

APPEALS COMMITTEE

2.30 P.M.

27TH JUNE 2013

PRESENT: Councillors Karen Leytham (Chairman), June Ashworth (substitute for Mike Greenall), Eileen Blamire, Helen Helme and Billy Hill (substitute for Kathleen Graham)

Apologies for Absence:

Councillors Mike Greenall, Kathleen Graham, Janice Hanson and Andrew Kay

Officers in Attendance:

Luke Gorst	Assistant Solicitor
Maxine Knagg	Tree Protection Officer
Jane Glenton	Democratic Support Officer

Also in Attendance:

Peter Black	Blackfryers Town Planning (on behalf of the Appellant – Pure Leisure Group)
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1 **SITE VISIT: TREE PRESERVATION ORDER NO. 512 (2013)**

Prior to commencement of the meeting, a site visit was undertaken, as follows, in response to an objection received.

The following Members were present on the site visit:

Councillors Karen Leytham, Eileen Blamire, Helen Helme and Billy Hill.

Officers in Attendance:

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

2 **APPOINTMENT OF VICE-CHAIRMAN**

It was proposed by Councillor Blamire and seconded by Councillor Ashworth that Councillor Helme be appointed Vice-Chairman of the Appeals Committee for the Municipal Year 2013/14. There being no further nominations, the Chairman declared the proposal to be carried.

Resolved:

That Councillor Helme be appointed Vice-Chairman of the Appeals Committee for the Municipal Year 2013/14.

3 MINUTES

The minutes of the meeting held on 14th December 2012 were signed by the Chairman as a correct record.

4 ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN

There were no items of urgent business.

5 DECLARATIONS OF INTEREST

There were no declarations of interest.

6 TREE PRESERVATION ORDER NO. 512 (2013) RELATING TO QUEEN'S WELL WOOD, CROOK O'LUNE, LANCASTER

The Committee considered a single, formal, written objection to a decision of the Council under Section 198 of the Town and Country Planning Act 1990 (T&CPA 1990) making an Order in respect of a woodland, comprised of mixed broadleaf species trees, established to the south of the Crook O'Lune Caravan Park, Crook O'Lune, Lancaster, known as Queen's Well Wood (identified as "W1"), being Tree Preservation Order (TPO) No. 512 (2013), and thereafter whether or not to confirm the Order.

It was reported that the City Council had received an objection from Blackfryers Town Planning, on behalf of Pure Leisure Group (PLG) (the Appellant), who owned and managed W1 as part of their caravan park. The City Council had become aware that 7 woodland trees (5 mature trees and 2 semi-mature trees) had been felled within W1, and concerns had been expressed from the public that further felling may continue.

Tree Preservation Order No. 512 (2013) had been served following the felling of the 7 trees during ground investigation works in relation to a proposed development to install an underground sewage treatment plant and associated kiosk. PLG had submitted planning application no. 12/00081/FUL to the Council a short time after the trees had been felled. This had been due to be refused on the grounds of the unresolved threat to existing trees and the applicant had chosen to withdraw the application in light of this and objections to the scheme, including the adverse impact on existing woodland trees. As such, there was therefore no existing permission to undertake the installation works within the site.

A new planning application no. 13/00434/FUL had since been submitted to the Council, which was, as yet, undetermined. There remained significant concerns at the loss of additional trees and the unacceptable threat to trees proposed for retention.

Trees within the woodland in question had been assessed in terms of their amenity value using the Tree Evaluation Method for Preservation Orders (TEMPO). The use of a Tree Preservation Order was described as "definitely merits" with a total score of 20.

It was reported that the City Council considered it expedient in the interests of amenity to make provision for the preservation of W1 under sections 198, 201 and 203 of the Town & Country Planning Act 1990 for the following reasons:

- Important public visual amenity

- Important landscape feature in keeping with the character of the immediate and wider locality
- Significant potential to provide important wildlife and resources for a wide range of protected and unprotected wildlife communities
- Potential threat from removal and inappropriate management.

Appellant's Representative

Present at the meeting was Mr. Peter Black from Blackfryers Town Planning, on behalf of the Appellant (PLG). Mr. Black presented the case on behalf of the Appellant.

He advised Members that PLG was a locally-based company that owned several other local caravan parks and employed many people directly. The visitors the company attracted spent millions of pounds each year in the local Lancaster economy and supported hundreds of jobs, including local facilities, cafes, post offices and visitor attractions.

The company's other sites had been awarded David Bellamy Conservation Awards for management of land as a haven for wildlife, reduction of use of energy, water and other resources, reduce, re-use and recycling of waste, and support for local communities.

Mr. Black reported that the company appreciated that customers valued the amenity, wildlife and active play potential that woodlands brought. Its record in protecting trees and woodlands was excellent, and this was not a story of a developer wanting to destroy trees for a quick buck.

The company had acquired the Crook O'Lune site in 2012, since when there had been a major programme of investment to ensure that the site was as attractive and environmentally-friendly as possible. It had become apparent that the existing sewage system was faulty and could potentially pollute the River Lune and shellfish breeding grounds in Morecambe Bay that were protected by EU Directive.

Discussions with the Environment Agency (EA) had suggested that complete replacement was required and the only potential sustainable site was at the bottom of the woodland by the A683. It was intended that the entire plant would be buried, with only a small control kiosk visible above ground. A planning application had been submitted and validated on 12th February 2013.

A TPO had been served on 15th March 2013 after the planning application had been made. It was normal for a TPO to be placed on development sites to protect trees while proposals were assessed.

Mr. Black advised that it was important to keep the woodland in perspective. It was not a large, ancient woodland, rather it was a small woodland on an unstable slope. Most trees were sycamore, which was an alien naturalised species that was poorer for wildlife than most native species and was noted as a pioneer species in tough conditions. Most of the trees were relatively young in woodland terms because of the sloping and unstable nature of the site, and there was evidence of recent natural falls. No protected species had been seen, and the site did not meet even local criteria for designation on conservation grounds, let alone national or European.

He informed Members that he felt that after the planning application was determined, the

TPO should not be confirmed for the following reasons:

- 1) There would be no potential threat to trees in the woodland at all, over any other woodland in the area, once the application was determined. The guidance suggested that, although trees may merit protection on amenity grounds, it may not be expedient to make them the subject of a TPO.
- 2) The TEMPO assessment was deficient and had been over-scored as if the wood was a free-standing group of trees in a parkland setting. If the assessment was accurate, then every established woodland, in reasonable condition near a road in the Lancaster area, would merit a TPO, and this was clearly not the intention of either the legislation or the TEMPO process. For instance, "other factors" had been scored as 4 (members of groups of trees important for their cohesion). However, this was intended for significant groups of trees, perhaps in an historic parkland, not a clough woodland largely hidden from view.
- 3) A TEMPO assessment undertaken on behalf of PLG (which was circulated at the meeting) suggested that once the development issue was resolved, the woodland would not merit a TPO.
- 4) The text of the notification letter was also misleading. It stated that "W1 is an important resource for a range of wildlife communities including protected species". It was strange, therefore, that the site had no statutory wildlife designation, such as SSSI, and no local designation either. It may be true that protected species (for instance bats) used the woodland, but this was true for most woodlands. Again, if this was a qualification for a TPO, then every wood within Lancaster City Council area would merit a TPO.
- 5) Similarly, it was described as a "highly visible landscape feature". In fact, most of the trees were hidden in a narrow valley and not visible. Only a handful was visible from the A683.
- 6) The area covered by the TPO was far too large. It included a large area where trees were not visible to the public, regardless of size, and where there was no possible development threat.
- 7) Confirmation of the TPO would make normal woodland management unnecessarily bureaucratic and expensive, and therefore less likely to be carried out, to the long-term detriment of the health of the woodland.

Mr. Black referred to several further suggestions that the Tree Protection Officer had made:

- a) *"A TPO does not incur additional management costs."*

In his opinion, this was clearly untrue. PLG would have to employ someone to fill out forms, to liaise with the Tree Protection Officer and potentially to negotiate. There was a cost to this, particularly for a small, lean company like PLG. The Government was minded to make it a duty on regulators (in this case Lancaster City Council) to consider the economic impact of their regulation.

- b) *“Has an important role for wildlife, including protected species.”*

No protected species (apart from nesting birds, which were universal) had been noted – if this was an important factor, then every woodland in Lancashire would merit protection. The absence of a local designation was very relevant.

- c) *“River Lune is 250 m away ... canopies linked.”*

The site was severed by the A683, one of the busiest roads in the area and a huge deterrent to wildlife. Although there was some canopy linking, this was limited.

- d) *“A TPO can be used to enforce replacement planting.”*

This was only true if removal of trees was proposed. In fact, the greatest threat was wind throw due to the unstable slope. A TPO could not enforce replanting in this case. The correct way to ensure replanting was through a proper Woodland Management Plan agreed as part of a planning condition.

Mr. Black advised that he felt it was reasonable to ask that a decision on confirmation of the TPO be delayed until after the development control process was complete. As there was a six month deadline for confirmation of a provisional TPO, this meant that a confirmation should not happen before September at the earliest. A request had been made for such a delay, which had been ignored.

Following presentation of his case, Members asked questions of the Appellant's representative.

Tree Protection Officer

The Tree Protection Officer presented the case on behalf of Lancaster City Council.

Members were advised that a TPO had been served on 15th March 2013 after a planning application had been made. It was normal for a TPO to be placed on development sites to protect trees while proposals were assessed. A TPO did not prevent or obstruct development, but ensured that trees became a material consideration in relation to any subsequent planning applications. The TPO would ensure the protection of existing trees and limit tree removals to only those absolutely necessary to facilitate the development. Importantly, a TPO could be used to enforce replacement planting where trees were agreed for removal, and protect the woodland beyond the development period and long into the future, in the interest of public amenity.

Members were advised that the trees and land in question were, in part, under the control of the owners of the caravan park, PLG. The woodland was extensive and extended beyond the curtilage of the site. The site was in a rural location and established immediately adjacent to the public highway, the A683. The River Lune lay immediately beyond the highway to the north-east and was recognised for its importance and was designated a Biological Heritage Site. Trees formed an integral component of the site.

The trees within Queen's Well Wood had clear links with the riverside trees and generated a continuous canopy of tree cover and an important corridor for wildlife. The

woodland comprised mixed broadleaf species trees, with an age range from semi-mature to mature and the potential to develop into ancient woodland.

The Tree Protection Officer referred to the points raised by the Appellant's representative.

1) *No potential threat to trees ...*

It was reported that the Local Planning Authority had the powers to make a TPO if it appeared to them to be "expedient" in the interest of amenity to make provision for the preservation of trees or woodlands in their area". "Amenity" was not defined by the Town & Country Planning Act 1990, nor was the circumstances in which it was in the interest of amenity to make a TPO. The Secretary of State's view was that TPOs should be used to protect selective trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

In this case, early-mature and mature woodland trees had been removed and large, mature trees were threatened by the proposed development. All of these trees were an important and integral component of the existing woodland. The impact of the tree losses and ongoing threat from development had not been addressed through measures to ensure the protection and sustainability of woodland trees.

2) *The TEMPO assessment was deficient ...*

Members were advised that the woodland in question had been accurately and appropriately assessed. In addition to the threat to the woodland, the score reached had been based on the location, composition, age, condition, remaining life potential and other relevant factors, as judged appropriate. The TEMPO assessment was a tool to demonstrate the factors considered in relation to determining the suitability of trees and woodlands to be served with a TPO in terms of amenity value and threat from harm. The TEMPO was designed to be used by arboriculturalists, who were suitably trained, qualified and experienced to do so. It would be inappropriate to try to use the process to assess the amenity value of trees in a set of circumstances that did not apply. The assessment was here and now. The woodland was under threat, given the recent history of tree removals and the resubmission of the planning application.

3) *... once the development issue was resolved, the woodland would not merit a TPO.*

The Tree Protection Officer advised that the threat to the woodland trees was significant. This threat would not be removed with the determination of planning application no. 13/00081/FUL. Future applications may be submitted. If the TPO was not confirmed, there would be no protection for the woodland, and trees could be removed to the detriment of public amenity. Lancaster City Council had a duty to protect the landscape with the imposition of a TPO in the interest of amenity when it was considered expedient to do so. The trees in question were important for their cohesion and generated a significant arboriculture feature, namely woodland.

- 4) *... the notification letter was also misleading. It stated that "W1" is an important resource for a range of wildlife communities including protected species ...*

It was reported that any woodland was a recognisable resource for a range of wildlife. The wildlife would inevitably include protected species, such as nesting birds and bats. A woodland did not have to be designated a "SSSI" to be of importance to a range of wildlife. The River Lune, which was less than 250 m to the north-east, was designated a Biological Heritage Site (BHS). The canopies of the woodland in question linked directly to the woodland continuation down to the banks of the river and trees were recognised and valued as key components of the BHS. A TPO could not be made solely in respect of wildlife. However, the Secretary of State was of the view that wildlife benefits could be taken into account. Therefore, the absence of any local or national designation was entirely irrelevant.

- 5) *... most of the trees were hidden in a narrow valley and not visible. Only a handful was visible from the A683.*

Members were advised that from the busy main road, the woodland feature could be clearly seen. It was not necessary to see every tree in the woodland from a singular perspective. However, elements of the woodland could be seen from a number of public vantage points near and far. It was also the continuity of woodland cover with adjacent woodland and their collective visual impact on the wider landscape that must be recognised.

- 6) *The area covered by the TPO was far too large.*

The Tree Protection Officer advised that whilst woodland could be considered in smaller compartments or units for management purposes, it was good arboriculture practice to consider the entire woodland as one for the purposes of protection with a TPO.

- 7) *Confirmation of the TPO would make normal woodland management unnecessarily bureaucratic and expensive ...*

It was reported that local authorities had a duty to protect significant trees for their amenity value. A TPO did not incur additional management costs. There was no monetary charge in relation to the submission of a tree works application to the Local Planning Authority and no stipulation of who must undertake the work. Work had to be undertaken to current standards of best practice BS 3998 (2010). Any manager of a woodland would be expected to employ this standard in the interests of health & safety and good arboriculture practice.

The Forestry Commission was the authority to whom a felling licence must be applied where large volumes of timber were to be felled. If a licence had been applied for in relation to the recent felling works, perhaps this was the process that had been referred to as being unnecessarily bureaucratic and expensive.

With reference to Mr. Black's statement that most trees in W1 were sycamore, which was an alien species, the Tree Protection Officer advised that the woodland comprised

mainly deciduous species, including oak, ash, sycamore, silver birch, hazel and elm. Mr. Black had referred to the trees being relatively young in woodland terms and because of the sloping and unstable nature of the site there was evidence of recent natural fall. The Tree Protection Officer advised that the age of the trees ranged from young, natural regeneration to mature trees in excess of 18 m in height. The trees were generally in good condition and there had been no evidence of land slippage, rather the roots of the trees would provide stability within the woodland.

Following presentation of her case, Members asked questions of the Tree Protection Officer.

(The Committee adjourned at 3.04 p.m. to consider the evidence. The Tree Protection Officer and the Appellant's representative left the meeting at this point.)

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 512 (2013)
 - (a) Without modification
 - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 512 (2013).

It was proposed by Councillor Helme and seconded by Councillor Hill:

“That Tree Preservation Order No. 512 (2013) not be confirmed.”

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 3.20 p.m. to give its decision and the Tree Protection Officer and the Appellant's representative returned to the meeting at this point.)

Resolved:

That Tree Preservation Order No. 512 (2013) not be confirmed.

Chairman

(The meeting ended at 3.23 p.m.)

**Any queries regarding these Minutes, please contact
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