

## APPEALS COMMITTEE

1.00 P.M.

28TH JUNE 2018

**PRESENT:** Councillors Claire Cozler (Chairman), Alan Biddulph (substitute for Janice Hanson), Tracy Brown, Joan Jackson, Terrie Metcalfe and Malcolm Thomas (substitute for Susie Charles)

Apologies for Absence:

Councillors Jon Barry, Susie Charles and Janice Hanson

Officers in Attendance:

Maxine Knagg	Tree Protection Officer
Noel Scanlon	On behalf of Legal Services
Jane Glenton	Democratic Support Officer

### 1 SITE VISITS

Prior to commencement of the meeting, site visits were undertaken in response to objections received to Tree Preservation Order No. 641 (2018) – Trees established on land at Home Farm, Main Road, Galgate and Tree Preservation Order No. 646 (2018) – Two areas of trees established on Land at Capernwray Diving Centre, Jackdaw Quarry, Capernwray Road, Capernwray.

The following Members were present on the site visits:

Tree Preservation Order No. 641 (2018) – Trees established on land at Home Farm, Main Road, Galgate

Councillors Claire Cozler (Chairman), Tracy Brown, Joan Jackson, Terrie Metcalfe and Malcolm Thomas

Officers in Attendance:

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

Tree Preservation Order No. 646 (2018) – Capernwray Diving Centre, Jackdaw Quarry, Capernwray Road, Capernwray

Councillors Claire Cozler (Chairman), Alan Biddulph Tracy Brown, Joan Jackson, Terrie Metcalfe and Malcolm Thomas

Officers in Attendance:

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

**2 APPOINTMENT OF VICE-CHAIRMAN**

It was proposed by Councillor Brown and seconded by Councillor Biddulph that Councillor Metcalfe be appointed Vice-Chairman of the Appeals Committee for the Municipal Year 2018/19. There being no further nominations, the Chairman declared the proposal to be carried.

***Resolved:***

That Councillor Metcalfe be appointed Vice-Chairman of the Appeals Committee for the Municipal Year 2018/19.

**3 MINUTES**

The Minutes of the meeting held on 7<sup>th</sup> December 2017 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.

**MATTERS FOR DECISION**

**With the agreement of the Committee, the Chairman brought forward agenda item number 7 - *Tree Preservation Order No. 646 (2018) - Two Areas of Trees Established on Land at Capernwray Diving Centre, Jackdaw Quarry, Capernwray Road, Capernwray* - to allow those present for that item to leave following its consideration.**

**Councillor Biddulph had not been present on the site visit for Tree Preservation Order No. 646 (2018) and took no part in the decision making.**

**6 TREE PRESERVATION ORDER NO. 646 (2018) - TWO AREAS OF TREES ESTABLISHED ON LAND AT CAPERNWRAY DIVING CENTRE, JACKDAW QUARRY, CAPERNWRAY ROAD, CAPERNWRAY**

The Committee received the report of the Interim Head of Legal and Governance Services to enable Members to consider an objection received to Tree Preservation Order No. 646 (2018) relating to two areas of trees established on land at Capernwray Diving Centre, Jackdaw Quarry, Capernwray Road, Capernwray, and thereafter whether or not to confirm the Order.

It was reported that the land in question was privately owned by the Appellant. The site was used for recreational activities associated with the business of the Diving Centre. Within the wider site, there were a number of privately owned holiday chalets.

Lancaster City Council had received concerns expressed from a member of the public that mature trees within the site had been removed without authorisation and that

ongoing site works may be in breach of a planning permission. The alleged breach of planning permission was a separate matter, which was under investigation by a Council Enforcement Officer, and was not for consideration by the Appeals Committee.

At the time of the complaint, it had been made clear to the Council that alleged engineering and tree felling works were in progress and ongoing. In such challenging circumstances, a Local Planning Authority had powers to make and serve an "Emergency" Tree Preservation Order to protect the remaining trees, as expediency was of paramount importance in order to be successful. As such, there was no requirement to survey the site trees, and a provisional order could be made and executed swiftly.

In determining whether or not to confirm Tree Preservation Order No. 646 (2018), Members heard the representations of the Appellant's representatives, Mr. Skelton and Mr. Wood, and the Tree Protection Officer, on behalf of Lancaster City Council.

***Mr. Alistair Skelton of Steven Abbott Associates LLP, on behalf of the Appellant, Mrs. Carol Hack of Hack Enterprises Ltd and Mr. Anthony Wood of Yewtree NW, on behalf of the Appellant, Mrs. Carol Hack of Hack Enterprises Ltd***

Members were advised that Mr. Skelton and Mr. Wood had been instructed to make formal representations and to object to the Tree Preservation Order as currently made, based on the following:

- (1) a thorough walk-over of all areas covered by the Tree Preservation Order (undertaken on 27<sup>th</sup> March 2018);
- (2) a review of the planning history of the Capernwray Diving Centre site utilising the Council's online planning search facility and documents and plans provided by Hack Enterprises Ltd;
- (3) relevant legislation;
- (4) relevant National Planning Policy and National Planning Practice Guidance relating to Tree Preservation Orders.

It was reported that the Appellant had owned and operated the Capernwray Diving Centre site since 1997 and had developed leisure and tourism-based facilities during this time. They were conscious of the landscape and biodiversity attributes of the site and had taken appropriate professional/environmental advice when engaging in the planning process.

It was their opinion that Council officers responsible for the preparation of the Tree Preservation Order had not thoroughly, or objectively, considered relevant planning matters that would be material when considering the expediency of making a Tree Preservation Order.

Having regard to the law and related policy guidance, the Appellant had grave concerns regarding the actions of the Local Planning Authority to make the Tree Preservation Order in its current form. The site identified was not woodland, and the Tree Preservation Order did not reflect the appropriate nature conservation/habitat management regimes previously approved for the site, and did not take account of the planning history of the site, in particular the extant planning permission.

It was reported that the planning application for the erection of 15 holiday homes on the site had been granted on appeal, subject to conditions. Two subsequent applications for

approval of reserved matters, pursuant to Outline Planning Permission 04/00877/OUT, had been dealt with. The reserved matters Planning Application had been for the erection of 8 holiday units, which had been granted on 13<sup>th</sup> November 2006, and related to plot 1-8 along the south-west portion of the quarry site. Development had been fully implemented in respect of these properties.

The reserved matters Planning Application for the erection of 7 holiday units, granted on 26<sup>th</sup> January 2008, had not commenced until February/March 2018, when site clearance and ground levelling works had commenced, which was well within two years of the final approval of the reserved matters.

The status of the relevant planning permissions and reserved matters approval was that the element relating to the 7 holiday units remained extant and was capable of implementation. Details relating to the approval of reserved matters for the 7 units were indicated on the following plans:

- *Mason Gillibrand – 4555/P/01* – this indicated the approved layout of the 7 holiday homes and associated works, including access roadway and car parking areas, and indicated an earth mound and planting along the northern boundary;
- *Mason Gillibrand – 4555/P/02* – this provided elevations and sections and demonstrated the significant level changes and proposed earthworks necessary to facilitate the approved development;
- *Mason Gillibrand – 4555/P/03, 04 and 05* – more detailed elevations, plans and sections clearly illustrating the extent of existing ground materials to be removed and regraded to create a new earth mound along the northern and north-eastern boundaries of the site.

Another important factor pertaining to the planning permission was the associated Nature Conservation Management Plan (July 2006). The bulk of the areas of the site covered by the Tree Preservation Order were identified as grassland and limited areas of scrub and trees.

Limited parts of the surveyed area had been identified as woodland, but the management regime suggested a need for thinning and the control of scrub and tree encroachment into the extensive grassland areas. The impact of the blanket woodland Tree Preservation Order would be to preclude the thinning and scrub clearance required by the Nature Conservation Management Plan, contrary to the objectives of maintaining a biodiverse habitat across the site.

The inspector dealing with the outline planning application stage had noted that, for its size, the site was highly diverse, with several different grassland communities occurring. The opportunity to improve the quality of the grassland was recognised. The construction of the buildings and access track would necessitate some clearance of trees and scrub. None of the species likely to be affected were mature and all were common.

On the basis of the foregoing, the main grounds for objection were:

- The making of the Tree Preservation Order was ultra-vires.
- The exercise of the discretion in this case appeared to have been made without regard to the relevant planning history of the site, in particular the existence of a planning permission for 7 holiday homes across the northern part of the site

where trees did exist.

- The Tree Preservation Order was purportedly made “in the interest of public amenity and wildlife benefit”. However much of the area covered by the Tree Preservation Order was not visible from public viewpoints. The established nature conservation management regimes had also been ignored.
- The exercise of the legal discretion to make a Tree Preservation Order had not been undertaken in a way which reflected the relevant Government Guidance, and there was no evidence that the Tree Preservation Order was based on a thorough or objective assessment of the site circumstances, the planning history or relevant habitat management regimes already in place at the site.

Following consideration of the representations of Mr. Skelton and Mr. Wood, Members of the Committee had the opportunity to raise questions on the representations.

Mr. Skelton and Mr. Wood were requested to provide a copy of the Nature Conservation Management Plan for the Diving Centre, prepared in July 2006 by Greenspace Ecological Consultancy, and copies of the plans prepared by Mason Gillibrand. These were provided and circulated to Members.

Once there were no further questions, the Chairman asked the Tree Protection Officer to give her representation.

#### ***Lancaster City Council's Tree Protection Officer***

The Tree Protection Officer informed Members that Tree Preservation Order No. 646 (2018) related to two areas of trees on land at Capernwray Diving Centre, Capernwray.

In the absence of tree-related information being submitted by the Appellant, it was impossible for the Council to know what their intentions were, and are, with regard to trees. Where the removal of trees was required in order to accommodate the authorised development, clearly those trees must be removed. The Tree Preservation Order would protect the remaining trees.

#### **Background**

It was reported that Lancaster City Council had received a complaint from a member of the public that trees were being felled on land at the Diving Centre. The complaint at that time also alleged engineering works were in progress and that the landowner may not have authorisation to undertake the works.

The complaint had been referred to the Council's enforcement team to investigate as an alleged breach of planning conditions. The enforcement investigation was ongoing. However, an update had been provided earlier in the week by the enforcement officer, who confirmed that two planning conditions relating to a permission for development at the site had not been formally discharged.

One of those conditions related to trees, including a requirement to agree which trees were to be retained and protected, and which trees may be agreed for removal. Instead, the applicant had commenced engineering works on-site and had felled a belt of woodland trees without the agreement of the Council. The trees had been felled in the bird nesting season.

On 9<sup>th</sup> March, 2018, the day of the site inspection, it quickly became apparent that at least x40 trees had been felled and that an excavator and operative were on-site. Works had continued until the Council's Enforcement Officer advised that work should cease until the alleged breach of planning conditions could be fully investigated. There had been an outstanding requirement for important tree-related information, including a Tree Protection Plan, to be submitted and agreed in writing with the Local Planning Authority.

Because of the urgent need to protect trees, an "Area" designated Tree Preservation Order had been made immediately, prior to the site visit, and served by hand during the visit. The action had been essential to prevent the further loss of trees without the authorisation of the Local Authority.

A coloured aerial photograph of the site (2013), as it was prior to the recent removals, was shown at Appendix 2 in the Agenda. Appendices 3A – 3D showed some of the recently felled trees and the associated engineering works.

### Objections

It was reported that Lancaster City Council had received three initial letters of objection requesting minor changes to the boundary of Tree Preservation Order No. 646 (2018) to exclude land under third party ownership. These changes had been made by the Council and the objections had subsequently been withdrawn. The changes could be seen at Appendices 4 and 4A in the Agenda.

Members were advised that the objection for their consideration had been made on behalf of the land owner, Mrs. Carol Hack of Hack Enterprises Ltd. A copy of this letter of objection, prepared by Mr. Alistair Skelton of Steven Abbott Associates, and the Council's response, could be read in full at Appendices 5 and 6 in the Agenda.

It was the recommendation of the Tree Protection Officer that TPO No. 646 (2018) be confirmed with modifications to replace the "Emergency" Area Designation A2 with x2 woodland compartments identified as W1 and W2. In effect, W1 and W2 would replace A2. It was not considered that trees identified as A1 were under threat from the current approved development, and, as such, A1 should be removed from TPO No. 646 (2018) without a replacement designation. These recommendations were set out at Section 6.2 of the report.

The Tree Protection Officer advised that it was her recommendation that trees identified as W1 and W2 should continue to be protected by TPO No. 646 (2018) in the interest of amenity and wildlife benefit. Trees within the site remained under threat from development. Details of the required tree retention and protection measures had not been formally agreed by the Council as part of the approved development of the site.

In the absence of TPO No. 646 (2018), important woodland trees were at risk of removal or damage. Early-mature and mature trees could not be replaced with new trees in the medium to long-term. Some trees, because of their age and value within the landscape, were irreplaceable and, as such, must be protected in the interest of public amenity and wildlife benefit. The Tree Preservation Order would serve to protect trees and ensure they were a material consideration within any future development proposals affecting the site.

It was the Tree Protection Officer's final recommendation that TPO No. 646 (2018) be confirmed with modifications to remove A1 and a small field marked in pink (Appendix 7) and to change the designation of Emergency Area 2 to x2 woodland compartments – W1 and W2 in the interest of public amenity benefit and wildlife value.

Further, tree losses on the scale witnessed would have significant potential to continue to adversely impact the character and appearance of the site, viewed from the public domain, with the potential to adversely impact on wildlife communities.

Whilst a Tree Preservation Order did not obstruct or prevent development, it ensured that trees remained an important material consideration.

Following the Tree Protection Officer's representation on behalf of Lancaster City Council, Members of the Committee had the opportunity to question the Tree Protection Officer on her representation.

The Appellant's representatives, Mr. Skelton and Mr. Wood, then had the opportunity to reply.

***(The Tree Protection Officer, the Appellant's representatives, Mr. Alistair Skelton of Steven Abbott Associates LLP and Mr. Anthony Wood of Yew Tree (NW) Ltd, left the meeting room whilst the Committee made its decision in private.)***

It was proposed by Councillor Metcalfe and seconded by Councillor Joan Jackson:

"That TPO No. 646 (2018) not be confirmed. However, for information, this be a technical non-confirmation and, for information/warning purposes, the Committee expects the Tree Protection Officer and the Appellant/their representatives to be liaising immediately with a view to the swift making of the appropriate group Tree Preservation Orders."

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

***(The Tree Protection Officer, the Appellant's representatives, Mr. Alistair Skelton of Steven Abbott Associates LLP and Mr. Anthony Wood of Yew Tree (NW) Ltd, returned to the meeting room for the decision to be announced.)***

**Resolved:**

That TPO No. 646 (2018) not be confirmed. However, for information, this be a technical non-confirmation and, for information/warning purposes, the Committee expects the Tree Protection Officer and the Appellant/their representatives to be liaising immediately with a view to the swift making of the appropriate group Tree Preservation Orders.

**7 TREE PRESERVATION ORDER NO. 641 (2018) - TREES ESTABLISHED ON LAND AT HOME FARM, MAIN ROAD, GALGATE**

The Committee received the report of the Interim Head of Legal and Governance Services to enable Members to consider the objection received to Tree Preservation Order No. 641 (2018) relating to trees located on land at Home Farm, Main Road,

Galgate, and thereafter whether or not to confirm the Order.

It was reported that the land in question was privately owned by the Appellant. It was a site that the Council was aware of, insomuch as it may come forward for possible future development. It was understood that the site had, as yet, not been assessed with regard to its potential for future development.

Lancaster City Council had received concerns from a member of the public that the trees within the site may be removed or inappropriately managed prior to the submission of a future planning application for development of the site. The trees at that time were not protected in law and, as such, could have been removed without the requirement for prior consultation with the Council.

In determining whether or not to confirm Tree Preservation Order No. 641 (2018) Members considered the written representations of the Appellant, Mrs. S. Charles, and the Tree Protection Officer, on behalf of Lancaster City Council.

***Representation of Mrs. S. Charles, Appellant***

The Council had received a letter of objection to the Tree Preservation Order, dated 13<sup>th</sup> February 2018, from Mrs. S. Charles's solicitors, Oglethorpe, Sturton and Gillibrand. This, and the Council's letter in response, dated 5<sup>th</sup> April 2018, were set out in the report.

An email, dated 26<sup>th</sup> June 2018, had been received from Mrs. Charles advising that she was unable to attend the hearing. Attached to the email was a copy of a letter from her solicitor, giving the reasons why it was thought that the Tree Preservation Order was unnecessary. Also attached was a copy of the proposed plan for building on the estate. The email and attachments had been circulated to Members prior to the hearing.

In determining whether or not to confirm Tree Preservation Order No. 641 (2018), Members considered the points raised in Mrs. Charles's letter/email and enclosures. The points raised in the solicitor's letter were:

- (1) The making of a Tree Preservation Order over such a large area and without prior consultation had taken their client by surprise. The areas outlined included large areas of rural working farm and woodland and it was extremely cumbersome to have a blanket Tree Preservation Order over such large areas of woodland. It would be impractical to have to request permission for lopping and managing the woodland on every occasion.
- (2) Their client was not aware of any visits by the Tree Protection Officer on to the land to survey the woodlands and inspect the trees.
- (3) The purpose of Tree Preservation Orders was to preserve and protect woodland and trees of particular value, not large areas of land in rural areas.
- (4) Their client was willing to work co-operatively with the Council in relation to particular trees or areas, but the blanket nature of the Tree Preservation Order would make the proper management of the woodland difficult.

The solicitor's letter attached to the email dated 26<sup>th</sup> June 2018 repeated the objections outlined in their letter of 13<sup>th</sup> February 2018, and queried whether the Council was being

consistent in its approach to such matters. Details of the steps taken to protect trees in relation to the development known as Bailrigg Garden Village were requested.

Following consideration of Mrs. Charles's written representation, Members of the Committee had the opportunity to raise questions on the representation.

Once there were no further questions, the Chairman asked the Tree Protection Officer to give her representation.

### ***Lancaster City Council's Tree Protection Officer***

The Tree Protection Officer informed Members that Tree Preservation Order No. 641 (2018) related to trees established at Home Farm, Ellel.

#### Background

It was reported that Lancaster City Council had received a concern from a member of the public that trees and woodland may be removed or inappropriately managed, prior to the submission of a planning application for development of the "Artisan Village" at the site.

At that time (January 2018), the trees had not been protected in law.

Members were advised that the Council had powers under the Town and Country Planning Act 1990 and the Town and Country Planning Regulations (Tree Preservation) (England) Act 2012 to protect trees where it was considered expedient to do so, and where trees or woodlands had sufficient amenity value.

The Council could protect trees with an "Emergency Order" on a Provisional Basis without the requirement to first survey the trees in question. In this instance, all trees within the identified location became protected under an "Area" designation.

There was, however, a requirement to assess the trees in more detail, providing a more appropriate designation prior to confirmation of the Order.

Lancaster City Council had received two initial letters of objection relating to the boundary of the Area designation. The owners/occupants of Cragg Hill Farm and Ellel Grange had requested an amendment to the boundary of the Order, in effect to remove their land. Lancaster City Council had considered this request and agreed that the boundary should be amended to remove land that was not included within the area identified for future potential development. These two initial objections to the Order had subsequently been withdrawn.

The objection to be considered by Members had been submitted by agents acting on behalf of the landowner, Mrs. Charles. A copy of the letter of objection and the Council's full response could be read at Appendices 5 and 6 in the Agenda.

It was reported that the priority in a situation where trees may be at potential risk of removal or inappropriate management was to protect them as quickly as possible to avoid loss or damage. In this instance, an Area designation was the most appropriate way of protecting trees on land which may be proposed for future development. Once protected, time could be taken to consult with interested parties and address any

objections that may be raised, and to assess the trees in more detail to identify a more appropriate designation.

A Tree Preservation Order did not prevent or obstruct development. It did, however, ensure trees were a material consideration within any future planning applications.

A Tree Preservation Order did not prevent works to trees or management of woodlands being undertaken. Owners of protected trees were required to obtain written authorisation from the Council prior to carrying out works to protected trees, except for the removal of dead branches or dead trees, which could be removed without prior consent.

It was reported that the Council supported the development and implementation of Management Plans for all woodland areas – protected or otherwise – in the interest of good woodland management. Typically, a Woodland Management Plan may span 15 years. Where a Management Plan was in place and approved by the Local Authority, ongoing woodland management could be approved and, in part, eliminated the requirement for the regular submission of tree work applications. The Forestry Commission offered assistance and financial support to help woodland owners develop formal Woodland Management Plans.

The Tree Protection Officer advised that she had met with the landowner on 10<sup>th</sup> May 2018 to consider the trees, the subject of the Order, in more detail. Following assessment, she recommended that trees implicated and threatened by the potential future development of the site continue to be protected by TPO No. 641 (2018). However, it was further recommended that the initial “Emergency Area” designation be replaced with a new designation to include a total of x13 individual trees (T1 – T13), x 3 groups (G1 – G3) and x20 woodland compartments. A draft version of this recommendation could be seen in detail at Appendices 7 and 8 of the Agenda pack.

It was further recommended that TPO No. 641 (2018) be confirmed with the aforementioned modification, in the interest of public amenity and wildlife benefit.

The trees in question made a significant contribution to the character and appearance of the site, the rural setting and the wider public domain.

The site may be brought forward for development in the future, threatening trees and woodlands.

The extensive number of trees and woodlands on-site offered important habitat and foraging opportunities for a potential range of wildlife, including protected species, such as nesting birds and bats. Both groups were protected under the Wildlife and Countryside Act 1982 (as amended 2010).

Following the Tree Protection Officer’s representation on behalf of Lancaster City Council, Members of the Committee had the opportunity to question the Tree Protection Officer on her representation.

***(The Tree Protection Officer left the meeting room whilst the Committee made its decision in private.)***

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 641 (2018) -
  - (a) Without modification;
  - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 641 (2018).

It was proposed by Councillor Metcalfe and seconded by Councillor Biddulph:

“That TPO No. 641 (2018) be confirmed with a modification to change the designation from the Temporary Emergency Area (A1) designation to that of individual trees T1 – T13, groups G1 – G3 and woodland compartments W1, W2, W3, W3A, W4 - W19, in the interest of public amenity benefit and wildlife value.”

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

***(The Tree Protection Officer returned to the meeting room for the decision to be announced.)***

That TPO No. 641 (2018) be confirmed with a modification to change the designation from the Temporary Emergency Area (A1) designation to that of individual trees T1 – T13, groups G1 – G3 and woodland compartments W1, W2, W3, W3A, W4 – W19, in the interest of public amenity benefit and wildlife value.

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Chairman

(The meeting ended at 3.10 p.m.)

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