The Planning Inspectorate

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

Your Ref: APP/11/00156

Our Ref: APP/TPO/X1735/1894

Date: 30 August 2011

HAVANT BOROUGH COUNCIL
31 AUG 2011
RECEIVED

Dear Mrs Wooden

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 78
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: MR & MRS MACWILLIAMS
SITE: 7 BROADMEADOWS LANE, WATERLOOVILLE, HAMPSHIRE PO7 8QL

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 3 August 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

Enc

The Planning Inspectorate

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Appeal Decision

Site visit made on 3 August 2011

by Simon Pryce

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

Decision date: 30 August 2011

Appeal Ref: APP/TPO/X1735/1894
7 Broadmeadows Lane, Waterlooville, Hampshire, PO7 8QL

- 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 Mr & Mrs D MacWilliams against the decision of Havant Borough Council.
- The application Ref: App/11/00156, dated 7 February 2011, was refused by notice dated 11 April 2011.
- The proposed work is the felling of one oak.
- The relevant Tree Preservation Order (TPO) is the Havant Borough Council TPO, no.1185, Land at Riverdale east of Tempest Avenue, Waterloovlle, which was confirmed on 28 September 1984.

Decision

1. This appeal is allowed, subject to the following conditions:

   1) All work is to be carried out in accordance with British Standard 3998:2010; Recommendations for treework.

   2) The work is to be carried out within one year of the date of this decision.

Main Issues

2. In my view the main issues in this appeal are:

2.1 The amenity value of the appeal tree [tree B].

2.2 The effect of the tree on conditions in the rear garden, particularly shade.

2.3 The tree's long term potential, given the proximity of another oak [tree X].

2.4 The effects of the proposed removal of tree B.

Reasons

Amenity value

3. Tree B is in reasonable health, but has developed a very one sided crown due to growing close to tree X, in the adjacent rear garden. The crowns of the two trees merge, but tree X is the larger and older of the two, so is more symmetrical. Tree B is prominent from within the rear garden of no.7, but the house hides it almost completely from the close in front and the other two oaks mean that it is barely noticeable from adjacent rear gardens. It and the others are part of a row of oaks and other trees, most in rear gardens with a few younger ones on the verge. These are a prominent feature of Tempest Avenue, but tree B is one of the smaller mature trees so, when approaching from the west it is completely hidden by tree X, while from the east it is barely noticeable against the backdrop formed by the crown of tree X. The belt of trees is a major local amenity; I accept that the contribution made to this by tree B is positive, but it is modest.

Effect on living conditions

4. Tree B casts some shade in the rear garden of no.7 but its crown starts well above ground and it is to the north of the house, so will cast little if any direct shade onto it. The tree's crowns create indirect shade and, as tree B is one of the nearer ones to the house, it contributes to this. However light levels in the garden are not unreasonably low and have been maintained by regular management of trees A and B. That could continue, so I am not persuaded that the shade cast by tree B is enough of a problem to warrant felling it.

Long term potential

5. Tree B is capable of growing significantly larger, but is being dominated by tree X, which has already restricted its growth on that side. As tree X is also growing it will do that to an increasing degree in years to come and will also suppress tree B's height growth, making it increasingly one sided. In time it would aiso reduce the smaller tree's vitality. Competition between the two will also reduce the growth of tree X to some degree but, as the more dominant of the two trees, it would be much less affected. I accept that it might be possible to reduce the effects of tree X on tree B, but that wouid require active management and it would be counter to recognised good practice to restrict the growth of the better of two trees to favour the weaker, unless there were compelling reasons for doing so. Tree X belongs to a neighbour to whom tree B is barely visible and who would have no obvious reason for making that effort. Therefore I consider that tree B's potential to develop into a specimen is severely limited by the proximity of tree X.

Effects of the proposed removal

6. The proposed removal of tree B would admit some more light to the nearer parts of the garden of no.7, but would not be very noticeable from elsewhere. The trees in the belt are irregularly sized and spaced, so there is no regular pattern that would be disrupted. The slightly asymmetrical crown of tree X would be noticeable from some viewpoints, mainly when approaching from the east, but it would not be obvious and further growth would create a more evenly shaped crown in time. Therefore, although tree B's removal would be noticeable the visual impact would be small and localised and in time would be mitigated by the growth of other trees.

Other matters

7. Tree B is close to other trees so, in my view it is particularly important that the work is done to a high standard in order to avoid incidental damage to them. Therefore I have imposed a condition that work is done in accordance with the relevant British Standard. I recognise that it is important to perpetuate tree populations, particularly those that provide significant amenity. However each case has to be treated on its individual merits and it is important that new trees can establish and grow satisfactorily. In this case the proximity of two mature oaks and an established younger tree on the nearby verge, all with some growth potential, mean that there is insufficient space in the garden for a new tree to develop well enough to make a material contribution to the area. Therefore I have not imposed a condition requiring replacement planting in this case.

Conclusions

8. The tree is in reasonable health, but has a highly asymmetrical crown due to growing close to a larger oak. It is fairly prominent in the immediate vicinity but the house and other trees make it much less noticeable from other directions. The belt of trees is a major local amenity, but the appeal tree's contribution to this is modest. It casts some shade in the garden, but light levels are not unduly low and the trees have been managed to maintain them; that could continue, so I am not convinced that that alone justifies felling it. The tree is capable of more growth, but the close proximity of the larger one significantly limits its potential to form a good specimen. The larger tree could be managed, but that would be counter to recognised good practice and it belongs to a neighbour who has no obvious reason for making that effort. The tree's removal would have a minor visual impact that would be mitigated in time by the growth of others.

9. Having given these points careful consideration I allow this appeal subject to a condition that the work is done to a good standard. I recognise that it is important to perpetuate tree populations, but in this case there is insufficient space for a new tree to establish satisfactorily, so I have not imposed a condition requiring replacement planting.

Simon Pryce

Arboricultural Inspector

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