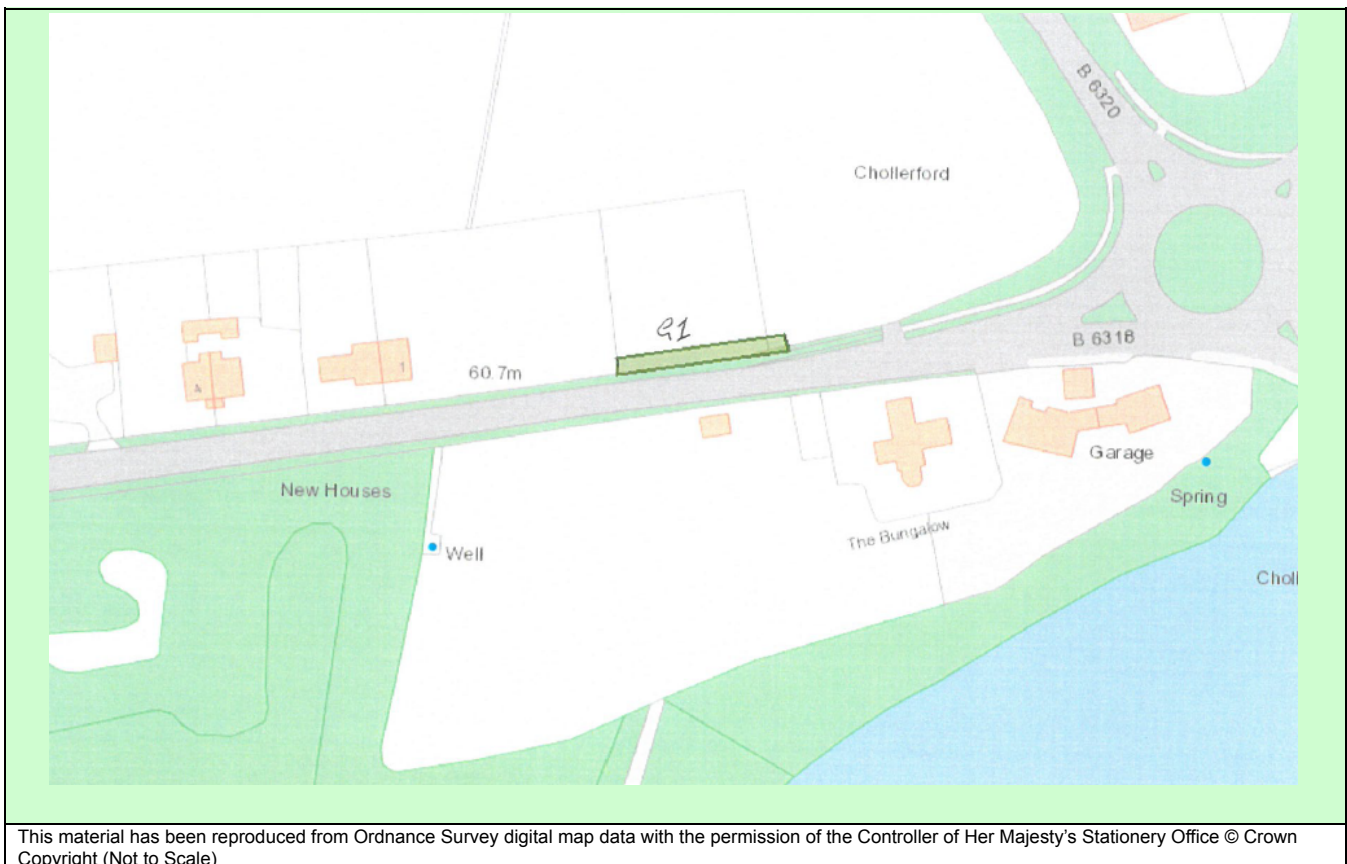




Northumberland County Council

**TYNEDALE LOCAL AREA COUNCIL
11 SEPTEMBER 2018**

**THE NORTHUMBERLAND COUNTY COUNCIL (LAND AT 1 NEW
HOUSES, CHOLLERFORD) TREE PRESERVATION ORDER (TPO)
2018 (NO.02 OF 2018)**



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1. Introduction

- 1.1 The purpose of this report is to seek a decision from the Local Area Council as to whether or not they wish the County Council to confirm the currently provisional Northumberland County Council (Land at 1 New Houses, Chollerford) TPO 2018 (No.02 of 2018).

2. Appraisal

- 2.1 The provisional Order was made by the County Council under Section 198 of the Town & Country Planning Act 1990 on the 21 March 2018 following a request from Humshaugh Parish Council.
- 2.2 The land to which the Order applies lies within Humshaugh ward and parish and forms part of the residential curtilage to a dwelling – No.1 New Houses.
- 2.3 The Order confers protection on a group of 4 trees (3 Sycamore and 1 Lime) which lie on the north side of the B6318 extending eastwards in the southwest corner of the garden of 1 New Houses for approximately 32 metres with a width of approximately 3 metres.
- 2.4 In requesting that the provisional Order be made the Parish Council advised that they considered the trees to be of significant value to the visual amenities of the locality and there was concern regarding their future survival. In this regard the County Council are currently assessing a planning application (reference 17/10931/FUL) on land to the immediate east of 1 New Houses for 15 dwellings and there was concern that a visibility splay required in connection with the vehicle access to this proposed development would result in the removal of or damage to the 4 trees in question.
- 2.5 The above planning application is due to be considered by the Local Area Council at its meeting in October. The applicant has amended the access arrangements in respect of their proposal to ensure that these trees would not be affected by the proposed development on the adjacent site.
- 2.6 Prior to the provisional Order being made, the trees were assessed by one of the Council's Tree Officers who confirmed that they were worthy of a TPO.
- 2.7 Following service of the provisional Order on the joint landowners of No.1 New Houses, both landowners have objected to the making of the Order.
- 2.8 They object because no other trees in the vicinity have had TPO's placed on them other than the trees in their garden which they consider to be unfair. They submit that their basic human rights and privacy within their house are being challenged. Clarity was also sought as to exactly which trees are protected by the Order and they wished to make clear also that they had no intention of removing the trees.
- 2.9 Given the above objections, the County Council must advise these objectors by the 20 September 2018 whether or not the Order has been confirmed.
- 2.10 The view of officers is that the trees in question do contribute significantly to the visual amenities of the locality and remain worthy of their TPO status. Whilst it is acknowledged that the access layout for the proposed development to the east has been amended to safeguard these trees and that the objectors to the Order have advised that they do not intend to remove them, it is nevertheless considered that the Order should be confirmed given the visual amenity value of the trees and bearing in mind their close proximity to the proposed development site to the east.

2.11 The fact that TPO's have not been placed on other trees nearby is not a consideration in deciding whether or not the Order should be confirmed.

2.12 Overall it is considered that the tree group in question and its location are satisfactorily specified, although a minor change to the 'Situation' text in the Schedule to the Order is recommended for the purposes of clarity. This text should be amended to read as follows:

The Group of 4 no. trees lying on the north side of the B6318 road and extending eastwards from the south east area of the garden of 1 New Houses, Chollerford for approximately 32 metres with a width of approximately 3 metres.

2.13 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

2.14 These proposals have no implications in relation to crime and disorder.

2.15 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.

2.16 For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

2.17 Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

3. Recommendation

That the Northumberland County Council (Land at 1 New Houses, Chollerford) TPO 2018 (No.02 of 2018) be confirmed subject to the minor change to the 'Situation' text within the Schedule to the Order as detailed earlier in this report.

Date of Report: 23.08.2018

Background Papers: Planning application file(s) 17/01931/FUL