



## Appeal Decision

Site visit made on 15 May 2012.

**by Alan Engley** MARb (RFS) FARborA MIHort MICFor AARC

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

Decision date: 22 May 2012

**Appeal Ref: APP/TPO/X1735/2511.**

**Land at 12 Royal Way, Waterlooville, Hants PO7 8JE.**

- 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 Preston Johnston against the decision of Havant Borough Council.
- The application (Reference: DC/MG/APP/12/00060), dated 16 January 2012, was refused by notice dated 8 March 2012.
- The proposed work is the felling of 1 Oak tree.
- The relevant Tree Preservation Order (TPO) is the Council of the Borough of Havant Tree Preservation Order 1101, Land South Of Stratford Road And West Of Royal Way And Hampton Close, Waterlooville, Hampshire, which was confirmed on 23 April 1982.

### Decision

1. The appeal is dismissed.

### Main Issues

2. I consider that the 2 main issues in this appeal are:
  - The effect on the character and appearance of the street scene and wider landscape if the tree is removed; and
  - Whether the reasons given for its removal are sufficient to justify that course of action.

### Reasons

***The first issue – the effect on the character and appearance of the street scene and wider landscape if the tree is removed***

#### *Character of the locality*

3. Royal Way is a curving road on undulating land, serving a modern residential development located just to the north of Hulbert Road, a main arterial route through Waterlooville to the M3 motorway. The properties are characterised by 2 storey brick built detached houses, constructed in modest sized plots, with open plan frontages, within an area that has a good scattering of groups and individual mature trees.
4. No 12, which has the appeal tree, is fairly typical of the houses, it is set back on the westerly side of the road on land that slopes gently up to the north

and west. Against the right side rear elevation is a conservatory and a patio; the landscaped garden is contained by wooden overlap fencing, it is laid to lawn with beds of maturing shrubs, and a rotary washing line is located towards the front left side. Beyond the right side fence is the landscaped garden of No 14 Royal Way.

*Local tree cover*

5. Within gardens and grassed verges along Royal Way is a scattering of mature, ornamental and Cypress trees of small stature. To the northeast of No 12, just before the junction with Hampton Close, are grassed public open spaces which are located on both sides of the road, they contain middle-aged and mature deciduous trees, including a number of large Oak, which form a curving, prominent wooded feature that grows around the rear of the properties locally.
6. Within the back garden of No 12, about 2m from the rear fence and 9.6m from the appeal tree, is a large mature Oak, within the rear garden of No 14, about 3.5m from the appeal tree is a mature Oak with a narrowly shaped crown. Beyond the rear fence of No 14 is another large mature Oak.

*Amenity value of the appeal tree*

7. The appeal tree is T2 of the application, it is a maturing Oak (*Quercus robur*). It has a circa 18m height and a trunk diameter of 40cm. The trunk is near upright and forks at about 6m into 3 main leaders which curve out towards the south and southeast.
8. It has a one sided appearance with branches spreading across the garden of No 12 by about 6.1m and up to an alignment with the guttering of the conservatory roof. Its limbs extend several metres across the rear garden of No 14, and towards the rear extension of the house.
9. In my opinion the appeal tree has a one-sided, but acceptable appearance and it grows as the edge component of the local grouping of 4 alike trees. Its top is lower than its companions but can be seen above the ridge tiles of the local houses and through the gap between the houses, in views when approaching along the road. Overall I consider it makes an important contribution to the amenity value of its residential surroundings.

*Impact of removing the appeal tree on the street scene and wider landscape*

10. The appellant wishes to remove the tree, his application is supported by the occupant of No 14, who considers there are many trees growing locally which would mitigate its removal, and the trees are generally overcrowded. The appellant claims his circa 4m high Yucca, which grows to the front of the appeal tree, and the companion Oak T1, would fill the gap created by its loss, and its felling would improve the shape of T1.
11. He wishes to replant using a flowering Cherry or Copper Foliage Beech, in addition he claims a tree surgeon considers the appeal tree is lopsided and has no amenity value.
12. I consider its erasure would delete the noticeable outer specimen of a loose grouping of similar trees and reduce the total number of Oak trees growing locally. T1 also has a slightly onesided shape away from the appeal tree but in my view the removal of T2 would have no noticeable beneficial effect on

its form because its crown grows above the appeal tree and would be very unlikely to develop into the lower space currently occupied by the crown of the appeal tree. I consider the spacing between the trees results in a pleasing group effect and could not be described as overcrowding.

13. A replacement Cherry or Copper Beech would take many years to grow to any appreciable size and in my view it would be unlikely to replace the amenity value lost due to the removal of the appeal tree.
14. I find therefore that the appeal tree enhances the visual amenity of its residential surroundings and its removal would cause harm to the character and appearance of the street scene and wider landscape.

**The second issue – whether the reasons given for the proposed works are sufficient to justify that course of action**

*Safety, proximity to property, shading, honeydew, drip and tree detritus*

15. The appellant claims that the tree grows too close to the house, its conservatory and the neighbouring property and it may be unsound because there are signs of rot in some of its branches. A third party, who objects to the application, claims it is a wildlife habitat and its removal could expose its companion trees to unaccustomed winds.
16. The appellant considers that it causes excessive shade to the neighbouring property and there is a constant covering of honeydew drip across the conservatory, house windows, patio, garden furniture, washing line and washing, and the underlying vegetation. In addition its acorns are disfigured.
17. On the day of my visit with the aid of visual magnification, I was able to observe a number of old cavities and tears along some branches within the upper crown of the appeal tree. In my view the tree is large, one sided and heavy and should it fail in anyway it could cause serious damage.
18. Its one sided appearance is the result of its juvenile development away from companion trees when it would have laid down compensatory woody tissue. Therefore, in my view its one sided form does not indicate instability or susceptibility to high winds.
19. I consider there is no evidence provided of serious weaknesses or decay of the trunk, branches or root system, nor investigations carried out to determine the safety and condition of the branches affected by the defects, sufficient to justify its removal on grounds of safety at this time.
20. The crown spread is across the properties and together with its companions it will cast shade and produce significant quantities of honeydew and tree related detritus across the surfaces beneath its crown. I accept the appeal tree is responsible for a major amount of the shading to No 14 and for a large proportion of tree detritus across both dwellings.
21. Its deletion would remove any contribution it makes to these problems but it would not remove the similar nuisances created by its companion trees. Its acorns are disfigured by a gall insect, which has no adverse effect on the health and safety of the tree. Relocating the rotary washing line could considerably reduce the honeydew drip problem.

22. I can appreciate the clearing of tree debris is a hefty and unwelcome chore, however, in my view the clearing of tree detritus is part of routine household and garden maintenance when living in proximity to trees and provides no justification for removing a good quality, protected specimen.

*Crown reduction*

23. The Council consider the tree is in good health and there are no sound reasons for its removal and they would welcome an application for sensitive management of its size. In my view some form of crown reshaping and lifting could be carried out which should be agreed with the Council that would significantly improve conditions to the properties and the risk of branch loss, without the necessity of tree removal.
24. I place great weight in my decision on the issues of safety concerns and tree detritus which could be appreciably improved by surgery methods that the Council may agree to.

*Potential root related problems*

25. The occupant of No 14 claims that its roots may be undermining the houses and it grows close to the sub-surface drainage system and its growing position would not conform to planting distances as described in various publications found within the public domain.
26. Roots can cause direct impairment to building materials, such as drains, by growing against the building fabric causing pressure and distortion. Indirect damage, such as subsidence, is dependent on an underlying clay soil and the depth and design of the property foundations. However there is no evidence supplied of root damage to the houses or drainage materials and there are insufficient details provided to persuade me that future root related damage could occur.

**Conclusions**

27. My conclusions on the 2 main issues have led me to the view that the appeal tree enhances the visual amenity of the street scene and wider landscape and the proposed work would cause demonstrable harm.
28. In reaching my decision I have taken into account all matters relating to the tree. I consider that it is not so ill-suited to its location that it creates unacceptable conditions sufficient to override the amenity benefits it provides and I am confident that surgery, which could be agreed with the Council, would significantly improve conditions to the properties without the necessity of tree removal. I have therefore dismissed this appeal.

*Alan Engley*

**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 & Tree Preservation Order (TPO) 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. A challenge against a Tree Replacement Notice (TRN) appeal must be received by the Administrative Court within 28 days of the date of the decision, unless the court extends this period.**

### *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: [www.courtservice.gov.uk](http://www.courtservice.gov.uk)**

## 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  
4/06 Kite Wing, Temple Quay House  
2 The Square, Temple Quay  
Bristol BS1 6PN  
Phone: 0117 372 8962

## General Enquiries

Phone: 0117 372 6372  
E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

## Complaints

### 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

## Cardiff Office

The Planning Inspectorate  
Room 1-004, Cathays Park  
Cardiff CF1 3NQ  
Phone: 0292 082 3866  
E-mail: [Wales@pins.gsi.gov.uk](mailto: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](http://www.ombudsman.org.uk)  
Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)



INVESTOR IN PEOPLE



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](mailto: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](mailto: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](http://www.ombudsman.org.uk)

E-mail: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

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