

# Report to Development Control Committee

Agenda  
Item:  
**A.3**

Meeting Date: 30<sup>TH</sup> April 2021  
Portfolio: Economy, Enterprise, and Housing  
Key Decision: Not Applicable:  
Within Policy and  
Budget Framework  
Public / Private Public

Title: TPO 311 LAND NORTH OF TANGLEWOOD, CUMWHINTON  
Report of: CORPORATE DIRECTOR OF ECONOMIC DEVELOPMENT  
Report Number: ED.15/21

## Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 311 on Land North of Tanglewood, Cumwhinton considering representations to the making of the woodland tree preservation order.

## Recommendations:

That Tree Preservation Order 311 be confirmed.

## Tracking

Executive:	
Scrutiny:	
Council:	

## **1. BACKGROUND**

- 1.1 The woodland in question is situated on land north of Tanglewood and is accessed from the C1040 Cumwhinton to Scotby road.
- 1.2 The woodland provides an important back drop to the Lowther Arms Public House in Cumwhinton.
- 1.3 In September 2020, planning application 20/0602 was submitted for the siting of 3no. detached houses on land in the ownership of Cringles Farm, which is west of this woodland.
- 1.4 Following refusal of planning permission on 16<sup>th</sup> December 2020, the Local Authority felt it was expedient to place protection on the trees situated on this land as well as the woodland in question.
- 1.5 Section 197 of the Town and Country Planning Act 1990 places a duty on local planning authorities to ensure, whenever it is appropriate, adequate provision is made for the preservation of trees. The local authority may make a tree preservation order where it appears to the authority that it is expedient in the interests of amenity.
- 1.6 An assessment of the woodland was undertaken using the Forbes-Laird Tree Evaluation Method for Preservation Orders (TEMPO), identifying the woodland as being suitable for protection due to the size, location, public visibility and contribution to the pleasant rural character of the area.
- 1.7 A copy of the plan relating to Tree Preservation Order 311 and the statement of reasons, are attached hereto at Appendix 1

## **2. CONSULTATION**

- 2.1 The Parish Council, owners of affected properties, and all those who were known to have an interest in the land (according to Land Registry searches) were consulted on the proposed Tree Preservation Order, in accordance with the requirements of The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.2 Four letters of objection (outside of the 28-day consultation period) have been received. The letters are contained within the third-party representations.
- 2.3 The objections and our response are summarised below.
  - 'The TPO has not been issued correctly': This relates to the issuing of the notification to landowners who are shown on Land Registry searches. The Local

Authority do all in its power to notify interested parties of their intentions and can only do so according to the information available. The placing of a site notice covers our legal duties in this instance.

- 'The TPO will remove the landowners right to maintain the woodland which will impact on potential damage to the trees, property, residents and passing traffic'  
The Order prevents cutting down, topping, lopping, uprooting, wilful damage, or destruction. Owners of protected trees must not carry out, or cause or permit the carrying out of any of the prohibited activities **without first obtaining written consent from the local authority**. There is a free application process that takes 8 weeks and will assess any proposed work in the best interests of the trees/woodland.

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

- 'The order is being used to stifle building development as opposed to protect the trees. Several perimeter trees require on-going attention or removal so as not to present a danger to nearby houses and the TPO will remove any swift action to do this'. Any approved planning permission will override a tree preservation order. The order will not prevent work being carried out once an application has been approved. If a tree poses an imminent danger it can be removed immediately under Town and Country Planning Regulation 14(1)(c) & (2)(b) of the 2012 and the Local Authority have a procedure in place for these instances.

### 3. CONCLUSION AND REASONS FOR RECOMMENDATIONS

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

### 4. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 4.1 Woodlands are an extremely important part of our countryside that help to create a pleasant and healthy environment in which to live and work, engendering a pride in place and contributing to the City Council's Healthy City Agenda.

## **5. RECOMMENDATION**

5.1 It is recommended that Tree Preservation Order 311 be confirmed.

**Contact Officer: Sue Stashkiw**

**Ext: 7175**

**Appendices                      Appendix 1 – Tree Preservation Order 311  
attached to report:**

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

- **None**

### **CORPORATE IMPLICATIONS:**

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

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

Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land, and business assets. In taking account of all material considerations, including Council policy it is considered that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the tree preservation order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

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

**FINANCE – n/a**

**EQUALITY – n/a**

**INFORMATION GOVERNANCE - n/a**

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

**Town and Country Planning Act 1990**

**The City Council of Carlisle**

**Land North of Tanglewood, Cumwhinton, Carlisle CA4 8DL – Tree Preservation  
Order 2020 (No.311)**

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

**Citation**

1. This Order may be cited as Land North of Tanglewood, Cumwhinton, Carlisle CA4 8DL – Tree Preservation Order 2020 (No.311).

**Interpretation**

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

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

**Effect**

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

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

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

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

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

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

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



(planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this

17<sup>th</sup> December 2020

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



Principal Clerk



70344

**CONFIRMATION OF ORDER**

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

OR

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

Signed on behalf of The City Council of Carlisle

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

**DECISION NOT TO CONFIRM ORDER**

A decision not to confirm this Order was taken by The City Council of Carlisle  
on the      day of

Signed on behalf of The City Council of Carlisle

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

## 44

day of \_\_\_\_\_ by a \_\_\_\_\_  
a copy of which is attached

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

.....  
 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]		

#### Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[A1]	None	

#### Groups of trees

(within a broken black line on the map)

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

#### Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
W1	Any trees of any species	344693 552817

# STATEMENT OF REASONS

## TREE PRESERVATION ORDER No. 311

### LAND NORTH OF TANGLEWOOD, CUMWHINTON, CARLISLE CA4 8DL

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 woodland, by virtue of its size and location is visible to the public and is a prominent feature in the landscape.

It is considered that the loss of any trees within this woodland would have a detrimental impact on the area and its enjoyment by the public.

Therefore to ensure the continuation of the visual amenity that the woodland provides, it is expedient to protect the trees by means of a Tree Preservation Order.



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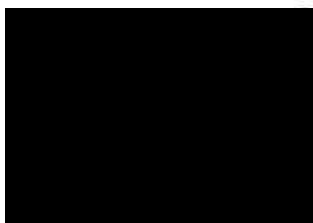
Act 1990 Section 198(1)

**Tree Preservation Order Number 311**  
**Land North of Tanglewood, Cumwhinton, CA4 8LU**

**Schedule of Trees**

**W1**

**All Trees of All Species**

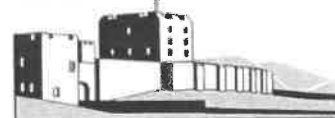


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**November 2020**

Economic Development  
 Civic Centre  
 Carlisle  
 CA3 8QG

**CARLISLE**  
**CITY COUNCIL**



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