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Our Ref: TPO607/2017/MK

**Regeneration and Planning
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Date: 21st November 2017

Appeals Committee (TPO)

Tree subject of the Appeals Committee – A single mature cherry tree at 57 Thirlmere Road, Lancaster, LA1 3LL, subject of **Tree Preservation Order no. 622 (2017)**.

This report has been prepared 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 cherry tree established within the rear garden of no. 55, Thirlmere Road, Lancaster. The Appeals Committee are to consider whether the tree, identified as T1, should be confirmed without modification, confirmed with modifications or not confirmed. A copy of Tree Preservation Order no. 622 (2017) is available at **appendix 1**.

2.0 Background

2.1 The tree in question is established close to a boundary line with a neighbouring property. Inevitably, branches from T1 extend beyond the boundary line. In the absence of a tree preservation order (TPO) a neighbour has a Common Law Right which allows branches that encroach over a boundary line to be cut back to the boundary line (not beyond), the cut branches must by law be offered back to the owner. In some instances this can result in the heavy and inappropriate management of trees in order to remove the encroachment of branches. However, the powers of a TPO override a Common Law Right and in effect remove a neighbour's ability to prune overhanging branches without first obtaining written authorisation to do so from the local authority. The protection includes all above and below ground tree structures. As a result of these important protection measures, tree works can be controlled to ensure all work undertaken is reasonable and

appropriate and in compliance to current standards of best practice set out within BS 3998 (2010) Tree Work – Recommendations.

- 2.2 An aerial photograph (Google 2013) of T1 is available at **appendix 2**.
- 2.3 T1 has the potential to offer opportunities for wildlife in terms of habitat and foraging which may include protected species, such as nesting birds and bats. Both groups are protected under the Wildlife & Countryside Act (as amended 2010) 1981.

3.0 Assessment

- 3.1 A copy of my initial report, dated 14th August 2017, is available at **appendix 3**.
- 3.2 A copy of the Tree Evaluation Method for Preservation Orders (TEMPO) is available at **appendix 4**. A cumulative score of 11 was achieved, indicating that, at the time of the initial assessment, a TPO would be “defensible”. It should be noted that the TPO was served as a precaution because of the owner’s “perceived threat” of possible unjudicial pruning in the future.
- 3.3 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.
- 3.4 T1 can be seen as a roof top tree and as such has a positive visual impact upon the wider public domain.

4.0 Tree Preservation Order no. 622 (2017)

- 4.1 Tree Preservation Order no. 622 (2017) was made on 15th August 2017, in the interest of public amenity value and wildlife benefit.
- 4.2 A TEMPO score of 11 was achieved supporting protection of the tree with a preservation order.

5.0 Objection to TPO no. 622 (2017)

- 5.1 Lancaster City Council received one letter of objection to Tree Preservation Order no. 622 (2017).
- 5.2 A letter of objection, including a series of colour photographs, was received from neighbours Mr & Mrs McDonnell, dated 25th August 2017. A copy of the letter can be seen in full at **appendix 5**. A copy of Lancaster City Council’s letter of response, dated 26th September 2017, is available at **appendix 6**.

- 5.3 The objection relates to the management of overhanging branches from T1 and claims that roots from the tree are disturbing paving stones within the rear garden of the objectors' property.
- 5.4 It should be noted that a TPO does not prevent reasonable and appropriate pruning works from being undertaken affecting both the above ground canopy and the below ground root system, subject to written approval by the local authority to ensure that any work undertaken does not result in an adverse impact upon tree health, vitality, stability and long term sustainability.
- 5.5 Mr & Mrs McDonnell confirmed their wish to maintain their objection to the order in their letter dated 2nd October 2017 (**appendix 7**).

6.0 Support for TPO no. 622 (2017)

- 6.1 Lancaster City Council received a letter, dated 6th September 2017 in support of the TPO from the tree owner Mr Fitton. A copy of this letter can be seen at **appendix 8**. The letter identifies the long period of time in which the tree has been established at the property, its benefits and support of wildlife. Concerns were also expressed that the tree may have been deliberately damaged in the past.

7.0 Decision to Serve TPO no. 622 (2017)

- 7.1 Lancaster City Council considers it expedient in the interests of amenity to make provision for the preservation of the tree identified as T1, cherry, 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 cites the following reasons.

- Contribution to the amenity of the immediate and wider public domain;
- Potential to provide important habitat and resources for a range of protected and unprotected wildlife communities;
- Perceived threat of damage.

The tree in question has sufficient amenity value and importance within the landscape and may be under threat from damage to justify its protection with TPO no. 622 (2017), as a precaution.

- 7.2 As such, Lancaster City Council recommends that TPO no. 622 (2017) be confirmed without modification to protect a single, mature cherry tree T1.

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On behalf of Lancaster City Council