The Planning Inspectorate

Appeal Decision

Hearing held on 20 March 2012
Site visit made on 20 March 2012

by R J Perrins MA MCMI ND Arbor

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

Decision date: 17 April 2012

Appeal Ref: APP/TPO/X1735/2208
5 a Wallis Road, Waterlooville, Hampshire PO7 7RX.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Mr Nicholas Meyer (OCA UK Ltd) against Havant Borough Council.
- The application Ref: APP/11/01269, is dated 20 July 2011.
- The work proposed is to fell the English Oak tree T3 as close to ground level as is practicable and treat the stump.
- The relevant Tree Preservation Order (TPO) is Tree Preservation Order No.1529 5A Wallis Road Waterloovile, which was confirmed on 17 August 1993.

Decision

1. The appeal is dismissed.

Procedural matters

2. The Council state that had an appeal not been lodged against its failure to determine the application, it would have refused the application for the following reason: The tree is a significant feature in the local landscape and appears to be in an adequate sound and healthy condition. Its proposed felling would result in undue loss and detriment to the visual amenities of the locality. Furthermore it has not been adequately demonstrated what the consequences would be for the ground conditions and properties in the vicinity of the Oak tree should it be removed. It is therefore contrary to Policy DM8 of the Havant Borough Core Strategy 2011 (CS) which forms part of the Local Development Framework and Planning Policy Statement 1 (PPS1). In determining the appeal I have taken this into account.

3. Furthermore, since the appeal was made, the National Planning Policy Framework has come into force and, amongst other things, has replaced PPS1 to which the Council refer. Nevertheless, the appellant has submitted no policy arguments and the policies in the Framework have been considered but in light of the facts of this case the Framework does not alter my conclusions.

Main Issues

4. I consider the main issues in respect of this appeal are the effect on the character and appearance of the surrounding area if the oak tree was felled and; whether the reasons given for felling the tree justifies that course of action.

Reasons

Character and appearance

5. The oak tree stands in the front garden of No 5a it is a mature specimen approximately 18 meters in height with a full crown which shows signs of past crown reduction work. It is nevertheless a fine specimen growing adjacent to a smaller Horse chestnut. The trees are prominent within the street scene and from afar appear as one crown, although the oak is the dominant feature and reflects the size and stature of other oaks nearby which, I was informed at the Hearing, once formed part of the Forest of Bere. At the time of my visit I was able to see the oak was of good vigour with no external signs of pests, disease or decay; there is nothing before me to indicate that the tree would not live for many more years.

6. The Council contend that given its visibility the tree has significant public amenity value. The appellant does not dispute that and accepts the tree is worthy of the Tree Preservation Order. I see no reason to disagree with the parties and I consider the tree meets the criteria for protection as set out in Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000. Its removal, even when set against the retention of the Horse chestnut, would have a significant impact on the local environment and its enjoyment by the public. Thus, my conclusion is that felling the oak would result in significant harm to the character and appearance of the area.

7. I come to that view having considered the potential to secure a replacement tree by way of conditions and the willingness of the current landowner to accommodate a replacement tree. However, the type of tree suggested by the appellant and property owner would not reach the substantial stature of the oak. Furthermore, I am not convinced, given the presence of an overhead telephone wire and the Horse chestnut tree, that a replacement oak tree could be successfully established within the front garden in any event. In addition I accept the property owners' concerns that a replacement tree positioned in the rear garden would not be suitable; given the proximity of neighbouring properties and the aspect, there would be potential for a tree of any stature to have an adverse impact upon the living conditions of those living nearby.

The second issue – the justification for felling the tree

8. No 11 Wallis Gardens is a detached property situated to the east of No 5, the properties share a common boundary, and No 11 is suffering from structural damage. The property owner notified their insurers in 2009. I was able to see from my site visit that damage is extensive; there are various signs of movement both inside and outside the building. There is no dispute that the property is suffering from subsidence damage; oak tree roots were identified in the trial pit excavated near the northernmost corner of the property and level monitoring results, indicate a seasonal pattern of movement. I see no reason to disagree with the view that the oak tree is contributing to the cyclical movement focussed on the northernmost corner of the dwelling.

9. Given the extent of the damage I have a great deal of sympathy with the property owner and his wife; it is understandable that he would want the situation satisfactorily resolved as soon as possible. The appellant considers the removal of the oak tree and superstructure repairs would be the most

enduring and cost effective solution to the problems. It was also agreed by the parties that pruning would have little effect and a root barrier, for it to be effective, would have to be installed beyond the curtilage of No 11 which could not be guaranteed. Furthermore, the appellant is not convinced in any event that a root barrier is an effective remedy.

10. At the Hearing it was agreed that underpinning would resolve the current issues regarding movement of the northernmost corner/rear wall of the property. However, the appellant set out a number of concerns with regards to costs, practicalities, and the future stability of the property. Those arguments were well set out by the appellant's Structural Engineer and I accept that, roots were found to a depth of 2.2 meters and traditional piling may need to go down to 2.5 meters or beyond. There are health and safety risks involved in the standard form of piling to that depth. In addition stabilising the affected part of the property by way underpinning would not guarantee that the remainder of the property would not be subject to further movement and that internal walls, for instance, could be subject to further movement and subsequent damage. Underpinning the affected part may not resolve the issue and retention of the tree may require underpinning of the whole of the property.

11. However, whilst the arguments put forward by the Structural Engineer were lucid, there is little by way of detailed information before me save to say that underpinning the northernmost corner/rear wall would resolve the subsidence issue at that point. Health and safety issues may not be insurmountable, there is no detail of ground conditions, save for the trial pit, so arguments regarding future movement of internal walls and floors are inconclusive and I must temper the weight I give to them. The appellant also raises concerns regarding the financial implications of remedial works and sets out that all options would be subject to detailed design and costings. The figures put forward thus far were based on previous experience. That is to say the cost of superstructure repairs, should the tree be removed, would be in the region of £10,000. The extra cost of underpinning works, if the tree were to stay, would be in the region of £15,000 plus the inevitable disturbance to the property owner whilst those works were carried out. Although no detailed costings have been submitted.

12. However, there should be no automatic felling of trees implicated in structural damage and such decisions should not be made on a purely economical basis; all factors must be weighed in the balance. I say that having considered a number of judgments put forward by the appellant to substantiate the view that the Council should have granted consent as the tree is the substantive and effective cause of the damage. Be that as it may, the case of Perrin v Northampton Borough Council 2007 is applicable in this instance. That judgment found the underlying purpose of the legislation is to preserve trees which are the subject of TPOs and states 'it would seem counterintuitive to that purpose when considering the minimum necessary that needs to be done in order to prevent or abate a nuisance caused by a tree that is subject of a TPO, to ignore altogether steps that may be taken other than to the tree itself and instead simply focus on the works to the tree'. This more recent judgment does not aid the appellant's case and all matters should be considered in the balance.

13. Moreover, I am not satisfied that felling the tree would resolve the matter. There is concern from the Council, the tree owner, the insurance company of a neighbouring property and neighbours that if the tree were to be removed soil heave could occur resulting in damage to their properties. I accept those concerns are not based upon any robust evidence, for example; the tree owner's arboricultural report refers to the need for a structural engineer and soil scientist; the insurers of No 5a refer to a potential repair figure of £100,000 should soil heave occur, but the parties agreed that the property was built to NHBC standards; and the garage at 3B has been underpinned so is unlikely to suffer any adverse consequences. Nevertheless, soil heave is a complicated matter which is subject to many variables.

14. I have no reason to doubt the views of the appellant's Structural Engineer and Consultant Arboriculturist that in their experience cases of soil heave are exceptional. In addition I accept it is their role to pursue the non-repudiated tree claim in respect of the insured property and that they are satisfied that soil heave would not be an issue for No 11. However, there is simply no detail as to how the appellant has come to the conclusion that soil heave is not a risk; no calculations or details have been submitted. Furthermore, the Council's Building Control Surveyor, stated that he was aware of cases of soil heave in the area. Whilst that statement was not substantiated, and carries little weight, it should also be weighed in the balance along with other professional opinions.

15. Having considered all of these matters I am not assured that removal of the tree would negate the need for underpinning or other structural works in the future. In any event there would remain a risk that soil heave may occur. However, I am satisfied that there is an engineering solution by way of underpinning; that may require piled foundations and some risk but there is nothing before me to suggest such matters are insurmountable. In any event, in the absence of any detailed scheme of remedial works and given the appellant's estimations of cost, the total cost of underpinning works would not equate to the greater public amenity value of the protected tree.

16. Therefore, having taken into account all the factors and likely outcomes I find that whilst the tree has most likely contributed to the structural damage to No 11, there are reasonable alternatives to the removal of the oak tree. Considerations regarding soil heave and potential for future movement following underpinning are inconclusive. Thus the reasons given for felling the oak tree are not sufficient to justify the cause of action, which may not solve the issues in any event.

17. For the reasons given above and having considered all other matters raised, I conclude the appeal should be dismissed.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms M MacQueen BSc CBiol MSB MICFor MAE	Consultant Arboriculturist
Mr J Appleton BEng(Hons) CEng MICE ACII	Consultant Engineer
Mr S Lush	Property owner

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Cantwell BSc MSc MRTPI AIEMA	Development Control Team leader
Mr J Gargett MSc	Arboriculturalist
Mr R Seamer MRICS BSc(Hons)	Building Control Surveyor

INTERESTED PERSONS:

Cllr P Buckley	Waterloo Ward Councillor
Mr J Pearce	Tree owner
Mrs W Pearce	Tree owner
Mr P Webb	Local resident

DOCUMENTS

1 Copy of Policy CS11 of the Havant Borough Core Strategy
2 Copy of Policy CS16 of the Havant Borough Core Strategy