

Contact: Maxine Knagg  
Telephone: 01524 582381  
FAX: 01524 582323  
Email: [mknagg@lancaster.gov.uk](mailto:mknagg@lancaster.gov.uk)  
Website: [www.lancaster.gov.uk](http://www.lancaster.gov.uk)  
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**Regeneration & Policy Service**  
Development Management  
PO Box 4  
Town Hall  
Lancaster  
LA1 1QR

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## **Appeals Committee (TPO)**

Trees subject of the Appeals Committee – An area of trees established on land adjacent to Ashton Road, Lancaster, subject of **Tree Preservation Order no. 565 (2015)**.

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 area of trees established on land off Ashton Road, Lancaster with respect to the above tree preservation order. The Appeals Committee are to consider whether the TPO should be confirmed without modification, confirmed with modifications or not confirmed. A copy of Tree Preservation Order no.565 (2015) is available at **appendix 1**.

### **2.0 Background**

**2.1** The site is lies immediately adjacent to Lancaster Canal which is recognised for its biological importance with the designation of a Biological Heritage Site (BHS). Whilst trees are not expressly protected under the terms of a BHS, trees are recognised for their contribution to the value of the BHS where they exist.

**2.2** Trees to the north of the canal are clearly seen from the public domain and form a significant backdrop to the canal when viewed from the north, north-west, east and south-east.

**2.3** The land in question is dissected into two compartments by residential dwellings established within Pinewood Close. Immediately to the north-west land is in use for agricultural purposes.

- 2.4 The land in question is currently subject of an outline planning application to develop the site, referenced as no.15/01342/OUT. This outline application was validated on 9<sup>th</sup> November 2015. At the time of writing the application has not as yet been determined.
- 2.5 Development has significant potential to adversely impact upon existing trees through a number of means, including direct tree removals, in order to accommodate the proposed design. Also indirect means, as a result of construction works and practices, or where tree protection measures are either not fully implemented or not maintained correctly throughout the course of any given construction phase until completion.
- 2.6 Trees across the site are important for their cohesion and contribution in forming significant arboriculture and landscape features. The majority of trees are clearly visible from a range of public vantage points. Their loss would have significant potential to adversely impact upon the character and appearance of the site and wider locality.
- 2.7 Trees within the site create important green corridors for wildlife, with the potential to support a range of wildlife communities, including protected species, such as nesting birds and bats, both groups are protected under the Wildlife & Countryside Act 1981 (as amended 2010).

### **3.0 Threat to Trees & Woodland**

- 3.1 In the view of the Secretary of State, a TPO should be used to protect selected trees and woodland, 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 the TPOs are made or confirmed. The trees or at least part of them should therefore normally be visible from a public place, such as a road or footpath, although the inclusion of other trees maybe justified. 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 an eyesore, or future development: the value of trees may be enhanced by their scarcity; and the value of a group of trees or woodland maybe collective only. Other factors such as importance as a wildlife habitat may be taken into account which alone would not be sufficient to warrant a TPO. A tree that is dead or in a dangerous condition is exempt from a TPO.
- 3.2 With this in mind, LPAs are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the visibility of trees from a public vantage point: the individual impact of a tree or the collective impact of a group of trees: in addition to the wider impact of trees, their significance to their local surroundings taking into account their suitability to their particular setting, as well as the presence of other trees in the vicinity.
- 3.3 Expediency must also be assessed. The Secretary of State considers that it may be expedient to make a TPO, if the LPA believe there is a risk of the tree or woodland being cut down or pruned in ways which would have a significant impact on the amenity of the area. Importantly, it is not necessary for the risk to be immediate. In some cases, the LPA may believe that certain trees are at

risk from development pressures. The LPA may have some other reason to believe that trees are at risk: changes in property ownership are widely recognised as potential threats to trees and woodlands, particularly as intentions to fell trees are not always known in advance and so the protection of selected trees by a precautionary TPO might be considered expedient.

- 3.4 The trees in question were protected with TPO no.565 (2015) when it became apparent through a Pre- Application request for advice for development was submitted to Lancaster City Council. Planning application no. 15/01342/OUT was subsequently submitted and validated.
- 3.5 It is important to note a Tree Preservation Order does not prevent or obstruct development, it does however ensure that trees subject of the order are a material consideration within any existing or future planning application.

#### **4.0 Assessment**

- 4.1 A copy of my initial report is available at **appendix 2**.
- 4.2 An aerial photograph detailing the composition and extent of trees within the site and wider locality has been included at **appendix 3**. This plan shows a number of locations within the public domain in which a great many of the trees within the site can be seen from public vantage points.
- 4.3 A copy of the Tree Evaluation Method for Preservation Orders (TEMPO) is available at **appendix 4**. A cumulative score of 15+ was achieved, indicating that at the time of the initial assessment the trees in question “Definitely Merit” protection within a TPO.
- 4.4 Lancaster City Council uses a Tree Evaluation Method for Preservation Orders (TEMPO) to demonstrate a structured and consistent approach to the assessment of trees and woodlands in relation to their suitability for inclusion within a TPO. This system when used by an individual suitably trained and experienced in the assessment of trees can be a useful tool to demonstrate key elements of the decision making process, resulting in a final total score and outcome indicator. The system in itself is not a decision making process.
- 4.5 In addition to their amenity value. Trees within the site are an important resource for wildlife providing essential habitat and foraging opportunities, including significant potential to provide important resources for protected species, such as nesting birds and bats, both of which are protected under the Wildlife & Countryside Act 1981. The presence of Lancaster Canal to the south-east increases the wildlife potential of the site trees and hedgerows, particularly for birds and bats.

#### **5.0 Tree Preservation Order no.565 (2015)**

- 5.1 Tree Preservation Order no. 565(2015) was made on 20<sup>th</sup> October 2015, following the site being identified for potential development. Trees within the site were unprotected and threatened by any potential development of the site, now or in the future.

- 5.2 Trees subject of TPO no.565 (2015) include a group of ash (**G1**) and two woodland compartments identified as **W1** and **W2**, comprised of a range of tree species.

### **Objection to TPO no.565 (2015)**

- 6.1 Lancaster City Council has received one letter of objection to Tree Preservation Order no.565 (2015).
- 6.2 A letter of objection was received from Mr Craig Barnes, of Barton Willmore, acting on behalf of the applicant. A copy of the letter, dated 23.11.15 can be seen in full, at **appendix 5**. A copy of Lancaster City Council's letter of response, dated 18<sup>th</sup> December 2015, is available at **appendix 6**.
- 6.3 There are two principal points for objection.
- i) The submitted planning application would not result in the loss of any trees of any quality or value in or around the site and therefore a TPO is not required; and
  - ii) Not all of the area identified within the TPO are considered necessary for inclusion to safeguard the existing tree belt along Lancaster Canal for reasons of amenity, wildlife or quality as outlined by the Council in the Order. We believe that if the TPO is deemed to be necessary (to which we disagree), the area defined as G56 as well as T43 and G44 within the attached AIA submitted as Appendix 1 should be omitted.
- 6.4 Lancaster City has addressed the issues raised, to summarise:
- i) Whilst an outline application has been received by the local authority reference 15/01342/OUT, it has not been determined. There is no current permission to develop the land in question. As such, there is no formal written agreement to retain and protect existing trees and woodland, other than through the controls of a TPO.
  - ii) Lancaster City Council has a duty to protect trees where development is proposed. The local authority would be failing in its duty, if a tree preservation order was not made and confirmed, particularly given the significance of the trees in question. Particularly, given the biologically sensitive nature of the area.
  - iii) The trees in question form a highly visible landscape feature, clearly visible from the public domain. They are also an important resource for a potential range of wildlife, including protected species.
  - iv) A TPO ensures that existing trees are a material consideration within a planning application, and importantly continues their protection through the post development phase and future use.
  - v) The applicant has indicated that the prospective developer Storey Homes has no intention to remove trees of "any value" important trees, as such then the TPO should have little relevance.
  - vi) Trees are threatened by the potential development of the site and by the future change of use of the wider landscape, should planning consent be granted. This only serves to support the need to maintain the existing protection status of the trees, in line with TPO 565 (2015). Trees identified as G56, T43 and G44 should remain subject of the Order, to ensure their full consideration within the existing and or any future planning application.

- vii) Planning permission overrides the powers of a TPO, where trees would be required to be removed in order to implement any given planning consent. As such, the existence of the Order will not prevent or obstruct development should full planning consent be granted in the future.

## **6.0 Decision to Serve TPO no.565 (2015)**

- 7.1 Lancaster City Council considers it expedient in the interests of amenity to make provision for the preservation of trees identified as **G1, W1 & W2** under sections 198 of the Town & Country Planning Act 1990. It is recommended that the TPO is confirmed without modifications.

Lancaster City Council cite the following reasons.

- important visual amenity shared from the public domain
- significant contribution to the character and appearance of the site and wider locality, also immediately adjacent to Lancaster Canal, designated a biologically important site (BHS)
- significant potential to provide important habitat and resources for a range of protected and unprotected wildlife communities
- under threat from removal or inappropriate management associated with the proposed development of the site

The trees in question have sufficient amenity value and importance within the landscape and are under threat from removal or inappropriate management to justify their protection with TPO no.565 (2015).

- 7.2 Lancaster City Council recommends that TPO no.565 (2015) be confirmed without modification in the interest of public amenity value and wildlife benefit.

It remains the view of Lancaster City Council that TPO 565 (2015) is an entirely appropriate and justified course of action given the existing amenity and wildlife value of the trees and woodland compartments. Particularly, given the existing threat from development and associated change of use of the wider landscape.

### **Maxine Knagg BSc (Hons) Arboriculture**

Tree Protection Officer, Regeneration & Planning Service

On behalf of Lancaster City Council