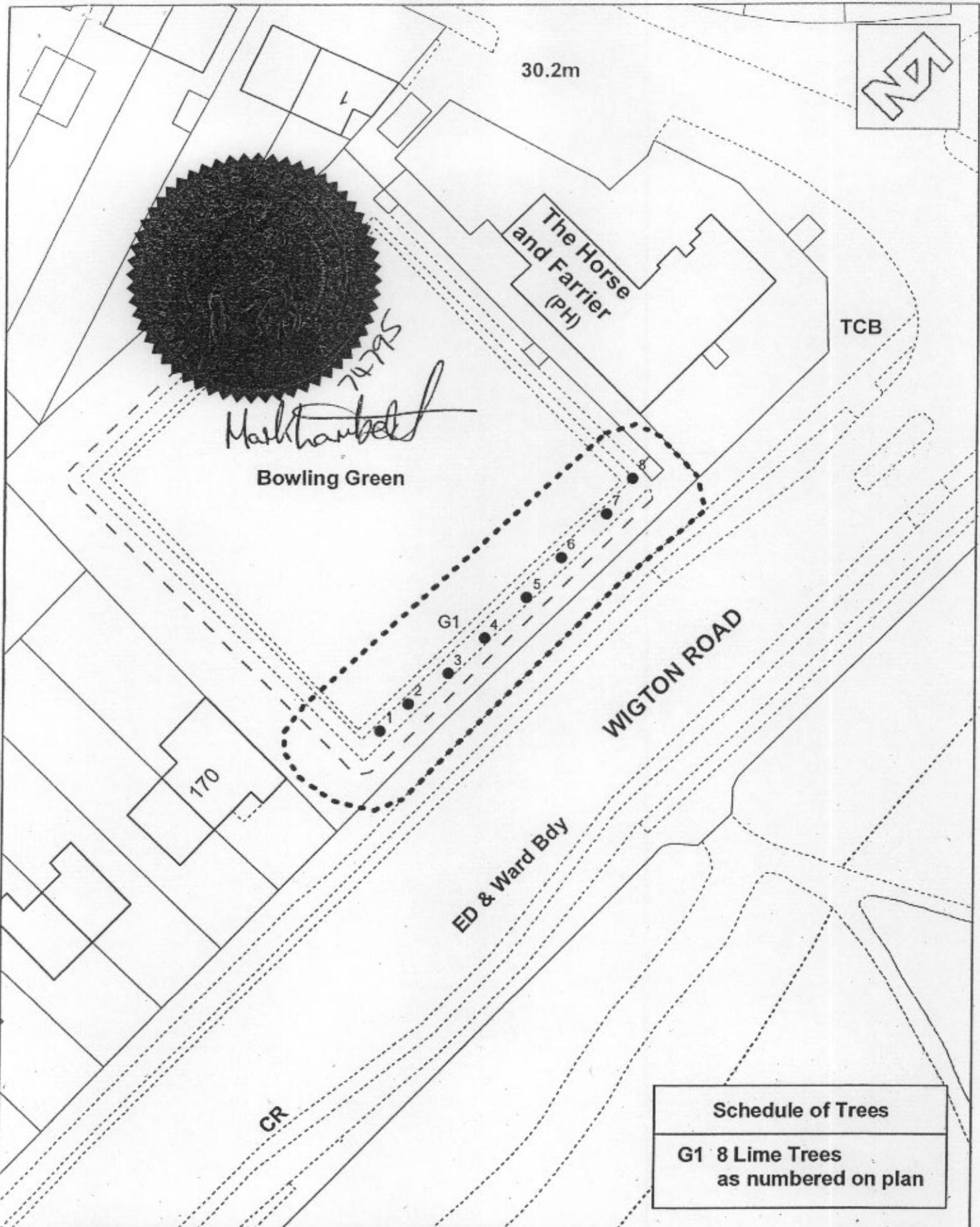
.....  
Authorised by the Council to sign in that behalf]

**[CONFIRMATION OF ORDER**

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

[This Order was confirmed by the *[insert name of Council]*, subject to the modifications indicated by *[state how indicated]*, on the [ ] day of *[insert month and year]*

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



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

**Tree Preservation Order Number 235**

**Land adjacent Horse and Farrier public house, Wigton Road, Carlisle**



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Carlisle City Council LA 0100024459. 2008

Date: 02 September 2008

1:500 www.carlisle.gov.uk

Planning & Housing Services, Civic Centre, Carlisle, CA3 8QG

**TREE PRESERVATION ORDER No. TPO 235  
LAND ADJACENT THE HORSE AND FARRIER, WIGTON ROAD,  
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.

This Tree Preservation Order protects a group of eight large mature Lime trees growing adjacent the bowling green at the Horse and Farrier and Wigton Road. The trees are highly visible and prominent and an attractive landscape feature providing a significant degree of visual amenity.

It is possible this site could be developed and this could result in the loss of these trees thereby resulting in a loss of visual amenity in this location. To ensure the trees are given full consideration throughout the planning and development process, and to ensure the character and visual amenity of the location is maintained the Council consider a Tree Preservation Order is the appropriate means to ensure the retention of the trees in the interests of amenity.

**[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 1**

**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

Reference on map	Description	Situation
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NONE

**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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G1	8 Limes	O.S Grid Ref. 338317 555158
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**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 style="padding-left: 20px;">(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 style="padding-left: 20px;">(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 style="padding-left: 20px;">(i) after “contain” insert “, as regards each such order”; and</p> <p style="padding-left: 20px;">(ii) for paragraphs (a) and (b) substitute—</p> <p style="padding-left: 40px;">(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 style="padding-left: 40px;">(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 style="padding-left: 20px;">(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 style="padding-left: 20px;">(ii) after “think fit”, insert— “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and</p> <p style="padding-left: 20px;">(iii) omit “subject to sections 91 and 92.”.</p> <p>(b) After subsection (1) insert—</p> <p style="padding-left: 20px;">“(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 style="padding-left: 20px;">(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 style="padding-left: 20px;">(i) “Any” for the words from “Without” to “any”;</p> <p style="padding-left: 20px;">(ii) “consent under a tree preservation order” for “planning permission to develop land”;</p> <p style="padding-left: 20px;">(iii) “the consent” for “the permission”; and</p> <p style="padding-left: 20px;">(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 style="padding-left: 20px;">(i) “the authority” for “a local planning authority”;</p> <p style="padding-left: 20px;">(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</p> <p style="padding-left: 20px;">(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</p> <p style="padding-left: 20px;">(iv) for paragraph (c) substitute—</p> <p style="padding-left: 40px;">“(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.”.</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 style="padding-left: 20px;">“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 style="padding-left: 20px;">(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—  <ul style="list-style-type: none"> <li>(i) “section 70(1), (1A) and (1B)” for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;</li> <li>(ii) “consent under a tree preservation order” for “planning permission”; and</li> <li>(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.”.</li> </ul> </p> <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.

**Appendix 2**

**Objections to the making of Tree Preservation Order 235  
and  
Officers Reply**

Manchester

Reference: KM/KM/992808/L001m

30 September 2008

The Exchange, 3 New York Street,  
Manchester, M1 4HN  
Tel: 0161 238 9150 Fax: 0161 238 9878  
Email: manchester@dppllp.com  
www.dppllp.com



JM Egan  
Director of Legal Services  
Civic Centre  
Carlisle  
CA3 8QG

Dear Sirs

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

Further to your letter dated 3/9/08, I enclose our formal objection to the provision TPO made by Carlisle City Council on 3/9/08.

I would also take this opportunity to reserve the right for a member of our team speak at the forthcoming Development Control Committee that will consider the Order.

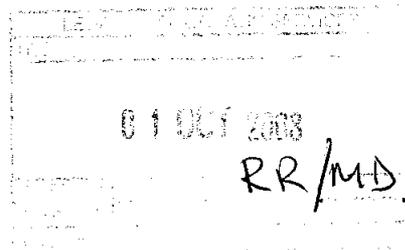
Should you have any further questions or require any additional information, please do not hesitate to contact me.

Yours faithfully

Kate McClean  
([kate.mcclean@dppllp.com](mailto:kate.mcclean@dppllp.com))

**DPP**

Direct Line: 0161 214 0635



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TESCO STORES LTD

aspect  
landscape planning

HORSE & FARRIER SITE,  
WIGTON ROAD, CARLISLE

**TPO Objection  
Order 2008 No. 235**

SEPTEMBER 2008  
4584.TPO.001

## **CONTENTS**

INTRODUCTION

## **APPENDIX 1**

ARBORICULTURAL CONSULTANTS REPORT

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## **1. INTRODUCTION**

- 1.1. In light of the recent Tree Preservation Order 2008 No. 235 on land adjacent to the Horse and Farrier, Wigton Road, Carlisle, the landowner would like to register their objection. Simon Jones Associates have been employed by Aspect on behalf of the client to survey the trees, and provide technical detail as to their structure, size, condition and future potential in line with BS 5837: 2005.
  
- 1.2. The objection is found at Appendix 1.

**APPENDIX 1**

ARBORICULTURAL CONSULTANTS REPORT

**SIMON JONES  
ASSOCIATES Ltd.**  
ARBORICULTURAL CONSULTANTS

Tree Surveys and Reports · Advisory Service  
Development · Management · Planning · Safety

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TADWORTH  
SURREY KT20 5ST  
Tel: (01737) 813058  
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E-mail: simon@sjatrees.co.uk

Principal: Simon R. M. Jones Dip. Arb. (RFS), F.  
Arbor. A., Arb. Assoc. Registered Consultant  
Associate: Mark Mackworth-Praed BA (Cantab),  
M.Sc., F. Arbor. A.



J. M. Egan, Esq.,  
Director of Legal and Democratic Services  
Carlisle City Council  
Civic Centre  
Carlisle  
CA3 8QG

29<sup>th</sup> September, 2008

Dear Mr Egan

**Ref.: Town and Country Planning Act, 1990  
Town and Country Planning (Trees) Regulations 1999  
The City of Carlisle (Land adjacent to the Horse and Farrier, Wigton Road,  
Carlisle) Tree Preservation Order 2008 No. 235**

## OBJECTION

On behalf of our clients, I wish to object to the imposition of the above Tree Preservation Order. This objection is made in respect of Group G1 as specified in the First Schedule to the order, on the grounds set out below. This practice recently undertook a detailed survey and inspection of trees on and immediately adjoining land in the vicinity of the Horse and Farrier, which included those on which the TPO has now been made. Our survey was carried out on Wednesday the 30<sup>th</sup> of July 2008. The grounds of objection are as follows:-

Although the trees constitute a linear group which is readily visible from public viewpoints, we believe that the Council has not had sufficient regard to the issue of their longevity and future management in making this Tree Preservation Order. The trees consist of a linear group of eight even-aged specimens of Common lime (*Tilia X europaea*), planted at equal spacings, which have all been previously pollarded at heights ranging between 4.5m and 6m, so that their present crowns are formed of multi-stemmed regrowth which has arisen subsequent to the pollarding operation.

Present guidance within British Standard BS 3998 (1989), *Recommendations for Tree Work*, (Para. 13.7) advises that as a form of tree management, pollarding is not advocated, as the large wounds it creates initiate serious decay in the trunks or

stems of mature and maturing trees. The draft 2008 revision of this Standard refines this advice, stating that pollarding should not be undertaken to trees which are over about 200mm diameter at 2-3m height above ground level. The (1989) Standard further notes that some species **“will be stimulated to produce a proliferation of very dense regrowth of shoots from around each wound. Such shoots grow vigorously and have weak attachments to the tree making trees potentially dangerous unless recutting is done frequently...it is better to plant an appropriate species for the site rather than to restrict the size of an unsuitably wide spreading or tall growing species.”**

These disadvantages of pollarding as a management practice are particularly relevant and well-known in the case of common lime, and normally determine that the only sensible options for continuing management are either re-pollarding at appropriate intervals, before the regrown branches achieve a size and weight which renders them liable to collapse or failure, or removal of the trees in their entirety, followed by replacement planting.

The radical nature of re-pollarding, requiring as it does the removal of the entirety of a tree's regenerated crown back to the former pollarding point(s), results in a periodic severe loss or reduction of a tree's visual size, and of its individual impact as an amenity to the locality within which it stands. In the case of a linear group, as in this case, the trees' wider impact as a landscape feature is also wholly diminished for a period of time, until subsequent regrowth has established sufficiently to form new crowns.

Paragraph 3.3 of *Tree Preservation Orders – A Guide to the Law and Good Practice* (the “Blue Book”) advises that in assessing whether trees are suitable for inclusion in a TPO, Local Planning Authorities should, *inter alia*, consider **“the tree's particular importance by reference to ... its future potential as an amenity”**. In this case, the almost inevitable need for repeated re-pollarding at periodic intervals in the future on an ongoing basis significantly diminishes the trees' **“future potential”** as a result of the likely adverse consequences for their structural integrity which such management is likely to cause over time.

The Council's statement of reasons for the making of the TPO suggests that potential development of the site **“could result in the loss of these trees thereby resulting in a loss of visual amenity in this location.”** Whilst accepting that trees may be at risk from development pressures generally, and that the making of a TPO may therefore be expedient on these grounds, proper account should still be taken of the trees' future potential as an amenity which will continue to make a significant contribution for a substantial period in the future, as well as their suitability to their setting and context.

It may be the case that although perhaps suited to their present setting adjacent to a bowling green, a proposed future development which might be permitted on the site could significantly affect this, rendering them unsuitable for retention in the new context. In these circumstances, replacement planting with more suitable species, in line with the advice in BS 3998 (1989) cited above, could be more effective in ensuring a continuing long-term contribution to local amenity, as opposed to the retention of specimens already impaired as a consequence of their past

management, the effects of which are likely to be aggravated by its necessary repetition at periodic intervals.

I trust that the Council will give careful consideration to the points raised in this objection, and I respectfully request that the TPO in this case is not confirmed.

Yours sincerely

Mark Mackworth-Praed BA (Cantab.), M.Sc., F. Arbor. A.



Ms McClean  
DPP  
The Exchange  
3 New York Street  
Manchester  
M1 4HN

**Please ask for:** Charles Bennett  
**Direct Line:** 01228 817535  
**E-mail:** charlesb@carlisle.gov.uk  
**Your ref:** KM/KM/992808/L001m  
**Our ref:** CB/TPO 235

03 October 2008

Dear Ms McClean

**OBJECTION TO TREE PRESERVATION ORDER  
(LAND ADJACENT TO THE HORSE AND FARRIER, WIGTON ROAD, CARLISLE)  
2008 NO. 235**

I am writing in response to your letter of objection dated 30 September 2008 in respect of the above Tree Preservation Order.

Your objections are based on the future potential of these trees as an amenity taking account of their past management, and the effect on the trees of any proposed future development of the site.

The group of eight Lime trees that form G1 within the Tree Preservation Order have been the subject of lopping in the past. Since the last lopping occurred the trees have formed new crowns giving them a good form and a significant degree of visual amenity.

Whilst the practice of lopping trees can cause the problems of decay at the pruning points and weakly attached re-growth as described, no evidence is supplied to show that in this instance significant defects requiring remedial works are present. Whether or not significant defects are present in these trees would have to be assessed on an individual basis and not by generalised statements.

Where significant defects are identified a suitable management regime, not necessarily re-logging, can be agreed and implemented to manage those risks, but this should be evidence based, and tailored to each tree as appropriate. A one-size fits all solution of once lopped repeat the lopping irrespective of the need is not an appropriate management regime.



INVESTOR IN PEOPLE

British Standard BS 5837:2005 Trees in relation to construction – Recommendations places trees at the start of the development process. This process is summarised in Figure 1 of BS 5837:2005 and ensures that the constraints placed on the site by the trees and the trees themselves are given due consideration throughout the planning and development process and would not be adversely impacted upon by the development. Thus allowing the trees to continue to provide a significant degree of visual amenity as an important landscape feature suitable to their setting and context.

Furthermore, the retention of these trees, if necessary with suitable management would enhance any development on this site by softening the impact of and providing screening.

Should you wish to apply for works to these trees the application would be considered on its merits, should you not agree with the Council's decision you would of course have the opportunity to appeal the decision.

I trust that for the reasons set out above you are able to withdraw your objection.

Although many Tree Preservation Orders are now delegated to Officers to determine, where an objection has been made the Tree Preservation Order is referred to the Development Control Committee for confirmation.

I note from your letter that you wish to take up the "right to speak at" Committee in relation to the above Tree Preservation Order and I can confirm that arrangements will be made for you to attend and address the Committee meeting when the application is being presented for confirmation.

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](http://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.

It is my intention to place this item before the Development Control Committee at its meeting on the 14 November 2008. The Committee meets in the Council Chamber at the Civic Centre, Rickergate, Carlisle, CA3 8QG and the meeting commences at 10:00am. Unless you indicate otherwise, you will be expected to attend the meeting and the Report on the Tree Preservation Order will be listed in the Agenda to be discussed at the Committee with similar applications where the "Right to Speak" will be exercised.

If you are unclear about the arrangements or wish to clarify any aspect of the application and its details, please contact the Case Officer whose name and telephone number appears at the top of this letter.

Yours sincerely

**C Bennett**

Landscape Architect/Tree Officer

# THE SCHEME FOR REPRESENTATIONS IN RESPECT OF PLANNING APPLICATIONS 'THE RIGHT TO SPEAK'

## INTRODUCTION

The Development Control Committee at the meeting on the 30 September 2005 resolved to amend the Scheme for Representations in Respect of Planning Applications 'The Right to Speak' as set out below.

## SCHEME DETAILS

### 1.0 Introduction

- 1.1 The provisions of this Right to Speak Scheme only apply to the consideration by the Development Control Committee, or Council of:-

***Applications under Town and Country Planning legislation for Planning Permission, Listed Building Consent, Advertisement Consent, the making of Tree Preservation Orders or Conservation Area Consent (subsequently referred to in this scheme as planning applications).***

- 1.2 The Right to Speak Scheme allows members of the public and Ward Councillors objecting to an application to speak during the consideration of that planning application. It also allows applicants or their agent(s) making the application on their behalf, the opportunity to respond to these objections, in accordance with the following provisions.
- 1.3 It allows only Ward Councillors or Applicants/Agents the Right to Speak in support of an application irrespective of whether it is recommended for approval or refusal.

### 2.0 Registering the Right to Speak

- 2.1 If any person, including Ward Councillors, wish to exercise a right to speak in accordance with Section 1.0 above, they must contact the Head of Planning Services and register their Right to Speak within the 28 day consultation period in respect of the relevant application.
- 2.2 The registration of a Right to Speak must be made in writing (whether by letter, email or fax) and should outline the objection to the application.
- 2.3 The Head of Planning Services will acknowledge receipt of the registration and advise the person so registering of the date on which the matter will be considered by the Council's Development Control Committee. The Head of Planning Services will also provide detail of this scheme.
- 2.4 If an Objector has registered a right to speak then an Applicant/Agent/Ward Councillor has the Right to Speak in response irrespective of whether they have registered their Right to Speak within the aforementioned 28 day consultation period. The Applicant/Agent will be advised of this right by the Head of Planning Services as appropriate.

- 2.5 In the event that a Ward Councillor has been approached to represent people in their Ward outwith the 28 day consultation period but prior to the application being determined under delegated powers they will be able to ask for the application to be referred to the Committee.
- 2.6 Where an objector or applicant/agent considers there are factual errors in the officer's report on an application this should be clarified in writing as soon as possible but at least two days before the Committee. A person making representations shall not be permitted to present to the Committee or Council any written or pictorial material that has not been lodged with the Head Planning Services at least two days before the Committee. However, it would be helpful if a person has prepared their presentation in writing if a copy could be left with the Committee Clerk at the Committee.

### **3.0 Procedural Matters**

- 3.1 The following procedure shall apply in respect of each planning application in respect of which a member of the public or Ward Councillor or Applicant/Agent has registered a wish to speak in accordance with this scheme:
- (i) Introduction of item by officers;
  - (ii) Presentation of their objection by those members of the public (or their nominated representative) or Ward Councillor who have registered to speak;
  - (iii) The applicant or agent shall be afforded the right of response;
  - (iv) OR, the Ward Councillor or Applicant/Agent shall speak in support of the planning application (providing that they have complied with the registration of the right to speak requirements);
  - (v) Consideration by the Committee of the application, which may include clarification by the Chairman and Members of any points made during presentations or responses to them.
- 3.2 All parties making representations must confine themselves to material planning and land use matters. Only material planning matters can be considered when deciding a planning application. These include, amongst other things, design, siting, privacy, loss of trees and nuisance from noise and smells. Other matters such as parking provision and highway matters are technical issues on which the Council receives advice from the Highway Authority and forms advice which the Council has to have regard to in making its decision.
- 3.3 Matters that are not material planning considerations cannot be considered by the Development Control Committee these include, amongst other things, loss of views, loss of property value, trade competition, private rights and legal disputes. If these matters are mentioned the Chairman will remind the Committee that these are not material planning considerations and must not be taken into account when coming to their decision on the application.

- 3.4 No more than three minutes in total will be allowed for representations and three minutes for responses in respect of each application provided that:-
- (i) Where more than one objector to an application, wishes to speak, the Chairman may, if she/he considers it appropriate to the effective achievement of the business of the meeting, require that a spokesperson be appointed to represent the voices of the objectors as the case may be;
  - (ii) The Chairman has the discretion to limit the representations made or responses by applicants or agents should the information being presented be a repetition of written or oral submissions previously made;
  - (iii) The Chairman may vary the order of representation if she/he considers that it is convenient and conducive to the business of the Committee or Council and will not cause any prejudice to the parties concerned.
  - (iv) Neither persons making objections nor applicants or agents will be allowed to question each other, Members of the Committee or officers.
- 3.5 The Chairman may suspend the operation of this scheme during the consideration of any application or for the remainder of the meeting if she/he considers it necessary so to do for the purpose of maintaining order at the meeting. The Chairman has absolute discretion in the interpretation of the scheme.
- 3.6 A planning application is sometimes deferred from one meeting of the Development Control Committee or Council to another. If an application is to be deferred those wishing to make objections/speak in support will be offered the opportunity by the Chairman to speak either at this time or a subsequent Committee when the application is considered. The Scheme does not afford the opportunity to speak more than once other than if the Chairman of that meeting considers that there have been significant amendments to the application.
- 3.7 Persons making representations, applicants and Elected Members of the City Council are reminded that all planning decisions are taken under the guidance of the Council's Code of Conduct on Planning Matters. A copy of the Code is available from the Council on request.
- 4.0 Extent of Scheme**
- 4.1 This Scheme has been introduced to allow objectors to, and certain supporters of, applications the right to speak at Development Control Committee meetings and to ensure that the applicants/agents are given the right of reply.
- 4.2 The Scheme does not permit supporters other than Ward Councillors or Applicants/Agents to register the right to speak in support of an application, irrespective of whether the Officer recommendation on the particular application is for approval or refusal.

## **Appendix 3**

### **Tree Evaluation Method for Preservation Orders (TEMPO) Assessment**

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

Date: 28/8/08	Surveyor: Charles Bennett
---------------	---------------------------

<b>Tree details</b>		
TPO Ref (if applicable)	Group 1	Species: 8 Limes
Owner (if known)	Location: Horse and Farrier, Wigton Road	

**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
Average condition, with some minor defects as a result of past management/lopping

\*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
Large trees clearly visible from road

**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       | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Scores &amp; Notes</td> </tr> <tr> <td style="padding: 5px;">4</td> </tr> <tr> <td style="padding: 5px;">Trees form a continuous/cohesive group</td> </tr> </table> | Scores & Notes | 4 | Trees form a continuous/cohesive group |
| Scores & Notes   |  |                |   |  |
| 4  |  |                |   |  |
| Trees form a continuous/cohesive group                                   |  |                |   |  |
| 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                       |  |                |   |  |

**Part 2: Expediency assessment**

Trees must have accrued 9 or more points to qualify

- |                               |  |                |   |                              |
|-------------------------------|--|----------------|---|------------------------------|
| 5) Immediate threat to tree   | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Scores &amp; Notes</td> </tr> <tr> <td style="padding: 5px;">5</td> </tr> <tr> <td style="padding: 5px;">Due to proposed development.</td> </tr> </table> | Scores & Notes | 5 | Due to proposed development. |
| Scores & Notes                |  |                |   |                              |
| 5                             |  |                |   |                              |
| Due to proposed development.  |  |                |   |                              |
| 3) Foreseeable threat to tree |  |                |   |                              |
| 2) Perceived threat to tree   |  |                |   |                              |
| 1) Precautionary only         |  |                |   |                              |

**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
20

Decision TPO
--------------

## **Part 1: Amenity Assessment**

This part of TEMPO is broken down into four sections, each of which are related to suitability for TPO:

- a) Condition
- b) Retention span
- c) Relative public visibility
- d) Other factors

The first three sections form an initial assessment, with trees that 'pass' this going on to the fourth section. Looking at the sections in more detail:

### **a) Condition**

This is expressed by five terms, which are defined as follows:

GOOD	Trees that are generally free of defects, showing good health and likely to reach normal longevity and size for species, or they may have already done so
FAIR	Trees which have defects that are likely to adversely affect their prospects; their health is satisfactory, though intervention is likely to be required. It is not expected that such trees will reach their full age and size potential or, if they have already done so, their condition is likely to decline. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse
POOR	Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired, and are likely to deteriorate. Life expectancy is curtailed and retention is difficult
DEAD	Tree with no indication of life
DYING/ DANGEROUS	Trees showing very little signs of life or remaining vitality, or with severe, irremediable structural defects, including advanced decay and insecure roothold. Death or catastrophic structural failure likely in the immediate future, retention therefore impossible as something worthy of protection

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. Dead, dying or dangerous trees should not be placed under a TPO, hence the zero score for these categories, due to exemptions within the primary legislation.

A note on the pro forma emphasizes that 'dangerous' should only be selected in relation to the tree's existing context: a future danger arising, for example, as a result of development, would not apply. Thus, a tree can be in a state of collapse but not be dangerous due to the absence of targets at risk.

Where a group of trees is being assessed under this section, it is important to score the condition of those principle trees without which the group would lose its aerodynamic or visual cohesion. If the group cannot be 'split' in this way, then its average condition should be considered.

Each of the condition categories is related to TPO suitability.

## b) Retention span

The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' potential retention span.

This factor has been divided into ranges, which are designed to reflect two considerations:

- It has long been established good practice that trees incapable of retention for more than ten years are not worthy of a TPO (hence the zero score for this category); this also ties in with the R category criteria set out in Table 1 of BS5837:2005
- The further ahead one looks into the future, the more difficult it becomes to predict tree condition: hence the width of the bands increases over time

Scores are weighted towards the two higher longevities (40-100 and 100+), which follow the two higher ranges given by Helliwell<sup>2</sup>.

The Arboricultural Association (AA) publishes a guide<sup>3</sup> to the life expectancy of common trees, which includes the following data:

300 years or more	Yew
200-300	Common [pedunculate] oak, sweet chestnut, London plane, sycamore, limes
150-200	Cedar of Lebanon, Scots pine, hornbeam, beech, tulip tree, Norway maple
100-150	Common ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear
70-100	Rowan, whitebeam, apple, wild cherry, Catalpa, Robinia, tree of heaven
50-70	Most poplars, willows, cherries, alders and birches

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive. However, it should assist with determining the overall lifespan of most trees, in light of their current age, health and context as found on inspection.

It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection (assuming that it doesn't already).

If a group of trees is being assessed, then the mean retention span of the feature as a whole should be evaluated. It would not be acceptable, for example, to score a group of mature birches based on the presence of a single young pedunculate oak.

A note on the pro forma identifies for inclusion in the less than ten years band trees which are assessed being an existing or near future nuisance, including those clearly outgrowing their context, or which are having an adverse effect on adjacent trees of better quality.