



Appeal Decision

Hearing Held on 1 August 2024

Site visit made on 1 August 2024

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2024

Appeal Ref: APP/TPO/X1735/9779

105 Havant Road, Emsworth, Hampshire PO10 7LF

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order (TPO).
 - The appeal is made by John Haynes against the decision of Havant Borough Council.
 - The application Ref: APP/23/00387, dated 28 April 2023, was refused by notice dated 22 June 2023.
 - The work proposed is Fell T1 Lime (*Tilia x europaea*).
 - The relevant TPO is Tree Preservation Order 1575: 105 Havant Road, Emsworth, which was confirmed on 13 May 1994.
-

Decision

1. The appeal is allowed and consent is granted to undertake work to a tree protected by Tree Preservation Order 1575: 105 Havant Road, Emsworth in accordance with the terms of the application, Ref APP/23/00387, dated 28 April 2023 subject to the following conditions:
 - 1) The work for which consent is hereby granted shall be implemented within two years from the date of this decision.
 - 2) A scheme for the planting and maintenance of one replacement tree shall be submitted to, and approved in writing by, the local planning authority, and these works shall be carried out as approved. These details shall include the size, species and position of planting, and a maintenance programme. The works shall be carried out in the first available planting season (November to March) following the removal of the Lime T1.
 - 3) If within a period of three years from the date of the planting of the tree required by Condition 2, or any tree planted in replacement for it, is removed, uprooted or is destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

Main Issues

2. The main issues are the effect of the proposed felling of the tree on the character and appearance of the area; and whether sufficient justification has been demonstrated for the proposed felling.

Reasons

3. The tree, a mature Lime, is described as being 20 metres tall, with a canopy spread of approximately 10 metres, in the Tree Report submitted with the application¹. It grows in the rear garden of 105 Havant Road, which is loosely divided into two flats. There is another protected mature Lime to the northeast, and the two canopies just converge, although their individual crowns are easily discerned. There are also two protected mature Horse Chestnut trees in the front garden.
4. In the vicinity of the appeal site, Havant Road is straight, and on its north side it is lined by substantial detached houses, which are set back behind gardens and car-parking. The land on the south of the road is undeveloped grassland. There are mature trees of various, mainly deciduous, species in the gardens of the houses, and all along the highway verge opposite. A significant number of tall trees can also be seen above and behind the frontage buildings. Consequently, the built development is balanced by an abundance of foliage on both sides of the road so that, despite the high volume of traffic, the area has a pleasant suburban character.
5. The scale of the tree means that it is visible above the frontage houses from a considerable distance along the road in both directions. From the footway on the south side of the road, it can be seen from approximately 170 metres to the east. From here, a significant proportion of its canopy can be seen above the frontage buildings, and its form can be readily distinguished from the other Lime. As a result, its full rounded canopy has a considerable presence in the street scene. From the west, it can be seen from the Blandings Way junction, approximately 250 metres away. In these views its individual form is less apparent, as it is seen with the other Lime almost directly behind it. From directly opposite the site, it is hidden by the frontage Horse Chestnuts, but from slightly oblique views to either side, its canopy is a substantial and prominent feature above the roofs.
6. The tree is, therefore, visible from a wide area, and its size, form, and prominence mean that it makes a significant and positive contribution to the character and appearance of the area. The appellant contends that the loss of the tree would not be harmful to the amenity of the locality, and that neighbours have not objected to its removal. However, from the evidence before me, including my own observations, felling of the tree would result in the conspicuous loss of a notable and attractive feature. Its role in softening the surrounding built form would be lost, and the visual amenity of the area would, therefore, be diminished. This harm would be mitigated, to some extent, in views from the west, because the other Lime is directly behind it. However, from the south and east, the loss of the substantial canopy would be very noticeable.
7. The appellant has indicated a willingness to plant a replacement tree. However, there are limited opportunities within the site to allow a tree to grow to such a stature that it would make a similar contribution to the character and appearance of the area. Any replacement tree would also take a substantial period of time to grow to a size that would provide any meaningful mitigation

¹ Gifford Tree Service Tree Report - Picus Testing – Common Lime at 105 Havant Road, Emsworth – 26 April 2023

for the loss. The removal of the tree would, therefore, result in considerable harm to the character and appearance of the area. Consequently, any reasons given for its felling would need to be compelling. It is those reasons, the second main issue, to which I now turn.

8. The Tree Report includes the findings of a Picus Test, which shows predominantly sound results at ground level, and at four metres in height, adjacent to a wound. A number of defects, such as damaged and rubbing branches are identified in the upper canopy. However, the Council indicated at the Hearing that the recommended works to remedy these defects would be likely to be supported, and would not fundamentally harm the amenity value of the tree. It is, therefore, common ground that the condition of the tree does not provide a justifiable reason for felling.
9. A Structural Engineer's Report² was submitted with the appeal, which noted stepped diagonal cracking, falling brickwork beds, and evidence of major brickwork repairs in the north wing of the building. It also noted that the patio was uneven, with a drop of approximately 40mm adjacent to the northern wing. The Report concludes that these faults result from tree-related subsidence, and that the proximity of the Lime will continue to cause structural problems to the building if not removed. The Report was prepared by a suitably qualified expert, so should carry significant weight in my decision.
10. However, the conclusions of the Report are based on certain assumptions. Whilst the British Geological Survey indicates that the soil at the property is likely to be River Terrace Deposits, there has been no on-site analysis of the soil type, its liquid limit, plastic limit, and plasticity index, as required by the guidance notes for making applications that is referred to in the Planning Practice Guidance³. Furthermore, no trial holes have been dug to identify the foundation type and depth, or the location and identification of any roots found. This reduces the weight that I can give to the Report's conclusions.
11. Nevertheless, the Council accepted at the Hearing that Lime trees have a moderate water demand, are a vigorous species that can result in subsidence claims, and that there have been other successful claims in the wider area. I also heard evidence from the owners of the adjacent house, which was built at the same time as No 105, that previous works on their property had revealed that the house did not have deep foundations. Bearing in mind the considerable scale of the tree, and the fact that it is only about four metres from the building, it is likely that roots extend as far as the north wing. Consequently, whilst there is a lack of technical data to demonstrate a causal link, I cannot entirely discount the considerable circumstantial evidence indicating that damage to the building results from the proximity of the tree. It was common ground between the parties that if the tree were the cause of the subsidence, crown reduction would not provide a suitable remedy.
12. The Structural Engineer's Report also identifies that the garden wall between Nos 105 and 107 is leaning to the west, has two large vertical cracks, and that these structural problems would continue if the tree were not removed. The guidance notes for making applications require that evidence in respect of damage to boundary walls should be provided by a relevant engineer, but do not require the level of on-site investigations that are required for subsidence.

² De Silva Structures Ref NDS/6898/001 – 17 July 2023

³ Paragraph: 069 Reference ID: 36-069-20140306

In this respect, therefore, the Report carries significant weight in my decision. I also saw for myself that a buttress root was growing right against the base of the wall, and I have no doubt that the damage to the wall is a direct consequence of the proximity of the tree.

13. However, the Report does not consider any options for repairing or rebuilding the wall alongside retention of the tree. No consideration is given to the potential for reconstruction or repair using piled or bridged foundations, or for the provision of an alternative means of boundary division. Whilst the wall is undoubtedly historic, it does not have a recognised heritage value, so its retention would not outweigh the loss of the amenity value of the protected tree. Consequently, on the evidence before me, the damage to the wall does not justify felling.
14. It is contended that the tree is causing damage to the drains that run parallel to the boundary wall in the grounds of No 107. The only evidence in support of this contention is that the symptoms are the same as on a previous occasion when the tree roots had been found to have penetrated the drain. However, no evidence has been provided in the form of trial excavations or CCTV camera footage to show that tree roots are the cause on this occasion. Even if they were, no consideration has been given to whether felling the tree would be the only means of resolving the issue. Consequently, I give little weight to this matter in my decision.
15. The tree lies to the north of the building, so it does not block direct sunlight from reaching windows in the rear elevation. However, its canopy extends over the roof of the building across its entire width, and its considerable spread means that skylight only reaches the windows at a low angle from under the branches. In the case of the ground floor windows, a section of sky is visible below the canopy, allowing some natural light to reach the rooms. The lounge also has south-facing windows. However, these are shaded by the protected trees in the front garden, so that at the time of my visit, on a sunny day in summer, the lounge was not well lit.
16. On the first floor, the windows are closer to canopy level, so there is less sky visible under the foliage. The bedroom window in the end elevation is heavily shaded by the canopy, although a window in the east elevation provides an alternative source of light. Nevertheless, the room was quite gloomy at the time of my visit. On the second floor, the canopy of the tree totally excludes skylight from the north facing dormer window serving a bedroom. Again, though, an alternative source of light is available through the south-facing dormer which, at this height, is less affected by the frontage trees.
17. Overall, the tree has a substantial impact on light reaching the windows in the north elevation. Although in most cases the affected rooms have alternative light sources, these are often shaded by other protected trees. Consequently, the tree does have a material impact on light levels throughout the accommodation, and results in harm to the living conditions of occupants. The Council indicated at the site visit that, as an alternative to felling, some limited crown reduction would be acceptable, but this would not be to an extent that would significantly alter the level of light reaching the windows. The impact of the tree on light to the living accommodation is, therefore, a matter that carries weight in my decision.

18. The canopy of the tree covers nearly all of the rear garden area of the ground floor flat. The remainder is under the canopy of the other Lime, so the garden receives very little direct sunlight at any time of the day. It was in almost total shade at the time of my early afternoon visit on a sunny summer day. However, the canopy of the tree is high, and the aspect to the north is largely open, so daylight from a moderate expanse of sky reaches the garden. However, it is not unreasonable to expect some part of a garden to be outside the constant shade of trees. Although the front garden is also available to the ground floor flat occupants, it is significantly affected by the shading impact of the Horse Chestnuts and by traffic noise from the busy road. The tree does, therefore, have a significant impact on the reasonable enjoyment of the outdoor space that is available to occupants.
19. The tree provides a habitat for birds, and the appellant's evidence identifies resultant problems with pigeon droppings, which deter the use of the garden. Whilst I saw that there were some droppings on the lawn and patio, they were not at such a concentration, or so widespread, that they would make the garden unusable, or unduly hazardous. I spent a considerable amount of time in the garden at my visit and, whilst I appreciate that this only represents a snapshot in time, I am not persuaded by the evidence that this issue alone would justify the removal of the tree.
20. My attention has also been drawn to the potential for falling branches to cause damage or injury. I saw some twigs, and one larger branch on the roof of the conservatory at the time of my visit. However, I saw no signs of any significant level of deadwood in the canopy. Such material could, in any event, be removed without consent as part of the normal maintenance regime for a mature tree in a residential setting.
21. I acknowledge that the accumulation of leaves in the gutters can be a nuisance and results in a higher level of maintenance, but there are products available that can reduce this burden. Furthermore, there are many other trees in the locality, so felling the tree would not eradicate this problem altogether. In any event, the collection of leaves and twigs, and clearance of gutters, are normal aspects of property maintenance in areas where trees are prevalent, and so cannot be used to justify the felling of a healthy tree that has amenity value.
22. With any application to fell a protected tree a balancing exercise must be conducted. The reasons for the proposed felling must be weighed against the resultant loss to the amenity of the area. I have found that the loss of the tree would result in considerable harm to the character and appearance of the area. However, I have also found that the tree results in a substantial loss of daylight to the internal living accommodation of both flats at No 105, and the garden of the ground floor flat. This has a harmful impact on the reasonable enjoyment of these properties by occupants, and is a matter to which I afford significant weight.
23. Furthermore, there is expert evidence that tree-related subsidence has resulted in damage to the building. This evidence is not as technically comprehensive as would normally be required to provide robust justification for the removal of a healthy tree. Consequently, it only carries moderate weight. However, added to the significant weight that I give to the living conditions of occupants, the cumulative weight is sufficient to outweigh the considerable harm to the character and appearance of the area.

Conditions

24. In accordance with Regulation 17(4) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012, I have imposed a condition limiting the consent to two years beginning with the date of this decision.
25. The Council has suggested a condition requiring the planting of a replacement tree of a size and species to be agreed, within five metres of the site of the T1 Lime. As the removal of the protected tree would result in harm to the character and appearance of the area, a condition requiring provision of a suitable replacement tree would be necessary and reasonable. However, it was agreed by the parties at the site visit, that the most suitable locations for a replacement tree that could thrive, and be allowed to grow to a meaningful stature, may lie more than five metres from the existing tree. The condition that I have imposed therefore allows for greater flexibility for its siting.
26. To ensure that the agreed replacement tree continues to provide mitigation for the harm in the long term, I have also imposed a condition requiring replanting if it fails.

Conclusion

27. In the normal course of events there would be a strong presumption against the removal of a healthy and mature protected tree. However, given the very particular circumstances of this case, I conclude that, on balance, the appeal should be allowed.

Nick Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Haynes – Appellant
Rachel Haynes

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Winter – Havant Borough Council, Arboricultural Technical Officer
Sarah Kiss – Havant Borough Council, Locum Tree Officer
David Hayward – Havant Borough Council, Strategic Planning Manager
Rachel McMurray - Havant Borough Council, Conservation Officer

INTERESTED PERSONS:

David Perry – Neighbour
Jenny Perry - Neighbour