

## APPEALS COMMITTEE

4.30 P.M.

22ND JULY 2008

**PRESENT:** Councillors Sheila Denwood (Chairman), Helen Helme (Vice-Chairman), Janie Kirkman, Bob Roe and Roger Sherlock (substitute for Janice Hanson)

Officers in Attendance:

Maxine Knagg	Tree Protection Officer
Angela Parkinson	Senior Solicitor
Jane Glenton	Democratic Support Officer

Also in Attendance:

Robert Partington	Thomas Associates, Architects
Peter Hodgson	Owner of 29A Stanhope Avenue, Morecambe
Stephen Hodgson	Mr. Peter Hodgson's Son

***Councillor Kirkman declared a personal interest in the following item, being acquainted with Robert Partington in his professional capacity as an architect, remained in the room during consideration of the item and voted on the matter.***

**8 TREE PRESERVATION ORDER NO. 436 (2008): TREES ESTABLISHED TO THE REAR OF 31 STANHOPE AVENUE AND LAND TO THE REAR OF 29A STANHOPE AVENUE, MORECAMBE**

It was reported that at the previous meeting of the Appeals Committee on the 8<sup>th</sup> July 2008, when Tree Preservation Order No. 436 (2008) had been due for hearing, it had been resolved that, in consideration of the late notification received by objectors, the matter be deferred and considered by the Committee at a later date.

Present at the meeting to consider the matter was Mr. Robert Partington of Thomas Associates, Architects, presenting the owner of 29A Stanhope Avenue, Morecambe. Mr. Collinson of Whiteside and Knowles, Solicitor for the owner of 31 Stanhope Avenue, Morecambe, had been unable to attend the meeting due to attending a funeral and had instructed Mr. Partington on his behalf. Also present was the owner of 29A Stanhope Avenue, Morecambe and his son.

The Committee considered appeals against a decision of the Council under Section 198 of the Town and Country Planning Act 1990, making an Order in respect of trees established to the rear of 31 Stanhope Avenue and land to the rear of 29A Stanhope Avenue, Morecambe.

In accordance with the Town and Country Planning (Tree Preservation Order) Regulations 1999, objections had been received to Tree Preservation Order No. 436 (2008), which had been made in relation to trees identified in a total of six groups: groups 1 to 6 (G1-G6).

The two properties included the rear garden of a private residential property, 31 Stanhope Avenue, and grass land to the rear of 29A Stanhope Avenue. The trees were mixed evergreen and deciduous species. The grassland area included mixed species

hedgerows and fragments of former hedgerows established along boundary lines. The land had residential properties to the east and north-east and a public cycle/footpath immediately adjacent to the southwest. White Lund Industrial Estate lay beyond the cycle path. The size and form of the hedgerow trees indicated that they had not been formally managed and had developed into mature trees with well structured crowns.

Approximately 50 to 60 trees had been removed from the garden area around the main dwelling, including standard trees and hedging, species of conifer, old English variety fruit trees, hawthorn, cherry, elder, poplar, ash and sycamore. The removals had, in effect, removed the tree cover from within the main property, exposing private garden areas of adjacent properties with an associated loss of amenity and privacy for a number of neighbouring residents.

The trees in question had been identified in a total of six groups: groups 1 to 6 (G1-G6). The trees in G1-G6 were of good condition, within the grassland area. The absence of regular maintenance of the hedgerows had meant that the hedgerows had become fragmented in areas and trees had grown to develop well structured crowns and had attained the height and dimensions of mature trees.

The trees within the groups provided screening for a number of private residential properties and helped to screen the industrial estate close by. These trees made an important contribution to urban greening along the cycle path and provided a significant resource for local wildlife communities.

The amenity value of trees within G1-G6 had been assessed using an objective and systematic approach (Tree Evaluation Method for Preservation Orders – TEMPO system). A score of 15+ had been achieved, supporting the action of serving a Tree Preservation Order.

Trees within G1-G6 contributed significantly to the local amenity by providing the following:

- Important visual amenity
- Improvements in air quality, screening and privacy
- Important wildlife resource.

The City Council had therefore considered it expedient in the interests of amenity to make provision for the preservation of the groups of trees in question under Sections 198, 201 and 203 of the Town and County Planning Act 1990 for the following reasons:

- They provided important public amenity benefits
- They were under potential threat from inappropriate management
- They were an important wildlife resource.

It was the City Council's view that damage or removal of the trees would have a detrimental impact on the amenity value of the local area and, as such, should be afforded protection by serving a Tree Preservation Order.

Letters of objection to the granting of the Tree Preservation Order had been received from:

- Thomas Associates Architects, agents for the owner of 29A Stanhope Avenue,

Morecambe

- Whiteside and Knowles, Solicitors, solicitors for the owner of 31 Stanhope Avenue, Morecambe.

Additional correspondence, supporting the removal of trees from within the garden area of number 29A Stanhope Avenue, Morecambe, had been received from:

- The owner of 29A Stanhope Avenue, Morecambe
- The owner of 27 Stanhope Avenue, Morecambe
- The owner of 29 Stanhope Avenue, Morecambe
- The owner of 33 Stanhope Avenue, Morecambe.

A statement in support of the objections had been received from:

- John Lawrence, Tree Surgery Contractor, Abseil Arboriculture and Lawrence Landscaping, in regard to 29A Stanhope Avenue, Morecambe

Mr. Partington, representing the owners of 29A and 33 Stanhope Avenue, Morecambe, put the case for the appellants.

- The owner of 29A Stanhope Avenue, Morecambe had legitimately cut down Leylandi and fruit trees, which were cankered and had outgrown themselves.
- The owner had recently taken residence at the property previously owned by his father and had set about tidying the area, which was unmanaged and overgrown and had been used as a tip for other people's rubbish. It was unreasonable to limit management through a Tree Preservation Order.
- The owner wished to maintain the property and hedges on the land and it appeared that the Tree Preservation Order had been served on the basis that other trees were at risk. The basis on which the Tree Preservation Order had been served was invalid as there was no future threat to the trees.
- G2 to G6 referred to hedgerows around a small field, where the trees that existed had overgrown from poorly managed perimeter hedgerow and a number of them were dead and needed to be removed.
- Allowing the trees to grow to an overall great height was inappropriate.
- G2, G3 and G4 constituted only part of the planted boundary area. The larger trees of G3 and G4 were located on the public side by a cycleway. The Tree Preservation Order applied to G3 and G4 was unnecessary to maintain a screen, as this was provided on the boundary in the public realm.
- The long boundary to the cemetery field had open fields separated by a hedgerow and at least two dead and over mature trees. All the hedgerows needed cutting back and tree planting could be added to this boundary inside the cemetery fencing where larger trees might be more appropriate and would not overshadow the field.
- The owner of the land needed to regularly maintain and cut back hedgerows as they grew in order to maintain the open edges of the field. Trees were not a regular feature other than those self-planted sycamore or overgrown and over mature hawthorns.
- It was an owner's right to maintain their land for whatever purpose and a Tree Preservation Order would be unfair and inappropriate and should not be applied to linear hedgerows intended to edge only the fields as boundary treatment.
- The imposition of a Tree Preservation Order would provide an unfair restriction

on the land and its future use compared to many other similar locations and conditions where such orders were not being proposed.

- In terms of G1, in 31 Stanhope Avenue, this was an unnecessary imposition in a compact garden area.
- The TEMPO system used assessed the aspects too high. The system was random and bizarre. The true overall score would not merit the imposition of a Tree Preservation Order.

Members directed questions at Mr. Partington and the owner of 29A Stanhope Avenue, Morecambe.

The Tree Protection Officer advised Members that she had been employed by the City Council's Planning Services for a period of 3 years and was experienced in arboricultural matters. Her role was to assess whether to serve or remove existing Tree Preservation Orders.

Under Sections 198, 201 and 203 of the Town and Country Planning Act 1990, the City Council had powers to serve Tree Preservation Orders, and the procedures to be followed were set out in the Town and Country Planning (Trees) Regulations 1999. The Regulations stated that the Council must consider any objections and other representations which were properly made, in writing, within the statutory consultation period of 28 days, and this had been carried out.

The amenity value provided by a tree was an objective judgment that would take account of a number of complex factors relating to the shape and form of the tree itself, its relationship with other trees and with buildings, and its visibility from wider public viewpoints. All types of tree, including hedgerow trees, but not hedges, were covered by Tree Preservation Orders, which, in general, made it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the Local Planning Authority's permission. The amenity value of the trees had been assessed using an objective and systematic approach (Tree Evaluation Method for Preservation Orders (TEMPO) system). A score of 15+ had been achieved, indicating that the trees in question fell in the category identified as "definitely merit" protection with a Tree Preservation Order.

Once the Tree Preservation Order had been made, it was an offence to do any works to the protected trees without first gaining consent from the Local Planning Authority. If consent was refused, the applicant had the right of appeal to the Secretary of State. The Tree Preservation Order did not extend to the compact hawthorn hedge on the northern boundary.

A concerned resident had initially contacted the Local Planning Authority regarding the owner of 29A Stanhope Avenue, Morecambe having undertaken large scale tree removal from within the garden area around the main dwelling, when approximately 50 to 60 trees had been removed during the bird nesting period. Although consent had not been required from the Local Planning Authority to undertake this work, it was the view of the Authority that this had a significant and adverse effect on the amenity of the area, causing a loss of privacy and screening to a number of private residential properties whose boundaries adjoined that of 29A Stanhope Avenue.

The trees in question provided significant amenity and were clearly visible from the public cycleway/footpath. It had been considered that there was sufficient risk present where the remaining trees were at risk of being cut down or pruned in ways which would

have a significant impact on the amenity of the area.

The most significant remaining trees at G1 to the front aspect of 29A Stanhope Avenue were those within 31 Stanhope Avenue. The amenity value of those trees had been assessed and was sufficient to justify serving them with a Tree Preservation Order protecting the trees against inappropriate management and requiring written consent to be obtained from the Local Planning Authority prior to undertaking works to those trees. Correspondence from the owner of 31 Stanhope Avenue, Morecambe's solicitor had indicated that the property was to be sold and it was at the point of sale when trees were most at risk. The correspondence also referred to vermin, such as foxes and rats, residing in the garden of number 29A. This was a matter for the City Council's Health and Strategic Housing Services and did not relate to the Tree Preservation Order. Additionally, untidy land could not be considered under the legislation.

Trees that were dead, dying or had become dangerous were exempt from protection under a Tree Preservation Order. The onus was on the appellant to provide evidence that this was the case if works were being undertaken using the exemption as reasoning for undertaking works.

Members directed questions at the Tree Protection Officer.

***(The Committee adjourned to consider the evidence.  
The Tree Protection Officer and Messrs. Partington and Hodgson  
left the meeting at this point.)***

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 436 (2008)
  - (a) Without modification
  - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 436 (2008).

With reference to 29A Stanhope Avenue, Morecambe - G2 to G6 - it was proposed by Councillor Sherlock and seconded by Councillor Kirkman:

"That the appeal be refused and the Tree Preservation Order confirmed without modification in relation to G2 to G6."

Upon being put to the vote, Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be carried.

With reference to 31 Stanhope Avenue, Morecambe – G1, it was proposed by Councillor Kirkman and seconded by Councillor Helme:

"That the Tree Preservation Order be modified in relation to G1, this group be reduced to a single tree T1, the cedar tree. All other trees previously identified within G1 to be excluded from the Tree Preservation Order."

Upon being put to the vote, Members voted unanimously in favour of the proposition,

whereupon the Chairman declared the proposal to be carried.

***(The Committee reconvened to give their decision.  
The Tree Protection Officer and Messrs. Partington and Hodgson  
returned to the meeting at this point.)***

***Resolved:***

- (1) That the appeal be refused and the Tree Preservation Order confirmed without modification in relation to G2 to G6.
- (2) That the Tree Preservation Order be modified in relation to G1, this group be reduced to a single tree T1, the cedar tree. All other trees previously identified within G1 to be excluded from the Tree Preservation Order.

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Chairman

(The meeting ended at 5.46 p.m.)

**Any queries regarding these Minutes, please contact  
Jane Glenton, Democratic Services - telephone (01524) 582068 or email  
jglenton@lancaster.gov.uk**