



Appeal Decision

Site visit made on 25 September 2022

by J E Jolly BA (Hons) MA MSc MCIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/X1735/TPO/8261

11 Hartwood Gardens, Cowplain, Waterlooville, Hampshire, England PO8 8RA

- 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 Stuart Fry against the decision of Havant Borough Council.
 - The application Ref: APP/20/00850, dated 15 September 2020, was refused by notice dated 11 November 2020.
 - The work proposed is permission to remove TPO 1357 from Oak Tree T4 and fell tree. The relevant Tree Preservation Order (TPO) is the Havant Borough Council TPO No 1357, which was confirmed on 23 September 1988.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council cites conflict with Policies DM8 of the Havant Borough Core Strategy 2011 in the Decision Notice. However, such policies are not decisive in an appeal relating to works to protected trees. Furthermore, they appear to relate to the impact of development proposals on trees and thus have not formed part of my deliberations.
3. The TPO was confirmed prior to the erection of 11 Hartwood Gardens. At the time of confirmation, the protected tree T4 was located in the rear gardens of properties on Hart Plain Avenue. It is clear to me, from the evidence provided, that the tree plotted as T4 on the original TPO map is the Oak which is to the front of 11 Hartwood Gardens. Therefore, I am satisfied that the appeal tree is protected by the TPO cited in the banner heading above and I have considered the appeal on this basis.

Main Issues

4. The main issues in this case are the effect of the felling of the tree on the character and appearance of the area, and whether justification has been demonstrated for its removal.

Reasons

5. Turning to the first main issue, the tree is a mature Oak tree that is located to the front of 11 Hartwood Gardens which is a cul-de-sac that has no through route. Nonetheless, in combination with the surrounding tall garden trees and the woodland adjacent to No 11, the appeal tree helps to frame and soften the built-form in this specific location when viewed along the main highway known as Hart Plain Avenue. The appeal tree can also be glimpsed between the dwellings that face onto Hart Plain Avenue. Therefore, in addition to the mature trees lining Hart Plain Avenue and those seen in the wider views, the Oak makes a positive contribution to the verdant surroundings.
6. To fell the Oak would erode this contribution and give rise to significant harm to the character and appearance of the area. Consequently, any reasons given to justify the removal of the tree need to be convincing. It is to those reasons, the second main issue, to which I now turn.
7. The Council summarised that the Oak tree appears to have good vigour and vitality for its age and species. In addition, there is no substantiated evidence of any defects or disease. This accords with my findings at the site visit where I noticed that although the tree has some historic lower-limb removal and that it leans slightly to one side in order to make best use of sunlight it nevertheless appeared to be in good health with a dense green crown. Therefore, I have no reason to disagree with the Council's summary.
8. The appellant has brought to my attention his concerns for the bird droppings that fall from the tree onto hard-standings and nearby parked cars, and also the seasonal tree debris associated with the Oak which collects in the surrounding gutterwork below. Given the size and maturity of the tree, I do not doubt that this is the case. However, whether gutter-guards or bird-scarers are deployed or not, regular maintenance of clearing debris and cleaning bird droppings goes hand-in-hand with living in an area that is defined by established mature trees and which provides an attractive place to live and work.
9. The appellant has also raised concerns related to shading associated with the tree. The tree is to the south of the host dwelling and to the west of the main entrance of 10 Hartwood Gardens. As such, any shading created by the appeal tree will be to the front of these properties and is likely to be more noticeable at certain times of the day and year. In spite of this, while I attribute this matter some limited weight, any inconvenience such as shading is rarely a reason to justify the loss of a protected tree and the subsequent significant harm to the character and appearance of the area that would result in this case.
10. I acknowledge the appellant's willingness to replace the tree. However, any replacement would take many years to reach the same maturity as the appeal tree in order to reinstate a similar level of visual amenity, and moreover, result in the same level of shading at the existing tree. As such, replacement planting would not be sufficient to mitigate the harm that would arise to the character and appearance of the area.

Other Matters

11. I note the Council has mentioned the potential for lesser works to the tree that might be acceptable. Nonetheless, the appellant is frustrated by the outcome of the previous arboricultural works, particularly crown reductions, which he contends exacerbates dense tree growth and shading. However, ongoing and long-term management works are to be expected for a tree of this size and maturity. Moreover, even if this approach would be acceptable to the appellant, the details of such works would need to be the subject of a separate application and hence does not form part of this determination.

Conclusion

12. 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 proposed felling of the tree would result in significant harm to the character and appearance of the area and, in my judgement, insufficient justification has been demonstrated for its proposed felling.
13. For the reasons set out above, I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR