

2373NL

NORTH TYNESIDE COUNCIL

INTERNAL MEMORANDUM

To: See below	From: Head of Corporate Services
Ref:	Ref: BMcN/MG/DEV.581/91
Date: 16 March 1995	This matter is being dealt with by: Mr B McNally

Town and Country Planning Act, 1990
Town and Country Planning (Tree Preservation
Order) Regulations, 1969 (As Amended)
The Council of the Borough of North Tyneside (Brookside, Seaton Burn)
Tree Preservation Order 1995

I enclose herewith, for your information, a copy of the above mentioned Tree Preservation Order which I have today served on the appropriate owners/occupiers and in this connection I would advise you that the Order is effective as from 17 March 1995.



To: Head of Development (for the attention of Mr M Howe) ✓
 Head of Environment (for the attention of Miss C M Washbourne)
 Land Charges Section

SEARCHED
21 MAR 1995
REFER TO: WZK
FILE REF:

THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE

(BROOKSIDE, SEATON BURN)

TREE PRESERVATION ORDER 1995

The Council of the Borough of North Tyneside (in this Order called "the Authority"), in pursuance of the powers conferred in that behalf by Section 198 and Section 201 of the Town and Country Planning Act 1990, and subject to the provisions of the Forestry Act 1967, hereby made the following Order:-

1. In this Order:-

"the Act" means the Town and Country Planning Act 1990;

"owner" means the owner in fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years; lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more; and a mortgagee in possession; and

"the Secretary of State" means the Secretary of State for the Environment.

2. Subject to the provisions of this Order and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the Authority and in accordance with the conditions, if any, imposed on such consent, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland therein specified, the position of which trees, groups of trees and woodlands is defined in the manner indicated in the said First Schedule on the map annexed hereto, which map shall, for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

3. An application for consent made to the Authority under Article 2 of this Order shall be in writing stating the reasons for making the application, and shall by reference if necessary to a plan specifying the trees to which the application relates, and the operations for the carrying out of which consent is required.

4. (1) Where an application for consent is made to the Authority under this Order, the Authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof), as the Authority may think fit, or may refuse consent.

Provided that where the application relates to any woodland specified in the First Schedule to this Order the Authority shall grant consent so far special character of the woodland or the woodland character of the area, and shall not impose conditions on such consent requiring replacement or replanting.

(2) The Authority shall keep a register of all applications for consent under this Order containing information as to the nature of the application, the decision of the Authority thereon, any compensation awarded in consequence of such decision and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

5. Where the Authority refuse consent under this Order, or grant such consent subject to the conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied:-

- (a) that the refusal or condition is in the interests of good forestry; or
- (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

6. (1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless:-

- (a) such consent is granted for the purpose of enabling development to be carried out in accordance with a permission to develop land under Part III of the Act; or
- (b) in the case of trees, other than trees comprised in a group of trees or in a woodland, that the trees have an outstanding or special amenity value; or
- (c) in the case of trees which are comprised in a group of trees or in a woodland, that the group of trees or the woodland, as the case may be, has an outstanding or special amenity value,

but a certificate shall not be given in the case of trees falling within (c) above if the application in respect of them has been referred by the Forestry Commissioners under section 15(1)(b) or 15(2)(a) of the Forestry Act 1967(c).

The Authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where such a direction is given and the part is felled the owner shall, subject to the provision of this Order and Section 204 of the Act, replant the said land in accordance with the direction.

(2) Any direction given under paragraph (1) of this Article may include requirements as to:-

- (a) Species;
- (b) Number of trees per acre (hectare);
- (c) The erection and maintenance of fencing necessary for protection of the replanting;
- (d) The preparation of ground, draining, removal of bushwood, lop and top; and
- (e) Protective measures against fire.

7. On imposing any condition requiring the replacement of any tree under Article 4 of the Order, or on giving a direction under Article 6 of this Order with respect to the replanting of woodlands, the Authority shall if such condition or direction relates to land in respect of which byelaws made by a water authority since 31 March 1974, by any other authority (whose functions are now exercised by a water authority) who at any time prior to 1 April 1974 exercised the functions in respect of which the byelaws was made, by a drainage board, or by the Greater London Council in the exercise of any of its functions in relation to the maintenance, improvement or construction of watercourses or of drainage works restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any such condition or direction has effect subject to the requirements of the water authority, the drainage board, or the Greater London Council under those byelaws and the condition or direction shall have effect accordingly.

8. The provisions set out in the Third Schedule to this Order, being provisions of Part III of the Act adapted and modified for the purposes of this Order, shall apply in relation thereto.

9. Subject to the provisions of this Order, any person who had suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the Authority within the time and in the manner prescribed by this Order, be entitled to recover from the Authority compensation in respect of such loss or damage.

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any trees the subject of a certificate in accordance with Article 5 of this Order.

10. In assessing compensation payable under the last preceding Article account shall be taken of:-

- (a) any compensation or contribution which has been paid whether to the claimant or any other person, in respect of the same trees under the terms of this or any other Tree Preservation Order under Section 198 of the Act or under the terms of any Tree Preservation Order under Section 60 of the Town and Country Planning Act 1971, Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) Act 1943, or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodlands contained in an operative scheme under the Town and Country Planning Act 1962; and
- (b) any injurious affection to any land of the owner which would result from the felling of the trees the subject of the claim.

11. (1) A claim for compensation under this Order shall be in writing and shall be made by serving it on the Authority, such service to be effected by addressing the claim to the Authority and leaving it at or sending it by post to the principal office of the Authority.

(2) The time within which any such claim shall be made as aforesaid shall be a period of twelve months from the date of the decision of the Authority, or of the Secretary of State, as to the case may be, or where an appeal has been made to the Secretary of State against the decision of the Authority, from the date of the decision of the Secretary of State on the appeal.

12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 205 of the Act.

13. The provisions of Section 201 of the Act shall apply to this Order and the Order shall take effect on 17 March 1995.

NOTE: Any person contravening the provisions of this Order by cutting down, uprooting or wilfully destroying a tree or by wilfully damaging, topping or lopping a tree in such a manner as to be likely to destroy it, is guilty of an offence and liable on summary conviction to a fine not exceeding £400 or twice the sum which appears to the Court to be the value of the tree, whichever is the greater, or on indictment to a fine. The penalty for any other contravention of this Order is a fine not exceeding £200 on summary conviction and, in the case of a continuing offence when the contravention is continued after conviction, a person is liable on summary conviction to an additional fine not exceeding £5 for every day on which the contravention is so continued.

If a tree other than one to which an Order applies as part of a woodland is removed, uprooted or destroyed in contravention of an Order, or is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by Section 198(6) of the Town and Country Planning Act 1990 relating to trees which are dying or dead or have become dangerous, it is the duty of the owner of the land, unless on his application, the local planning authority dispense with the requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can. Except in emergency, not less than 5 days previous notice of the removal, etc, should be given to the Authority to enable the latter to decide whether or not to dispense with the requirement.

14. This Order may be cited as "The Council of the Borough of North Tyneside (Brookside, Seaton Burn) Tree Preservation Order 1995.

FIRST SCHEDULE

The map referred to is to a scale of 1:500 and is based on an enlargement of the OS sheet NZ 2373 NE (1993 ed).

The area covered lies to the north of Burnbridge and to the south west of Mason View.

The area is wholly within the Borough of North Tyneside.

No. on plan	Description	Situation
		<p>INDIVIDUAL TREES (Encircled black on the map)</p> <p>The following trees are measured from the south west corner of the garden at Brookside along a line projected east along the property boundary.</p>
T1	Horse Chestnut	Approximately 7.5 metres offset 4.9 metres north.
T2	Sycamore	Approximately 17.3 metres offset 5 metres north.
T3	Sycamore	The following tree is measured from the western most corner of the garden of 4 Mason View along a line projected south east. Approximately 0.6 metres offset 1 metre west.
T4	Sycamore	The following tree is measured from the northern most corner of Brookside along a line projected south west. Approximately 14.35 metres offset 0.35 metres south east.

No. on plan	Description	Situation
G1	Consisting of 9 No. Sycamores	<p>GROUPS OF TREES (within a broken line on plan)</p> <p>Situated along the western boundary of Brookside extending for approximately 35 metres at approximately 13 metres wide.</p>
		<p>TREE SPECIFIED WITH REFERENCE TO AN AREA</p> <p>None</p> <p>WOODLAND</p> <p>None</p>

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the Authority to:-

(1) the cutting down of any tree on land which is subject to a forestry dedication covenant where:-

- (a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant and at the time of the cutting down binding on the then owner of the land are fulfilled;
- (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.

(2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under Section 4 of the Forestry Act 1967 except a scheme which applies to a forestry dedication covenant;

(3) the cutting down, uprooting, topping or lopping of a tree:-

- (a) in pursuance of the power conferred on the Post Office by virtue of Section 5 of the Telegraph (Construction) Act 1908 and Section 21 of the Post Office Act 1969, or by or at the request of the Post Office where the land on which the tree is situated in operational land as defined by the Post Office Operational Land Regulations and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;

(b) by or at the request of:-

- (i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;
- (ii) an electricity board within the meaning of the Electricity Act 1947, where such tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act, 1882 or interferes or would interfere with the maintenance or working of any such line;
- (iii) a water authority established under the Water Act 1973, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1930, or the Greater London Council, where the tree interferes or would interfere with the exercise of any of the functions of such water authority, drainage board, or Council in relation to the maintenance, improvement or construction of watercourses or of drainage works; or
- (iv) the Secretary of State for Defence, the Secretary of State for Trade, the Civil Aviation Authority or the British Airports Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe, efficient use of aviation or defence technical installations;

- (c) where immediately required for the purpose of carrying out development authorised by the planning permission granted on an application made under Part III of the Act, or deemed to have been so granted for any of the purposes of that Part;
- (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden.

THIRD SCHEDULE

Provisions of the following parts of Part III of the Town and Country Planning Act 1990 as adapted and modified to apply to this Order.

75. (1) Without prejudice to the following provisions as to the revocation or modification or consents, any consent under the Order, including any direction as to replanting given by the Authority on the granting of such consent, shall (except in so far as the consent otherwise provides), ensure for the benefit of the land and of all persons for the time being interested therein.

Reference of applications to the Secretary of State

77. (1) The Secretary of State may give directions to the Authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the Authority.

77. (2) A direction under this section may relate either to a particular applicant or to applications of a class specified in the direction.

77. (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

77. (4) Where an application for consent under the Order is referred to the Secretary of State under this section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to an application which fails to be determined by the Authority.

77. (5) Before determining an application referred to him under this section the Secretary of State shall, if either the applicant or the Authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

77. (6) The decision of the Secretary of State on any application referred to him under this section shall be final.

Appeals against decisions. Right to Appeal against planning decisions and failure to take such decisions.

78. (1) Where the Authority -

- (a) refuse an application for consent under the Order or grant it subject to conditions;
- (b) refuse an application for any consent, agreement or approval of the Authority required by a condition imposed on a grant of consent or grant it subject to conditions; or
- (c) refuse an application for any approval of the Authority required under a development order or grant it subject to conditions,

the applicant may by notice appeal to the Secretary of State.

(2) A person who has made such an application may also appeal to the Secretary of State if the Authority have done none of the following:-

- (a) given notice to the applicant of their decision on the application;
- (aa) given notice to the applicant that they have declined to determine the application;
- (b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 77, within such period as may be prescribed by the development order or within such extended period as may at any time be agreed upon in writing between the applicant and the Authority

(3) Any appeal under this section shall be made by notice served within such time and in such manner as may be prescribed by a development order.

(4) The time prescribed for the service of such a notice must not be less than -

- (a) 28 days from the date of notification of the decision; or
- (b) in the case of an appeal under subsection (2), 28 days from the end of the period prescribed as mentioned in subsection (2) or, as the case may be, the extended period mentioned in that subsection.

(5) For the purposes of the application of section 79(1) in relation to an appeal under Subsection (2) it shall be assumed that the authority decided to refuse the application in question.

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.

(3) The decision of the Secretary of State on such an appeal shall be final.

Power to
revoke or
modify the
consent under
the Order.

97. (1) If it appears to the Authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the Authority may be Order revoke or modify the consent to such extent as they consider expedient.

98. (1) Except as provided in section 99, an order under section 97 shall not take effect unless it is confirmed by the Secretary of State.

(2) Where a local planning authority submit such an order to the Secretary of State for confirmation they shall serve notice on

- (a) the owner of the land affected,
- (b) the occupier of the land affected, and
- (c) any other person who in their opinion will be affected by the order.

(3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(4) If within that period such a person so requires, before the Secretary of State confirms the order he shall give such an opportunity both to him and to the local planning authority.

(5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.

(6) The Secretary of State may confirm an order submitted to him under this section either without modification or subject to such modifications as he considers expedient.

Un-opposed
revocation or
modification
of consent

99 (1) This section applies where

- (a) the local planning authority have made an order under section 97 and
- (b) the owner and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it

(2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall advertise the fact that the order has been made, and the advertisement must specify

- (a) the period within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
- (b) the period of the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section without being confirmed by the Secretary of State.

(3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(b).

99 (4) The period referred to in subsection (2)(a) must not be less than 28 days from the date the advertisement first appears.

(5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).

(6) The authority shall send a copy of any advertisement published under subsection (2) to the Secretary of State not more than three days after the publication.

(7) If

- (a) no person claiming to be affected by the order has given notice to the Secretary of State under subsection (2)(a) within the period referred to in that subsection, and
- (b) the Secretary of State has not directed within that period that the order be submitted to him for confirmation, the order shall take effect at the expiry of the period referred to in subsection (2)(b) without being confirmed by the Secretary of State as required by section 98(1).

(8) This section does not apply

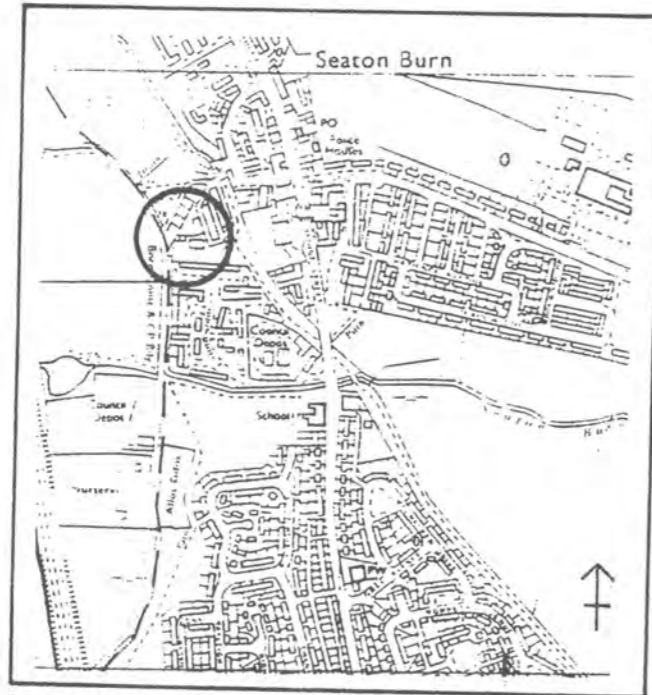
- (a) to an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part or Part VII, or
- (b) to an order modifying any conditions to which a planning permission is subject by virtue of section 91 or 92.

THE COMMON SEAL of the NORTH)
TYNESIDE BOROUGH COUNCIL was)
hereunto affixed this 17 day)
of March 1995 in the)
presence of:)

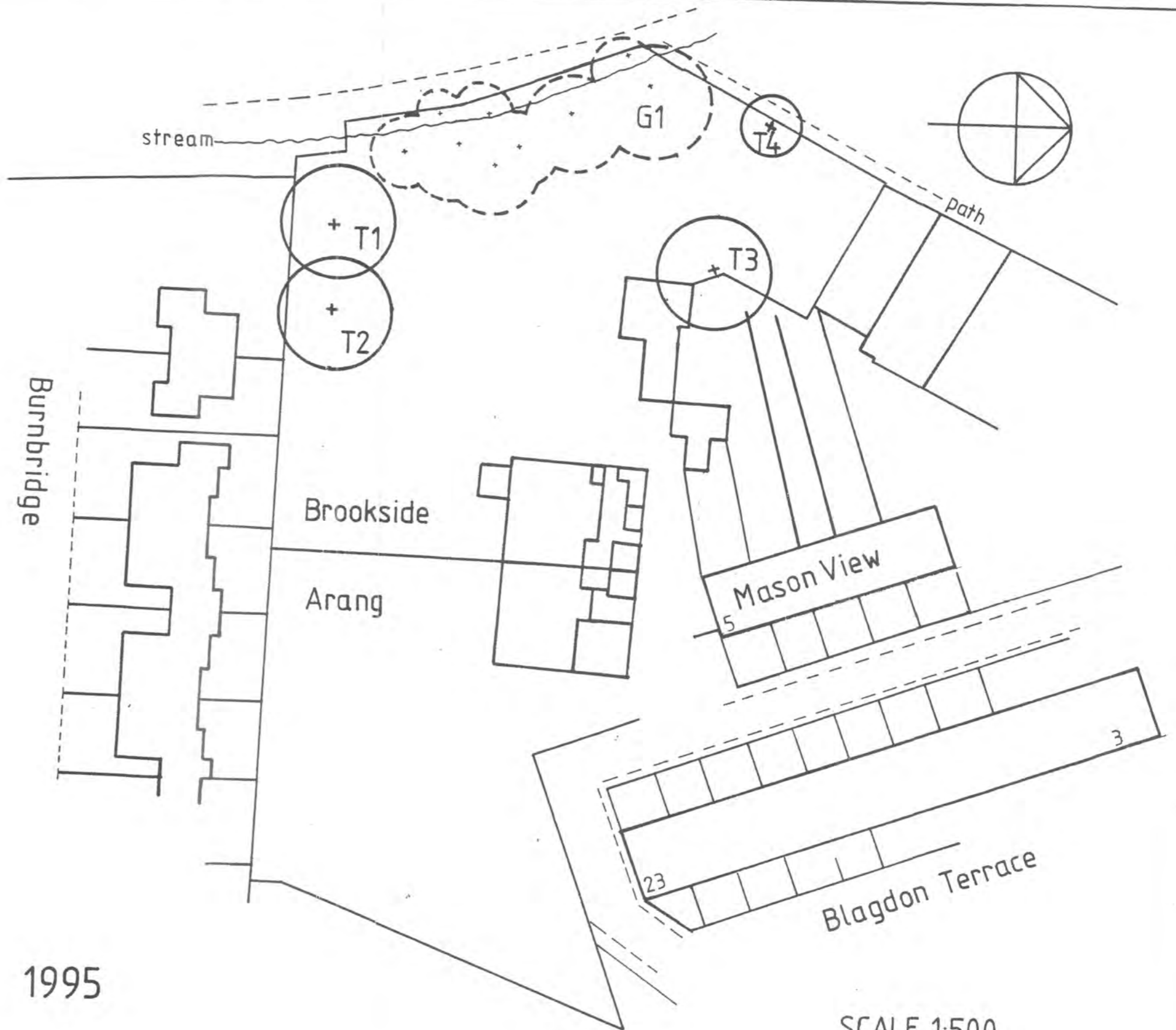
(signed)

R A Usher
Mayor

C A Dunn
Manager/ Legal and Contracts



Location plan 1:12,500



SCALE 1:500

NORTH TYNESIDE COUNCIL
 Brookside, Seaton Burn
 TREE PRESERVATION ORDER 1995

Drg. no: TPO/A3/118/2

Mr M. Halsey L.L.B. Head of Development Function

DATED 17 MARCH 1995

THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE
BROOKSIDE, SEATON BURN)
TREE PRESERVATION ORDER 1995

E D Nixon
Head of Corporate Services
14 Northumberland Square
North Shields
NE30 1PZ