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## **Appeals Committee (TPO)**

Trees subject of the Appeals Committee – A single, mature lime tree within the curtilage of St. Johns Church, Gressingham and subject of **Tree Preservation Order no. 456 (2009)**.

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

### **1.0 Introduction**

1.1 **Site:** The tree in question is established on land within the curtilage of St. Johns Church, Gressingham.

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 28<sup>th</sup> April 2009.

2.2 **Brief Site Description:** The site is established within Gressingham Conservation Area, within the village of Gressingham. The tree is established within the curtilage of the church immediately adjacent to a footpath within the church grounds and a public highway to the west.

### 3.0 Identification and condition of the tree:

- 3.1 The tree in question is established within a conservation area and as such protected in law. It is now subject of Tree Preservation Order no. 456 (2009) (appendix 1). The tree has been identified as **T1** for the purpose of this report and the Tree Preservation Order.
- 3.2 **T1** is a single, mature lime tree of a multi-stemmed form. Leaf colour, size and distribution are all within normal parameters for a tree of this species. Shoot extension growth is also within normal parameters. There was no significant pest, disease or serious structural defect identified that would otherwise require **T1** be exempt from serving with a tree preservation order.
- 3.3 There is a second, mature lime tree (**T2**) established in close proximity to **T1** and a mature, group of Portuguese laurel (**G1**) growing immediately adjacent to the church building. After an initial period of consultation with the Parochial Church Council, it was agreed that **T2 & G1** should be removed from TPO no.456 (2009) because of the poor overall condition and limited remaining life potential of **T2 &** the unsuitability of **G1** to be covered by the order. **T2** and **G1** are not subject of TPO no.456 (2009) and do not form any further part in this report and should not be considered by the appeals committee.
- 3.4 Westmorland Tree Care Ltd, an agent acting on behalf of the church submitted a tree works notification form in March 2009 with proposals to fell **T1, T2 & G1**. The reason for felling the trees was not stated within the notification. There were no proposals for replacement planting.
- 3.5 A site visit was undertaken on 28<sup>th</sup> April 2009, by Maxine Knagg (Tree Protection Officer).

### 4.0 Tree Preservation Order

- 4.1 The amenity value of trees within the site was 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).
- 4.2 Trees within the site contribute significantly to the local amenity by providing the following:
- Provide screening & greening
  - Highly visible from the public highway and a number of private residential properties making a significant contribution to the public amenity of the area
  - Important landscape features
  - Important wildlife resource
- 4.3 Lancaster City Council considers it expedient in the interests of amenity to make provision for the preservation of **T1 under sections 198, 201 and 203 of the Town & Country Planning Act 1990.**

Lancaster City Council cite the following reasons.  
Trees :

- Provide screening & greening
- Highly visible from the public highway and a number of private residential properties making a significant contribution to the public amenity of the area
- Important landscape features
- Important wildlife resource

## 5.0 Objections against the validity of TPO no.456 (2009)

5.1 *General duty of planning authorities* – Under section 197 of the Town & County Planning Act 1990 (T&CPA 1990), a LPA has a duty whenever appropriate to preserve or plant trees by the imposition of conditions and to make such an order as appears to the authority to be necessary.

5.2 *Tree Preservation Orders* – Under section 198 of T&CPA 1990 if it appears that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

5.3 A tree preservation order will make provision – for (a) prohibiting the cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give consent subject to conditions; (b) for securing replanting; (c) for applying, in relation to any consent under the order, and to applications for such consent.

5.4 *Conservation Area* – Under section 211 of the T&CPA 1990) trees with a stem diameter of 75mm or greater when measured at 1.3m above ground level and established within a conservation area are protected in law. As such, a period of 6-weeks notification must be made in writing to the local planning authority prior to the lawful commencement of the work. Upon receipt of such a notification the LPA has a period of 6-weeks to assess the notification with respect to the trees. The council's response will be either; (i) 'without objection'; this maybe confirmed in writing within the 6-week period or without a formal written response, in which case the applicant has the right to proceed with the specified works after the 6-week period has elapsed; (ii) If the LPA 'formerly objects' to the proposed tree works, it can do so only by serving a TPO, which must be subject to a formal assessment and valuation of amenity and the suitability of the tree (s) to be served with such an order. This should be undertaken by an individual qualified and experienced in such matters.

5.5 In the case in question the procedure as set out under sections 197-214 of the T&CPA 1990 was followed and a period of consultation with the land owners implemented once the order was served. There was a delay of 8 days from the expiry of the 6-week period of formal notification under conservation area legislation (section 211 notice) to the TPO being served on the land owners (15<sup>th</sup> May 2009) which did create some confusion. This delay however, does not invalidate the order, as an LPA has powers to serve a TPO at any time. Had the landowners taken the opportunity to proceed to fell the tree (s) during this period of 5 days, it could have done so lawfully, however this was not the case and the TPO remains valid.

## 6.0 Objection against TPO no.456 (2009) on health & safety grounds

- 6.1 Serving a TPO does not nor is it intended to prevent reasonable and appropriate maintenance works being planned and undertaken. However, the LPA must be consulted through a formal, written application process as set out under the T&CPA 1990. Tree owners have a 'duty of care' to have their trees regularly inspected to identify maintenance needs. Trees that can be classified as 'dead, dying or dangerous' as set out within the legislation become exempt from a TPO. LPA has no interest in preserving such trees.
- 6.2 Serving a TPO not only protects the tree present at the time the order was served, importantly it is a land charge that allows the LPA to apply conditions ensuring the replacement of a tree (s) should its removal be required at a future date. The replacement tree assumes the protection status of the original TPO.
- 6.3 Objections to the Councils decision in relation to tree works applications can be made directly to the Planning Inspectorate, through an identified appeals process.
- 6.4 On Wednesday 17<sup>th</sup> June 2009, David Hall, Development Control Manager & Maxine Knagg, Tree Protection Officer met with members of the Parochial Church Council, Parish Council and members of the local community. The procedures relating to the TPO were discussed at length and the concerns expressed by both the Church Council and Parish Council. During the meeting a representative of the Church Council accepted the validity of the TPO. The church council were advised to consult with the appropriate professionals to consider engineering solutions that would allow for the repair and re-surfacing of the footpath, installation of a new water pipe and retention of the tree. To date the Council has not received any such proposals.
- 6.5 The Parish Council reported 'no objection' to the proposed tree removals.

## 7.0 In conclusion

- 7.1 Under the T&CPA 1990, the LPA has a duty to protect the landscape and protect trees.
- 7.2 T1, mature lime tree is a dominant landscape feature, it is highly visible and provides a high level of amenity to the local area; its suitability, condition and amenity value are sufficient to support and justify its retention by protecting with Tree Preservation Order no.456 (2009).
- 7.3 The presence of a Tree Preservation Order does not prevent appropriate and reasonable maintenance works being undertaken in consultation with the local planning authority. Removal of a high value tree should not be seen as the first management option.
- 7.4 Objections to decisions in relation to tree works applications can be made to an independent and impartial authority – Planning Inspectorate.
- 7.5 A Tree Preservation Order is a land charge that allows a LPA to enforce the replacement of a tree(s) should the tree subject of the order require removal at a future date, and in so doing ensure the protection and amenity of the landscape.

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