



Committee: APPEALS COMMITTEE
Date: MONDAY, 23 APRIL 2012
Venue: LANCASTER TOWN HALL
Time: 2.00 P.M.

Please note that a site visit will take place prior to the meeting. The coach will depart from Morecambe Town Hall at 12.30 p.m. and from Lancaster Town Hall at 12.45 p.m.

A G E N D A

1. **Apologies for Absence**

2. **Minutes**

Minutes of the meeting held on 30 September 2011 (previously circulated)

3. **Items of Urgent Business authorised by the Chairman**

4. **Declarations of Interest**

MATTER FOR DECISION

5. **Tree Preservation Order No. 496 (2011) relating to woodland established on land West of Lune Industrial Estate, Lancaster (Pages 1 - 110)**

Report of Head of Governance

ADMINISTRATIVE ARRANGEMENTS

(i) **Membership**

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

(ii) **Substitute Membership**

Councillors June Ashworth, Jon Barry, John Harrison, Billy Hill, David Kerr, Vikki Price and Sylvia Rogerson

(iii) **Queries regarding this Agenda**

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068 or email jglenton@lancaster.gov.uk

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary, telephone (01524) 582170, or email memberservices@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER LA1 1PJ

Published on Friday, 13 April 2012

APPEALS COMMITTEE**TREE PRESERVATION ORDER NO. 496 (2011)****23 APRIL 2012****REPORT OF HEAD OF GOVERNANCE****PURPOSE OF REPORT**

To enable Members to consider the objections received to Tree Preservation Order No. 496 (2011) relating to woodland established on land West of Lune Industrial Estate, Lancaster, known locally as *Freemans Wood*, and thereafter whether or not to confirm the Order.

This matter will be dealt with in accordance with the adopted procedure for considering matters relating to individual applications, that is, the relevant matters for consideration by the Committee will be presented in the public part of the meeting, and the decision will be made after the exclusion of the press and public, on the basis that, in making its decision, the Committee will receive exempt information in the form of legal advice on possible legal proceedings arising from the decision (Paragraph 5A of Schedule 12A of the Local Government Act 1972) as amended by the Local Government (Access to Information) (Variation) Order 2006.

RECOMMENDATIONS

That Members consider the objections to Tree Preservation Order No. 496 (2011) relating to woodland established on land West of Lune Industrial Estate, Lancaster, known locally as *Freemans Wood*, and decide whether or not to confirm the Order.

1.0 Introduction

- 1.1 Under Section 198 of the Town and Country Planning Act 1990, the Local Planning Authority may make an Order in respect of a tree or group of trees if it appears that it is expedient in the interests of amenity to make provision for the protection of trees in their area.
- 1.2 In accordance with the Town and Country Planning (Tree Preservation Order) Regulations 1999, objections have been received to Tree Preservation Order No. 496 (2011), which has been made in relation to woodland established on land West of Lune Industrial Estate, Lancaster, known locally as *Freemans Wood*.
- 1.3 In accordance with the Regulations, it is necessary to consider the objections, and in order for the objections to be considered objectively, the matter is referred to the Appeals Committee.
- 1.4 The report of the City Council's Tree Protection Officer is attached (pages 3 to 8).

Appended to the report are:

- Appendix 1 - *Copy of the initial officer report (page 9);*

- Appendix 2 - *Tree Evaluation Method for Preservation Orders (TEMPO)* (page 10);
- Appendix 3 – *Copy of the original Tree Preservation Order No. 496 (2011)* (pages 11 to 24);
- Appendix 4 – *Photograph of the woodland* (page 25);
- Appendix 5 (a) and 5 (b) – *Aerial photographs of the site* (pages 26 and 27);
- Appendix 6 – *Copy of the appellant’s letter of objection* (pages 28 to 33);
- Appendix 7 - *Full copy of the Council’s response to the appellant’s letter of objection* (pages 34 to 37);
- Appendix 8 – *Copies of letters of support* (pages 38 to 108).

2.0 Proposal Details

2.1 The purpose of the report is to provide Members with details to enable them to decide whether or not to confirm Tree Preservation Order No. 496 (2011).

3.0 Details of Consultation

3.1 There has not been any consultation at this stage.

4.0 Options

- (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).

5.0 Conclusion

5.1 In the light of information contained within the report and its appendices, together with legal advice given at Committee and a site visit, Members are requested to determine whether or not to confirm Tree Preservation Order No. 496 (2011).

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Not applicable.

LEGAL IMPLICATIONS

A Legal Officer will be present at the meeting to advise the Committee .

FINANCIAL IMPLICATIONS

Not applicable.

BACKGROUND PAPERS

Tree Preservation Order No. 496 (2011)

Contact Officer: Jane Glenton

Telephone: (01524) 582068

Email: jglenton@lancaster.gov.uk

Ref: JEG

Contact: Maxine Knagg
Telephone: 01524 582381
FAX: 01524 582323
Email: mknagg@lancaster.gov.uk
Website: www.lancaster.gov.uk
Our Ref: TPO470/2010/MK

Regeneration & Policy Service
Development Management
PO Box 4
Town Hall
Lancaster
LA1 1QR

Date: 12th April 2012

Appeals Committee (TPO)

Trees subject of the Appeals Committee – Woodland established on land West of Lune Industrial Estate, Lancaster – known locally as ‘Freemans Wood’, subject of **Tree Preservation Order no. 496 (2011)**.

This report has been produced by Maxine Knagg (BSc Hons Arboriculture), Tree Protection Officer, Lancaster City Council.

1.0 Purpose of Report

1.1 This report relates to an objection received in relation to Tree Preservation Order no.496 (2011).

2.0 Background

2.1 Tree Preservation Order no 496 (20011) relates to an area of woodland established on land west of Lune Industrial Estate, an area more commonly known locally as Freeman’s Wood.

2.2 The site in question encompasses land under the control of a private company known as The Property Trust Plc. In addition, there is a relatively small, triangular piece of land to the south which is under the control of Lancaster City Council.

2.3 The site subject to the TPO is characterised by mixed species, broadleaf woodland densely planted to the north, south and western boundaries, thinning to the east of the site at the fringes of the woodland area close to the industrial estate. There is an open space to the centre of the land owned by The Property Trust Plc which has a long history of use by local people as a recreational facility.

- 2.4** The woodland trees in question are 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 are also clearly visible from the public highway Willow Lane. The woodland area subject of TPO no.496 (2011) makes a significant contribution to the visual appearance and character of the immediate and wider locality.
- 2.5** The value of the trees in question has been identified within the initial officer report and through the Council's Tree Evaluation Method for Preservation Orders (TEMPO), both documents are attached to this report at appendices 1 & 2 respectively.
- 2.6** Tree Preservation Order no. 496 (2011) was made on 19th December 2011, following local concerns which were raised when work was commenced to erect substantial galvanised fence panels, around the perimeter of land owned by The Property Trust Plc. This work was undertaken during November 2011 and completed in December 2011.
- 2.7** The Council 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
- 2.8** The woodland was assessed and identified to have important amenity value. Trees within the site and on land adjacent to the site have important amenity value; they make a significant impact on the visual appearance of the landscape, and contribute to the character of the wider locality. They are also an important resource for wildlife communities, providing habitat opportunities for protected species including nesting birds and bats. The trees were considered to be under potential threat should development of the site occur or further activities undertaken with the potential to harm trees.
- 2.9** The land owners The Property Trust Plc are known to have engaged in pre-application planning consultation with Lancaster City Council, though formal submission of a planning application has not taken place.
- 2.10** A copy of Tree Preservation Order no.496 (2011) is attached to this report at appendix 3.
- 2.11** A copy of digital and aerial (Google) photographs of the site and woodland in question are attached to this report at appendices 4 & 5(a), 5(b) respectively.

3.0 Objection Received

- 3.1** Lancaster City Council served a copy of TPO no.496 (2011) on a total of x26 interested parties, including the respective land owners.
- 3.2** The Council received x1 objection to the order, presented in a letter from Simon Jones Associates Ltd, and dated 18th January 2012, on behalf of the appellants The Property Trust Plc.
- 3.3** A full copy of the appellant's letter of objection is attached to this report at appendix 6.

3.4 A full copy of the Council's response to the appellant's letter of objection is attached to this report at appendix 7.

3.5 The main points for objection are identified along with the Council's response.

4.0 Main Points of Appellant's Objection and Council Response

4.1 Failure to comply with Regulation 3 of the 1999 Regulations

In our letter, dated 20th December 2011 the Council informed the land owners and interested third parties that Tree Preservation Order 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'.

Regulation 3 of the 1999 Regulations requires local authorities on making a TPO to serve on the owner and occupier of the land affected by the TPO: a copy of the TPO and a notice stating the reason for making the TPO, that objections or other representations about the trees or woodland specified in the TPO may be made to the LPA, the date, being at least 28 days after the date of the Regulation 3 Notice by which any such representations must be received by the LPA.

A number of land registry searches were undertaken the land owner and a total of twenty four interested third party neighbours were initially identified, and served with copies of the TPO, and regulation 3 notice. An additional two, third party landowners and neighbours were identified and served with a copy of the TPO 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.

Blue Book – Tree Preservation Orders – A Guide to The Law and Good Practice, section 3.21 states:

'If the LPA serve a number of regulation 3 notices on different people and 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 has fulfilled its obligations with respect to Regulation 3; the order has been made and served in accordance with the required legislation. As such, we do not accept and therefore reject this element of your objection.

4.2 Land included within W1 is not "woodland"

The boundary line of the site identifies the land where the woodland is established and the limits of the woodland edge.

Blue Book – Tree Preservation Orders – A Guide to The Law and Good Practice, section 2.1:

Whilst the Town & Country Planning Act (1990) ('Act') does not define the term 'tree' or indeed the term 'woodland'. A tree is 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 a considerable height and size. But for the purposes of TPO legislation the High Court has sought to apply the rationale that: *'a 'tree' is anything which ordinarily one would call a tree'*.

Clearly, brambles, dogwood, willow herb and other ground vegetation are not 'trees' and as such are not included or specified within the TPO. However, they do of course make an important contribution in wildlife terms in particular and increase the natural biodiversity of this important resource. The First Schedule contained within the TPO clearly identifies those tree species included within the order. Open spaces devoid of trees are obviously not protected in relation to the TPO.

The Oxford Dictionary defines a 'woodland' as *'land which contain trees'*. Woodland areas can of course differ significantly, in terms of visual characteristics depending upon the species composition, age distribution, local growing and climatic conditions, use of the site, historic management, or indeed an absence of formal management and the overall condition of trees within the woodland. Inevitably, woodlands evolve over time and again the composition of the woodland can also change.

The trees subject of TPO no.496 (2011) clearly form a highly visible woodland, that can be seen from a number of public vantage points to the east, south and west. They make an important contribution to the visual appearance and character of their locality being bounded by public footpaths and cycle paths on three sides. They make an important contribution as a wildlife resource in an area valued for its diversity of wildlife communities and breeding birds.

The site in question can be searched using Google Maps where it is identified as 'Freeman's Wood, Lancaster'.

We challenge the appellant's view that the trees in question would not be considered 'woodland' by any 'reasonable person'. On the contrary, we would suggest it would be an entirely unreasonable person who could dismiss this area of trees in question, as anything other than a woodland.

We entirely reject the appellant's view that 'W1' is not woodland.

4.3 TPO in conflict with Council's adopted policies for the site

Lancaster City Council is currently considering the allocation of land in this area. The TPO does not conflict with this allocation/designation. Dependent in part upon the future allocation and designation of this land, should a planning application be made in the future, a TPO will ensure that the woodland in question becomes a material consideration. A TPO does not prevent development. A full planning consent, will override a TPO where trees would be required to be removed to facilitate implementation of any future consent.

We reject the appellants view that TPO conflicts with adopted policies for the site.

4.4 Other Issues

TPO no.496 (2011) extends across a number of different land ownership boundaries. Lancaster City Council does have ownership for some land affected by the TPO. Should the appellants land become subject of a future planning application, and consent be granted, 'off site' trees not under the direct control of the appellant may be implicated. As such, regardless of ownership it is essential that 'off site' trees are afforded protection to enable their future consideration and protection should it be required.

It came to the attention of the LPA that fencing was being erected around the appellant's land in question, shortly before Christmas. This is of course something which as land owners they have the right to do, however it also raises local concerns that woodland trees may become under threat of damage or removal.

The LPA has powers to make and serve a TPO if it considers it: *'expedient in the interest of amenity to make provision for the preservation of trees or woodland in their area'*.

Blue Book – Tree Preservation Orders – A Guide to The Law and Good Practice, section 3.2:

Whilst the 'Act' does not define amenity, it is 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. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees or at least part of them should be visible from a public place, such as a road or footpath. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen and eyesore or future development; the value of trees maybe enhanced by their scarcity; and their value as a group or woodland may be collective only. Other factors, such as importance to wildlife maybe taken into account, though not sufficient alone to warrant a TPO.

There is no doubt in the view of Lancaster City Council that the TPO in question has been made, and served in accordance with the required legislation. Its use is appropriate and entirely justified in the interest of public amenity.

5.0 Decision to Serve TPO no.496 (2011)

5.1 Lancaster City Council considers it expedient in the interests of amenity to make provision for the preservation of the woodland in question, and at that time **under sections 198, 201 and 203 of the Town & Country Planning Act 1990.**

Lancaster City Council cite the following reasons.
Woodland (W1):

- important visual amenity

- provide greening and screening to the industrial estate
- important wildlife resource
- under threat from removal/damage

The trees are a hugely important component within the site, they have sufficient amenity value and importance within the landscape to justify their protection with TPO no.496 (2011).

It should be noted that a tree preservation order does not prevent works being undertaken that are appropriate and reasonable and in the interest of good arboriculture practice and in compliance to current standard of practice BS 3998 (2010) Tree Work - recommendations.

A tree preservation order does not obstruct or prevent development, it does however ensure that trees become a material consideration within any future plans to develop the site in question.

Maxine Knagg BSc (Hons) Arboriculture
Tree Protection Officer, Development Management
Lancaster City Council

Proposed New Tree Preservation Order No: 496 (2011)**Site: Land to the west of Lune Industrial Estate, Lancaster****Location of Trees: To west of industrial estate and immediately adjacent to cycle/public footpaths****Assessment:**

I have assessed an area of woodland which is established to the west of Lune Industrial Estate. The land is bounded by two public footpaths and a cycle way. To the north of the wood is an important wildlife resource known as Freeman's Pools, wildlife pools established by the Environment Agency in association with the management of local flood issues. Beyond the pools is the River Lune.

The woodland is comprised of a number of tree species including sycamore, hawthorn, ash, elder, willow and poplar. The trees are clearly visible from a number of public vantage points including the length of the cycle/footpath to the north, west and south of the site. Lune Industrial Estate is established to the eastern boundary of the land. There is an under-storey element of brambles and nettles.

The woodland has its greatest value in providing greening and screening to the industrial estate, and as a green backdrop to the public foot/cycle paths. It is an important resource for wildlife making important links with a similar area trees to the west.

The wider area is frequented by cyclists, walkers and dog walkers alike and as such is a valuable local amenity of which the trees are undoubtedly an important component providing interest, greening, screening, and character to the locality.

The site is known to be designated as a brown field site and maybe developed in the future. A Tree Preservation Order does not prevent development; however it does ensure that trees are protected and that they are a material consideration in any future plans to develop the site.

Generally the condition of the trees is good, however the absence of formal management in recent years does mean that certain works maybe required in the interests of good arboriculture practice. A woodland management plan would be of benefit to an area such as this to ensure its long term sustainability, that health & safety issues are addressed and that new tree planting is on going and appropriate, ensuring species diversity and maximum amenity and wildlife benefits.

For the purpose of this report the woodland has been identified and referenced as **W1**.

Land Owners:

The Property Trust plc
Kingsgate House
114/115 High Holborn
London WC1V 6JJ
Tel: 020 7242 0008

Third Party Neighbours:

1. Lune Industrial Estate
2. Land search required

Maxine Knagg BSc (Hons) Arboriculture
Tree Protection Officer
Regeneration & Policy Services
(12.12.2011)

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO):

SURVEY DATA SHEET & DECISION GUIDE

Date: 12.12.2011	Surveyor: M Knagg
Tree details: 496 (2011)	
Tree/Group No: W1	Species: Mixed species predominantly broadleaf species
Owner (if known): The Property Trust plc, Kingsgate House, 114/115 High Holborn, London WC1V 6JJ	

Part 1: Amenity assessment

a) Condition & suitability for TPO:

Refer to Guidance Note for definitions

- | | |
|-----------|-------------------------|
| 5) Good | Highly suitable |
| 3) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Unsafe | Unsuitable |
| 0) Dead | Unsuitable |

Score & Notes

3 – Little evidence of management in recent times, good health generally

b) Remaining longevity (in years) & suitability for TPO:

Refer to 'Species Guide' section in Guidance Note

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| 2) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10 | Unsuitable |

Score & Notes

4 – many trees have the potential to remain for extensive periods extending into multiple decades and beyond

c) Relative public visibility & suitability for TPO:

Consider realistic potential for future visibility with changed land use; refer to Guidance Note

- | | |
|--|-------------------------|
| 5) Very large trees, or large trees that are prominent landscape features | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| 3) Medium trees, or larger trees with limited view only | Just suitable |
| 2) Small trees, or larger trees visible only with difficulty | Unlikely to be suitable |
| 1) Young, v. small, or trees not visible to the public, regardless of size | Probably unsuitable |

Score & Notes

4 – clearly visible from a number of public vantage points; important landscape features

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | | |
|--|--|
| 5) Principal components of arboricultural features, or veteran trees | Score & Notes
4 – greatest value is as a woodland/scrub land area, amenity and w3ildlife value |
| 4) Members of groups of trees important for their cohesion | |
| 3) Trees with identifiable historic, commemorative or habitat importance | |
| 2) Trees of particularly good form, especially if rare or unusual | |
| 1) Trees with none of the above additional redeeming features | |

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify; refer to Guidance Note

- | | |
|--|--|
| 5) Known threat to tree | Score & Notes
2 – significant potential for future development |
| 3) Foreseeable threat to tree | |
| 2) Perceived threat to tree | |
| 1) Precautionary only | |
| 0) Tree known to be an actionable nuisance | |

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| 15+ | Definitely merits TPO |

Add Scores for Total:

17

Decision:

Merits serving with TPO

I hereby certify that this is a true copy of the original order.

A. H. Kenward 20/12/11

CITY COUNCIL OF LANCASTER
TREE PRESERVATION ORDER NO. 496 (2011)

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LAND TO THE WEST OF
LUNE INDUSTRIAL ESTATE
LANCASTER

PO BOX 4
TOWN HALL
DALTON SQUARE
LANCASTER
LA1 1QR

TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
As amended by the Town and Country Planning (Trees)(Amendment)(England) Regulations 2008

MODEL FORM OF TREE PRESERVATION ORDER

Town and Country Planning Act 1990
Tree Preservation Order No. 496 (2011)

The City Council of Lancaster, in exercise of the powers conferred on them by sections 198 [201] and 203 of the Town and Country Planning Act 1990 hereby make the following Order

Citation

1. This Order may be cited as Tree Preservation Order No. 496 (2011).

Interpretation

2. In this Order "the authority" means the [Lancaster City Council] and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on December 2011.

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners), and subject to article 5, no person shall

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

5.(1) Nothing in article 4 shall prevent

- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary
 - (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
- (aa) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming certain orders and schemes);

- (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes;
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development Order) 1995;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991; or
- (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

(2) In paragraph (1), "statutory undertaker" means any of the following:

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
- a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewerage undertaker,
- the Civil Aviation Authority or a body acting on behalf of that Authority,
- the Post Office.

Application of provisions of the Town and Country Planning Act 1990

7. (1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

Directions as to replanting

8. (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9. (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article

- (a) if more than 12 months has elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or

(d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article

"development value" means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

Application to trees to be planted pursuant to a condition

10. In relation to the tree[s] identified in the first column of Schedule 1 by the letter "C", being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when [that tree is planted] [those trees are planted].

Dated this 19th day of December 2011

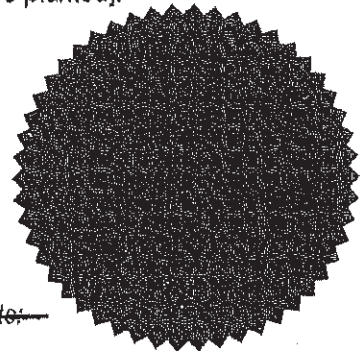
The Common Seal of the [City Council of Lancaster was hereunto affixed in the presence of -

~~Deputy~~ Chief Executive

~~if the Council's Standing Orders do not require the sealing of such documents:~~

Signed on behalf of the City Council of Lancaster

Authorised by the Council to sign in that behalf



CONFIRMATION OF ORDER

This Order was confirmed by the City Council of Lancaster with/without modification on the _____ day of _____

OR

This Order was confirmed by the City Council of Lancaster, subject to the modifications indicated by

on the _____ day of _____

Authorised by the Council to sign in that behalf

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by City Council of Lancaster on the _____ day of _____

Authorised by the Council to sign in that behalf

VARIATION OF ORDER

This Order was varied by the City Council of Lancaster on the _____ day of _____
under the reference number _____
reference number of the variation order is

Authorised by the Council to sign in that behalf

REVOCATION OF ORDER

This Order was revoked by the City Council of Lancaster on the _____ day of _____
under the reference number _____
reference number of the revocation order is

Authorised by the Council to sign in that behalf

SCHEDULE 1

SPECIFICATION OF TREES

**Trees specified individually
(encircled in black on the map)**

Reference on map	Description	Situation
------------------	-------------	-----------

**Trees specified by reference to an area
(within a dotted black line on the map)**

Reference on map	Description	Situation
------------------	-------------	-----------

**Groups of trees
(within a broken black line on the map)**

Reference on map	Description (including number of trees in the group)	Situation
------------------	--	-----------

**Woodlands
(within a continuous black line on the map)**

Reference on map	Description	Situation
------------------	-------------	-----------

W1	Sycamore, Hawthorn Ash, Elder, Willow and Poplar	Land west of Lune Industrial Estate
----	--	--

SCHEDULE 2

PART I
 PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 APPLIED
 WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1)</p> <p>(i) omit</p> <p>“, in such manner as may be prescribed by a development order,”</p> <p>“such” in the second place where it appears, and</p> <p>“as may be so prescribed”; and</p> <p>(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In subsection (2)</p> <p>(i) after “contain” insert “, as regards each such order”; and</p> <p>(ii) for paragraphs (a) and (b) substitute</p> <p>(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p>(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State’s determination of it.”</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>

<p>Section 70 (determination of applications: general considerations)</p>	<p>(a) In subsection (1)</p> <p>(i) substitute</p> <p>"Subject to subsections (1A) and (1B), where" for "Where";</p> <p>"the authority" for "a local planning authority";</p> <p>"consent under a tree preservation order" for "planning permission" where those words first appear; and</p> <p>"consent under the order" for "planning permission" in both of the other places where those words appear;</p> <p>(ii) after "think fit", insert</p> <p>"(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and</p> <p>(iii) omit "subject to sections 91 and 92,".</p> <p>(b) After subsection (1) insert</p> <p>"(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting)."</p> <p>(c) Omit subsections (2) and (3).</p>
<p>Section 75 (effect of planning permission)</p>	<p>(a) In subsection (1) substitute</p> <p>(i) "Any" for the words from "Without" to "any";</p> <p>(ii) "consent under a tree preservation order" for "planning permission to develop land";</p> <p>(iii) "the consent" for "the permission"; and</p> <p>(iv) "the land to which the order relates" for "the land".</p> <p>(b) Omit subsections (2) and (3).</p>

Section 78 (right to appeal against planning decisions and failure to take such decisions)

(a) In subsection (1) substitute

- (i) "the authority" for "a local planning authority";
- (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear;
- (iii) "consent under such an order" for "planning permission" in the second place where those words appear;
- (iv) for paragraph (c) substitute
 - "(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
 - (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,".

(b) Omit subsection (2).

(c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute

"in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant."

(d) For subsection (4), substitute

"(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."

(e) For subsection (5), substitute

"(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection

	<p>(1)(d), it shall be assumed that the authority decided to refuse the application in question."</p>
<p>Section 79 (determination of appeals)</p>	<p>(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority".</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute</p> <ul style="list-style-type: none"> (i) "section 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5"; (ii) "consent under a tree preservation order" for "planning permission"; and (iii) "the authority" for "the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of sections 65 or 71." <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after "section 78".</p>

PART II
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,
AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order

- (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
- (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order

- (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

(1) Where the authority

- (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;

- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant if subject to conditions;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

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

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

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

Section 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.

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

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

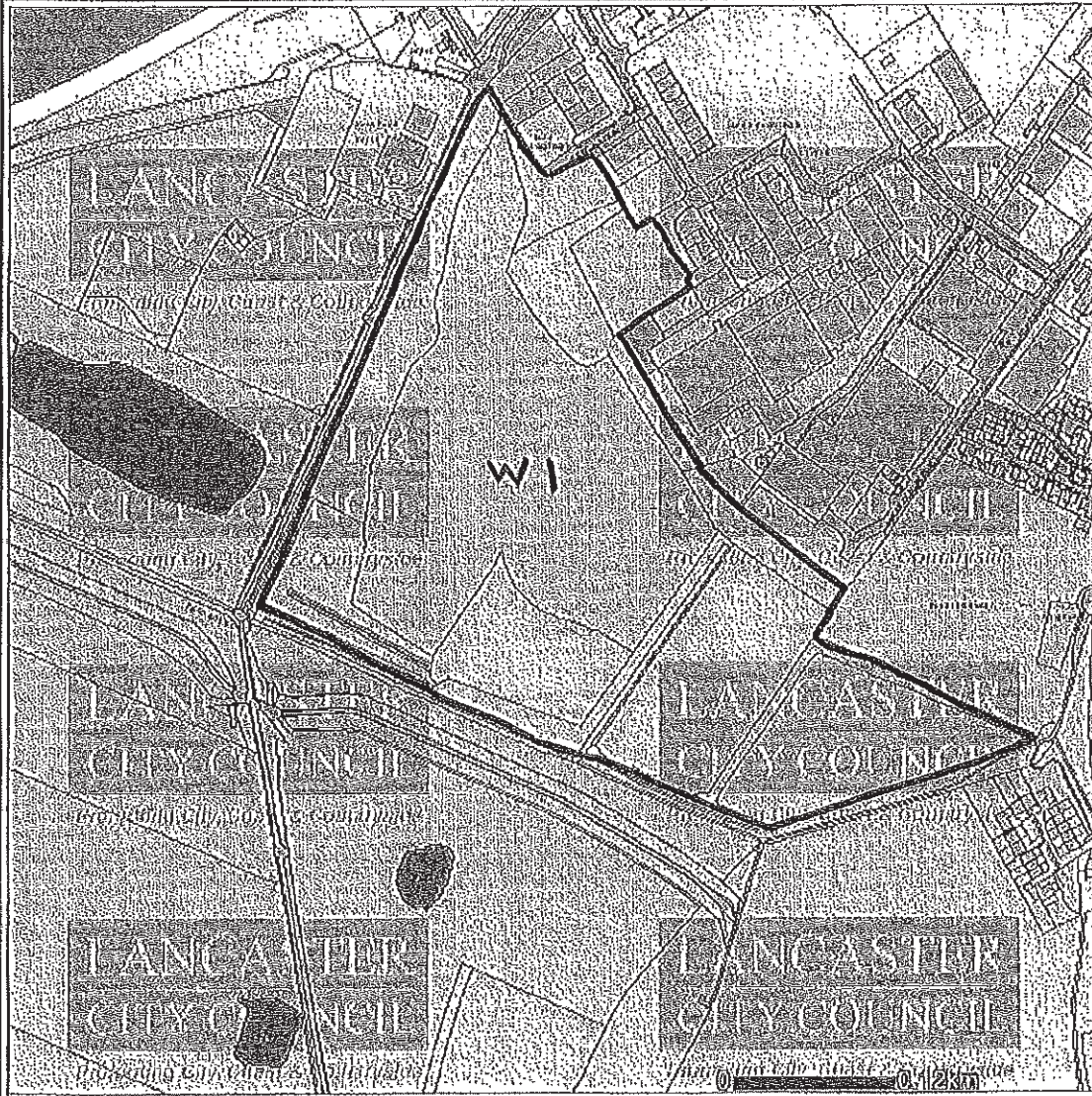
(7) Schedule 6 applies to appeals under section 78.

Tree Preservation Order no. 496 (2011)

Freeman Wood, Lancaster

**LANCASTER
CITY COUNCIL**

Promoting City, Coast & Countryside



Legend

© Crown copyright and database rights 2011. Ordnance Survey
100025403

Map Information

Scale:	1: 4913
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**SIMON JONES
ASSOCIATES Ltd.**
ARBORICULTURAL PLANNING CONSULTANTS

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Planning & Development - Hazard & Safety
Tree & Woodland Management - Expert Witnesses

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A., Arb. Assoc. Registered Consultant
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F. Arbor. A., Arb. Assoc. Registered Consultant



Lancaster City Council
Planning Services
PO Box 4
Town Hall
Lancaster
LA1 1QR

18th January 2012

Dear Sir/Madam

Ref.: **TOWN & COUNTRY PLANNING ACT 1990**
TOWN & COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER No. 496 (2011), Land to the south-west of
Lune Industrial Estate and adjacent to Unit 10, Abbots Way, Lune Business
Park, Lancaster

OBJECTION

On behalf of my client, The Property Trust Group, I wish to formally object to the imposition of the above Tree Preservation Order. The objection is made in respect of Woodland W1, as specified in the first schedule to the order.

I carried out a general inspection of this site on Thursday the 12th of January 2012. I also carried out a brief tour of the neighbourhood of the site, in order to assess the trees' visibility from local public viewpoints, their individual impact, and their wider impact within the local landscape.

This objection is made on the following grounds:

1.0. Failure to comply with Regulation 3 of the 1999 Regulations.

1.1. The Council has not complied with the requirements of Regulation 3 of the Town and Country Planning (Trees) Regulations 1999 in that the "Regulation 3 Notice" accompanying service of the Tree Preservation Order contains no statement whatsoever of the Council's reasons for its making, as required by Regulations 3(1)(a)(ii) and 3(2)(a). No reasons have been given for the making of the Order. In our view, this flaw fatally undermines the validity of the Tree Preservation Order, as it has not been correctly made and served in accordance with the Act or Regulations.

1.2. Failing to comply with Regulation 3(1)(a)(ii) and 3(2)(a) would render any decision to confirm the order unlawful and liable to quashing by the High Court. The requirements of Regulations 3(1)(a)(ii) and 3(2)(a) are fundamental, because persons who may be affected by the TPO must be able to understand in advance, and challenge if they wish to do so, the reasoning behind the TPO. Any reasons which are provided for the first time at the stage of confirmation of the TPO would be manifestly inadequate, because those affected by it are entitled to a proper opportunity (i.e. the 28 day period provided by the Regulations) to consider those reasons and respond to them.

1.3. Moreover, it is our understanding that the Council has not complied with the requirements of Regulation 3(1)(a) of the Regulations in that it has not served a copy of the Order on every owner and occupier of the land affected by the Order. The boundary of the area of W1 as drawn on the TPO encompasses an area on its north-eastern boundary which is not within our client's ownership, but is within the curtilages of adjacent industrial units to the north-east. We are informed that the relevant occupier of these industrial units has not been served with a copy of the TPO. The area of land in question is at least partially cleared, levelled and occupied by hard standing, a matter addressed in more detail below.

1.4. Following on from the above, it is clear that the Council cannot confirm the TPO as things stand, and it accordingly must be withdrawn immediately. If the Council wishes to pursue the making and confirmation of a TPO on this site (which for the detailed reasons given below, we consider to be unjustified in any case), a new one must be issued, accompanied by a notice properly including the reasons for the making of the Order, so that possible objectors are given the statutory 28 days to consider those reasons and address them; and it must be properly served on all persons interested in the land affected.

1.5. For these reasons, the Order in our submission clearly cannot stand and should therefore be immediately withdrawn.

2.0. Land included within W1 is not "woodland".

2.1. Without prejudice to the fundamental basis of objection as set out above, I set out below our objection to the designation of the affected land as "woodland", in the light of my recent inspection and prevailing central Government advice.

2.2. The overwhelming majority of the land included within the boundary of W1 as drawn on the TPO plan is not "woodland", by any definition or common understanding of that term. The central area of the site comprises open grassland containing no trees or woody shrubs at all, which formerly was occupied by both a cricket ground and a football pitch, as is clearly shown on the relevant Ordnance Survey map of the area. Although the grassland is currently overgrown and no longer managed as sports pitches, it remains open, with no tree or woodland cover.

2.3. The areas to the north, west and east of the open grassland are also not "woodland", but comprise areas of abandoned grassland overgrown with undergrowth of bramble, willowherb and other common ruderal vegetation, with

bushes and scrub consisting predominantly of hawthorn and elder, together with gorse, dogwood, goat willow and occasional ash. Whilst the density of this vegetation type varies, over almost the full extent of our client's ownership it can only properly be described as "scrub", rather than as "woodland". The few trees included are generally of indifferent or poor quality, and do not comprise any specimens of sufficient merit to warrant protection as individual specimens in their own right.

2.4. Although the term "woodland", is not defined within the 1990 Act, current Government guidance in Paragraphs 2.2 and 2.3 of the DETR document *Tree Preservation Orders – A Guide to the Law and Good Practice* (the "Blue Book") (March 2000) state:-

"2.2. Neither does the Act define the term 'woodland'. In the Secretary of State's view, trees which are planted or grow naturally within the woodland area after the TPO is made are also protected by the TPO. This is because the purpose of the TPO is to safeguard the woodland unit as a whole which depends on regeneration or new planting. But as far as the TPO is concerned, only the cutting down, destruction or carrying out of work on trees within the woodland area is prohibited; whether or not seedlings, for example, are 'trees' for the purposes of the Act would be a matter for the Courts to decide in the circumstances of the particular case.

2.3. A TPO may only be used to protect trees and cannot be applied to bushes or shrubs, although in the Secretary of State's view a TPO may be made to protect trees in hedges or an old hedge which has become a line of trees of a reasonable height and is not subject to hedgerow management. Separate legislation is in place to regulate the removal of hedgerows."

2.5. The application of this TPO to open grassland, and to bushes and shrubs, is therefore in direct conflict with Government guidance as to the appropriate use of Tree Preservation Orders, and therefore should not be confirmed for this reason.

2.6. The 1990 Act and the Blue Book do not define the term woodland, and there is no precise definition of "woodland" in either legislation or judicial decisions. Legally therefore, there is normally held¹ to be no particular reason to depart from the ordinary dictionary definition of "woodland" as "land covered with trees"². It is therefore reasonable to hold that the word "covered" implies that a substantial number (but not necessarily all) of tree canopies should be touching each other for an area or group of trees to be termed "woodland".

2.7. The concept of what constitutes "woodland" is, however, refined considerably by the definitions assigned to it by other authorities. For example, the Forestry Commission's *National Inventory of Woodland and Trees – Great Britain* (2003) defines it in the following terms:

"In the United Kingdom woodland is defined as land with a minimum area of 0.1 ha under stands of trees with, or with the potential to achieve, tree crown cover of more than 20%. Areas of open space integral to the woodland are also included. Orchards and urban woodland between 0.1 and 2 ha are excluded. Intervening land-classes such as roads, rivers or pipelines are disregarded if less than 50m in extent".

¹ The Law of Trees, Forests and Hedgerows, (2002) Mynors, C; section 15.6.6.

² New Oxford Dictionary of English (1998).

2.8. It is clear that in the present case, the vast majority of the area included within W1 does not accord either with the ordinary dictionary definition of the term "woodland", nor with the Forestry Commission's definition as cited above. Moreover, as mentioned above, the area of W1 includes land within the curtilage of adjacent industrial units to the north-east, which is partially, if not completely, levelled, cleared and laid to hard standing. The inclusion of this land has doubtless arisen as a result of the TPO plan being based on an out-of-date map base, but nonetheless, it is clear that the land so covered could not be considered to be "woodland" by any reasonable person.

2.9. The only part of the area encompassed by W1 within our client's ownership which could reasonably be described as comprising "woodland", according to ordinary understanding and the above definition, consists of a narrow strip of more established semi-mature trees (principally sycamore) and understorey of mature hawthorn concentrated towards the south-west corner of the site. At its maximum, this strip is only approximately 40m in width, and tapers down to only around 10m in width as one progresses eastwards along the southern limits of the site. This represents only a very small fraction of the land which has been designated as "woodland" within this TPO.

2.10. The designation of the open land and scrub as "woodland" is also at odds with the Council's own adopted policies for the area of the site, as discussed below.

3.0. TPO in conflict with Council's adopted policies for the site.

3.1. The designation of the entirety of the land south of the Lune Industrial Estate as "woodland" within this TPO is at odds with, and belied by, the Council's own planning policies for the area. The adopted 2004 Lancaster City Council Local Plan clearly identifies three different policy designations for the area, each of which is separately identified on the Proposals Map.

3.2. The areas of both the former cricket ground and the former football pitch are identified within the 2004 Local Plan as being governed by Policy R1, which defines them as "Outdoor Playing Spaces", and seeks to protect them from proposed development. This designation plainly acknowledges that the areas are not "woodland", and accordingly their inclusion within a woodland TPO is completely at odds with their identification under this policy.

3.3. Similarly, the areas of open grassland, weed growth, and encroaching scrubland surrounding the former playing areas are identified within the Local Plan as being subject to Policy E29, which defines them as "Urban Green Space". The supporting text to the policy defines these areas as "open space", which as a matter of common sense acknowledges that they are not "woodland". Again, their inclusion within a woodland TPO is therefore totally inconsistent with their identification under this policy.

3.4. Two strips of land along the western and southern boundaries of the site, and two rectangular areas to the south-east and east of the former playing pitches, are encompassed within a brown line on the Local Plan Proposals Map, which identifies

them as "Woodland Opportunity Areas", governed by Policy E27. The policy states, *inter alia*:-

"Within these areas, the Council will seek to establish new woodlands using predominantly native species and allowing, where practical, for public access and the protection and enhancement of nature conservation interests."

3.5. Although a footnote beneath the policy notes that it is partly superseded by policies within the Council's emerging Core Strategy, the wording of the policy makes it clear that its view of the area was that it represented an opportunity site for new woodland, rather than being an existing woodland (albeit that it does include the more wooded strip along the site's southern boundary discussed above). This further undermines the inclusion of the areas of scrub and undergrowth within a woodland TPO, as plainly the aspiration to create new woodland within the relevant areas had not been fulfilled at the time of the policy's formulation and adoption, and has not been brought about since.

3.6. In our view, therefore, the validity and appropriateness of the inclusion of our client's land within a single woodland TPO designation is clearly undermined by the Council's recognition, within its own adopted planning policies, that the site does not consist of woodland, and indeed has been sought to be safeguarded by two of these policies for purposes that are incompatible with woodland coverage.

4.0. Other Issues.

4.1. The coverage of W1 within the Order extends beyond the southern boundary of our client's site to include a strip of land adjacent to a public footpath running roughly east-west, which abuts open agricultural land to the south. It also extends to cover a roughly triangular-shaped area of land to the south-west of an existing area of recreation land (including a children's playground) adjacent to Willow Way. This area is similar in composition and vegetation coverage to parts of our client's land, being essentially overgrown undergrowth and scrub, albeit at a slightly denser level of coverage by the latter. Our understanding is that the both the strip adjoining the public footpath, and the triangular area, are within the ownership of the City Council.

4.2. Whilst there is nothing in legislation or guidance which would prevent the City Council from making a TPO on land within its own ownership and control, it is generally the case that Local Authorities are presumed to be responsible tree owners and managers, and that imposing a Tree Preservation Order on their own land is therefore unnecessary, and serves little, if any, useful public purpose.

4.3. Secondly, the circumstances and timing of the imposition of the Tree Preservation Order in this case suggest that it may have been prompted by our clients having recently commenced work to replace the broken and dilapidated former chain link fencing around the boundary of their land, in order to control unauthorised public access to it. By purporting to protect the entirety of the land within our client's ownership by designating it as a "woodland", the Order in our view represents an excessive and over-reactive response, primarily intended to act as an obstacle to any potential future lawful aspirations for the development or other beneficial use of the land by our clients. This is not in accordance with the proper

use or purpose of Tree Preservation Orders, which is to protect selected trees and woodlands in the public interest, "if their removal would have a significant impact on the local environment and its enjoyment by the public."

5.0. Conclusion.

5.1. The Council has not complied with the requirements of Regulation 3 of the Town and Country Planning (Trees) Regulations 1999, as no reasons have been given for its making, and it has not been correctly served on all interested parties. It should therefore be withdrawn immediately, as it cannot lawfully be confirmed.

5.2. The Order purports to designate land as "woodland" which manifestly does not contain or comprise woodland, but includes open neglected grassland, undergrowth and scattered bushes and scrubland, as well as land which has been cleared and laid to hard standing. Only a very small strip of the land within our client's ownership is comprised of a vegetation type which could reasonably be described as "woodland", and this occupies only a tapering narrow strip in the extreme south-west corner and along the southern boundary. The Council's own planning policies recognize that the majority of the site is not woodland, and applies other policy designations which reflect its non-woodland land use.

5.3. The circumstances of the Order's making suggest that its purpose is not in accordance with the proper use and purpose of Tree Preservation Orders, but to impose a form of blanket control which is entirely inappropriate, and incompatible with the letter and spirit of relevant government guidance. Furthermore, there is no evidence that the Local Planning Authority has undertaken any "structured and consistent" assessment of the site, contrary to the relevant guidance.

5.4. For these reasons, this Tree Preservation Order is therefore fundamentally flawed and in clear conflict with Government guidance on the use of Tree Preservation Orders. In our submission, to confirm it would be both unlawful, and directly contrary to Government advice.

5.5. On behalf of my client, I thus request that this Tree Preservation Order be withdrawn, and not confirmed.

Yours faithfully

Mark Mackworth-Praed BA (Cantab.), M.Sc., F. Arbor. A.
For Simon Jones Associates Ltd.

Contact: Maxine Knagg
Telephone: (01524) 582384
Fax: (01524) 582323
E-mail: mknagg@lancaster.gov.uk
Website: www.lancaster.gov.uk

APPENDIX 7

Simon Jones
Associates Ltd
FAO: Mr M Mackworth-Praed
17 Cross Road
Tadworth
Surrey
KT20 5ST

Regeneration & Policy Service
Development Management
PO Box 4
Town Hall
Lancaster
LA1 1QR

Date: 6th March 2012

Dear Sir

Re: Tree Preservation Order no. 496(2011) affecting woodland established on land immediately south-west of Lune Industrial Estate, Lancaster

Further to your letter of objection to the above Tree Preservation Order, dated 18th January 2012, and written on behalf of your client, The Property Trust Plc.

In the interest of clarity, we will seek to address each element of your objection in numeric order, as they appear within your letter.

In the event that you wish to maintain your objection, following due consideration of the contents of our response. We will arrange for a formal TPO Appeal Committee to be held, upon consideration Members will determine whether to; confirm the order without modification; to confirm the order with modification; or not to confirm the order.

You will be informed of the date and elements of the procedure in due course; you will be contacted by a member of staff from our Democratic Service department accordingly.

1.0 Failure to comply with Regulation 3 of the 1999 Regulations

In our letter, dated 20th December 2011 the Council informed the land owners and interested third parties that Tree Preservation Order 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'.

Regulation 3 of the 1999 Regulations requires local authorities on making a TPO to serve on the owner and occupier of the land affected by the TPO: a copy of the TPO and a notice stating the reason for making the TPO, that objections or other representations about the trees or woodland specified in the TPO may be made to the LPA, the date, being at least 28 days after the date of the Regulation 3 Notice by which any such representations must be received by the LPA.

A number of land registry searches were undertaken the land owner and a total of twenty four interested third party neighbours were initially identified, and served with copies of the TPO, and regulation 3 notice. An additional two, third party landowners and neighbours were identified and served with a copy of the TPO 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.

Blue Book – Tree Preservation Orders – A Guide to The Law and Good Practice, section 3.21 states:

‘If the LPA serve a number of regulation 3 notices on different people and 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 has fulfilled its obligations with respect to Regulation 3; the order has been made and served in accordance with the required legislation. As such, we do not accept and therefore reject this element of your objection.

2.0 Land included within W1 is not “woodland”

The boundary line of the site identifies the land where the woodland is established and the limits of the woodland edge.

Blue Book – Tree Preservation Orders – A Guide to The Law and Good Practice, section 2.1:

Whilst the Town & Country Planning Act (1990) (‘Act’) does not define the term ‘tree’ or indeed the term ‘woodland’. A tree is 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 a considerable height and size. But for the purposes of TPO legislation the High Court has sought to apply the rationale that: ‘a *‘tree’ is anything which ordinarily one would call a tree’.*

Clearly, brambles, dogwood, willow herb and other ground vegetation are not ‘trees’ and as such are not included or specified within the TPO. However, they do of course make an important contribution in wildlife terms in particular and increase the natural biodiversity of this important resource. The First Schedule contained within the TPO clearly identifies those tree species included within the order. Open spaces devoid of trees are obviously not protected in relation to the TPO.

The Oxford Dictionary defines a ‘woodland’ as *‘land which contain trees’.* Woodland areas can of course differ significantly, in terms of visual characteristics depending upon the species composition, age distribution, local growing and climatic conditions, use of the site, historic management, or indeed an absence of formal management and the overall condition of trees within the woodland. Inevitably, woodlands evolve over time and again the composition of the woodland can also change.

The trees subject of TPO no.496 (2011) clearly form a highly visible woodland, that can be seen from a number of public vantage points to the east, south and west. They make an important contribution to the visual appearance and character of their locality being bounded by public footpaths and cycle paths on three sides. They make an important contribution as a wildlife resource in an area valued for its diversity of wildlife communities and breeding birds.

The site in question can be searched using Google Maps where it is identified as 'Freeman's Wood, Lancaster'.

We challenge the appellant's view that the trees in question would not be considered 'woodland' by any 'reasonable person'. On the contrary, we would suggest it would be an entirely unreasonable person who could dismiss this area of trees in question, as anything other than a woodland.

We entirely reject the appellant's view that 'W1' is not woodland.

3.0 TPO in conflict with Council's adopted policies for the site

Lancaster City Council is currently considering the allocation of land in this area. The TPO does not conflict with this allocation/designation. Dependent in part upon the future allocation and designation of this land, should a planning application be made in the future, a TPO will ensure that the woodland in question becomes a material consideration. A TPO does not prevent development and a full planning consent, will override a TPO where trees would be required to be removed to facilitate implementation of any future consent.

We reject the appellants view that TPO conflicts with adopted policies for the site.

4.0 Other Issues

TPO no.496 (2011) does extend across a number of different land ownership boundaries. Lancaster City Council does have ownership for some land affected by the TPO. Should the appellants land become subject of a future planning application, and consent be granted, 'off site' trees not under the direct control of the appellant may be implicated. As such, regardless of ownership it is essential that 'off site' trees are afforded protection to enable their future consideration and protection should it be required.

It came to the attention of the LPA that fencing was being erected around the appellant's land in question, shortly before Christmas. This is of course something which as land owners they have the right to do, however it also raises local concerns that woodland trees may become under threat of damage or removal.

The LPA has powers to make and serve a TPO if it considers it: *'expedient in the interest of amenity to make provision for the preservation of trees or woodland in their area'*.

Blue Book – Tree Preservation Orders – A Guide to The Law and Good Practice, section 3.2:

Whilst the 'Act' does not define amenity, it is 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. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees or at least part of them should be visible from a public place, such as a road or footpath. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen and eyesore or future development; the value of trees maybe enhanced by their scarcity; and

their value as a group or woodland may be collective only. Other factors, such as importance to wildlife maybe taken into account, though not sufficient alone to warrant a TPO.

There is no doubt in our view the TPO in question has been made, and served in accordance with the required legislation. Its use is appropriate and entirely justified in the interest of public amenity.

We would be grateful if you would confirm your intentions within 21 days of the date of this letter with regard to whether you wish to proceed with your objection to a formal Appeal Committee hearing or whether you wish to withdraw your objection.

Yours faithfully,

**Maxine Knagg BSc (Hons) Arboriculture
Tree Protection Officer
On behalf of Lancaster City Council**

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