

## APPEALS COMMITTEE

2.30 P.M.

9TH DECEMBER 2010

**PRESENT:-** Councillors Sheila Denwood (Chairman), Chris Coates, Janie Kirkman and Bob Roe

Apologies for Absence:

Councillors John Harrison and David Kerr

Officers in Attendance:

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

Also in Attendance:

Bill Scott, Fred Shears, Sally Shears (objectors) and Stuart Riley, Peter West (supporters).

**8 SITE VISIT: TREE PRESERVATION ORDER NO. 474 (2010) - TREES ESTABLISHED WITHIN LOW MILL, CATON**

Prior to commencement of the meeting, a site visit was undertaken to Low Mill, Caton in response to objections received to Tree Preservation Order No. 474 (2010).

**The following Members were present on the site visit:**

Councillors Sheila Denwood (Chairman), Chris Coates, Janie Kirkman and Bob Roe.

**Officers in Attendance:**

Maxine Knagg	-	Tree Protection Officer
Jane Glenton	-	Democratic Support Officer

**9 APPOINTMENT OF VICE-CHAIRMAN**

It was proposed by Councillor Denwood and seconded by Councillor Coates that Councillor Kirkman be Vice-Chairman of the Appeals Committee for the Municipal Year. There being no further nominations, the Chairman declared the proposal to be carried.

**Resolved:**

That Councillor Kirkman be appointed Vice-Chairman of the Appeals Committee for the Municipal Year.

**10 MINUTES**

The Minutes of the meeting held on 8<sup>th</sup> September 2010 were signed by the Chairman as a correct record.

**11 ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN**

There were no items of urgent business.

**12 DECLARATIONS OF INTEREST**

There were no declarations of interest.

**13 TREE PRESERVATION ORDER NO. 474 (2010) - TREES ESTABLISHED WITHIN LOW MILL, CATON**

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 a group of trees located at Low Mill, Caton, being Tree Preservation Order No. 474 (2010).

The Tree Protection Officer advised Members that the City Council had been asked to consider trees within Low Mill, Caton for protection with a Tree Preservation Order (TPO), following concerns that healthy trees had been removed in the past and that more trees were under consideration for removal.

It was reported that the trees in question were identified as T1 – T5, G1 – G10, comprising a wide range of deciduous and evergreen tree species, including redwood, pine, cherry, birch, willow, lime, oak, holly, maiden hair tree and walnut, many of which were young, semi-mature and early-mature in good overall condition, free from major pests or disease. Collectively, the trees provided a range of important greening and intermittent screening between different components of the residential complex and were an important resource for a range of wildlife.

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 16 had been achieved, which supported the action of serving a Tree Preservation Order.

Members were advised that the site could be seen from a public vantage point to the north, and the canopies of trees linked to wider tree populations and were an integral part of the local landscape that made a significant contribution to the amenity value of the complex. The trees contributed to the character of the area beyond the boundary lines of the site, and provided visible landscape features, greening and intermittent screening within the residential complex. They could be seen from a public vantage point, made an important contribution to the character of the area and were an important wildlife resource.

It was reported that the City Council considered it expedient in the interests of amenity to make provision for the preservation of the trees in question under Sections 198, 201 and 203 of the Town and Country Planning Act 1990 for the following reasons:

Trees:

- are an important visual amenity
- provide greening and screening
- are an important wildlife resource
- are under threat from removal.

Members were informed that the trees were a hugely important component within the site and had sufficient amenity value and importance within the landscape to justify their protection with TPO No. 474 (2010). It was noted that a Tree Preservation Order did not prevent works that were appropriate and reasonable and in the interest of good arboriculture practice being undertaken.

It was reported that the City Council had received eight letters in objection to TPO No. 474 (2010) and eight letters in support. Following publication of the Agenda, two further representations objecting to TPO No. 474 (2010) had been received from V. and M. Williams and W. R. Scott and these had been circulated to Members prior to the meeting.

The Tree Protection Officer referred to areas of concern raised by objectors. In particular, the obscuring of views by T2, a pine tree, which was situated in the garden of 9 Low Mill, and concern that the tree blocked residents' views. The objector had proposed either that a slower growing conifer, planted at the base of the tree, be allowed to grow whilst the pine tree was undercut, or that both trees be replaced entirely with a variety, such as a magnolia tree. The Tree Protection Officer informed Members that the conifer did not have the genetic potential to overtake the pine tree, and that a view obstructed by trees could not legally be regarded as a nuisance in law. Another objector had advised that the TPO should have been served personally on the Company Chairman/Secretary, rather than upon individual residents. The Tree Protection Officer advised that having made a TPO, the regulations required the Local Planning Authority to serve papers on owners/occupiers of the land affected.

The Tree Protection Officer referred to the bund at Low Mill and the structures within it, which acted as a defence against flooding, and informed Members that tree roots would take the easiest route to obtain nutrients and did not have the capacity to crush or move structures. The majority of tree roots were very fine and were unlikely to be the cause of damaged pipes, but would exploit cracks. They would reduce the risk of flooding and soil erosion. Trees that were protected by a TPO required consent before they could be cut down, uprooted, topped or lopped, and the cutting of roots, which could be damaging, also required consent. Any claim that tree roots had caused damage would need to be substantiated.

The Tree Protection Officer concluded that it was her opinion that the amenity value of the trees warranted their protection through the serving of a TPO, and advised Members that she recommended that T5, a pine tree in the courtyard, be included in the TPO.

An extensive question and answer session followed the Tree Protection Officer's presentation.

Present at the meeting to consider the matter were Bill Scott, Fred Shears, Sally Shears (objectors) and Stuart Riley, Peter West (supporters).

Bill Scott, Director responsible for Grounds and Gardens of Finchfive Low Mill (Caton) Ltd and objector, advised Members of the three elements forming his case for not confirming Tree Preservation Order No. 474 (2010), namely:

1. Matters of Particular Concern

Mr. Scott referred to the bund, which he advised was an integral element of the flood defences of the Mill complex and an important element in life at the Mill. The bund was a complex system of pipes and inspection chambers which, together with a pumping system, provided protection for the site from rainfall and surface water flooding. Photographs of the network of pipes being installed were circulated to Members, together with diagrams showing how the system worked. Mr. Scott advised that the flood system had been tested on a number of occasions in recent years, notably 1995, 1999 and 2000. There were a number of trees planted directly over the structures, and damage to the system by root penetration would prove very costly to repair should the Company not be allowed to manage its own affairs. Were a TPO in place, impairing the Company's ability to maintain the bund, and flooding resulted, then the Company would have little alternative but to seek financial recompense from the City Council. A recent quote from the engineers who designed the bund had stated: 'You do not plant trees over structures, period.' Mr. Scott advised that the lack of thought given to the original planting was currently causing the Company a lot of expense.

Members were informed that the Company had applied for planning permission to replace a culvert, created at the time of the development, to take water from the original millpond, constructed in concrete for the most part, with the final extent as a plastic lining. The culvert ran along the top of the bund and had been leaking for a period of time with the result that the North East side of the bund was under threat because the water escaping from the culvert was appearing as springs of running water, threatening erosion of the bund and creating flooding in the neighbouring farmer's field. The presence of a number of trees in close proximity certainly could not be dismissed as not being a contributory factor. The Company was currently working with the Forest of Bowland AONB regarding the possibility of harnessing this water in a Hydro Feasibility Study.

2. General Background with regard to the Communal Gardens

Mr. Scott advised Members that the communal gardens at Low Mill, Caton were managed by a sub-committee of resident volunteers under the chairmanship of the Director of Finchfive Low Mill (Caton) Ltd responsible for Grounds and Gardens. The sub-committee worked to a Grounds and Gardens Plan, which had been approved by the Board. Copies of the plan, together with copies of sub-committee minutes and a detailed schedule for the development of one section of the garden had been previously circulated to Members to show that the management of the gardens, and therefore the trees, was in good hands. Copies of photographs of the gardens taken in September 2010 were also circulated. Members were advised that it was Company policy that, should any tree be removed, whether it be for aesthetic grounds or for bund protection purposes, the Company would plant two trees for each tree removed. Mr. Scott advised that some trees might be under threat but there were instances where substantial trees had been planted without thought to their long-term growth, resulting in trees too close to properties and, in one instance, directly above the main rainwater drainage pipe exiting surface water to and through the bund.

3. Individual Gardens

Mr. Scott informed Members that 28 different species of birds (details of which were included), hedgehogs, voles, mice, rats, rabbits, deer, foxes and their litter, weasels and

stoat had been observed, being a clear indication that current practice was supporting wildlife in abundance.

It was reported that there was a positive, structured approach to the care and development of the gardens at Low Mill, led by experienced gardeners who contributed physically to their maintenance. All proposed actions were published in the minutes of the sub-committee meetings and no action was taken without the whole community having the opportunity to comment.

All residents at Low Mill were shareholders in the Company which was managed by a Board of Directors elected by the Shareholders. The Company, Finchfive Low Mill (Caton) Ltd owned the freehold of the complex. A Director was responsible for the Grounds and Gardens and a part-time gardener was employed who had provided excellent service to all who resided there for a number of years. The Director was supported by a group of residents who formed a sub-committee to carry out tasks and implemented the Grounds and Gardens policy. No resident could carry out work without the Board's permission.

It was reported that trees and shrubs were pruned in accordance with accepted horticultural practice and no tree could be removed or lopped without the Board's permission. Part of the Gardens Policy was that for every tree removed, for whatever reason, two would be planted. The cycle of Board/Shareholder and Garden Sub-Committee meetings allowed shareholders to make their views known, and a vote would be taken if necessary.

The Company was concerned that it may be necessary to remove some of the trees if excessive root growth threatened the integrity of the flood defence systems. Any such action would only take place after an in-depth inspection by the original structural engineers and tree surgeons. If required, the City Council's Engineer or its Arboricultural Officer would be consulted, but the Board would be responsible for the final decision and overseeing the operation. Mr. Scott advised that the Board wanted to work with the City Council in every way possible, thereby taking advantage of the expertise of Council officers.

Mr. Scott circulated diagrams and photographs of the bund installation in order that Members could better understand the magnitude of the problem.

Members asked questions of Mr. Scott, and Fred Shears, Sally Shears and Peter West provided supplementary information.

Mr. Riley, supporter, thanked the Tree Protection Officer for the expeditious way she had dealt with the matter and the clarity of her presentation. He advised that there was manifest evidence of individuals having removing trees without permission and their having been set fire to under other the tree canopies. Mr. Riley advised that he had concerns regarding the current system. Historically, trees had been removed in an unauthorised way in the past by individuals and this concern had led to the request for a TPO.

Mr. Riley informed Members that he had prepared a statement and spoken to the AONB and asked for their guidance. A Local Planning Authority had a statutory duty to conserve and enhance natural beauty and as the site was situated in an Area of Outstanding Natural Beauty, this was relevant.

A further question and answer session followed.

***(The Committee adjourned at 3.42 p.m. to consider the evidence. The Tree Protection Officer and members of the public left the meeting at this point.)***

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 474 (2010)
  - (a) Without modification
  - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 474 (2010).

It was proposed by Councillor Kirkman and seconded by Councillor Roe:

“That the appeal be refused and the Tree Preservation Order confirmed with modification to include T5.”

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 at 4.02 p.m. to give their decision and the Tree Protection Officer and members of the public returned to the meeting at this point.)***

***Resolved:***

That the appeal be refused and the Tree Preservation Order confirmed with modification to include T5.

***Summary of the Decision:***

Members of Committee have listened carefully to representations made this afternoon. They have read the report and letters in support of the Order and letters of objection. They have also visited the site this afternoon. Members have decided to confirm TPO No. 474 (2010), subject to modification to include T5.

Members have expressed a wish that the Grounds and Gardens Management Committee of Finchfive Low Mill (Caton) Ltd will work with the Local Planning Authority and the City Council's Tree Protection Officer for the further good management of the trees.

Members would like to stress that they have given this matter a good deal of consideration and it has not been an easy decision to make.

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Chairman

(The meeting ended at 4.05 p.m.)

**Any queries regarding these Minutes, please contact  
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