

APPEALS COMMITTEE

1.30 P.M.

18TH FEBRUARY 2016

PRESENT: Councillors Claire Cozler (Chairman), Janice Hanson, Joan Jackson, Karen Leytham, Roger Sherlock and Peter Yates (substitute for Helen Helme)

Apologies for Absence:

Councillor Jon Barry and Helen Helme

Officers in Attendance:

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| Angela Parkinson | Senior Solicitor |
| Maxine Knagg | Tree Protection Officer |
| Jane Glenton | Democratic Support Officer |

1 **SITE VISITS: TREE PRESERVATION ORDERS NO. 555 (2015) AND NO. 559 (2015)**

Prior to commencement of the meeting, site visits were undertaken in response to objections received to the two Tree Preservation Orders.

The following Members were present on the site visits:

Councillors Claire Cozler (Chairman), Janice Hanson, Joan Jackson, Karen Leytham, Roger Sherlock and Peter Yates.

Officers in Attendance:

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| Maxine Knagg | - | Tree Protection Officer |
| Jane Glenton | - | Democratic Support Officer |

2 **APPOINTMENT OF VICE-CHAIRMAN**

It was proposed by Councillor Jackson and seconded by Councillor Leytham that Councillor Helme be appointed Vice-Chairman of the Appeals Committee for the Municipal Year 2015/16. There being no further nominations, the Chairman declared the proposal to be carried.

Resolved:

That Councillor Helme be appointed Vice-Chairman of the Appeals Committee for the Municipal Year 2015/16.

3 **MINUTES**

The minutes of the meeting held on 30th April 2015 were signed by the Chairman as a correct record.

4 ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN

There were no items of urgent business.

5 DECLARATIONS OF INTEREST

There were no declarations of interest.

The Chairman advised that the Agenda would be re-ordered in consideration of the Appellant's representative being present at the hearing for Tree Preservation Order No. 559 (2015).

6 TREE PRESERVATION ORDER NO. 559 (2015) - RIVERSIDE CARAVAN PARK, LANCASTER ROAD, HEATON WITH OXCLIFFE

The Committee considered a formal written objection to a decision of Lancaster City Council under Section 198 of the Town and Country Planning Act 1990 making an Order in respect of an area of trees established within the Riverside Caravan Park, Lancaster Road, Heaton-with-Oxcliffe, identified as A1 and being Tree Preservation Order (TPO) No. 559 (2015), and thereafter whether or not to confirm the Order.

It was reported that the Council had made the said TPO on 28th September 2015, following Riverside Caravan Park being identified for potential development. Trees within the site had been unprotected and at risk of removal prior to the submission of Planning Application No. 15/00626/FUL for the siting of static caravans for holiday occupation for 12 months of the year. The application proposed the felling of swathes of trees to accommodate the proposed development. The Planning Application had been refused by the Council. Two reasons had been given for refusal, both of which related to the adverse impact of the proposed tree losses on the wider public domain and inadequate mitigation measures.

The written objection had been received from Ms. Rachel Whaley of GVA Leeds, Planning Agents acting on behalf of the landowner, Britaniacrest Limited (the Appellant). Ms. Whaley was present at the meeting.

In determining whether or not to confirm the Order, Members heard representations from Ms. Whaley on behalf of the Appellant.

Appellant's Representative

The Appellant's representative advised Members that, in her opinion, TPO No. 559 (2015) had been wrongly served. Planning application no. 15/00626/FUL would not have resulted in the large-scale loss of important trees that made a significant contribution to the character of the area. It would have been appropriate to protect those trees through conditions imposed on the planning application, had it been granted, for example conditions relating to landscaping and an arboricultural method statement.

AWA Tree Consultants had been commissioned by the Appellant to carry out a full tree survey and tree constraints plan for the site, which had shown that none of the trees on site was considered to be of high amenity value, but of low or moderate value.

With reference to the trees and groups of trees identified on AWA's tree constraints plan, G39, G38, T40 and T41 could not be seen from outside the site. G4, G5, T7, G8, G9, G10, T11 and G12 did not feature on views outside the site. There was already planning permission in place on this part of the site for the siting of static caravans and it was felt that a TPO should not be served on this part of the site.

Other groups of trees around the site boundary were not under threat from development proposals. None of these trees had been identified as being of high amenity value. The landowner intended to retain them for landscape screening around the site.

In the Appellant's representative's opinion, the methodology used in the Tree Evaluation Method for Preservation Orders (TEMPO) to assess the amenity value of trees contained within A1 was flawed. Trees and groups of trees could not be seen from outside the site and therefore their loss would not have a detrimental impact on the amenity value of trees on-site.

Confirmation of the TPO was therefore unnecessary and unreasonable, and an inappropriate way in which to control development on the site. The retention and protection of the trees could be secured through planning conditions on any planning application granted.

Following presentation of her case, Members asked questions of the Appellant's representative.

Lancaster City Council's Tree Protection Officer

The Tree Protection Officer presented the case on behalf of Lancaster City Council, and reported that the Council had authority under Section 198 of the Town and Country Planning Act 1990 to make an Order in respect of a tree or group of trees if it appeared that it was expedient, in the interests of amenity, to make provision for the protection of trees in its area.

The amenity value of the trees contained within A1 had been assessed using a TEMPO, and a score of 15+ had been achieved, which definitely merited a TPO.

Members were advised that Riverside Caravan Park benefited from extensive mature hedgerow trees to its boundaries and within areas internal to the site. Species included hawthorn, alder, ash, willow, cherry and eucalyptus. Many of the trees made an important contribution to the character and appearance of the site and significantly also that of the wider public domain.

The site lay less than 100 metres to the north of the River Lune, which was designated a Biological Heritage Site. Trees and hedgerows were recognised for their contribution to the Biological Heritage Site in a range of locations along its length.

The trees within the Caravan Park could be clearly seen from a range of public vantage points. These included the public footpath along the southern bank of the River Lune and in both easterly and westerly directions when travelling along the main public highway to the north.

The trees within the site made a clear visual impact upon the character and appearance

of the site and that of the wider public domain. The loss of any of these trees had significant potential for harm which, given their age and size, could not be reasonably mitigated with new planting in the next 20 to 30 years.

It was the view of the Secretary of State that a TPO should be used to protect selected trees or woodland if their removal would have a significant impact on the local environment and its enjoyment by the public.

In addition, the Secretary of State considered that it may be expedient to make a TPO if the Local Planning Authority believed there was a risk of the trees or woodland being cut down or pruned in ways which had a significant impact on the amenity of the area. It was not necessary for the risk to be immediate. In some cases, the Local Planning Authority may believe that certain trees were at risk from development pressure.

Members were advised that Riverside Caravan Park had been subject to a recent planning application for development (reference no. 15/00626/FUL) for the siting of static caravans. Large swathes of trees were proposed to be felled to facilitate the development, effectively removing important mature hedgerow trees from within the site. The application had been refused planning consent. The two reasons given for refusal were relating to the loss of existing trees and inadequate measures to mitigate the proposed tree losses.

It was reported that trees could be adversely impacted in a number of ways by development, directly with their removal, indirectly through practices associated with the construction phase of development, and by increased pressure to inappropriately manage trees associated with the change of use of any given site that inevitably came with a new planning permission.

Trees within the site had an important role in the provision of habitat and foraging opportunities for wildlife, including protected species, such as nesting birds and bats. Both groups were protected under the Wildlife and Countryside Act 1981 (as amended 2010). The largescale loss of trees and hedgerows would result in a net loss of habitat in this biologically sensitive location adjacent to the River Lune.

It was reported that there had been recent development within the site, which had resulted in the loss of a section of trees to the north-eastern boundary where new caravan units were sited. TPO 559 (2015) had been made when it had become apparent that the Caravan Park was likely to be the subject of an application for development.

Trees within the site were found to have sufficient amenity and wildlife benefit, coupled with the very real threat from development, to warrant and justify their inclusion and protection by a TPO. A TPO did not obstruct or prevent development. It did, however, ensure trees were a material consideration within any future application.

Trees within the site had been protected on a provisional basis by an 'Area' designation. This was commonly viewed as an 'emergency' or 'blanket' TPO, providing protection to all trees within the curtilage of the designated area.

With regard to the Council's response to the main points contained in the written objection to TPO 559 (2015), the Council was entirely appropriate in designating an Area of protection in the original provisional order. It was now appropriate to modify this

designation to identify individual trees and groups or woodland compartments to provide a greater level of detail (as shown at Appendix 7 to the Tree Protection Officer's report).

It was reported that planning conditions alone would be an inadequate method of protecting existing trees against removal or inappropriate management. Conditions could only be applied to a planning consent and there was currently no planning permission. As such, on this basis, the trees would be unprotected and could be removed or inappropriately managed at any point. Amenity and wildlife benefit could be lost. There were sufficient pressures and threat from development of the site to warrant and justify a TPO. Whilst there were a number of significant individual trees within the site that conveyed individual merits, the majority of trees had the greatest benefit as a collective, generating significant arboricultural and landscape features.

Trees internal to the site and those established along boundary lines had sufficient visual impact on the site and wider locality to justify their inclusion within TPO No. 559 (2015). They were clearly visible from a range of public vantage points, which had been demonstrated. Members noted that there was no requirement within the Town and Country Planning Act 1990 for all trees to be clearly seen from a public vantage point. The loss of trees from particular areas would have the potential to impact upon the remaining trees. There was sufficient potential to retain trees previously identified for removal by opting for only 'tree and root friendly' materials and methods of construction, thus avoiding any potential for an adverse impact upon the wider domain.

The Council supported the applicant's 'intention' to retain boundary trees. However, an intention alone did not safeguard trees. It remained the Tree Protection Officer's view that TPO 559 (2015) should be confirmed, with modifications as set out at Appendix 7 to her report (subject to a final tree count), in the interests of public amenity value and wildlife benefit.

Following presentation of her case, Members asked questions of the Tree Protection Officer.

(The Tree Protection Officer and the Appellant's representative left the meeting room whilst the Committee made its decision in private.)

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 559 (2015)
 - (a) Without modification;
 - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 559 (2015).

It was proposed by Councillor Sherlock and seconded by Councillor Leytham:

"That Tree Preservation Order No. 559 (2015) be confirmed, as modified by Appendix 7 of the Tree Protection Officer's report."

Upon being put to the vote Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be clearly carried.

(The Tree Protection Officer and the Appellant's representative returned to the meeting for the decision to be announced.)

Resolved:

That Tree Preservation Order No. 559 (2015) be confirmed, as modified by Appendix 7 of the Tree Protection Officer's report.

7 TREE PRESERVATION ORDER NO. 555 (2015) - SHENSTONE, THE GREEN, OVER KELLET

The Committee considered a formal written objection to a decision of Lancaster City Council under Section 198 of the Town and Country Planning Act 1990 making an Order in respect of two mature trees established within the curtilage of Shenstone, The Green, Over Kellet, identified as T1 and T2 and being Tree Preservation Order (TPO) No. 555 (2015), and thereafter whether or not to confirm the Order.

It was reported that the Council had made TPO No. 555 (2015) on 3rd September 2015 following the Council's objection to the removal of two mature sycamore trees, the subject of a Section 211 notification no. 15/0105/TCA. Both trees had been found to be free from significant pests, disease and structural defects to otherwise justify their removal. Both trees were considered to have important public amenity and wildlife value to justify their ongoing retention and protection.

The formal written objection had been received from the property owner and Appellant, Mr. Paul Maguire.

Members were advised that the Appellant had been unable to attend the Appeal hearing due to being away on holiday at the time of the meeting. In determining whether or not to confirm the Order, Members considered a written representation submitted by the Appellant, which had been emailed to Members prior to the meeting. A paper copy of the written representation was circulated at the meeting and considered by Members.

Appellant's Representation

In his written representation, the Appellant had advised the Committee as follows:

- The TEMPO Assessment score was 15. The Appellant's understanding was that a TEMPO score of 16+ merited a definite TPO, and that a score of 12 to 15 meant that a TPO was 'defensible'. Therefore objective scoring did not show a 'definite' TPO.
- The two sycamores, T1 and T2, dominated the domestic garden, and were out of proportion for a domestic garden. They were not native trees.
- The size of the root footprint and its proximity to the house was of concern to the Appellant, as was the tree falling in severe weather and causing injury, or even death.

- The canopy in the summer was enormous and blocked a significant amount of light in the Appellant's garden and those of his neighbours. His neighbours had written to the Council in support of the Appellant's application and the Appellant asked that this be taken into consideration.
- Much emphasis was given to the effect of trees on the local amenity within a Conservation Area. The trees were only just visible from the Green to the front of the house. If the sycamores were felled, the native oak and beech would thrive. The oak, in particular, was showing signs of distress, as acknowledged by the Tree Protection Officer, who had advised the Appellant that if he was unsuccessful in his application to fell the sycamores, should consider an application to fell the native oak.
- Wildlife would continue to thrive if the sycamores were felled. There were two mature beech trees, two rowan trees and a large oak and a number of mature fruit trees. The canopy would therefore be maintained.
- The emphasis on the visual change was subjective and this had been made on a short visit to the property by one person. The Appellant and his neighbours lived with the trees permanently and felt that there would be no negative impact visually if they were felled. In fact, the opposite. It could not be objectively proven that wildlife would be detrimentally affected. This, again, was subjective speculation and opinion.
- The sycamores were two imposing trees in a domestic garden. All arguments for the TPO appeared subjective. The TEMPO score at least allowed counter-argument to the TPO, as referred to previously.

The Appellant asked the Committee to consider his opinion, as someone who lived with the trees on a day-to-day basis.

Lancaster City Council's Tree Protection Officer

The Tree Protection Officer presented the case on behalf of Lancaster City Council, and reported that the Council had authority under Section 198 of the Town and Country Planning Act 1990 to make an Order in respect of a tree or group of trees if it appeared that it was expedient, in the interests of amenity, to make provision for the protection of trees in its area.

TPO 555 (2015) had been made regarding two sycamore trees, which were established within the rear garden of the Appellant and within the local Conservation Area.

The Appellant had submitted a Section 211 Notice to fell both trees because of the shading effect of their canopies on the main dwelling when the trees were in leaf. There were no other arboriculture reasons cited to support their removal.

The property had been extended following planning consent granted on 8th April 2011. As part of the assessment of the application, the trees had been duly considered, including their relationship with the existing dwelling, the wider locality and the Conservation Area. A total of six trees had been agreed for removal at that time; five because of arboriculture reasons; and one tree had been felled to accommodate the development. All other trees, including the two sycamore, had been agreed for retention

and protection, given their important amenity value and wildlife benefit.

The development had been duly completed. It was understood that the Appellant had bought the property approximately nine months ago. The sale of the property had been widely recognised as a significant threat to trees, either through direct removal or inappropriate management.

The Council had not received any written notifications to undertake works to either of the two trees in question since planning consent had been granted in 2011. This would suggest that the relationship between the trees and dwelling was not incongruous.

T1 and T2 were sycamore that had grown and matured to make an important contribution to the character and appearance of the property, the wider public domain and the Conservation Area. Their presence was clearly apparent. Their canopies could be seen well above the roof of the main dwelling and also to the side. There were other trees within the rear garden. However, it was T1 and T2 that were visible. Such large, important landscape trees, if removed, could not be mitigated with new planting.

The Tree Protection Officer commented on the main issues raised in the Appellant's representation to the Committee, as follows:

- 1) Sycamore were a resilient species believed to be naturalised, having been present in Britain for over 400 years. An alternative school of thought believed that sycamore were, in fact, a native species. They were a large leafed species, capable of generating shade when in leaf, April to October. Expectations had to be realistic, and trees caused shade when in leaf.

Lancaster City Council operated a Tree Policy (adopted 2010), which set out its own position with regard to the management of its trees. Lancaster City Council would not generally fell trees because of shading.

Members noted that amenity value was not determined by tree species.

- 2) The trees in question had been assessed in detail as part of the 2010/2011 planning application previously mentioned. Tree roots did not generally cause direct damage to underground structures, particularly if those structures were intact and in good condition. The foundations of the extension were new and it was assumed, as such, that they were in good condition, having only been recently built. Tree-related subsidence occurred only on a highly plastic clay soil, and the Tree Protection Officer was unaware of highly plastic clay soils being associated with the property in question. As such, tree related subsidence could not occur.
- 3) Anyone who had responsibility for trees was always advised to have them regularly assessed by an individual suitably trained and experienced to carry out such inspections. Recommendations for maintenance work should be undertaken, subject to any existing constraints.

The proximity of trees to a building was not, in itself, justification to fell healthy trees, particularly trees that conveyed important amenity value. If that were to be the case, urban areas would be devoid of trees. These were exactly the areas that required more trees and not less. Trees were entirely sustainable in close

proximity to buildings.

- 4) Trees inevitably created shade when in leaf. Typically for broadleaf trees, this may be a period of up to six months a year. The Appellant's neighbours had written to Lancaster City Council following the Order being served. Their letters had failed to meet the criteria set out in the Regulation 3 Notice and, as such, had not formed part of the appeal process.
- 5) The two trees in question were visible from the wider public domain, despite being established within the rear garden and positioned, in part, behind the main dwelling. There was no requirement within the Town and Country Planning Act 1990 for every tree to be seen, or all parts of any given tree to be seen, from the public domain. The fact that both trees could be seen beyond the property was testament to their significant contribution to the wider locality and the Conservation Area. Their renewal would inevitably have the potential to generate a negative impact on the wider public domain.

Regardless of species, if a tree was in a poor overall condition, for example showing signs of stress, including canopy dieback, or accumulation of deadwood, appropriate action should be taken – both sycamore trees were in better health, vitality and offered a longer, safe, useful life potential than the oak tree to which the Appellant referred. It would be unwise to assume the existing oak would thrive in the absence of T1 and T2. It should also be noted that European beech were not of local provenance and did not naturally occur in this area of Britain.

- 6) The older and larger trees were, the greater the potential opportunities for wildlife. The removal of T1 and T2 would result in a net loss of tree cover and net loss of opportunities for wildlife, including protected species, such as nesting birds and bats, which were protected under the Wildlife and Countryside Act 1981 (as amended 2010).

The Tree Protection Officer advised Members that she was a qualified arboriculturalist, who was responsible for the management of some 600 TPOs, and had made over 250 new Orders. As a Local Authority, the Council was able to demonstrate a planned and objective approach to making new Orders.

It was recommended that TPO No. 555 (2015) be confirmed without modification in the interests of amenity value and wildlife benefit.

Following presentation of her case, Members asked questions of the Tree Protection Officer, which were suitably answered.

(The Tree Protection Officer left the meeting room whilst the Committee made its decision in private.)

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 555 (2015)
 - (1) Without modification;
 - (2) Subject to such modification as is considered expedient.

(2) Not to confirm Tree Preservation Order No. 555 (2015).

It was proposed by Councillor Hanson and seconded by Councillor Yates:

“That Tree Preservation Order No. 555 (2015) be confirmed without modification.”

Upon being put to the vote, Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be clearly carried.

(The Tree Protection Officer returned to the meeting for the decision to be announced.)

Resolved:

That Tree Preservation Order No. 555 (2015) be confirmed without modification.

Chairman

(The meeting ended at 2.45 p.m.)

**Any queries regarding these Minutes, please contact
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