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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.

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