

## APPEALS COMMITTEE

2.00 P.M.

23RD APRIL 2012

**PRESENT:-** Councillors Helen Helme (Chairman), Sheila Denwood (Vice-Chairman), Kathleen Graham, Mike Greenall, Janice Hanson, Andrew Kay and Karen Leytham

Officers in Attendance:

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

Also in Attendance:

Appellant's Representative - Mr. Mark Mackworth-Praed	Senior Consultant with Simon Jones Associates Ltd., Arboricultural Planning Consultants
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### 8 **SITE VISIT: TREE PRESERVATION ORDER NO. 496 (2011)**

Prior to commencement of the meeting, a site visit was undertaken in response to objections received.

The following Members were present on the site visit:

Councillor Helen Helme (Chairman), Sheila Denwood (Vice-Chairman), Kathleen Graham, Mike Greenall, Janice Hanson, Andrew Kay and Karen Leytham.

Officers in Attendance:

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

### 9 **MINUTES**

The minutes of the meeting held on 30<sup>th</sup> September 2011 were signed by the Chairman as a correct record.

### 10 **ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN**

There were no items of urgent business.

### 11 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

### 12 **TREE PRESERVATION ORDER NO. 496 (2011) RELATING TO WOODLAND ESTABLISHED ON LAND WEST OF LUNE INDUSTRIAL ESTATE, LANCASTER**

The Committee considered an appeal against a decision of the Council under Section 198 of the Town and Country Planning Act 1990 making an Order in respect of an area

of woodland established to the west of Lune Industrial Estate, Lancaster, being Tree Preservation Order (TPO) No. 496 (2011).

The area of woodland established on land west of Lune Industrial Estate was known locally as Freeman's Wood and comprised a number of tree species, including sycamore, hawthorn, ash, elder, willow and poplar. The woodland had been identified and referenced as W1. The site in question encompassed land under the control of a private company known as The Property Trust Plc. In addition there was a relatively small triangular piece of land to the south which was under the control of Lancaster City Council.

#### The Appellant's Representative

The Appellant's representative, Mr. Mark Mackworth-Praed, Senior Consultant with Simon Jones Associates Ltd., Arboricultural Planning Consultants, and a Fellow and Registered Consultant of the Arboricultural Association, advised Members that he was instructed by Mr. Nelson Chan, Director of the Property Trust Group plc, which owned the major part of the land affected by the TPO, and also appeared on behalf of Satnam Ltd, a company which had an agreement with his client in connection with the development of the land through the planning process.

Mr. Mackworth-Praed advised that he was aware that his client's actions in erecting fencing around the perimeter of their land had been the cause of concern, and that the possibility of future development taking place on the land was not one that was viewed favourably by residents in the local area. He noted that a large proportion of the representations received referred to these issues, but advised that neither was for consideration by the Committee.

Committee was asked by the Appellant to consider two issues, namely:

- (1) Whether the Order had been correctly made and served in accordance with the procedural requirements set out in the Town and Country Planning (Trees) Regulations 1999; and
- (2) Whether the Order was appropriate in terms of what it was actually protecting or intended to protect, as defined by Central Government's document 'TPOs – A Guide to the Law and Good Practice' known generally as the 'Blue Book'.

Mr. Mackworth-Praed referred to the second issue and asked Committee to have in mind three particular points within the Blue Book when considering the TPO, as follows:

- (1) Paragraph 3.2 – *Purpose of TPOs*. 'In the Secretary of State's view, TPOs 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 trees, or at least part of them, should therefore normally be visible from a public place, such as a road or a footpath although, exceptionally, the inclusion of other trees may be justified.'
- (2) Paragraph 2.3 – *Application of TPOs*. 'A TPO may only be used to protect trees, and cannot be applied to bushes or shrubs.'
- (3) Paragraph 3.15 – *referring to the making of woodland TPOs, or TPOs to apply to*

*a woodland.* 'The boundary of the woodland should be indicated on the map as accurately as possible, making use of any natural landscape features or property boundaries in a way that will avoid any future uncertainty if trees close to the boundary are removed.'

Mr. Mackworth-Praed advised Members that the protection of such a TPO would extend to any trees that might arise subsequently anywhere within the boundary of the area defined on the map within the Order, as given judicial authority in the 2009 case of *Palm Developments versus Medway Council*. However, neither the Act nor Regulations defined the terms 'tree' or 'woodland' which was a problem. The majority of the area was not one that would ordinarily be called a woodland, and included a large area of open grassland, formerly sports pitches, areas of peripheral weed and undergrowth with scattered scrub, shrubs and small trees, and a substantial area previously built over and forming part of the existing Lune Industrial Estate.

In the Appellant's opinion, this was a problem because:

- (1) By describing the entire area as a 'woodland' the TPO protected every bush or small tree of the species listed in the TPO and any that might arise on the land in future. The scattered trees and bushes within the interior site should not be included because they did not constitute an element of existing woodland, nor make an effective contribution to public visual amenity, as they were screened from public viewpoints by more mature, denser tree cover on the perimeters of the site, by topography or both. Their protection did not confer a significant degree of public benefit, which was a requirement of the guidance.
- (2) It was common knowledge that abandoned, unmaintained land in the UK would gradually become covered with trees. In this case, such trees would automatically be protected. The guidance was that TPOs were to protect trees and woodland if their removal would have a significant impact on the environment and public enjoyment, which implied that they must already be there. Nowhere in the guidance did it indicate that TPOs could be used to effectively create new woodlands where none previously existed.
- (3) As a result of these factors, any future consideration of a planning proposal for the site would be at risk of being adversely affected, as it would appear to be resulting in the loss of protected woodland, even where it did not exist, which would unfairly unbalance the 'level playing field' and prejudice their interests.

Mr. Mackworth-Praed advised Committee that the Tree Protection Officer's report stated that any future application would be determined on its merits, and the impact of any associated loss or removal of trees would be critically evaluated in the context of a specific application which, in his opinion, was an over-optimistic view. Paragraph 4.2 of the report stated that 'The boundary line of the site identifies the land where the woodland is established and the limits of the woodland edge' which was at odds with the visible reality of the site.

The Appellant's representative asked Committee to consider an alternative boundary to the woodland, which had been circulated in advance of the meeting, which would, in his opinion, secure protection of the trees most contributing to the public amenity of the adjoining rights of way and would be more in accordance with ongoing discussions between his client's planning advisors and the Council's planning officers as to the future

potential allocations of the site through the evolving Local Development Framework (LDF) process.

Mr. Mackworth-Praed referred to the first issue for consideration by Committee, namely that the TPO had not been correctly made and served. In his opinion, the Regulation 3 notice was defective as no reasons had been given for making the Order. A full copy of the TPO had not been served. Copies of the documentation served were provided for Members' attention. He advised that Ms. Cathy Lloyd, who represented Hurstwood Estates (Lancaster) Ltd., the owners of the existing Lune Industrial Estate, would suggest further evidence that the correct procedure had not been followed in making and serving the TPO which, he believed, would mean that confirmation of the TPO was fundamentally unsafe and therefore capable of legal challenge, when taken in conjunction with the prejudicial consequences of the TPO for his clients' interests arising from the extent and nature of what it purported to protect when properly considered in the light of the Blue Book guidance.

#### Objector

Cathy Lloyd, Site Manager for Hurstwood Estates (Lancaster) Ltd, speaking in objection to the TPO, advised that the boundary on the plan submitted had been incorrect and she had contacted the Council, following which the detail had been amended. Ms Lloyd informed Committee that she had not been served with the TPO and had therefore not been given the opportunity of objecting within the 28 day period. Neither had she received notification of the Appeals Committee and had phoned the Council on 20<sup>th</sup> April, when full information had been given. Ms. Lloyd advised Committee that much of the woodland related to bushes, shrubs, brambles and self-seeded saplings. The land in question had been allocated as a local employment site. During the 22 years in which she had worked for Hurstwood Estates (Lancaster) Ltd, the adjoining land had always been unfenced. However, signs had recently been put up to advise that the land was privately owned, which had subsequently been vandalised. Fencing had been erected. On behalf of Hurstwood Estates (Lancaster) Ltd, Ms. Lloyd requested that the TPO be lifted.

#### Supporter

Councillor Jon Barry, speaking in support of the TPO, advised that the public presence at the meeting and the number of representations received in support of the TPO, indicated the level of concern amongst local residents. Councillor Barry referred to three points previously raised, the first being whether the trees could be seen. Councillor Barry advised Members that there were several hilly streets in the area of Marsh, such as Gerrard Street, Denmark Street, Wharfedale Road, Coverdale Road, Bishopdale Road and Ays-Garth Road, from which Coronation Field could be clearly seen and, whilst the whole of the site could not be viewed from the pathways and cycleways, it could be seen from a wider vista. Secondly, public opinion. The area was a woodland opportunity site and was seen as being extremely valuable. Thirdly, the suggested boundary missed out some of the larger and smaller trees. Some large trees had been missed out of the south-west corner of the plan. These were large trees, not shrubs, as proven when a large willow tree had fallen down and blocked the pathway.

#### The Tree Protection Officer

The Council's Tree Protection Officer, Maxine Knagg, advised Committee that she was a

qualified arboriculturalist and her role was to protect trees in the district, which involved the serving of TPOs. An assessment of the site had been made following local concerns raised when work was being undertaken by the landowners (The Property Trust Plc) to erect substantial galvanised fence panels around the perimeter of the land during November 2011. Whilst this was something that they had the right to do, as landowners, it had raised local concerns that woodland trees may become under threat of damage or removal.

Members were advised that the Local Planning Authority (LPA) had powers to make and serve a TPO if it was considered 'expedient' in the interest of amenity to make provision for the preservation of trees or woodland in its area. The Town and Country Planning Act 1990 did not define 'amenity'. However, it was the view of the Secretary of State that TPOs 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 trees were highly visible from the public footpaths and cycle paths to the west and south and from the off-site recreational facilities to the east. Many of the trees in question were also clearly visible from the public highway of Willow Lane. The woodland area made a significant contribution to the visual appearance and character of the immediate and wider locality. To the north of the wood was an important wildlife resource known as Freeman's Pools, which were wildlife pools established by the Environment Agency in association with the management of local flood issues. Beyond the pools was the River Lune. The trees within the site were an important source for wildlife communities, providing habitat opportunities for protected species, including nesting birds and bats.

The Council had considered it to be expedient in the interests of amenity to make TPO No. 496 (2011) due to the potential threat of damage or removal of woodland trees from within the site. The amenity value of the woodland had been assessed using an objective and systematic approach (Tree Evaluation Method for Preservation Orders – TEMPO system). A score of 17 had been achieved supporting the action of serving a TPO. A total of 74 letters and emails had been received in support of the TPO.

Members were advised that The Property Trust Plc were known to have engaged in pre-application planning consultation with Lancaster City Council, though formal submission of a planning application had not taken place. The TPO did not conflict with this. The TPO would ensure that the woodland in question became a material consideration should a planning application be made in the future. The TPO would not prevent development. A full planning consent would override a TPO where trees would be required to be removed to facilitate implementation of any future consent. The Appellant's view that the TPO conflicted with adopted policies for the site was rejected.

The Tree Protection Officer addressed the main points raised by the Appellant's representative, namely:

- (1) *Whether the Order had been correctly made and served in accordance with the procedural requirements set out in the Town and Country Planning (Trees) Regulations 1999; and*

The Tree Protection Officer reported that in a letter dated 20<sup>th</sup> December 2011, the Council had informed landowners and interested third parties that TPO No. 496 (2011)

had been made, and stated that: 'The Council has made the Order because it believes that the woodland provides important wildlife resource, value in providing greening and screening and is of local amenity value.'

Land registry searches were undertaken and the landowner and a total of 24 interested third party neighbours were identified and served with copies of the Order and Regulation 3 notice, and given a further 28 day period in which to make a formal objection or representation to the LPA should they wish to do so. Two parties omitted from the original correspondence were served with the Order once the Council had been notified of the omission. The Council had received one objection to the Order.

Members were advised that Section 3.21 of the Blue Book stated: 'If the LPA serves a number of Regulation 3 notices on different people on different dates, they should ensure that each person is given at least 28 days from the date of the notice to submit their objections or representations to the LPA.' The LPA had fulfilled its obligations in respect of this.

(2) *Whether the Order was appropriate in terms of what it was actually protecting or intended to protect, as defined by Central Government's document 'TPOs – A Guide to the Law and Good Practice' known generally as the 'Blue Book'.*

The Tree Protection Officer informed Members that the boundary line of the site identified the land where the woodland was established and the limits of the woodland edge. Whilst the Town & Country Planning Act 1990 did not define the term 'tree' or 'woodland', a tree was widely defined as a perennial plant with a self-supporting woody main stem, usually developing woody branches at some distance from the ground and growing to a considerable height and size. For the purposes of the TPO legislation, the High Court had sought to apply the rationale that a tree was anything which one would ordinarily call a tree.

Brambles, dogwood, willow herb and other ground vegetation were clearly not 'trees' and were not included or specified within the TPO, but did make an important contribution in wildlife terms by increasing the natural biodiversity of the area. Open spaces devoid of trees were not protected in relation to the TPO.

The Tree Protection Officer reported that the Oxford Dictionary defined a 'woodland' as land which contained trees. The trees, the subject of TPO No. 496 (2011) clearly formed a highly visible woodland that could be seen from a number of public vantage points to the east, south and west and made an important contribution to the visual appearance and character of their locality, being bounded by public footpaths and cycle paths on three sides. The woodland made an important contribution as a wildlife resource in an area valued for its diversity of wildlife communities and breeding birds. The site was identified as 'Freeman's Wood, Lancaster' and the Appellant's view that the trees in question were anything other than woodland was rejected.

It was reported that, following a late submission, the Tree Protection Officer and the Appellant's representative had attended a site visit. Following the site visit, it was recommended that the area of hardstanding be excluded from the site, the subject of TPO No. 496 (2011).

Following the Tree Preservation Officer's presentation, the Appellant's representative responded in detail to the points raised.

Supporters were then invited to reply and made comments as follows.

The Secretary of Fairfield Association advised that the greenery provided by Freeman's Wood was part of a green corridor used by wildlife to travel from one site to another. Deer had been traumatised by the erection of the fence, as had local residents, and it was vital that a natural balance be maintained.

Ms. Simpson recommended that the site be returned to its pre-November 2011 condition before many trees had been uprooted. Asbestos, tipped from the old Williamson factory, had been unearthed by the works, and this needed to be covered and the stability of the landfill maintained by the presence of the trees.

Councillor Tracey Kennedy reminded Members of the adjacent nature reserve that would be adversely affected should the TPO not be confirmed.

***(The Committee adjourned at 3.15 p.m. to consider the evidence.  
The Tree Protection Officer the Appellant's representative and members of the public left the meeting at this point.)***

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 496 (2011)
  - (a) Without modification;
  - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 496 (2011).

Members considered the matter in detail.

It was proposed by Councillor Leytham and seconded by Councillor Hanson:

- "(1) That Tree Preservation Order No. 496 (2011) be confirmed, subject to the following modification:

*Exclusion of the hardstanding area identified on the plan attached to the minutes of the meeting and hatched red.*

- (2) That there be no requirement to apply for a tree works application in connection with the mowing of grassed areas on which saplings have the potential to grow."

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

***(The Committee reconvened at 4.40 p.m. to give its decision and the Tree Protection Officer, the Appellant's representative and members of the public returned to the meeting at this point.)***

***Resolved:***

- (1) That Tree Preservation Order No. 496 (2011) be confirmed, subject to the

following modification:

*Exclusion of the hardstanding area identified on the plan attached to the minutes of the meeting and hatched red.*

- (2) That there be no requirement to apply for a tree works application in connection with the mowing of grassed areas on which saplings have the potential to grow.

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Chairman

(The meeting ended at 4.43 p.m.)

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

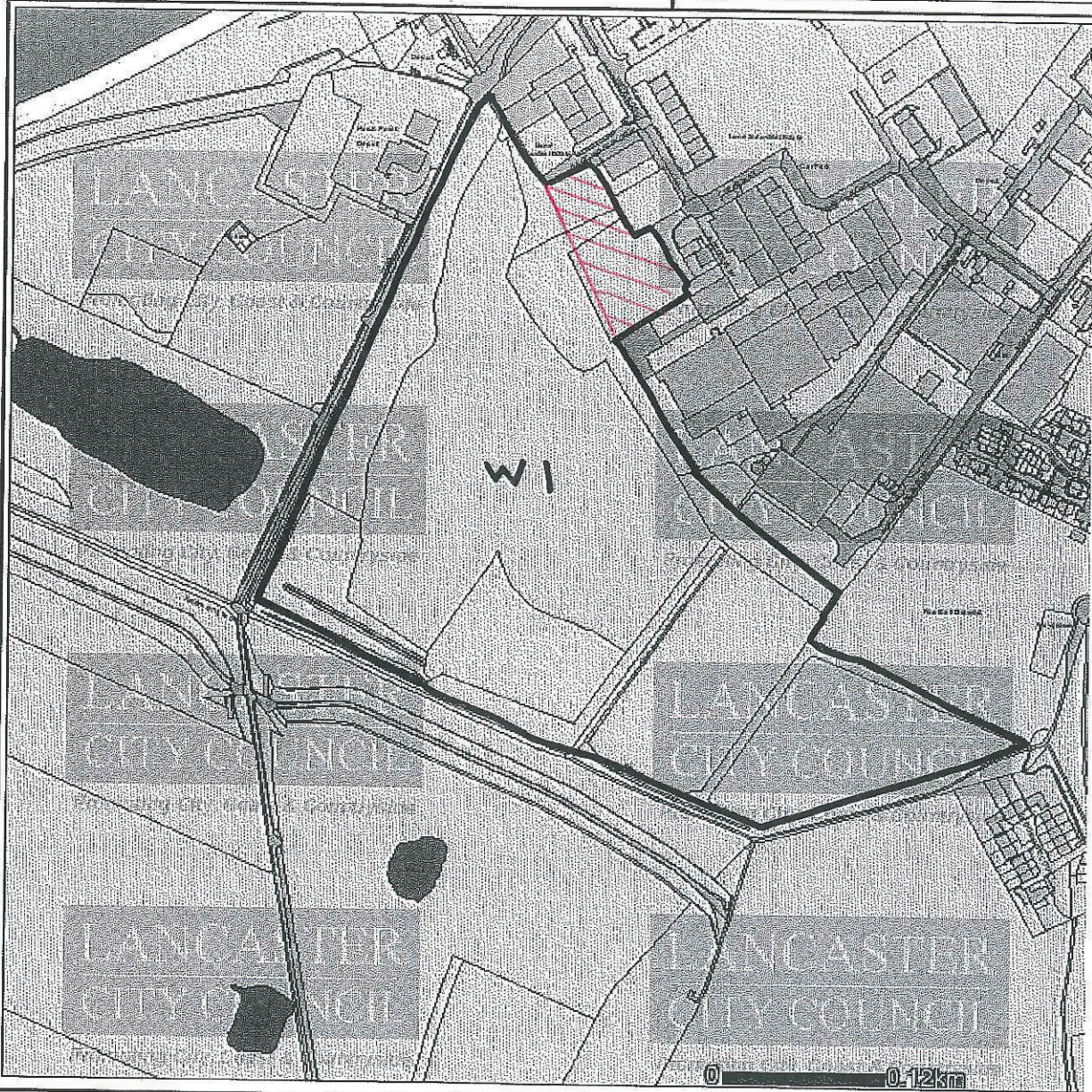


# Tree Preservation Order no. 496 (2011)

Freeman Wood, Lancaster

## LANCASTER CITY COUNCIL

Promoting City, Coast & Countryside



### Legend

key:



Area of hard-  
standing proposed  
for exclusion from  
TPO 496(2011)

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### Map Information

Scale:	1: 4913
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