



Committee: APPEALS COMMITTEE
Date: TUESDAY, 30TH JANUARY 2007
Venue: LANCASTER TOWN HALL
Time: 2.00 P.M.

A G E N D A

1. **Apologies for Absence**

2. **Minutes**

Minutes of the Meeting held on 13th December 2006 (previously circulated)

3. **Items of Urgent Business authorised by the Chairman**

4. **Declarations of Interest**

MATTER FOR DECISION

5. **Tree Preservation Order No. 397 (2006): Land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster (Pages 1 - 44)**

Report of Head of Democratic Services (incorporating the report of the Tree Protection Officer)

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Sheila Denwood (Chairman), Shirley Burns, Chris Coates, John Gilbert, John Harrison, Helen Helme and David Kerr

(ii) Substitute Membership

Councillors Evelyn Ashworth, Anne Chapman, Ian Barker, Pat Quinton, Sylvia Rogerson and Joyce Taylor

(iii) Queries regarding this Agenda

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068 or email jglenton@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary, telephone 582170, or alternatively email memberservices@lancaster.gov.uk.

MARK CULLINAN
CHIEF EXECUTIVE
TOWN HALL,
LANCASTER LA1 1 PJ

Published on Friday, 19th January 2007

APPEALS COMMITTEE

TREE PRESERVATION ORDER NO. 397 (2006): LAND BETWEEN LANCASTER BOYS CLUB AND NOS. 9-17 VILLAS COURT, DALLAS ROAD, LANCASTER

30TH JANUARY 2007

REPORT OF HEAD OF DEMOCRATIC SERVICES

PURPOSE OF REPORT

To enable Members to consider the objection received to Tree Preservation Order No. 397 (2006): Land Between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster.

This matter will be dealt with in accordance with the adopted procedure for considering matters relating to individual applications, that is, the relevant matters for consideration by the Committee will be presented in the public part of the meeting, and the decision will be made after the exclusion of the press and public, on the basis that, in making its decision, the Committee will receive exempt information in the form of legal advice on possible legal proceedings arising from the decision (Paragraph 5 of Schedule 12A of the Local Government Act 1972).

RECOMMENDATIONS

That Members consider the objection to Tree Preservation Order No. 397 (2006): Land Between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster.

1.0 Introduction

- 1.1 Under Section 198 of the Town and Country Planning Act 1990, the Local Planning Authority may make an Order in respect of a tree or group of trees if it appears that it is expedient in the interests of amenity to make provision for the protection of trees in their area.
- 1.2 In accordance with the Town and Country Planning (Tree Preservation Order) Regulations 1999, an objection has been received to Tree Preservation Order No. 397 (2006), which has been made in relation to thirty-three trees on land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster.
- 1.3 The objection is from Lancaster Boys Club.
- 1.4 In accordance with the Regulations, it is necessary to consider the objection, and in order for the objection to be considered objectively, the matter is referred to the Appeals Committee.
- 1.5 The report of the City Council's Tree Protection Officer is attached (pages 3 to 5).

Appended to the report are:

- Appendix 1 - *Copy of the original Tree Preservation Order No. 397 (2006) (pages 7 to 20);*
- Appendix 2 - *Tree Evaluation Method for Preservation Orders (TEMPO) – Survey Data Sheet and Decision Guide (pages 21 to 22)*
- Appendix 3 - *Individual Trees and Landscape Photographs (pages 23 to 28);*
- Appendix 4 – *Correspondence and objection in relation to Tree Preservation Order No. 397 (2006) (pages 29 to 44).*

2.0 Proposal Details

2.1 The purpose of the report is to provide Members with details to enable them to decide whether or not to confirm Tree Preservation Order No. 397 (2006).

3.0 Details of Consultation

3.1 There has not been any consultation at this stage.

4.0 Options

4.1 The Options are:

- (1) To confirm Tree Preservation Order No. 397 (2006)
 - (a) Without modification
 - (b) Subject to such modifications as considered expedient.
- (2) Not to confirm Tree Preservation Order No. 397 (2006)

5.0 Conclusion

5.1 In the light of information contained within the report and its appendices, together with legal advice given at Committee and a site visit, Members are requested to determine whether or not to confirm Tree Preservation Order No. 397 (2006).

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Not applicable.

FINANCIAL IMPLICATIONS

Not applicable.

LEGAL IMPLICATIONS

A Legal Officer will be present at the meeting to advise the Committee.

BACKGROUND PAPERS

Tree Preservation Order No. 397 (2006)

Contact Officer: Jane Glenton

Telephone: 01524 582068

E-mail: JGlenton@lancaster.gov.uk

Ref: JEG

Contact: Planning Services
Telephone: 01524 582381
FAX: 01524 582323
Email: mknagg@lancaster.gov.uk
Website: www.lancaster.gov.uk

Planning Services
Maxine Knagg
Tree Protection Officer

Palatine Hall
Dalton Square
LANCASTER LA1 1PW

Date: 12th January 2007

Appeals Committee (TPO) – Held on Tuesday 30th January 2007

Trees subject of the Appeals Committee – established on land between Lancaster Boys Club and nos. 9-17 Villas Court, Dallas Road, Lancaster and subjects of **Tree Preservation Order no.397 (2006)**.

This report has been produced by Maxine Knagg (BSc Hons Arboriculture), Tree Protection Officer, Lancaster City Council.

1.0 Introduction

1.1 **Site:** The thirty-three trees in question are established on land between Lancaster Boys Clubs and nos. 9-17 Villas Court, Dallas Road, Lancaster.

1.2 **Scope and limitation of this report:** This is an arboriculture report restricted to only those trees subject of the Appeals Committee. The information provided within this report has been gathered by means of a preliminary visual tree assessment restricted to ground level observations and inspection at the time of the site visit. A systematic and objective appraisal of the amenity value of the trees has been undertaken using the *Tree Evaluation Method for Preservation Orders (TEMPO)*. It should be noted that trees are dynamic, living organisms subject to changes in weather, climate, pest and disease, development activities and site conditions.

2.0 Site Visit

2.1 **Date:** Undertaken 09th November 2006.

2.2 **Brief Site Description:** The site is established within a popular residential area of Lancaster, within easy access of the City Centre. The locality is characterised by terraced and semi-detached residential properties, a few commercial properties, a school, and car park. There is a main railway line situated immediately to the west of the site. Access to the city centre amenities are

serviced by a well-utilised public highway and public transport service to the east. The site in question represents a green open space in a densely populated area. There are trees established along the east, south and western boundaries, with little of no significant vegetation within the middle of the site.

2.3 **Identification and condition of the tree:** The thirty-three trees in question are the subjects of **Tree Preservation Order no. 397 (2006) (Appendix 1)**. The trees are clearly visible from the public highway *Dallas Road*, and from a large number of residential properties, *Lancaster Boys Club*, and from the railway line to the west. The trees have been identified in three groups within Tree Preservation Order no. 397 (2006); **G1** established along the eastern boundary; **G2** established along the southern boundary with Villas Court; and **G3** along the western boundary, adjacent to the railway line.

2.4 **G1** is a group of 11x ornamental cherry, 1x common alder; 1x larch; and 1x sycamore. These trees are of good overall condition, health and state of vigour.

2.5 **G2** is a group 3x common alder; 1x Italian alder; 1x lime; 2x sycamore; and 4x Norway maple. These trees are all of good overall condition, health and state of vigour.

2.6 **G3** is a group of 3x sycamore; 2x Italian alder; 2x common alder; and 1x cockspur thorn. These trees are all of good overall condition, health and state of vigour.

3.0 Tree Preservation Order

3.1 The amenity value of trees within G1, G2 and G3 has been assessed using an objective and systematic approach (Tree Evaluation Method for Preservation Orders - *TEMPO* system). A score of 15+ was achieved supporting the action of serving a Tree Preservation Order (**Appendix 2**).

3.2 Trees in G1, G2 and G3 contribute significantly to the local amenity by providing the following:

- pollution control, improving air quality by trapping particulate and gaseous pollutants, recycling moisture from the ground and re-releasing it back to the atmosphere;
- a reduction in noise pollution generated from traffic on the adjacent public highway, and railway. Leaves and branch structures provide a physical barrier and buffer sound waves, significantly reducing pollutant noise levels within the residential area;
- a sense of the changing seasons and greening in an otherwise heavily urbanised area;
- cohesion in an urbanised areas, providing links to other green fringes within the street scene;
- contribute to the support of wildlife colonies, and local biodiversity within Lancaster City;
- privacy and screening between adjacent properties, and from the public highway and railway systems.

3.3 Lancaster City Council considers it expedient in the interests of amenity to make provision for the preservation of the four trees in question **under sections 198, 201 and 203 of the Town & Country Planning Act 1990**. Lancaster City Council cite the following reasons. Trees are:

- provide important public amenity benefits;
- potential threat from site development in the future;
- a number of trees on the site have been damaged in the past seriously limiting their useful life potential.

It is the view of Lancaster City Council that damage or removal of these trees would have a detrimental impact on the amenity value of the local area and as such should be afforded protection by serving a Tree Preservation Order.

Maxine Knagg BSc (Hons) Arboriculture
Tree Protection Officer, Planning Services
Lancaster City Council

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APPENDIX 1

TREE PRESERVATION ORDER NO. 397 (2006)

---ooOoo---

I hereby certify that this is a true copy of the original
order.

K.H. Hendricks 11/16/06

RELATING TO TREES LOCATED AT
LAND BETWEEN LANCASTER BOYS CLUB AND
Nos. 9-17 VILLAS COURT, DALLAS ROAD, LANCASTER

TOWN HALL
LANCASTER
LA1 1PJ

CITY COUNCIL OF LANCASTER

TREE PRESERVATION ORDER NO. 397 (2006)

The City Council of Lancaster, in exercise of the powers conferred on them by sections 198, [201] and 203 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as Tree Preservation Order (No. 397) 2006

Interpretation

2. This Order "the authority" means the (Lancaster City Council) and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

Application of section 201

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on (15 November 2006).

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders) [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, no person shall:-
 - (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of, any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

Exemptions

5. (1) Nothing in article 4 shall prevent:-
 - (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary:-
 - (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
 - (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;

- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
 - (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph(a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
 - (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
 - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991; or
 - (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.
- (2) In paragraph (1), "statutory undertaker" means any of the following:-

a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,

a relevant airport operator (within the meaning of Part V of the Airports Act 1986, the holder of a licence under section 6 of the Electricity Act 1989, a public gas transporter,

the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,

a water or sewerage undertaker,

the Civil Aviation Authority or a body acting on behalf of that Authority,

the Post Office,

Applications for consent under the Order

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall:-
- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
 - (b) specify the work for which consent is sought; and
 - (c) contain a statement of the applicant's reasons for making the application

Application of provisions of the Town and Country Planning Act 1990

7. (1) The provision of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part 1 of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).
- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

Directions as to replanting

8. (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.
- (2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.
- (3) a direction under paragraph (1) may include requirements as to:-
- (a) species;
 - (b) number of trees per hectare;
 - (c) the preparation of the relevant land prior to the replanting; and
 - (d) the erection of fencing necessary for the protection of the newly planted trees.

Compensation

9. (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of:-
- (a) the refusal of any consent required under this Order; or
 - (b) the grant of any such consent subject to conditions,
- he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.
- (2) No claim, other than a claim made under paragraph (3), may be made under this article:-
- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
 - (b) if the amount in respect of which the claim would otherwise have been made is less than £500.
- (3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.
- (4) In any other case, no compensation shall be payable to a person:-
- (a) for loss of development value or other diminution in the value of the land;
 - (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
 - (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
 - (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10(application for felling licence and decision of Commissioners thereon) of that Act as if or any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article:-

"development value" means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

[Applications to trees to be planted pursuant to a condition

10 In relation to the tree(s) identified in the first column of Schedule 1 by the letter "C", being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees)), this Order takes effect as from the time when [that tree is planted] [those trees are planted]].

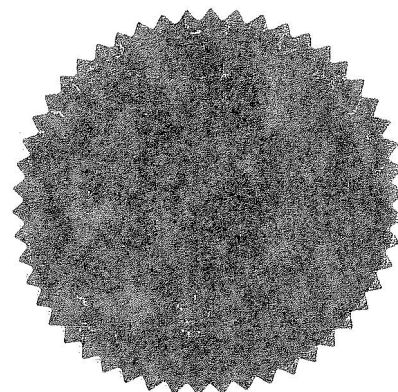
[Orders made by virtue of section 300

11. This Order takes effect in accordance with subsection (3) of section 300 (tree preservation orders in anticipation of disposal of Crown land).]

Dated this 14th day of November 2006

THE COMMON SEAL of
THE CITY COUNCIL OF LANCASTER
was hereunto affixed in the presence of:-

} *J. Dun*



Corporate Director (Regeneration)

SEAL REGISTER
No: 2113

FIRST SCHEDULE

Trees Specified Individually
(encircled in black on the map)

NO. ON MAP	DESCRIPTION	SITUATION
	NONE	

Trees specified by reference to an area
(within a dotted black line on the map)

NO. ON MAP	DESCRIPTION	SITUATION
	NONE	

Groups of trees
(within a broken black line on the map)

NO. ON MAP	DESCRIPTION	SITUATION
G1	(11) Ornamental Cherry , (1) Common Alder, (1) Larch and (1) Sycamore	Eastern boundary of: land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster
G2	(3) Common Alder, (1) Italian Alder, (1) Lime, (2) Sycamore and (4) Norway Maple	Southern boundary of: land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster
G3	(3) Sycamore, (2) Italian Alder, (2) Common Alder and (1) Cockspur Thorn	Western boundary of: land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster

Woodlands
(within a continuous black line on the map)

NO. ON MAP	DESCRIPTION	SITUATION
	NONE	

SCHEDULE 2

PART I

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications

<p>Provision of the Town and Country Planning Act 1990</p> <p>Section 69 (registers)</p>	<p>Adaptation or Modification</p> <p>(a) In subsection (1):-</p> <p>(i) Omit:- "in such manner as may be prescribed by a development order," "such" in the second place where it appears, and "as may be so prescribed", and</p> <p>(ii) substitute "matters relevant to tree preservation orders made by the authority" for "applications for planning permission".</p> <p>(b) In subsection (2):-</p> <p>(i) after "contain" insert "as regards each such order"; and</p> <p>(ii) for paragraphs (a) and (b) substitute:- "(a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it".</p> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
<p>Provision of the Town and Country Planning Act 1990</p> <p>Section 70 (determination of applications: general considerations)</p>	<p>Adaptation or Modification</p> <p>(a) In subsection (1):-</p> <p>(i) substitute:- "Subject to subsections (1A) and (1B), where" for "Where"; "the authority" for "a local planning authority",</p>

	<p>"consent under a tree preservation order" for "planning permission" where those words first appear; and "consent under the order" for "planning permission" in both of the other places where those words appear; and "consent under the order" for "planning permission" in both of the other places where these words appear; (ii) after "think fit", insert- "(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and (iii) Omit "subject to sections 91 and 92,".</p> <p>(b) After subsection (1) insert:- "(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting)".</p> <p>(c) Omit subsections (2) and (3).</p>
<p>Section 75 (effect of planning Permission)</p> <p>Section 78 (right to appeal Against planning decisions and failure To take such decisions)</p>	<p>(a) In subsection (1) substitute:-</p> <p>(i) "Any" for the words from "Without" to "any"; (ii) "consent under a tree preservation order" for "planning permission to develop land"; (iii) "the consent" for "the permission"; and (iv) "the land to which the order relates for the land".</p> <p>(b) Omit subsections (2) and (3).</p> <p>(a) In subsection (1) substitute:-</p> <p>(i) "the authority" for "a local planning authority"; (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear; (iii) "consent under such an order" for "planning permission" in the second place where those words appear;</p> <p>(iv) for paragraph (c) substitute:- "(c) give a direction [under a tree preservation order or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p>

(d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority"

(b) Omit subsection (2).

(c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order".

Substitute:-

"in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:-

(a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;

(a) in respect of such a failure as is mentioned in paragraph

(b) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant".

(d) For subsection (4) substitute:-

"(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)".

(e) For subsection (5), substitute:-

"(5) For the purposes of the application of Section 79 (1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question".

Section 79 (determination of appeals)(a)

(a) In subsections (1) and (2), substitute "the authority" for the local planning authority".

(b) Omit subsection (3).

(c) In subsection (4), substitute:-

(i) "sections 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5";

(ii) "consent under a tree preservation order" for "planning permission"; and

(iii) "the authority" for "the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71".

(d) Omit subsections (6) and (6A).

(e) In subsection (7), omit the words after "section 78".

PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990
AS ADAPTED AND MODIFIED BY PART 1

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part 1 of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

- (1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.
- (2) The register shall contain, as regards each such order:-
 - (a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and
 - (b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.
- (3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order:-
 - (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
 - (b) they may refuse consent under the order.
- (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.
- (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

Section 75

Any grant of consent under a tree preservation order shall (except insofar as the consent otherwise provides) ensure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

- (1) Where the authority:-
 - (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
 - (a) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;
 - (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or

- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

- (3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:-
 - (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
 - (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.
- (4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).
- (5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

Section 79

- (1) On an appeal under section 78 the Secretary of State may:-
 - (a) allow or dismiss the appeal, or
 - (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),and may deal with the application as if it has been made to him in the first instance.
- (2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

- (4) Subject to condition (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.
- (5) The decision of the Secretary of State on such an appeal shall be final.
- (7) Schedule 6 applies to appeals under section 78.

Lancaster City Council TPO No.397 (2006)

Land between Lancaster Boys Club & nos.9-17 Villas Court, Dallas Road,



Scale : 1:1250

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Produced using ESRI (UK)'s MapExplorer 2.0 - <http://www.esriuk.com>

Organisation	Lancaster City Council
Department	Planning Services
Comments	
Date	09 November 2006
SLA Number	LA100025403

APPENDIX 2

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO) – SURVEY DATA SHEET AND DECISION GUIDE

SURVEY DATA SHEET & DECISION GUIDE

Date: 9.11.06 Surveyor: MKNAGG

Tree details
 TPO Ref: Tree/Group No: G1-G3 Species: Mixed broadleaf + larch.
 Owner (if known): Location: Land between Lancaster Boys Club + nos. 9-17 Villas Court, Dallas Road, Lancaster

Part 1: Amenify assessment

a) Condition & suitability for TPO:

Refer to Guidance Note for definitions

- 5) Good Highly suitable
- 3) Fair Suitable
- 1) Poor Unlikely to be suitable
- 0) Unsafe Unsuitable
- 0) Dead Unsuitable

Score & Notes 3
 Predominantly early mature to mature trees, good condition, health + vitality.

b) Remaining longevity (in years) & suitability for TPO:

Refer to 'Species Guide' section in Guidance Note

- 5) 100+ Highly suitable
- 4) 40-100 Very suitable
- 2) 20-40 Suitable
- 1) 10-20 Just suitable
- 0) <10 Unsuitable

Score & Notes 4

c) Relative public visibility & suitability for TPO:

Consider realistic potential for future visibility with changed land use: refer to Guidance Note

- 5) Very large trees, or large trees that are prominent landscape features Highly suitable
- 4) Large trees, or medium trees clearly visible to the public Suitable
- 3) Medium trees, or larger trees with limited view only Just suitable
- 2) Small trees, or larger trees visible only with difficulty Unlikely to be suitable
- 1) Young, v. small, or trees not visible to the public, regardless of size Probably unsuitable

Score & Notes 4
 Highly visible public highway + private properties.

d) Other factors

(11)

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of arboricultural features, or veteran trees
- 4) Members of groups of trees important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features

Score & Notes 1

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify: refer to Guidance Note

- 5) Known threat to tree
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only
- 0) Tree known to be an actionable nuisance

Score & Notes 3 local residents may approach aneas to remove trees. 3x trees on site already inappropriately pruned along southern boundary.

Part 3: Decision guide

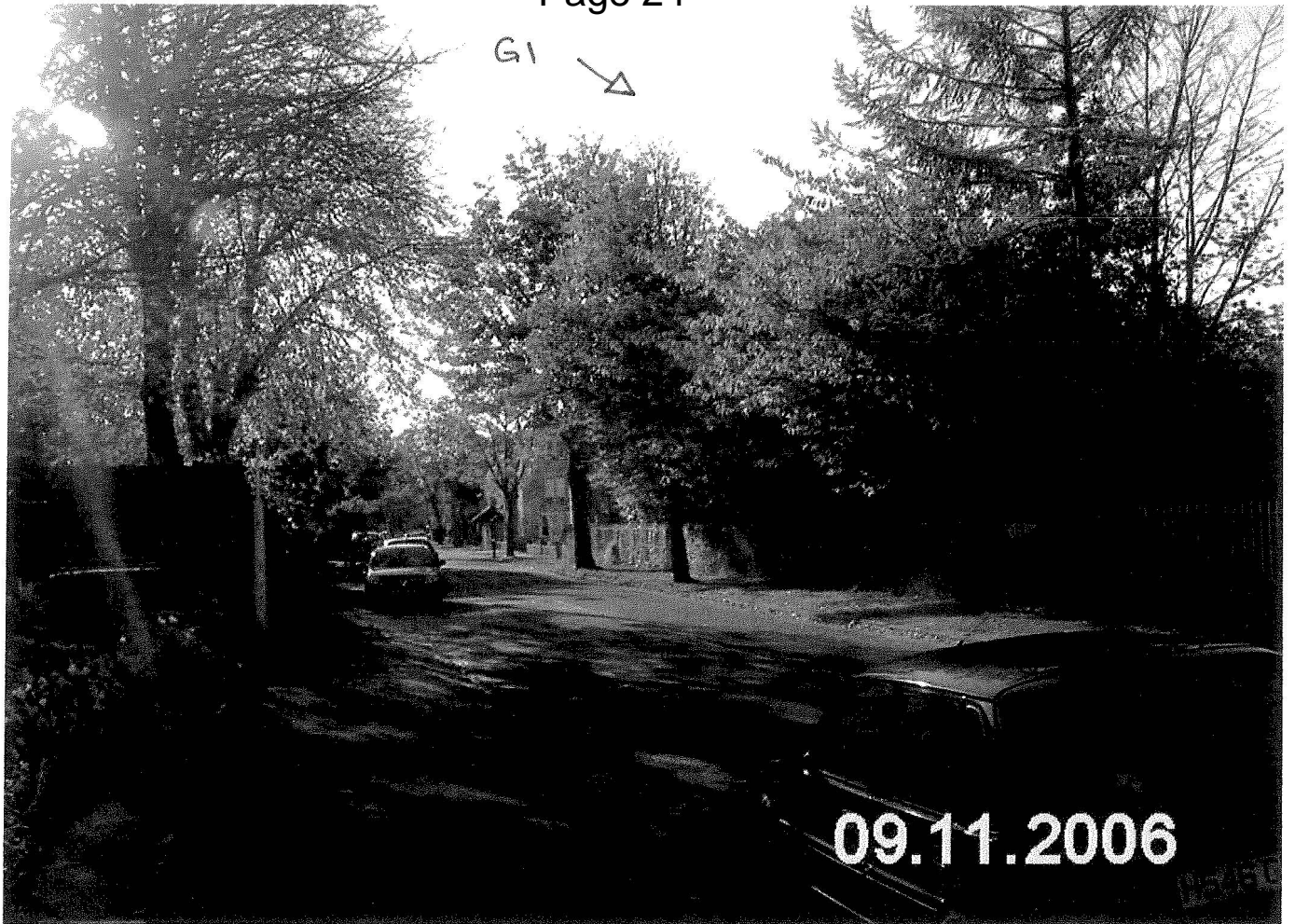
- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-10 Does not merit TPO
- 11-14 TPO defensible
- 15+ Definitely merits TPO

Add Scores for Total:
15+

Decision:
Serve TPO.

APPENDIX 3

**INDIVIDUAL TREES AND LANDSCAPE
PHOTOGRAPHS**



G1 Viewed From the land between Lancaster Boys Club
and Villas Court .



09.11.2006



09.11.2006

Villas Court



Tree Preservation Order no. 397 (2006) - G3 adjacent to the railway embankment (western boundary).



← Villas Cart →

09.11.2006

At Villas
Court →

previously 'topped' tree
not subject to
TPO no. 397 (2006)

09.11.2006



APPENDIX 4

**CORRESPONDENCE AND OBJECTION IN
RELATION TO TREE PRESERVATION ORDER
NO. 397 (2006)**

Contact: Planning Services
Telephone: 01524 582381
FAX: 01524 582323
Email: mknagg@lancaster.gov.uk
Website: www.lancaster.gov.uk

Oglethorpe Sturton & Gillibrand
Solicitors
16 Castle Park
Lancaster
Lancashire
LA1 1YG

Planning Services

Maxine Knagg
Tree Protection Officer
Palatine Hall
Dalton Square
LANCASTER LA1 1PW

Date: 2nd January 2007

Dear Sir/Madam

Re: Tree Preservation Order no.397 (2006) – Land between Lancaster Boys Club and nos. 9-17 Villas Court, Dallas, Lancaster.

Thank-you for your letter dated 22nd December 2006 with regards to the above matter.

We acknowledge your formal objection to Tree Preservation Order no.397 (2006), and would like to take this opportunity to respond to the comments made within your letter.

In response to your comments, we would reiterate that as a local planning authority, we are responsible for the correct administration of all regulations relating to Tree Preservation Orders and not for making the regulations themselves. Regulation 4 (1) clearly states that the trees subject of the objection must be specified; an objection may relate to a single tree, several trees or indeed all trees subject of the Tree Preservation Order. Your letter of the 18th December 2006 failed to clearly specify the trees to which the formal objection related. We cannot be left to either assume or guess which trees an objection relates to. The prompt response of Lancaster City Council in dealing with this matter did in fact allow you the opportunity to amend your objection and respond within the given time scales.

To confirm and for your records Tree Preservation Order no.397 (2006) does in fact relate to a total of 33 trees on the land between Lancaster Boys Club and nos. 9-17 Villas Court, not 13 as stated in your letter (22.12.2006).

As you kindly point out, this area of land and trees may not be the 'Forest of Dean', however, in a heavily, urbanised area, very close to Lancaster City centre it does in my professional opinion, hold a significantly high level of importance and value. I trust that, on reflection, you may appreciate that this is not a factual legal issue but one of environmental amenity.

If you require any further information or wish to discuss this matter further, please do not hesitate to contact us.

Yours faithfully

**Maxine Knagg BSc (Hons) Arboriculture
Tree Protection Officer**

OGLETHORPE STURTON & GILLIBRAND
S O L I C I T O R S

Lancaster City Council
Planning Department
DX: 63531
LANCASTER

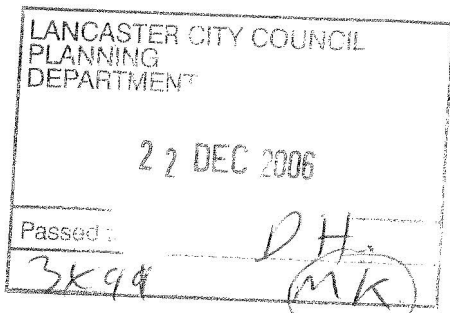
Our Ref: JM/HB/LAN003-5

Your Ref: TPO NO. 397 (2006)

Date: 22 December 2006

Email: jmyers@osg.co.uk

DocRef: -92047616



Please note that we are closed from noon on 22nd December until 9am on 27th December, and from noon on 29th December until 9am on 2nd January 2007.
We would like to wish all our clients and colleagues a Merry Christmas and a Happy New Year!

Dear Sirs

Tree Preservation Order 397 (2006)
Land between Lancaster Boys Club and Nos. 9 - 17 Villas Court, Dallas Road

Thank you for your letter of the 21st December 2006.

We believe that our letter of the 18th December 2006 makes it perfectly clear that we are objecting to all of the trees contained within the Order and that there was no need to simply re-write the list of 13 trees contained within the Order. The plot being land at 9 – 17 Dallas Road, Lancaster is hardly the Royal Forest of Dean.

For the purpose of clarity, the trees over which our client wishes to object an Order being imposed upon are contained within the first schedule of Tree Preservation Order number 397 (2006) and contained within areas G1, G2 and G3 on the attached plan.

We look forward to hearing from you.

Yours faithfully

Oglethorpe Sturton & Gillibrand

Enc. Plan
Schedule

R.M.N. Gillibrand
D.L. Gillibrand
E.R. Breay
Gill Gardner
Alison Kinder
Emma J. Briggs
D.E. Park
Jenny Gemmell



INVESTOR IN PEOPLE

16 Castle Park
Lancaster
LA1 1YG
DX 63500 Lancaster
T 01524 846 846
F 01524 382 247
E office@osg.co.uk
W www.osg.co.uk
Offices at Kirkby Lonsdale Bentham

FIRST SCHEDULE

Trees Specified Individually
(encircled in black on the map)

NO. ON MAP	DESCRIPTION	SITUATION
	NONE	

Trees specified by reference to an area
(within a dotted black line on the map)

NO. ON MAP	DESCRIPTION	SITUATION
	NONE	

Groups of trees
(within a broken black line on the map)

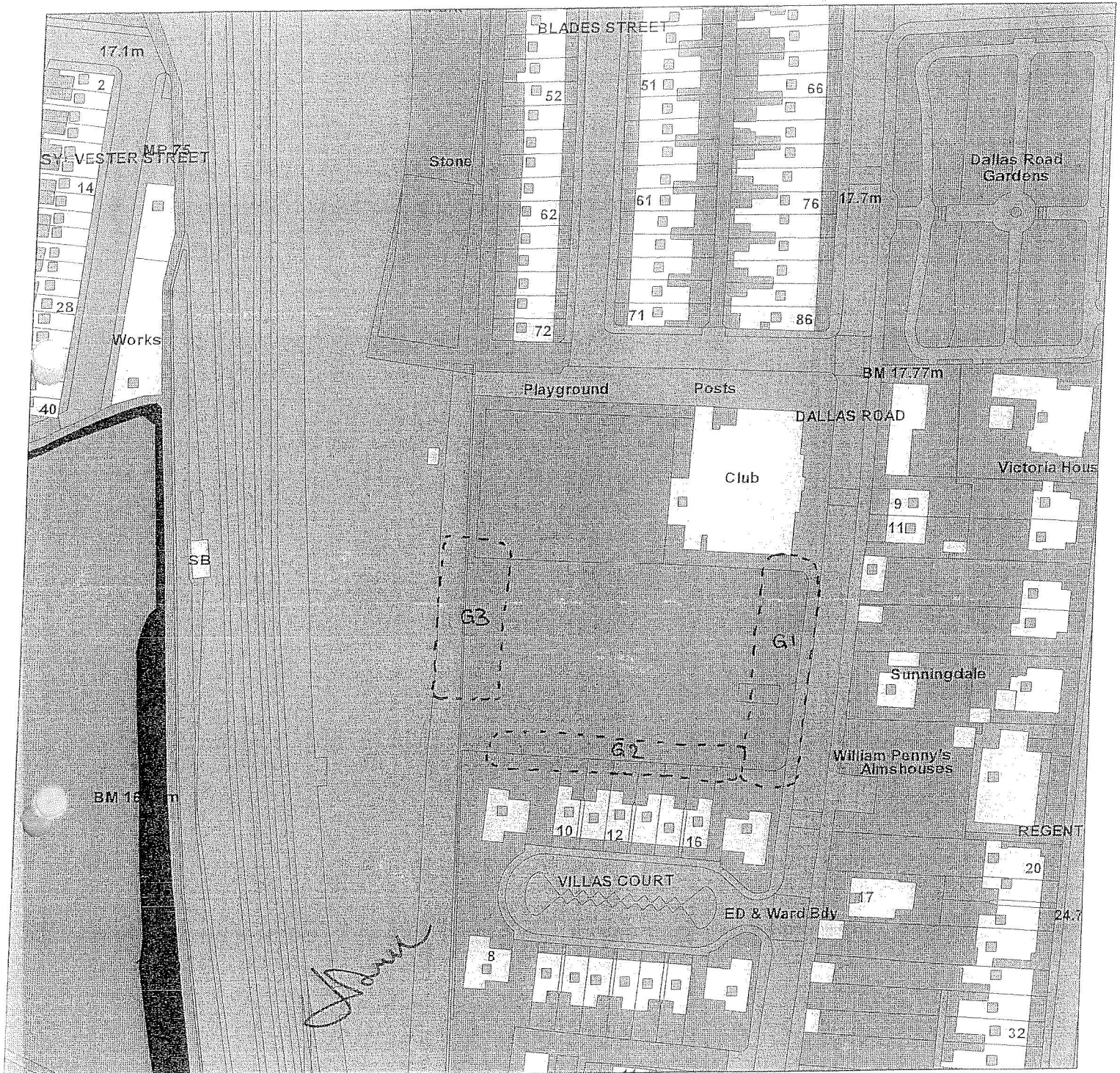
NO. ON MAP	DESCRIPTION	SITUATION
G1	(11) Ornamental Cherry , (1) Common Alder, (1) Larch and (1) Sycamore	Eastern boundary of: land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster
G2	(3) Common Alder, (1) Italian Alder, (1) Lime, (2) Sycamore and (4) Norway Maple	Southern boundary of: land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster
G3	(3) Sycamore, (2) Italian Alder, (2) Common Alder and (1) Cockspur Thorn	Western boundary of: land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster

Woodlands
(within a continuous black line on the map)

NO. ON MAP	DESCRIPTION	SITUATION
	NONE	

Lancaster City Council TPO No.397 (2006)

Land between Lancaster Boys Club & nos.9-17 Villas Court, Dallas Road,



Scale : 1:1250

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Organisation	Lancaster City Council
Department	Planning Services
Comments	
Date	09 November 2006
SLA Number	LA100025403

Contact: Planning Services
Telephone: 01524 582381
FAX: 01524 582323
Email: mknagg@lancaster.gov.uk
Website: www.lancaster.gov.uk

Oglethorpe Sturton & Gillibrand
Solicitors
16 Castle Park
Lancaster
Lancashire
LA1 1YG

Planning Services

Maxine Knagg
Tree Protection Officer
Palatine Hall
Dalton Square
LANCASTER LA1 1PW

Date: 21st December 2006

Dear Sirs/Madam

Re: Tree Preservation Order no.397 (2006) – Land between Lancaster Boys Club and Nos. 9-17 Villas Court, Dallas Road, Lancaster.

Thank-you for your letter dated 18th December 2006, with regard to the above matter.

With reference to your correspondence, we should point out that the written objection fails to comply with *Regulation 4 of the Town & Country Planning (Trees) Regulations 1999*.

Section 4(1) subject to paragraph (2), objections & representations, sub-section (b) states: '*specify the particular trees, groups or areas of trees or woodlands in respect of which the objections or representations are made*'.

The objection received fails to comply with this requirement, as it has not specified the tree(s) to which it relates. As such, under current legislation and good practice we consider the objection invalid.

You may also note that the period in which to make a valid objection ends on 24th December 2006, 28 days after delivery of the Formal Notice informing all interested parties of Lancaster City Council's decision to serve Tree Preservation Order no. 397 (2006).

Yours faithfully

Planning Services
Lancaster City Council

OGLETHORPE STURTON & GILLIBRAND
S O L I C I T O R S

Lancaster City Council
Planning Department
DX: 63531
LANCASTER

Our Ref: JM/HB/LAN003-5

Your Ref: TPO NO. 397 (2006)

Date: 18 December 2006

Email: jmyers@osg.co.uk

DocRef: 1932295680

Please note that we are closed from noon on 22nd December until 9am on 27th December, and from noon on 29th December until 9am on 2nd January 2007.

We would like to wish all our clients and colleagues a Merry Christmas and a Happy New Year!

Dear Sirs

Tree Preservation Order 397 (2006)
Land between Lancaster Boys Club and Nos. 9 - 17 Villas Court, Dallas Road

We have been instructed by Lancaster Boys Club to submit an objection to the above.

We make this objection on the basis that the trees noted within the proposed Tree Preservation Order are of very little amenity value and are not species of trees that are in any way in need of protection. Making these trees subject to an Order appears quite unnecessary.

We look forward to hearing from you.

Yours faithfully

Oglethorpe Sturton & Gillibrand



R.M.N. Gillibrand
D.L. Gillibrand
E.R. Breay
Gill Gardner
Alison Kinder
Emma J. Briggs
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Fax: (01524) 582323
Minicom: (01524) 582175
E-mail: ashepherd@lancaster.gov.uk
Website: www.lancaster.gov.uk
Our Ref: TPO NO. 397 (2006)
Your Ref:

Planning Services

See attached names and addresses

Andrew Dobson
Head of Planning Services

Palatine Hall
Dalton Square
LANCASTER LA1 1PW

23 November 2006

Dear Sir/Madam

IMPORTANT - THIS COMMUNICATION MAY AFFECT YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999

Tree Preservation Order: 397 (2006)
Lancaster City Council:- LAND BETWEEN LANCASTER BOYS CLUB AND
Nos. 9-17 VILLAS COURT, DALLAS ROAD, LANCASTER

THIS IS A FORMAL NOTICE to let you know that on 14 November 2006 the Council made the above tree preservation order.

A copy of the order is enclosed. In simple terms, it prohibits anyone from cutting down, topping or lopping any of the trees described in the First Schedule and shown on the map without the Council's consent.

Some explanatory guidance on tree preservation orders is given in the enclosed leaflet, *Protected Trees: a guide to Tree Preservation Orders*, produced by the Department of the Environment, Transport and the Regions.

THE COUNCIL HAVE MADE THE ORDER BECAUSE:-

The trees are of significant importance to the amenity of the area.

The Order took effect, on a provisional basis, from 15 November 2006. It will continue in force on this basis for a further 6 months or until the order is confirmed by the Council, whichever first occurs.

The Council will consider whether the order should be confirmed, that is to say, whether it should take effect formally. Before this decision is made, the people affected by the order have a right to make objections or other representations about any of the trees, groups of trees or woodlands covered by the Order.

If you would like to make any objections or other comments, please make sure we receive them in writing within 28 days of receiving this notice. Your comments must comply with regulations 4 of the Town and Country Planning (Trees) Regulations 1999, a copy of which is enclosed. Send your comments to Lancaster City Council, Planning and Building Control, Palatine Hall, Dalton Square, Lancaster LA1 1PW. All valid objections or representations are carefully considered before a decision on whether to confirm the Order is made.

The Council will write to you again when that decision has been made. In the meantime, if you would like any further information or have any questions about this letter, please contact Anne Shepherd at Lancaster City Council, Planning Services, Palatine Hall, Dalton Square, Lancaster LA1 1PW or telephone (01524) 582346.

Yours faithfully

A handwritten signature in black ink, appearing to read 'AD', is written over a faint circular stamp.

ANDREW DOBSON
HEAD OF PLANNING SERVICES

COPY OF REGULATION 4 OF THE TOWN AND COUNTRY PLANNING (TREES)
REGULATIONS 1999-12-02

Objections and representations

4(1) *Subject to paragraph (2), objections and representations*

(a) *shall be made in writing and*

- (i) *delivered to the authority not later than the date specified by them under regulation 3(2)c; or*
- (ii) *sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;*

(b) *shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which the objections or representations are made; and*

(c) *in the case of an objection, shall state the reasons for the objection.*

4(2) *The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected.*

Contact: Planning Services
Telephone: 01524 582381
FAX: 01524 582323
Email: mknagg@lancaster.gov.uk
Website: www.lancaster.gov.uk

Planning Services
Maxine Knagg
Tree Protection Officer

Palatine Hall
Dalton Square
LANCASTER LA1 1PW

Date: 9th November 2006

Re: Proposed New Tree Preservation Order – land between Lancaster Boys Club and nos. 9-17 Villas Court, Dallas Road, Lancaster.

1.0 Introduction

1.1 **Site:** The land in question is established between the main building of Lancaster Boys Club and nos. 9-17 Villas Court, Dallas Road, and is under the control of Lancaster Boys Club. The locality is a popular residential area characterised by terraced and semi-detached properties. There are also, occasional commercial premises, a school and public car park close by.

1.2 **Scope and limitation of this report:** This is an arboriculture report restricted to the trees subject to the proposed new Tree Preservation Order. The information provided within this report has been gathered by means of a preliminary visual tree assessment restricted to ground level observations and inspection at the time of the site visit. An objective appraisal of the amenity value of the trees in question has also been undertaken using a *Tree Evaluation Method for Preservation Orders (TEMPO)*. It should be noted that trees are dynamic, living organisms subject to changes in weather, climate, pest and disease, development activities and site conditions.

2.0 Site Visit

2.1 **Date:** Undertaken 09th November 2006.

2.2 **Brief Site Description:** There is a railway line established close to the western boundary of the site with the public highway of Dallas Road to the east.

2.3 Identification and condition of the trees: There are 33 trees subject of this report, referenced as G1, G2 and G3. Species include Italian Alder, Common Alder, Sycamore, Norway Maple, Goat Willow, Ornamental Cherry, Lime and Larch.

G1 is a group formed along the eastern boundary of the site adjacent to Dallas Road. This group includes a line of 11x Ornamental Cherry; 1x Common Alder; 1x Larch and 1x Sycamore. Trees within this group are of a good overall condition, health and vigour status. Branches from these trees overhang the public highway.

G2 is group formed along the southern boundary of the site, and includes 3x Common Alder; 1x Italian Alder; 1x Lime; 2x Sycamore and 4x Norway Maple. Trees within this group are of a good overall condition, health and vigour status. Branches from these trees overhang the rear boundary of residential properties nos. 10-17 Villas Court. A number of these trees have been pruned in the past; brash (pruned branches) has accumulated beneath the canopy of a number of trees. In addition, there is 1x Sycamore and 1x Lime opposite the rear of no.9 Villas Court, both of these trees have been pruned very heavily (topped) in the past, because of their poor overall condition they will not be the subject of any future Tree Preservation Order.

G3 is group formed along the western boundary of the site at the base of a steep railway embankment. This group is comprised of 3x Sycamore; 2x Italian Alder; 2x Common Alder and 1x Cockspur Thorn.

3.0 Tree Preservation Order

3.1 The amenity value of the trees in question has been assessed using an objective and systematic approach; the *Tree Evaluation Method for Tree Preservation Orders (TEMPO)* system) has been used. A score of 15+ was accumulated, supporting the use of a Tree Preservation Order.

3.2 Lancaster City Council consider it expedient in the interests of amenity to make provision for the preservation of the trees in question **under sections 198 (201) and 203 of the Town & Country Planning Act 1990**. Lancaster City Council cite the following reasons:

- All trees are clearly visible from Lancaster Boys Club, the public highway, a large number of residential properties, and railway.
- The trees are important landscape features in terms of their form, size and contribution to local amenity.
- Important wildlife value in an inner city centre area with few other opportunities for large groups of trees to grow to maturity.

4.0 Recommendation

4.1 Serve a Tree Preservation Order under sections 198 (201) and 203 of the Town & Country Planning Act 1990.

**Maxine Knagg BSc (Hons) Arboriculture
Tree Protection Officer
Planning Services
Lancaster City Council**

R =

Returned

Tree Preservation Order No. 397 (2006)

Villas Court, Dallas Road, Lancaster LA1 1TR

Nos.	Names
9	Inayat & Mariam Munshi
10	Farzana & Mustaq A. Khoda
11	Martin Wyeth
12	The Owner/Occupier R 6/12/06
14	The Owner/Occupier R 6/12/06
15	The Owner/Occupier
16	Bilal, Ikram, Salma & Wajmumisha Dola
17	Abdulla, Bilkish & Riaz Munshi

No Number 13.

12, 14 and 15 – Names not registered in the electoral file.

And:

Lancaster Boys Club
 Dallas Road
 Lancaster
 LA1 1TR

For the attention of Colin Hewitt - Manager

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