



4/04 Kite Wing (Env)
Temple Quay House
2 The Square
Bristol
BS1 6PN

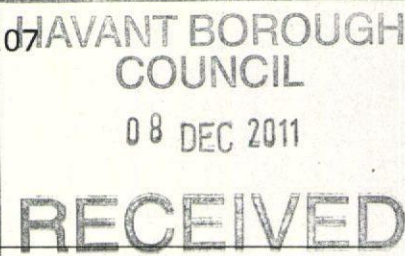
Direct Line: 0117 372 8192
Customer Services: 0117 372 6372
Fax No 0117 372 6241
e-mail: environment.appeals@pins.gsi.gov.uk

Mrs K Wooden
Planning Development
Havant Borough Council
Civic Offices
Civic Centre Road
Havant
Hampshire PO9 2AX

Your Ref: APP/11/01075

Our Ref: APP/TPO/X1735/2107

Date: 7 December 2011



Dear Mrs Wooden

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 78
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: IAN D UPTON
SITE: 14A KINGSWAY, HAYLING ISLAND, HAMPSHIRE PO11 OLZ

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 24 November 2011.

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 Town and Country Planning Act 1990;
- (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
4/11 Eagle 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

Lee Richards

Mr Lee Richards
Environment Appeals Administration

Enc



Appeal Decision

Site visit made on 24 November 2011.

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: -7 DEC 2011

Appeal Ref: APP/TPO/X1735/2107.

Land at 14A Kingsway, Hayling Island, Hampshire PO11 0LZ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
 - The appeal is made by Iain D Upton against the decision of Havant Borough Council.
 - The application (Reference: APP/11/01075), was registered by the Council 27 May 2011. It was refused by notice dated 3 August 2011.
 - The proposed work is the felling of 1 *Macrocarpa*.
 - The relevant Tree Preservation Order (TPO) is The Council of the Borough of Havant, Tree Preservation Order No 928, trees on land rear of 12 Kingsway and on boundary with 14, Kingsway, Hayling Island, which was confirmed on 22 October 1976.
-

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. Kingsway is a short link road on fairly level land that winds through a residential area of Hayling Island located to the east of the main Havant Road. The properties are of mixed ages and designs constructed within modest sized plots. No 14A, which has the appeal tree, is set back on the easterly side of the road; it is fairly typical of the detached 2 storey houses. Against its rear elevation is a brick and glass roofed conservatory.
4. The rear garden is laid to lawn and contained by wooden fencing beyond which are the rear gardens of neighbouring properties. The appeal tree grows against the far right corner of the garden.

Local tree cover

5. Throughout the residential area, lining the roads and growing within the gardens, are maturing ornamental trees of small stature. Within gardens locally are occasional mature evergreen and deciduous trees of large stature. Beyond the right boundary are mature Eucalyptus and Silver Birch. To the front of No 14A is a mature, truncated Oak and a group of Cypress trees of medium stature. Generally the area has a scarcity of large trees but there is a good cover of small and medium sized specimens.

Amenity value of the appeal tree

6. The appeal tree is a mature Monterey Cypress (*Cupressus macrocarpa*). It is of very large stature and has a height of about 17m and a trunk diameter of about 1.5m. The trunk forks at 1.5-2m with a more upright north westerly leader naturally suppressing a sub-leader which curves upwards towards the southeast. I measured the crown radial spread to be 8.1m across the lawn; the outer canopy is low and transverses 3 neighbouring gardens. The dense crown has a broad dome shape. The appellant considers the tree to be unattractive.
7. The appeal tree forms part of a loose scattering of large trees that grow in an area which has few similar specimens of large stature. In my view the appeal tree has an acceptable shape; it can be seen from the rear garden of No 14A and from the rear of some gardens of local properties. Its top can be seen when approaching along the road. Overall I consider it has considerable amenity value to its residential surroundings.

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

8. The appellant wishes to remove the tree and in principle he would plant a smaller growing tree. In my view its removal would result in the loss of a large attractive specimen that grows in an area which has a paucity of similar trees and a replacement smaller growing specimen would not replace the amenity lost due to the removal of the appeal tree.
9. I find therefore that the tree enhances the visual amenity of its residential surroundings and its removal would cause significant 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

Antisocial position and growth

10. The appellant considers that the tree was part of a group of trees which have since been removed and it is too large and over-shadows the small garden and neighbouring properties and is now out of place. In addition it has a large south-easterly facing sub-leader that grows across neighbouring properties and it is antisocial because of its location and growth pattern. He wishes to fell the tree and retain a 15-20 ft stump and he claims his application is supported by 2 neighbours. The Council argue that the tree is sound and healthy and suggests its size could be managed by crown reduction by 3m.
11. In my view the tree dominates the rear of the dwelling of No 14A and its garden and the rear of some local properties to a considerable level. I

accept the view of the Council that it could be managed by surgery. In my opinion, properly carried out, crown reduction would reduce its size, and therefore its dominance, by a considerable amount and could be the subject of further discussions and a detailed specification, and agreement with the Council.

Detritus and lack of light

12. The appellant claims that its branches occupy one third of his garden and deposits quantities of detritus across the lawn and surfaces beneath the crown and it has a large limb that grows across neighbouring properties. In addition, it prevents sunlight to the east facing conservatory and kitchen and because of which, the rooms require additional heating. He considers that the work proposed by the Council would have no benefits.
13. On the day of my visit I was able to observe large quantities of needles, cones and debris across the surfaces beneath its canopy arising from the appeal tree. I can appreciate the reduced light levels to the dwelling and neighbouring properties resulting from the juxtaposition and size of the tree.
14. In my view the clearing of tree related debris is an unwelcome chore but it is part of routine household maintenance when living in proximity to a tree and in isolation it provides no justification for removing a good quality, protected specimen.
15. Furthermore I am confident that crown reduction could have noteworthy benefits regarding reducing tree debris, light level penetration to the house and gardens and it would reduce the size of the large south-easterly facing sub-leader. I place great weight in my decision on the problems of shade and tree detritus and the benefits that could be achieved by surgery.
16. In light of the foregoing I have decided that on the second issue the reasons given for removing the appeal tree are insufficient to justify that course of action.

Conclusions

17. My conclusions on the 2 main issues have led me to the view that the appeal tree significantly enhances the visual amenity of the street scene and wider landscape and the proposed work would cause demonstrable harm. In reaching my decision I have taken into account all other matters relating to the tree.
18. I consider that the tree is not so ill-suited to its location that it creates unacceptable conditions sufficient to override the amenity benefit that it provides.
19. I have no doubt that some form of properly specified crown reduction, which should be agreed with the Council, would significantly improve conditions to the properties and avoid the necessity of removing a good quality, protected tree. I have therefore dismissed this appeal.

Alan Engley

Arboricultural Inspector