

# Report to Development Control Committee

Agenda  
Item:  
**A2**

Meeting Date: 22<sup>nd</sup> November 2019  
Portfolio: Economy, Enterprise and Housing  
Key Decision: Not Applicable:  
Within Policy and Budget Framework  
Public / Private Public

Title: TPO 305 WOOD COTTAGE/MAYA HOUSE, ST LAWRENCE LANE, BURGH BY SANDS  
Report of: CORPORATE DIRECTOR OF ECONOMIC DEVELOPMENT  
Report Number: ED.37/19

## Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 305 within the grounds of Wood Cottage on the eastern boundary of Maya House, St Lawrence Lane, Burgh by Sands.

## Recommendations:

That Tree Preservation Order 305 is confirmed (with modifications)

## Tracking

Executive:	
Scrutiny:	
Council:	

## 1. BACKGROUND

- 1.1 In June 2019 a Section 211 Notice (19/0034) was received for the removal of 1no. 'Birch' Tree outside of the boundary fence at Maya House, Burgh by Sands. The reason stated for removal was due to the tree 'causing shading close to the house and drains'.
- 1.2 Publicity was in the form of direct notification to the Parish Council and Ward Councillors. No representations were received during the 21 day consultation period.
- 1.3 The purpose of a S211 notice of The Town and Country Planning Act 1990, for which there is no prescribed format, must describe the work proposed to a tree that is within a conservation area, along with enough details to identify the tree. It is to give the council an opportunity to consider whether a Tree Preservation Order (TPO) should be made in respect of the tree if the proposed work is excessive. The local planning authority cannot refuse consent or impose conditions such as a replacement tree if removal is acceptable. This is because a S211 notice is not, and should not be treated as, an application for consent under a TPO.
- 1.4 The local planning authority can deal with a S211 notice in one of three ways, namely:
- (i) Make a TPO, if justified, in the interests of amenity. The proposal would then have to be the subject of a formal application for a TPO. This would occur when;
    - The notice details the removal of a tree which is of sufficient amenity value to warrant the making of a TPO; or
    - The notice details work (other than removal) which fall outside of what would be good arboricultural practice, and that the tree concerned would otherwise be of sufficient amenity value as to warrant the making of a TPO.
  - (ii) Decide not to make a TPO and allow the six-week period to expire, at which point the works may go ahead if it is carried out within two years from the date of the notice; or
  - (iii) Decide not to make a TPO and inform the applicant the work can go ahead.
- 1.5 Burgh-by-Sands is within a conservation area and in considering this application, a site visit was made to assess the tree, which was identified as a young native hardwood **Alder** Tree, (part of the Birch family).
- 1.6 A TEMPO (Tree Evaluation Method for Preservation Orders) score of 14 was recorded, which is an approved assessment method taking certain factors into account such as:
- Amenity assessment
  - Retention span
  - Relative public visibility and suitability

- 1.7 Taking the assessment into account, it was considered that the tree had enough amenity value to warrant protection and permission to fell were refused on 30<sup>th</sup> July 2019. **Appendix A** shows photos of the site and tree.

## 2. CONSULTATION

- 2.1 A Tree Preservation Order was placed on the tree on 30<sup>th</sup> July 2019 with a consultation period to 26<sup>th</sup> August 2019. A copy of the plan, order and statement of reasons are shown in **Appendix B**
- 2.2 The Parish Council, owners of affected properties, and all those who were known to have an interest in the land were consulted on the Tree Preservation Order in accordance with the requirements of The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.3 One letter of objection was received from the original applicant, Mr Wilson of Maya House and can be seen as **Appendix C**. Reasons for his objections were:
- The tree roots could affect the drains which are nearby (this was confirmed by a landscaper)
  - Trees have been blown down during previous storms in this area and fear this could happen again which would cause considerable damage to their house.

## 3. ASSESSMENT

- 3.1 No evidence was provided to support root damage into the drains. It is normal that tree roots will only enter drains which are already damaged and leaking. Given that Maya house is less than 10 years old, this is unlikely to be the case. Several proven methods to remove tree roots from drains are available should this be the case.
- 3.2 A perceived threat that a tree may fall in high winds is not good reason for removal. Each tree must be assessed on its own merits and in this case, the tree is in good health.
- 3.3 It is accepted that the tree is isolated on the site, which adds weight to its importance, given that several poor grade trees have been removed within the copse of Wood Cottage to accommodate permission to build 2 dwellings (18/1083).
- 3.4 Indeed, as part of the application, the Tree Management Plan listed the Alder tree for retention describing it as '*in a sound and healthy condition with no outward signs of any significant defects or decay*'. The tree shows good form and has yet to reach maturity with a life span of 60+ years.

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

- 4.1 Taking the TEMPO score into account and having considered the reasons for removal along with the amenity value and health of the tree, it is considered appropriate to confirm Tree Preservation Order 305 (with modifications of its description).

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

- 5.1 The value of trees to humans, wildlife and the environment is well recognised and includes many benefits such as reducing noise and pollution, creating essential wildlife habitats and increasing bio-diversity. Trees are essential to ecosystems and provide shelter from wind, sun and rain, and increase 'visual amenity'. Justification of removing a tree must be considered if the tree is diseased, dangerous, in decline or causing a public safety issue.

**Contact Officer: Sue Stashkiw**

**Ext: 7175**

**Appendices  
attached to report: Appendix A - Photos  
Appendix B - Tree Preservation Order 305  
Appendix C - Objection**

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

- **None**

#### **CORPORATE IMPLICATIONS:**

**LEGAL** - The validity of the tree preservation order cannot be challenged in any legal proceedings except by way of application to the High Court. An application must be made within six weeks from the date of the confirmation of the tree preservation order.

This tree preservation order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third party, who has made representations, has the right to a fair hearing and to this end the Committee must give full consideration to their comments.

Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land

and business assets. In taking account of all material considerations, including Council policy it is considered that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the tree preservation order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

**FINANCE – n/a**

**EQUALITY – n/a**

**INFORMATION GOVERNANCE – n/a**

APP. A

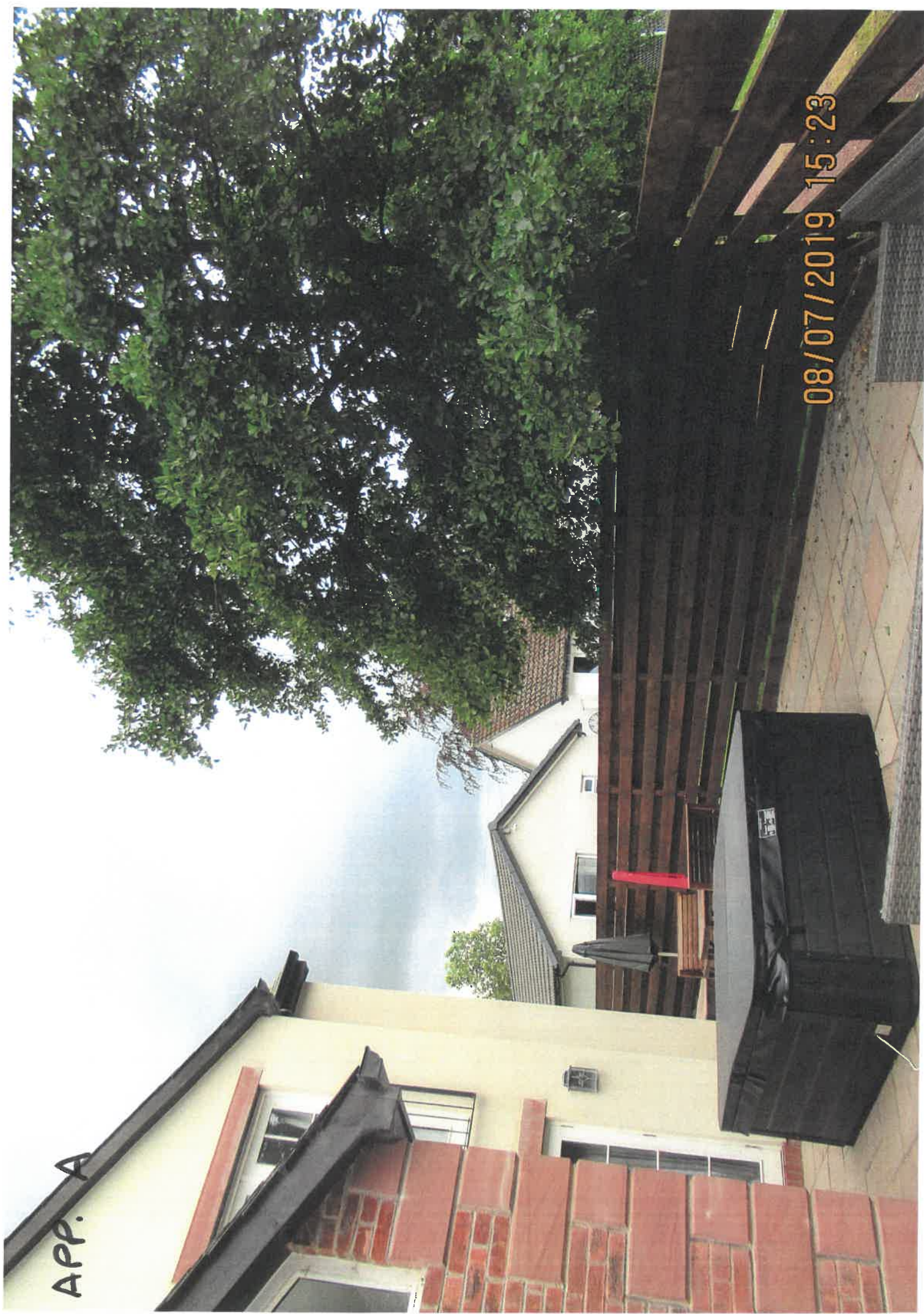
Appendix A

08/07/2019 15:25



APP. A

08/07/2019 15:23



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

### **Town and Country Planning Act 1990**

#### **The City Council of Carlisle**

#### **Wood Cottage / Maya House, St Lawrence Lane, Burgh by Sands, Carlisle, CA5 6BT – Tree Preservation Order 2019 (No.305)**

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

#### **Citation**

1. This Order may be cited as Wood Cottage / Maya House, St. Lawrence Lane, Burgh by Sands, Carlisle, CA5 6BT – Tree Preservation Order 2019 (No.305).

#### **Interpretation**

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

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

#### **Effect**

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

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

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

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197

Authorised by the Council to sign in that behalf]

### **VARIATION OF ORDER**

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

day of by a  
a copy of which is attached

Signed on behalf of The City Council of Carlisle

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

### **REVOCATION OF ORDER**

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

Signed on behalf of The City Council of Carlisle

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

## SCHEDULE

### Specification of trees

#### Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[T1]	Birch	332024 558932

#### Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	None	

#### Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>

#### Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
	None	

## STATEMENT OF REASONS

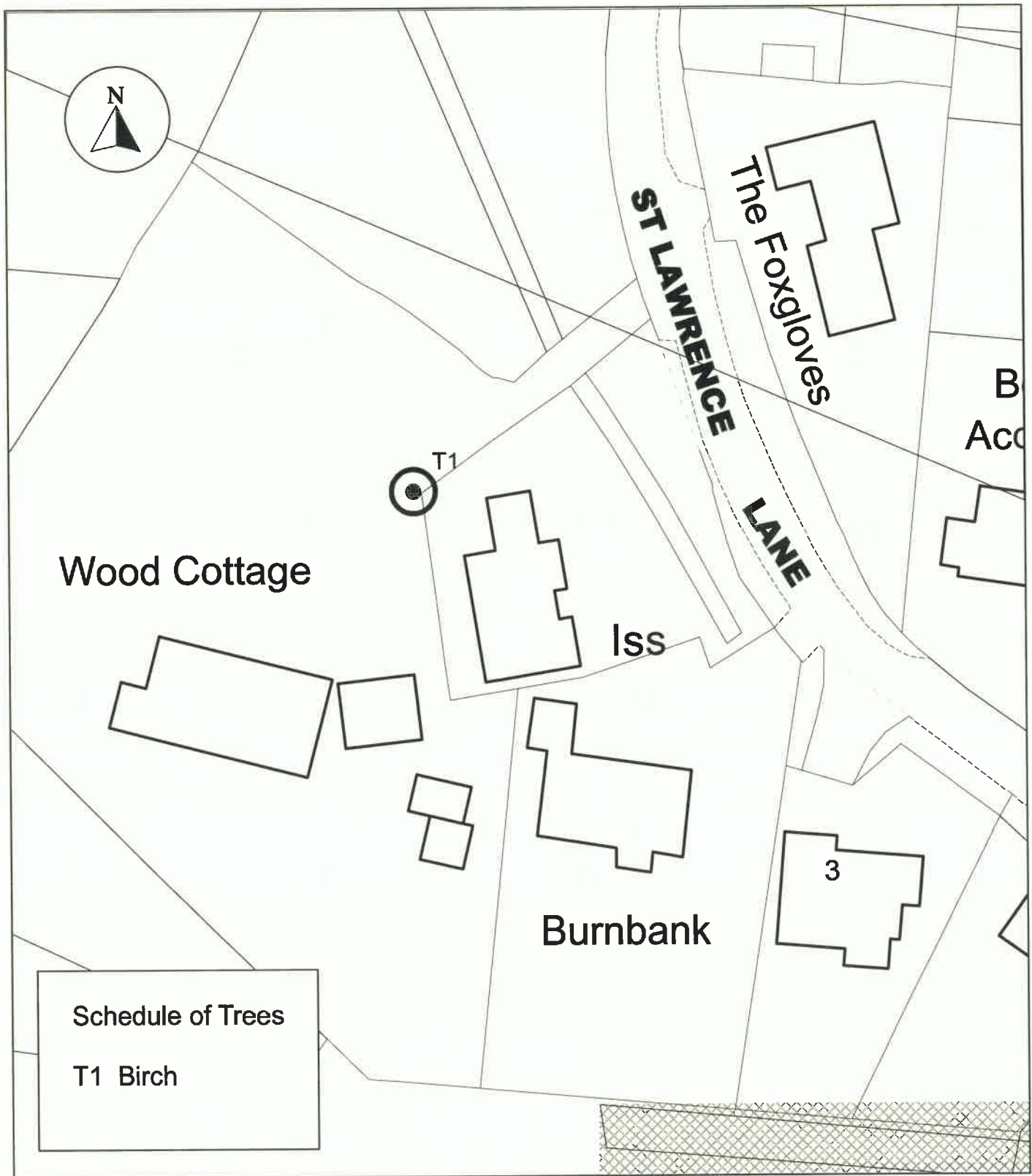
### TREE PRESERVATION ORDER NO. 305

#### WOOD COTTAGE/MAYA HOUSE, ST LAWRENCE LANE, BURGH BY SANDS, CARLISLE CA5 6BT

Section 197 of the Town and Country Planning Act 1990 places a duty on local planning authorities to ensure, whenever it is appropriate, adequate provision is made for the preservation of trees. The Local Authority may make a Tree Preservation Order where it appears to the authority that it is expedient in the interests of amenity.

The Birch tree shows good health and is likely to reach normal longevity. The canopy can be seen from the public realm and provides positive amenity value that will contribute to the area for many years.

It is considered that the most appropriate way to protect this tree for the future is by means of a Tree Preservation Order.



Act 1990 Section 198(1)

**Tree Preservation Order Number 305**  
**Wood Cottage/Maya House, St Lawrence Lane,**  
**Burgh By Sands, Carlisle, CA5 6BT**

Scale: 1 : 500

Date: July 2019

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 ordnance survey LA100024459

Economic Development, Civic Centre, Carlisle, CA3 8QG



APP. C

Appendix C

YOR REF  
SJS/DC/19/0034 S24

PLANNING SERVICES	
REF:	
20 AUG 2019	
RECORDED	
SCANNED	
PASSED TO	
ACTION	

19/8/19

BURSH-BY-SANDS  
CARLISLE

DEAR SIRS

I WOULD LIKE TO APPEAL YOUR REFUSAL TO  
CUT DOWN THE TREE.  
THE REASONS BEING THAT  
BOTH WHEN WE HAD THE HOUSE SURVEYED  
WE WERE ADVISED THAT  
THIS TREE'S ROOTS COULD AFFECT THE DRAINS  
WHICH ARE NEAR BY, THIS WAS CONFIRMED  
RECENTLY BY THE LANDSCAPER WHO LAID A  
PATIO ON THE AREA BESIDE THE DRAINS  
AND ADVISED ABOUT THE TREE ROOTS, IT WILL  
ONLY GET WORSE THROUGH TIME.

IN LAST YEARS STORMS SEVERAL TREES WERE  
BLOWN DOWN IN OUR AREA AND COULD HAPPEN  
TO THIS TREE CAUSING CONSIDERABLE DAMAGE  
SINCE

LAST YEAR WE HAVE PLANTED THREE TREES  
IN A SAFE PLANTING AREA, CAN YOU PLEASE  
ALLOW US TO CUT DOWN THIS TREE FOR OUR  
PEACE OF MIND AND SAFETY.

YOURS FAITHFULLY