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Date: 10<sup>th</sup> April 2017

## Appeals Committee (TPO)

Tree subject of the Appeals Committee – A single mature beech tree established within the curtilage of 51 Meadow Park, Galgate, subject to **Tree Preservation Order no. 595 (2017)**.

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 a single mature beech tree, established within the rear garden of the above property 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. 595 (2017) is available at **appendix 1**.

### 2.0 Background

2.1 The site is a residential property that backs onto Lancaster Canal. The canal is a biologically sensitive location, designated a Biological Heritage Site (BHS). Trees are an important component feature of the BHS in a range of locations along the canal. Trees along the canal make an important contribution to the green wildlife corridor established along the canal.

2.2 The tree in question (T1) is growing at the furthest point from the main dwelling, and sits immediately adjacent to the canal. It can be seen from the wider public domain, notably from the waterway and its associated towpath, and, as such, makes an important contribution to the character and appearance of the wider public domain.

2.3 A tree of this age and size has the potential to offer important habitat and foraging opportunities for a range of wildlife communities, including protected

species. This is particularly important, given the location of the tree adjacent to the waterway. Protected species, such as nesting birds and bats, are protected under the Wildlife & Countryside Act (as amended 2010) 1981.

- 2.4 Lancaster City Council was made aware of concerns from the tree owner that the tree could be under threat from injudicial pruning to control overhanging branches. Heavy or repeated pruning events have the potential to alter the natural shape and appearance of an affected tree, impacting on the tree's future health, vitality, long-term sustainability and amenity value. The tree is established close to a boundary fence. Its size is such that branches from T1 encroach towards the neighbouring property.
- 2.5 In the absence of a tree preservation order, a neighbour has a Common Law Right to prune back any overhanging branches from a tree back to the boundary line and in fulfilling their legal obligation must offer the cut branches back to the tree owner.
- 2.6 A tree preservation order overrides this Common Law Right. Instead, the tree owner or any interested third party is required by law to make a formal application to the local authority to seek written authorisation to carry out works to the tree. This allows the local authority to control the extent of works agreed to protect the future health, vitality, shape and appearance of the tree and, as such, safeguard wider public amenity and wildlife benefit. A TPO does not prevent maintenance works from being undertaken, even to overhanging branches, subject of course to written approval.

### **3.0 Threat to the Tree**

- 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. Local Planning Authorities (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 woodland 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 may be 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 may be 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 potential for injudicial pruning to eliminate overhanging branches from T1 is present. Beech trees are a species that are intolerant of heavy pruning events. They recover slowly, if at all, and are at an increased risk of invasion by pest and disease following heavy or repeated pruning events, with an adverse impact upon their long-term sustainability.

#### **4.0 Assessment**

- 4.1 A copy of my initial report, dated 7<sup>th</sup> February 2017, is available at **appendix 2**.
- 4.2 A copy of the Tree Evaluation Method for Preservation Orders (TEMPO) is available at **appendix 3**. A cumulative score of 14 was achieved, indicating that at the time of the initial assessment the tree in question merits protection with a TPO, as a precaution - "TPO is Defensible".
- 4.3 Lancaster City Council uses a 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.
- 4.4 In addition to the public amenity value of T1, it offers a range of important resources 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 increases the wildlife potential of the tree, particularly for birds and bats.

#### **5.0 Tree Preservation Order no. 595 (2017)**

- 5.1 Tree Preservation Order no. 595 (2017) was made on 7<sup>th</sup> February 2017, following an assessment.
- 5.2 The beech tree in question (T1) has been identified as a tree of good condition, with sufficient public amenity value and wildlife benefit to justify its protection with a tree preservation order as a precaution. The order has been served to protect the tree from the potential of injudicial pruning events with the potential to alter its natural character and visual appearance, and for an adverse impact upon tree health, vitality and public amenity and wildlife benefit.

## **6.0 Objection to TPO no. 595 (2017)**

- 6.1 Lancaster City Council has received a letter of objection to Tree Preservation Order no. 595 (2017) from Mr. A. J. Hargreaves, 35 Lichfield Road, Galgate, detailed in his letter dated 2<sup>nd</sup> March 2017. Mr. Hargreaves lives immediately next door to the property in which T1 is established. A copy of Mr. Hargreaves' letter can be read in full at **appendix 4**.
- 6.2 A copy of Lancaster City Council's letter of response, dated 9<sup>th</sup> March 2017, can be read in full at **appendix 5**.

## **7.0 Decision to Serve TPO no. 595 (2017)**

- 7.1 Lancaster City Council considers it expedient in the interests of amenity to make provision for the preservation of a single mature beech tree identified as T1 under sections 198, 201 and 203 of the Town & Country Planning Act 1990. It is recommended that the TPO is confirmed without modification.

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, established immediately adjacent to Lancaster Canal, designated a Biological Heritage Site (BHS)
- potential to provide important habitat and foraging opportunities for a range of protected and unprotected wildlife communities
- potential threat to the character and appearance of the tree, its future health, vitality and long-term sustainability from inappropriate management to control overhanging branches.

The tree in question has sufficient amenity value and importance within the landscape and is under potential threat from removal or inappropriate management to justify its protection with TPO no. 595 (2017).

- 7.4 As such, Lancaster City Council recommends that TPO no. 595 (2017) be confirmed without modification as a precaution.

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

Tree Protection Officer, Regeneration & Planning Service  
On behalf of Lancaster City Council