



Appeal Decisions

Hearing held on 22 June 2011

by **G D Grindey MSc MRTPI Tech.Cert.Arb**

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

Decision date: 1 July 2011

Appeal Ref: APP/TPO/X1735/1671

30 Grassmere Way, Waterloo, Havant, PO7 8RT.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against (i) a refusal to grant consent to reduce 2 oak trees and fell 4 others protected by a Tree Preservation Order and (ii) against an Article 5 Certificate.
 - The appeal is made by Marishal Thompson & Co against the decision of Havant Borough Council.
 - The application Ref: APP/10/00012, dated 1 April 2010, was refused by notice dated 7 January 2011.
 - The work proposed is oak x 2 (TG1) – reduce to points of previous reductions; Cypress (H1) – remove hedge; oak x 4 (TG2) – remove group.
 - The relevant Tree Preservation Order (TPO) is No. 1206 land to the south east of Idsworth Road, Cowplain, which was confirmed on 1 March 1985.
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Decision

1. I dismiss the appeals.

Main Issues

2. From my inspection of the site and surroundings and the representations made I consider that the decision in appeal (i) turns on 2 main issues. These are the amenity value of the trees and the likely impact of felling and/or pruning and whether the works are justified in the circumstances of this case. Concerning appeal (ii) against the Article 5 Certificate, *Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000* advises that it must be established whether the Certificate meets the terms of Article 5 and, if so, whether each tree concerned merits such a Certificate.

The Cypress hedge.

3. While the application refers to a short length of Cypress hedge (H1 on the site plan) between the front and the rear garden to no. 30, this is not a matter for me. The hedge is not the subject of a TPO and, at the hearing, it was agreed by both main parties that it would be a matter of personal choice if the occupiers wished to remove it.

Reasons

Appeal (i) the amenity value of the trees.

4. This might usefully be considered under the headings from *Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000*, paragraph

3.3. It is clear that a considerable number of large, mature oaks have been preserved in this area, with the houses being built around them later. I understand, from the representations made, that many trees on the estate may be remnants from the Forest of Bere. However, the TPO of which the appeal trees form a part covers what was obviously a former hedgerow of 38 oaks, all protected as G1 on the TPO. Now they form the domestic boundaries between Grassmere Way and Idsworth Road/Stephen Close properties.

5. The appellants argue that the oaks have 'limited local amenity as the main road into the estate runs parallel to the trees offering only limited views'¹. I do not agree. I found at my site inspection that the oaks have considerable visibility from a fair number of public viewpoints, particularly from the various cul-de-sacs off Grassmere Way, from Park Lane, Idsworth Road and Stephen Close. From these the appeal trees and their neighbours occupy a skyline position. The appeal tree groups, TG1 and TG2 on the appeal plan, are visible from a significant number of public places, to residents, pedestrians, those travelling along the roads and those visiting/calling. Because the trees occupy a skyline position from many of these viewpoints they contribute greatly to the attractive, mature appearance of this residential area. These are all large, mature, forest sized trees and hence unusual in close proximity to suburban roads.
6. These trees contribute to the pleasantness and biodiversity interest of the locality and, as typical, domed, deciduous trees, form a good backdrop to the built development in foreground views. In my view the loss of the 4 oaks in group TG2 and a reduction in the canopy of the 2 forming TG1 would harm the appearance of the area, even though there are many other trees present. While groups TG1 and TG2 are some of a large number of protected trees visible this does not mean that their loss or reduction would not be significant.
7. Taking account of all of these foregoing matters, the trees appear to me to meet the criteria for protection in *Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000*. They have significant impact on the local environment and its enjoyment by the public. As such, my conclusion is that felling 4 oaks and pruning 2 others back to previous reduction points² would significantly diminish the character and appearance of the area.

Appeal (i) whether the reasons given for felling 4 oaks and pruning 2 others are sufficient to justify the course of action proposed.

8. The property has the appearance of a modern detached house probably built around 1985. It seems that sometime prior to the present occupiers' purchase in 2005, a UVPC conservatory was added to the northerly elevation of the main house together with a narrow single-storey extension (used as a utility area) linking the garage to the conservatory. There was no Building Regulation application for this work; all the damage is within these side additions. I saw at my site inspection internal and external cracks between the extension and the earlier walls, where the extension butts up against the garage wall (the later works are not tied in). There are cracks around the internal door-frame and distortion of the frame making it difficult to close (figures 3, 4 and 5 from the Engineer's Report submitted by the appellants). Externally, there is a crack

¹ Appellants' statement, paragraph 5

² as a preventative measure which was stated at the hearing

at DPC level and, internally, signs of movement can be seen between the component parts of the conservatory.

9. The foundations for these side additions at no. 30 were found in Trial pits 1 and 2; they are between 470mm and 550mm in total deep (including the pad at the bottom). It was agreed at the hearing that these are inadequate, taking into account NHBC standards. It is not known what foundations the main portion of no. 30 has, but it does not appear to exhibit any signs of movement. I was told at the hearing, by a long-serving Councillor, that great care was taken at the time of construction of the estate, both to preserve the oaks and to take their presence into account in the building works. In contrast, the extension and conservatory have not been constructed taking into account either the soil conditions or the proximity of trees.
10. There is agreement that the soil has the potential for volume changes to varying degrees and the root identification of 30 October 2009 reveals no surprises; given the proximity of the line of oaks I would be surprised if oak roots were not present in the trial pits.
11. I think it highly likely that the manner in which the extension and conservatory have been constructed is the main factor in the damage here; their foundations did not take into account the proximity of the trees or the soil conditions – both of which would have been obvious at the time of building. Had the foundations and construction been properly considered at the outset, there should have been no problems. Likewise, the additions were not bonded to the main structure; differential movement seems to me highly likely and, indeed, the main cracks are at the junctions of the original/later structures.
12. It was argued, for the appellants, that the cost of underpinning 'is likely to be significant'³ but I have not seen any written and detailed costs. There are too many unknowns here to make this a decisive issue anyway. Firstly, we discussed the possibility of heave at the hearing. If the trees are felled there is a possibility of between 0 – 2cm and 2 – 5cm recovery. This means that repairs cannot be carried out immediately; Mr Wilkins, for the appellants, stated that they would not wish to undertake repairs for 12 – 18 months to accommodate soil re-hydration; the disruption and uncertainty for the householder may continue. Secondly, we know the foundations of the main house are different to the additions; there may be differential movement between the 2 anyway and additional costs and disruption at some point in the future; these elements should also weigh in the balance.
13. Pulling all these threads together, I am by no means convinced that felling the oaks in group TG2 and pruning the oaks in TG1 would end the matter. There is at least a possibility of heave occurring, with all that implies in terms of delay to repair works and future disruption. Whatever the outcome of this appeal, there are repair and re-decoration works necessary anyway. While underpinning works would be expensive, these are small extensions relative to the main house. This is purely an economic balance and cannot be decisive. Given this, I see no reason why the 4 oaks must be felled or 2 others pruned. Remedial works could be properly designed to take into account the presence of the nearby protected trees as, indeed, was done when the house was built and should have been done when the extension and conservatory were added.

³ Appeal statement, paragraph 6.5

14. The appellants submit that the Council has not 'acknowledged or referred to'⁴ the 'reasons' for making the application and list the Engineer's Technical Report; the Arboricultural Report; the Soil Analysis results; the foundation details and the crack monitoring results. But these 5 items are not 'reasons' as referred to in paragraph 6.61 (as amended) of *Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000*. There is a single 'reason' put forward for the application in this case and that is the clay shrinkage subsidence exacerbated by vegetation. The 5 listed items are not 'reasons' (in paragraph 6.61 terms) they are the *evidence* required by paragraph 6.40C (as amended) to support the case made in the application. Clearly, the Council has considered the *reason* put forward and states, on their decision notice, that there are other remedies, besides the work proposed, as indeed there are.
15. Returning to my original question of whether the reasons given for felling the oak trees in group GT2 and pruning group TG1 are sufficient to justify the course of action proposed, this is a judgement or balancing exercise concerning the fate of protected trees. In this case there is a once-and-for-all engineering solution; this is certainly one way of solving the problem. There should be no automatic felling of trees simply because they are implicated in causing damage to some poorly constructed, minor additions to a property when there are other ways of tackling the problem. I accept that this may be more costly than the immediate works proposed but there are necessary repair works required, whatever the outcome of the appeal, to off-set against this. In any event the total cost would not compare to the greater public amenity value of the protected trees.
16. Indeed, to my mind such a loss runs counter to the thrust of the TPO system of making 'provision for the preservation of trees' as Section 198 of the Act says. The key matter to weigh against this loss of amenity would be the scale of the repairs/works necessary to return these minor extensions to a reasonable standard once more. The felling and/or pruning would be disproportionate and the trees would not be 'preserved' in the ordinary meaning of the word of keeping safe from harm or injury; to take care of, to guard.
17. The case of *Perrin v Northampton Borough Council* is relevant here. The judgement states "If, as is obviously the case, the underlying purpose of the legislation is to preserve trees which are the subject of TPOs, it would seem counterintuitive to that purpose when considering what is 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 focus simply on the works to the tree". This judgement does not assist the appellant's case.
18. All the protected trees are a highly characteristic feature in the street scene; they are particularly prominent; they are what makes it distinctive. Hence, their loss or diminution, as substantially sized trees, would result in a reduction in the amenity of the area.
19. My conclusion is that while the trees are the most likely cause of the structural damage to parts of no. 30, there are reasonable and preferable alternatives to felling and/or pruning. The reasons given for the works proposed are not sufficient to justify the course of action proposed. I conclude that appeal (i) should be dismissed.

⁴ Appellants' appeal statement, paragraph 5.1

Appeal (ii) the Article 5 Certificate

20. *Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000* states that, before issuing a “special” or “outstanding” certificate the LPA should consider carefully the amenity value of the tree and whether that value amounts to something that could reasonably be described as “special” or “outstanding” using the ordinary meanings. The example that is then used⁵ refers to the term ‘outstanding’ being used in relation to dominant features of the landscape. The *Guide* goes on to state that, in an appeal, it should be considered whether there are special factors that distinguish the trees from other protected trees rather than trees generally.
21. I consider that this is the case. These are large, forest sized oak trees adjacent to suburban roads and set amidst a housing estate; such juxtapositions are unusual and special. The trees lie along a domestic boundary, on the edges of properties, where their presence can be more easily tolerated. They perform a notable softening function and are a skyline feature as well as prominent and pleasant leafy backdrops to built development. The trees are mature and, as the parties suggest, may have been part of the original Forest of Bere. All these features distinguish them from other protected trees.
22. While the appellants raise ‘health and safety issues’ on 2 old pruning wounds of the TG2 trees⁶ no evidence of any significant decay at these points was presented at the hearing or at the site inspection. The trees appeared to be in good health, foliage was normal; there were no fruiting bodies or any other obvious signs of potential problems⁷. Callus appeared to be forming around the wounds as would be expected. I do not accept, therefore, that these old wounds diminish these trees in any material way. I can find no reason for the Article 5 Certificate to be quashed.
23. For the reasons given above I conclude that appeal (ii) should be dismissed.

Gyllian D Grindey

Inspector

⁵ Paragraph 6.69 of *Tree Preservation Orders – A Guide to the Law and Good Practice – DETR March 2000*

⁶ not the TG1 group as the photographs in the Arboricultural Report state

⁷ There is one obvious dead limb in the western-most tree in group TG2 which should be removed

APPEARANCES

FOR THE APPELLANT:

Mr P Wilkins BA(hons) M Arbor For Marishal Thompson & co
Assn AA Tech Cert.

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Cantwell BSc MSc MRTPI	Team Leader Development Management Havant Borough council (HBC)
Mr D Harris ND Arb MArborAssn	Arboricultural Officer HBC
Mr J Gargett MSc	Arboricultural Officer HBC
Mr D Thomas BSc(Hons) MBEng	Building Control Officer HBC
Mr D Tanner BSc	Building Control Officer HBC

INTERESTED PERSONS:

Ms V Philips	Tree Warden
Mr G Fulcher	Tree warden
Cllr Gibb-Gray	Cllr HBC
Ms F Jannaway	Tree Warden
Mr R Cousins	Tree warden
Ms V Barber	Tree warden
Mr K and Ms N Daniels	Near neighbours to appeal site
Cllr P Buckley	Cllr HBC

DOCUMENTS

- 1 Letter of notification of hearing and circulation list
- 2 Letter from Ms F Jannaway handed in at the hearing
- 3 Letter from occupants of 30 Grassmere Way handed in at site inspection



The Planning Inspectorate

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Jamie Gargett
Havant Borough Council

Your Ref: APP/10/00012

Our Ref: APP/TPO/X1735/1671

Sent by email

Date: 1 July 2011

Dear Mr Gargett

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 78
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: MARISHAL THOMPSON & CO
SITE: 30 GRASSMERE WAY, WATERLOOVILLE PO7 8RT

I enclose a copy of our Inspector's decision on the above appeal following the hearing on 22 June 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.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm

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

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