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APPENDIX 7

Simon Jones
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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**