



Appeal Decision

Site visit made on 14 November 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2023

Appeal Ref: APP/TPO/X1735/9301

26 Douglas Gardens, Havant, Hampshire PO9 5TG

- 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.
 - The appeal is made by Mr Robert Letts against the decision of Havant Borough Council.
 - The application Ref: APP/22/00500, dated 2 May 2022, was refused by notice dated 1 September 2022.
 - The work proposed is to fell 1no. Monterey Cypress tree.
 - The relevant Tree Preservation Order (TPO) is West Leigh House Martin Road Leigh Park Havant tree preservation order reference 1499, which was confirmed on 5 April 1993.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It has been confirmed that the appellant is the husband of Mrs Lucy Letts, who is given as the applicant on the original application form.

Main Issues

3. 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 its removal.

Reasons

Character and appearance

4. The tree is a tall Monterey Cypress growing in the rear garden of 26 Douglas Gardens, a semi-detached late 20th century house set within an established residential area. The property is at the termination of a cul-de-sac and close to a play area. There is a notable amount of mature tree cover comprising different species within and near residential properties in the vicinity. Many trees are considerably higher than the mostly two storey dwellings and can be seen adjacent to houses and/or above roof ridges. The presence of such tree groups adds considerably to the verdant spaciousness of the residential layout and has a softening effect on the built form.
5. The Monterey Cypress is a considerable height. As such, a good proportion of its upper horizontally spreading branches can be seen above the rooftop of no.26. I was able to observe it as I approached the end of Douglas Gardens and the adjacent play area. From this perspective the tree is seen close to

another Monterey Cypress to the west, thereby providing a backdrop to the semi-detached pair of 24-26 Douglas Gardens. Their dark green foliage and angular silhouette contrast with the mature mostly deciduous group of trees to the east within the public open space. Furthermore, the tree can be seen from the adjacent area of public open space which includes grass, other trees and a play area.

6. In addition, a significant proportion of the tree can clearly be seen above the roofs of houses in Farringdon Road to the south. From this position, the tree reads as one of a distinctive linear series of evergreen Monterey Cypresses.
7. Consequently, the tree is an attractive feature in its own right. However, it also forms part of a notable abundance of tree cover that adds interest and softness to the residential area. Furthermore, when seen from the south it forms part of a recognisable landscape feature. Therefore, I cannot agree with the appellant that the removal of the Monterey Cypress would not have a significant impact just because there are other trees nearby.
8. Accordingly, I find that the Monterey Cypress provides a good level of amenity which is an important component of the character and appearance of the area. Its removal would diminish the overall mature tree cover and would erode the distinctive backdrop that is presently apparent from nearby roads. This would be to the detriment of the pleasant, treed character and appearance of the area. Therefore, the reasons given to justify the loss of the tree need to be convincing.

Justification

9. The appellant considers that the presence of the tree blocks a significant amount of sunlight from entering the rear garden of no.26, which makes growing flowering plants difficult. Furthermore, the amount and type of debris dropping from the tree is highlighted, which has increased during recent periods of drought. Whilst reference is made to branches having caused damage to the shed roof in the past, concerns about potential damage to property were not advanced as part of the application and so have not had a bearing on my determination.
10. Concerns are also raised in relation to the quantity of pigeon droppings associated with the tree, which it is asserted may have health implications for the users of the garden, which include a young child.
11. The size and presence of the tree will undoubtedly cause some shade to the modest rear garden area of no.26 given its location towards the south-eastern corner. I accept that this is likely to contribute to a constraint on the type of plants that might be successfully cultivated within the garden. Nevertheless, I observed that it has a relatively high crown that would allow for some passage of light underneath.
12. There is no technical evidence before me that measures sunlight levels in the rear garden of no.26, nor any to show what difference the removal of the tree would make. Neither is there any analysis or comparison of the effects on sunlight arising from potential alternative works, such as crown raising or reduction. This inhibits a proper assessment of the likely effects the tree may have on the living conditions of the occupants of no.26 when using their

garden. In the absence of evidence to show otherwise, it is probable that lesser works could reasonably address concerns regarding sunlight.

13. I acknowledge that falling debris and the impact of pigeon droppings can be inconvenient, unpleasant, and sometimes worrying for property owners. However, as trees are living organisms, some such debris and interaction with wildlife is not uncommon. To an extent it goes hand in hand with living in an area which is in part defined by a mature and verdant landscape. Whether that extent is reasonable requires a judgement to be made as to the likely magnitude and frequency of the impact on the occupants.
14. Little detail is given as to the practical maintenance or cleaning implications arising from the debris or droppings. Based on the evidence before me, I am not persuaded that the impact is so onerous, or potential health risks are of such magnitude, that the circumstances go beyond the reasonable expectations of a domestic occupier living close to mature trees.
15. The felling of the tree would be a drastic measure and therefore, requires sound justification. In the absence of more conclusive evidence, I am not convinced that the impact on the living conditions of the occupants of no.26 is so harmful that felling the tree would be necessary. Therefore, on the information before me, I find the proposal would be a disproportionate response.
16. My views are reinforced by the appellant's acknowledgement that previous crown raising and reduction works to the tree have provided a temporary improvement. Felling is proposed in part owing to the recurrent nature of such works and their associated costs. Nevertheless, some such costs are to be reasonably expected with mature trees that contribute to the attractiveness of the area. Hence, this factor would not amount to a strong reason to allow the removal of the tree. Moreover, felling works would also have associated costs. The information before me does not clearly show that comparatively, maintenance works would be so costly or be needed so frequently that they would be exorbitant.
17. I am provided with a decision notice for a consent¹ given for works to cypress trees nearby, west of 24-26 Monterey Drive. These were to fell 2 trees and remove deadwood and damaged branches on 4 trees. Given the recent date of that decision which concerned other trees protected under the same TPO, I accept it has relevance to my determination. Nevertheless, I am not assured that I have all the technical information that was before the Council when they made their decision. Furthermore, the works related to different specimens, which given the individual nature of trees, would have had a different relationship to the surrounding built form. As such, it is not shown that the case is directly comparable to the circumstances of the appeal before me. Accordingly, whilst I attribute this matter limited weight in favour of the proposal, it would not fully justify the proposed felling of the appeal tree.
18. Similarly, the absence of further evidence pertaining to application reference APP/17/00768, such as the location, tree and supporting reasoning, inhibits a comparison with the appeal proposal. Accordingly, it carries little weight.

¹ Reference APP/22/01120

19. I acknowledge the appellant's willingness to plant a replacement silver birch, or other tree species in agreement with the Council. However, such a replacement would be unlikely to attain a comparable height or prominence to the present tree. Even if that were possible, it would take a considerable time to establish. Neither do I consider that any consequent improvement in the variety and colour of flowering plants in the rear garden of no.26 would be likely to possess similar prominence or public amenity value equal to that of the present Monterey Cypress. Consequently, I am not convinced that such replacement planting would be sufficient to mitigate the amount of harm that would result to the character and appearance of the area from the removal of the existing tree.
20. Moreover, for the reasons outlined, the proposal to fell the protected tree would conflict with policy DM8 of the Havant Borough Local Plan, Core Strategy, March 2011 which seeks to conserve, protect and enhance existing natural features.

Other matters

21. The appellant highlights that there were no objections from local residents to the proposed removal of the tree. Even so, it does not follow that no harm to the character and appearance would result, and I have found otherwise. As such, the absence of objections does not lead me to a different overall view on the merits of the proposal.

Overall balance and conclusion

22. With any application to fell a protected tree a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area. In this case, the felling of the tree would result in notable harm to the character and appearance of the area and the reasons provided are not sufficient to justify its removal.
23. Accordingly, for the reasons set out above and having regard to all matters raised, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector