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Ms Karen Wooden  
Havant Borough Council  
Public Service Plaza  
Civic Centre Road  
Havant  
Hants PO9 2AX

Your Ref: APP/12/01038  
Our Ref: APP/TPO/X1735/3007  
Date: 26 March 2013

Dear Ms Wooden

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)  
REGULATIONS 2012, SI No. 605  
APPLICATION TO CARRY OUT WORK ON PROTECTED TREES  
APPELLANT: MR KIM GIFFORD  
SITE: 51 SOUTHWOOD ROAD, HAYLING ISLAND, HANTS PO11 9PT**

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 12 March 2013.

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. 0303 444 5884

Or visit:

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

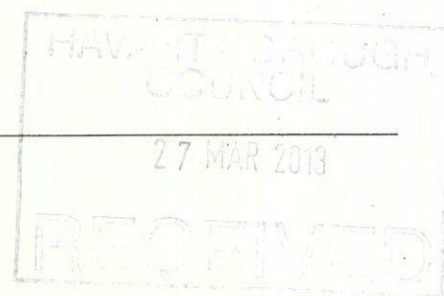
The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Kevin Gordon', with a stylized flourish at the end.

Kevin Gordon  
Environment Appeals Administration

Enc



## Appeal Decision

Site visit made on 12 March 2013

by **Jonathan Fulcher**

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

Decision date: **26 MAR 2013**

**Appeal Ref: APP/TPO/X1739/3007**

**51 Southwood Road, Hayling Island, Hampshire PO11 9PT**

- 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 Kim Gifford of Gifford Tree Service as agent for Mrs Beverley Byrne against the decision of Havant Borough Council.
- The application ref: APP/12/01038 dated 4 October 2012 was refused by notice dated 21 November 2012.
- The work proposed is the felling of a Monterey pine tree.
- The relevant Tree Preservation Order is the Council of the Borough of Havant Tree Preservation Order No. 1237 '51 and 51A Southwood Road, Hayling Island which was confirmed on 30 August 1985.

### Decision

1. I dismiss the appeal.

### Main Issues

2. In my view the main issues in this case are:-
  - i) The effects of the proposed felling on the visual amenities of the locality; and
  - ii) Whether or not there are sufficient grounds for the works as proposed.

### Reasons

#### *The tree*

3. The tree is a maturing Monterey pine of about 14m in height with a trunk diameter of 80cm. The first main primary branch arises at about 2.5m to give a crown height above the ground from about 2.5m. Branches including primary branches on the east side of the crown have been removed, giving the tree a slightly one-sided appearance when seen from close to. Otherwise the tree appears to be in normal health and condition for the species. The tree stands on the west side of the plot, in the rear garden and about 2.5m from the nearest part of the dwelling at 51 Southwood Road.

#### *The area and its character*

4. Southwood Road is a residential street in the suburban east side of Hayling Island. Properties in the vicinity are typically detached and semi-detached houses in their own modest grounds, with occasional small blocks of flats. Front gardens are comparatively shallow, typically not much more than 5m

deep, and vegetation in frontages is typically shrubby and small-scale. Trees tend to be restricted to rear gardens and to public open spaces. In the vicinity of the appeal tree there are few trees of similar stature in nearby properties although locally groups of cypress in hedge formation give the impression of evergreen masses of foliage on Southwood Road. The level landform gives no long views into or out of the site of the appeal tree and houses, with trees occasionally visible above and between houses, form the horizons and limits of view in most directions.

*The effects of the proposed felling on amenity*

5. The appeal tree is visible from Southwood Road. It is more prominent for views approaching the site from the east because the hedges of cypress on the west side of the tree tend to obscure direct views for approaches from the west. The size of the tree and its proximity to the road give it modest and very local prominence. It has an attractive form and the removal of lower branches on its east side is not readily apparent from more distant views from the east on Southwood Road. The tree is separated from others of similar size and this degree of separation gives the tree modest individual specimen character. It is also perceived from any distance as part of the general tree population locally and part of the landscape character that gives this area its attractive appearance. I am satisfied that the appeal tree has amenity value in its own right and as part of the local landscape. I find that the loss of the appeal tree would have an adverse effect on the visual amenities of the locality.

*Grounds for felling*

6. The appeal tree is about 1.5m from a concrete path and I noted some disturbance of the path surface, although not to such an extent as appeared to constitute a trip hazard or to have a significant adverse effect on the reasonable use of the path. Subject to discussions with and possibly an application to the Local Planning Authority there are usually remedies for this sort of root activity that do not require the felling of the tree. I am not persuaded that the effects of the appeal tree on the concrete path warrant felling.
7. I saw a crack in the garage wall above its side door. The garage is about 3m from the tree. I have seen no evidence that links the crack in the garage to the appeal tree so as to warrant felling. I find that the felling of the appeal tree is not justified on the grounds of adverse effects on the garage.
8. I saw roots appearing to be from the appeal tree on the surface of the lawn near the tree. I accept that the wooden shed near the appeal tree may have become dislodged and is now standing on ground that is uneven because of the activity and presence of roots from the appeal tree. I am satisfied that there are reasonable remedies for this situation that do not require the felling of the appeal tree and I find that the felling of the appeal tree is not warranted on the grounds of its adverse effects on the nearby shed.
9. I accept that the appeal tree is likely to shed debris including needles and cones and that this may require more frequent clearing of gutters than if the tree was not present. I am not persuaded that the matter of debris in gutters is so significant as to outweigh the amenity value of the appeal tree and I find

that the felling of the tree is not warranted on the grounds of debris in gutters and on roofs and gardens.

10. The appeal tree appears to be about 15m from Southwood Road and I agree that conifers including cypress hedges partially screen views of the tree from the west. I also agree that the appeal tree is still growing and is likely to increase in size; and that it is likely to have greater longevity than the cypress hedges. I agree that the present amenity value of the appeal tree is modest; but it is likely that the amenity value will increase as the tree increases in size, and if the cypress hedges are managed as hedges. I do not agree that the tree has such poor structural form as will adversely affect its long term retention; and in any event there may be pruning remedies if such problems do appear. Pruning to maintain a reasonable separation between the house and the crown of the tree is likely to affect principally the lower branches of the appeal tree, and it is the middle and upper parts of the crown that make the most significant contribution to amenity. I am not persuaded that the possibility of pruning to maintain a reasonable clearance to prevent nuisance warrants felling now.
11. I acknowledge that the presence of a large tree near a dwelling may affect property sale because of the perception of proximity and pressure from occupancy for some potential purchasers, but I am not persuaded that this is sufficient to warrant the removal of the tree. I also acknowledge the effects of a potential replacement elsewhere, but I am satisfied that the appeal tree has amenity value in its present form and at its present location, and that this will not be replaced satisfactorily at present with a new tree.
12. I have not seen pressing evidence sufficient to outweigh the amenity value of the appeal tree and warrant its removal and I conclude that in consideration of the circumstances I should dismiss this appeal.

## Conclusions

13. I find that the appeal tree has amenity value as a specimen in its own right and as part of the characteristic tree cover in the local landscape. I am satisfied that the proposed felling has the potential to have an adverse effect on the visual amenities of the locality.
14. I find that the grounds for the felling are not supported by the evidence and that the potential adverse effects of the proposed works on amenity outweigh the condition and other circumstances of the tree.
15. I conclude that the proposed felling of the appeal tree is not warranted on the evidence and I therefore dismiss the appeal.

*Jonathan Fulcher*

**Arboricultural Inspector**