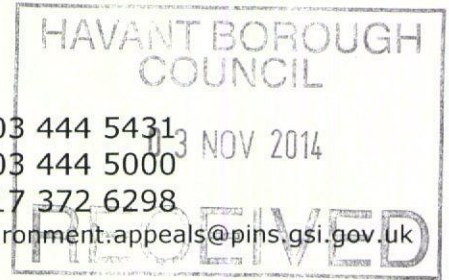




The Planning
Inspectorate

3/25 Hawk Wing (Env)
Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line: 0303 444 5431
Customer Services: 0303 444 5000
Fax No 0117 372 6298
e-mail: environment.appeals@pins.gsi.gov.uk



Tree Officer
Havant Borough Council
Planning Department
Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX

Your Ref:

Our Ref: APP/TPO/X1735/3976

Date: 30 October 2014

Dear Sir / Madam,

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES**

I enclose a copy of our Inspector's decision on the above appeal.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An application under Section 288 of the Town & Country Planning Act 1990 must be made to the High Court promptly and in any event within 6 weeks of the decision in question. This is an absolute time limit that cannot be extended by the Court.

A challenge must be made on one or both of the following grounds:

- (1) the decision is not within the powers of the above-cited Regulations;
- (2) any of the relevant statutory requirements have not been complied with.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:

Quality Assurance Unit
The Planning Inspectorate

4/06 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Or visit:

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback>

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely

Environment Appeals Administration

Enc



An Executive Agency in the Department for Communities
& Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can require the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals. Some other specialist casework types have different processes and timescales; information about which can be provided on request.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal.

This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to clarify matters as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-consider an appeal or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further planning authority in the case once their decision is issued. It is the role of our Quality Assurance Unit to impartially investigate complaints about decisions, an Inspector's conduct or supporting administrative procedures. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it.

We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams and Inspectors. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

We aim to reply as soon as we can. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector or staff member and line management team concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.



Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary and Health Service Ombudsman, who can investigate complaints of maladministration against Government Departments or Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will have visited the site and will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but the Courts have judged it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – The appeal decision will highlight what the Inspector found unacceptable about the proposed development. In some cases it may be possible to address these problems, in which case you should talk to your Local Planning Authority's planning officers or take advice from a planning consultant.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You should contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Our Annual Report and Accounts contains details of our performance. It also includes details of how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'below')

Contacting us

Complaints & Queries in England

Please refer to our website:
<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/>
or write to:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252

General Enquiries

Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land – other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" – An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" – This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" – You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" – Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" – The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: <http://www.justice.gov.uk/about/hmcts/>

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/> However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

High Court Section
The Planning Inspectorate
1/25 Hawk Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5645

General Enquiries

Phone: 0303 444 5000
E-mail: enquiries@pins.gsi.gov.uk

Complaints

Complaints & Queries in England

Please refer to our website:
<http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>
or write to:

Quality Assurance Unit
The Planning Inspectorate
1/23 Hawk Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5884

Cardiff Office

The Planning Inspectorate
Room 1-004, Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033
Website: www.ombudsman.org.uk





Appeal Decision

Site visit made on 2 October 2014

by **Jim Quaife** Dip Arb (RFS), F Arbor A, CEnv

an Arboricultural Inspector appointed by the Secretary of State for Communities and Local Government

Decision date:

30 OCT 2014

Appeal Ref: APP/TPO/X1735/3976

33 Cavendish Drive, Waterlooville, Hampshire, PO7 7PJ

- 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 trees protected by a Tree Preservation Order.
- The appeal is made by Mr Cooper against the decision of Havant Borough Council.
- The application Ref: App/14/00368, dated 4 April 2014, was refused by notice dated 22 May 2014.
- The proposed work is to fell two oaks.
- The relevant Tree Preservation Order (TPO) is The Council of the Borough of Havant TPO No.1492, 33 Cavendish Drive Waterlooville, which was confirmed on 27 March 1992.

Decision

I dismiss the appeal.

Main Issues

1. The impact of felling the trees on the character and appearance of the surrounding area.
2. Whether the reasons given for felling the trees are sufficient to justify that course of action.

Reasons

The impact of felling the trees on the character and appearance of the surrounding area

3. This locality is a residential area of medium density comprising a mixture of detached bungalows, chalet-style bungalows and two-storey houses. No.33 is situated on the western side of the road and is the third property north of Cavendish Close.
4. The front garden is open and the rear garden has several mature trees in the rear half. These trees are part of a "spine" of mature trees which runs from Hulbert Road to the south along the rear boundaries of Cavendish Drive, which are common with Cavendish Close, and continues to the north-east along the common rear boundaries of houses in Poundway and Oakhurst Drive. This characteristic of rear boundary "spines" is repeated in this locality.

5. The landscape presence of these "spines" is to provide a backdrop skyline of mature trees to the properties when viewed from the roads. Cavendish Drive does have some semi-mature street trees, but larger trees in front gardens are very intermittent.
6. As part of the "spine" the appeal trees are visible from both Cavendish Drive and Crescent and thus very prominent in terms of public amenity as they contribute to landscape definition of the area. Consequently the proposed removal should not be allowed unless there are clear and convincing reasons to do so.

Whether the reasons given for felling the trees are sufficient to justify that course of action

7. The appeal trees are mature English oaks (*Quercus robur*) identified within the First Schedule of the TPO as being T1 and T2, which together with a third oak T3 are the only components of the TPO.
8. Appeal tree T1 is to the right (north) when looking toward the rear boundary and T2 is more central. Oak T3 is to the left and further back from the rear boundary. In the last winter's high winds appeal tree T1 lost two branches which the appellant had retained for me to see. Both had torn from a larger member and one had some incipient internal tissue decay from an old wound, and the other also appeared to have fractured at what could be regarded as a defective minor branch union.
9. The loss of branches following severe weather does happen and in both instances I could see the likely reasons why the two branches from the appeal tree T1 had failed. These failures relate to the specific defects and do not reflect the overall condition of the tree. As far as I could determine from ground level there were no features about the tree which indicate any structural deficiency, although there is an ascending branch in the upper crown with some decay. The tree is in satisfactory physiological condition.
10. Appeal tree T2 is much the same height as the adjacent trees. The neighbour at No. 3 Cavendish Close has expressed concern that appeal tree T2 is just 7.5 metres from the rear elevation of his house. That house and its extension did suffer subsidence damage in the past, but remedial repairs were carried out and no evidence has been provided to suggest that they have not been effective. There is no "standard" separation distance between built structures and trees and such guidance as there is must be interpreted in terms of the specific site circumstances.
11. Appeal tree T2 is forked into two stems of similar size at about 3 metres. The indications on the bark are that there is some bark inclusion but not to an extent that indicates any structural compromise. Features on the bark show that the tree has grown adaptively to accommodate this fork and no evidence has been provided to justify a conclusion that it is causing any structural compromise.
12. The appellant has indicated that the stumps of the two appeal trees would be left high but in view of my decision this is immaterial.
13. I note that there has been some past pruning of the appeal trees, and that trees to each side have also been pruned by crown reductions.

14. The Council received representations from five third parties which I have taken into account.

Conclusions

15. The two appeal trees are in satisfactory health and structural condition. The failure of two branches from appeal tree T1 does not indicate any wider structural deficiencies and the fork in the main stem of appeal tree T2 is not unsound. No evidence has been provided to demonstrate any abnormal level of risk. I use the term "abnormal risk" in relation to trees as no tree is 100% "safe" but where there are no defects or characteristics that render the subject tree more likely to fail than any other, I describe it as presenting no abnormal risk.
16. I sympathise with the appellant that the appeal trees have given cause for concern, but no evidence has been provided to persuade me that these concerns justify their removal.
17. However, a fundamental criterion of the evaluation of TPO protection is the balance between the benefits a tree, or in this case trees, provide to public amenity, with the compromises they cause to private amenity. I am not persuaded that this balance is in favour of the appellant on the basis of the evidence provided.
18. Accordingly I dismiss the appeal.

Jim Quaipe

Arboricultural Inspector