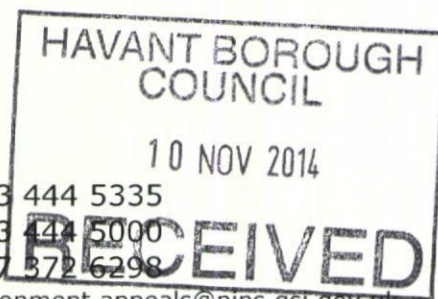




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Ms M Houghton
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
Hampshire
PO9 2AX

Your Ref: APP/14/00417
Our Ref: APP/TPO/X1735/4007
Date: 7 November 2014

Dear Ms Houghton

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: MISS CLAIRE PAYNE
SITE AT: 21 BUSHY MEAD, WIDLEY, WATERLOOVILLE, HANTS PO7 5DY**

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 9 September 2014.

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



Appeal Decision

Site visit made on 9 September 2014

by **Jonathan Fulcher**

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

Decision date: 7 November 2014

Appeal Ref: APP/TPO/X1735/4007

21 Bushy Mead, Widley, Waterlooville, Hampshire PO7 5DY

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against the application of a condition requiring replacement tree planting relating to the removal with consent of a tree protected by a Tree Preservation Order.
- The appeal is made by Miss Clair Payne against the decision of Havant Borough Council.
- The application dated 4 April 201 Ref: APP/14/00417 was determined by notice dated 22 May 2014.
- The condition is Condition 2 of the consent and it refers to replacement planting with one fastigate oak in the rear garden of 21 Bushy Mead, Widley, Waterlooville.
- The relevant Tree Preservation Order is the Council of the Borough of Havant Tree Preservation Order No. 1468 which was confirmed on 20 September 1991.

Decision

1. I dismiss the appeal.

Main Issues

2. In my view the main issues in this case are:-
 - i) The impact of the proposed planting on the visual amenities of the locality; and
 - ii) Whether or not the condition as proposed relates to the authorised work and is fair and reasonable in the circumstances of the case.

Reasons

The tree proposed for removal

3. At the time of my site visit the tree proposed for removal was still present. The tree is a maturing Lombardy poplar of about 20m in height and about one third of the crown appears to be dead. The tree stands in the rear garden of 21 Bushy mead close to the rear boundary on to Deverell Place.

The area and its character

4. Bushy Mead is a quiet residential suburban street in Purbrook, in the southern suburbs of Waterlooville. Properties in the vicinity are generally detached and semi-detached houses in their own modest plots, typically with open plan front gardens and occasionally with trees in front gardens. These trees are generally of small ornamental species and with the few hedges and shrubs they constitute the principle green landscape features. Trees with the stature of the Lombardy poplar are uncommon amid the houses, although there are larger trees visible in the middle distance.

- 12.If the Council grants consent to fell and wishes for a replacement tree to be planted it must attach such a condition to the consent, and this is an opportunity provided for in the relevant legislation. I note references in the appeal submissions to potential discussions between the appellant and the Council about alternative planting species in the event that the appeal is unsuccessful. While I accept that I am able to vary to some extent the provisions of the replacement planting condition I am satisfied that the condition is reasonable in the circumstances and I do not propose to vary it. Discussion and agreements between the parties after the appeal decision is issued are a matter beyond the scope of the present appeal and decision.
- 13.In consideration of the evidence that I have seen, I conclude that I should dismiss this appeal.

Conclusions

- 14.I find that the proposed replacement oak tree will have amenity value from the time of planting, with the amenity value increasing as the tree grows. I am satisfied that the oak tree proposed is a reasonable replacement for the poplar.
- 15.I find that the replacement planting condition is relevant and reasonable. It is precise enough to enable it to be discharged, and enforced if necessary.
- 16.I find that the grounds for opposing the application of this condition do not outweigh the reasonableness and relevance of the condition.
- 17.I conclude that the grounds for the application of the replacement planting condition meet the normal requirements for such conditions and are reasonable and relevant to the circumstances. I therefore dismiss the appeal.

Jonathan Fulcher

Arboricultural Inspector

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).

Our Complaints Procedures

Complaints

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Applications and orders to amend the rights of way network can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This can sometimes lead to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding application appeals and orders works. When this happens we will try to explain things as clearly as possible. Sometimes the objectors, applicant, the authority or another interested party may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open a case to re-consider its merits 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 long an order making authority took to submit an order to the Secretary of State) 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 direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way appeals and orders 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.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint 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. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that 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 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. However, the law does not allow us to amend or change the decision.



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