



The Planning
Inspectorate

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Date Received

Appeal Ref

TREE PRESERVATION ORDER (TPO) APPEAL FORM
The Town and Country Planning (Tree Preservation) (England)
Regulations 2012 – SI No. 605, Regulation 19

Before completing this form please read "Guide for Appellants (Tree Preservation Orders – consents for works)"

WARNING Your appeal must reach the Planning Inspectorate within 28 days from receipt of the decision against which you are appealing.

Appeals received after the deadline will only be accepted in exceptional circumstances.

If you need this document in large print, on audio tape, in another language or in Braille, please call 0303 444 5584.

PLEASE PRINT CLEARLY IN CAPITALS USING BLACK INK

A. APPELLANT

Name: Sharon Johns
Address: South Africa Lodge Limited
South Africa Lodge
Stakes Hill Road
Waterlooville
Postcode: PO7 7LA
Daytime Tel: Fax:
Email: [REDACTED]
I prefer to be contacted by: Email: ☒ Post: ☐

B. AGENT: If acting on behalf of the appellant, you will be our main contact on all matters relating to this appeal and we will direct all queries and correspondence to you.

Name: Mr Kevin Cloud
Organisation: Technical Arboriculture Limited
Address: 1 Chase Farm Close
Waltham Chase
Hampshire
Postcode: SO32 2UB
Daytime Tel: 01489 896655 Fax:
Email: info@techarb.co.uk
I prefer to be contacted by: Email: ☒ Post: ☐

C. APPEAL SITE

Address where the appeal tree is (trees are) located:

South Africa Lodge
South Africa Lodge
Stakes Hill Road
Waterlooville
PO7 7LA

Do you own the site: Yes: ☒ No: ☐

If no:

- 1) give details of your interest in the site (eg tenant, neighbour):
- 2) give the name and address (if different from the above) of the owner and/or occupier of the site.
We will need to contact them to make arrangements for our Inspector to gain access to the site:

D. COUNCIL/DECISION

Council: Havant Borough Council

Council Contact Name: Maria Stewart

Telephone Number: 02392 474174

Full title of tree preservation order (if known): TPO 0977.

Date of Council's decision (if applicable): 10 January 2018

E. APPEAL

Please tick only the relevant boxes:

I am appealing against:

The Council's refusal of consent ☒

The Council's failure to issue a decision (deemed refusal of consent) ☐

Condition(s) attached to the consent ☐

The Council's refusal to agree a matter that required their agreement under the terms of a condition of consent. ☐

F. GROUNDS OF APPEAL

If you choose the recommended Fast Track appeal procedure the reasons you set out below will be treated as your statement of case. It is important that you set them out in full because you will not get an opportunity to add to them later.

You should provide at least one reason for each of the boxes you have ticked in section E. Explain why you think the Council's decision is wrong and should be overturned. The decision on your appeal will take into account the contribution that the tree(s) make to the amenity of the area and the reasons set in support of your application/appeal. Please bear in mind that allegations of maladministration or complaints about the time taken by the Council to issue a decision on the application are unlikely to affect the outcome of the appeal, since such matters are not relevant to the merits of the proposal. If appealing against a refusal of consent to fell a tree or against a condition or direction requiring replacement planting you should indicate the species and size of any tree/s you would be prepared to plant if the appeal were to be allowed.

Please continue at section K or on a separate sheet if necessary

Reason for appeal

The appeal is submitted in response to **Havant Borough Council's** REFUSAL of consent to prune a mature oak.

For information the tree is noted as T3 in the tree risk report submitted with the application but referred to as T4 in the Tree Preservation Order (TPO) paperwork.

Background

The appellant provides care for older people with complex needs. Access to grounds with mature trees is part of this care provision. As such the appellant has a duty of care to those in its care and to visitors. In addition, mature trees overhang neighbouring property and, in the case of the subject tree, maintenance buildings for the care home which are regularly occupied.

The appellant is custodian to a number of trees subject to tree preservation order (TPO) and is supportive of trees in the local environment and the legislation that supports their protection

I reviewed the appeal tree in November 2017 and provided a written risk assessment to the appellant.

Proposed tree work

The subject of the appeal is refusal of consent to reduce the crown of a mature oak. The recommendation was made following an assessment of the amenity value of the tree and in relation to the impact that removal of the tree would have on any amenity the tree provides.

Furthermore, the recommendation was based upon the current size and the form of the tree, its relationship with and proximity to the maintenance sheds and neighbouring private gardens and dwellings and, importantly, an assessment of the risk of harm from failure based upon the defects noted at the time of my inspection.

The proposed tree works were stated on the application as:

"Prune to reduce crown by approx. 5m length and reduce by approx. 5m in height back to previous prune points".

As is clear from this statement, the tree has been previously subject to a significant reduction – the proposal seeks to repeat that which has gone before.

Tree location and context

The tree is located in the south east corner of the land at South Africa Lodge, located on the border with residential gardens of properties in Upper and Lower Bere Wood. I estimate the distance from the tree to the nearest dwelling to be 10m; distance from edge of tree crown to be approx. 4m and the extent of over sail to gardens to be approx. 4 – 7m (varies garden to garden).

Continues at supplementary sheet K1

G. PROCEDURE

Appeals dealt with by written representations (Fast Track) procedures are usually decided more quickly than those which proceed through a hearing or a more formal local inquiry and because of this we recommend the Fast Track procedure.

However, if you or the Council ask to be heard by the Inspector we will organise a hearing which will take the form of a round table discussion. In very exceptional cases, where complex legal matters are at issue, a substantial number of third parties are involved and/or formal cross examination is warranted, we may decide to hold an inquiry.

Please tick one box only:

I wish my appeal to be decided through the Fast Track procedure ☒

I wish to appear and be heard by an Inspector ☐

H. SITE VISIT

Are you willing for an Inspector to enter the site and conduct the visit unaccompanied?

Yes ☒

No ☐

If Yes, please give details below of anything the Inspector needs to know with regard to how to access the site:

Please access via reception of care home – secure access due to elderly clients

If No, please outline below why this is not possible, why you need to be there or why you need to be represented during the Inspector's visit:

Are there any Health and Safety concerns that the Inspector will need to be aware of prior to the site visit?

Yes ☒

No ☐

If yes, please detail the concerns below:

Tree is located behind site maintenance huts, detritus and fallen limbs on ground around tree form potential trip hazard. Access OK but with caution.

I. SUPPORTING DOCUMENTS

In support of your appeal form please send a copy of your application for consent and a copy of the Council's decision (where one has been issued).

Please tick the boxes to show which documents you are enclosing and list any other documents you are submitting in the space below. Don't worry if you cannot send a copy of the tree preservation order – we will ask the Council to send a copy together with the relevant background papers.

I enclose:

1. A copy of my application for consent **X**

If you do not have a copy of your application, please state the council's application reference number here (it should be stated on your decision if one was made):

2. A copy of the Council's decision (if one was issued) **X**

3. A copy of the tree risk report **X**

J. CONFIRMATION

DECLARATION

1. I understand that:

- a) The Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my appeal.
- b) Details from this form, including my name, the site description and reasons for making this appeal may appear on the Planning Portal.

By signing this form I am agreeing to the above use of the information I have provided.

2. I have completed all sections of the appeal form and confirm that the details are correct to the best of my knowledge.
3. I have sent a copy of this appeal form and enclosures to the Council.

Signature:



Date: 6th February 2018

Name (in capitals): K J CLOUD

On behalf of (if applicable):

The gathering and subsequent processing of the personal data you give on this form accords with the terms of the Planning Inspectorate's registration under the Data Protection Act 1998. More about the Planning Inspectorate's data protection policy can be found on the Planning Portal at <http://www.planningportal.gov.uk/planning/appeals/online/about/privacystatement>

Please send the completed form and supporting documents to:

The Environment Appeals Team
Trees and Hedges
Room 3/25 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0303 444 5584 or e-mail it to: environment.appeals@pins.gsi.gov.uk.

- 1. You must send a copy of this completed form to the Council including copies of any supporting documents you send to us.
- 2. When we receive your appeal form we will check it against background documents supplied by the council before telling you whether your appeal is valid.
- 3. At the end of the appeal process we will send you the Inspector's decision, including the reasoning in writing.

K. SUPPLEMENTARY SHEET K1

Continued from section F

Tree location and context – continued

The tree sits immediately behind the maintenance sheds for the care home with significant crown overhang to these units. The appellant has concerns about the condition of the tree and its potential to cause injury to staff and/or neighbouring persons/property in the event of a failure.

When considering the context in tree risk management terms I consider the location and context provide a reasonably high target occupancy in that failure of the tree would result in damage to those persons/property highlighted.

From a public visibility standpoint, the tree sits behind properties in Lower Bere Wood, meaning that the bulk of the tree is obscured by dwellings and garages with a small section visible above the built form through a narrow gap between properties.

Details of tree subject of appeal

The appeal tree is a mature oak.

At the time of the survey and report the tree was measured as approximately 18 metres tall with a stem diameter at 1.5m above ground level (AGL) of 1100 millimetres. Crown spread was estimated as 11m to the north; 8m south; 9m east and 10m west. As previously stated the trees location places the crown and major limbs of both the site maintenance sheds and neighbouring gardens.

At the time of the survey I assessed the physiological condition of the tree to be good. I assessed the structural condition of the tree to be fair. During my site visit I observed the following notable defects (*italics* indicate direct quote from my report);

"Buttress - Significant area of darkened bark with signs of active bleeding from W side through to E; area extending from ground level to 1m AGL. Sounding indicates degradation and hollowing behind patches. Probe unable to penetrate beyond cambium suggesting that sounding is due to delamination of bark rather than cavities. Sounding above to 2m good.

Stem - No significant defects. Previous height reduction.

Branches - Previous length reduction.

Crown - Previously reduced.

The planning history noted below provides evidence to support the notion that the tree has been subject to past management on more than one occasion. The reason for at least one previous application to reduce the tree was neighbour concerns over proximity.

Relevant planning history

- 97/56387/003 - crown reduction of Oak tree subject to TPO 977 - permitted;
- 97/56387/004 - pruning of Oak tree (T2) subject to TPO 977 - permitted;
- 98/56387/006 - crown reduction of Oak tree (T3) subject to TPO 977 - permitted;
- 05/56387/013 - crown reduction by 20% of 3No. Common Oaks (T1, T2 and T4) of TPO 0977 - permitted;
- 06/56387/014 - crown reduction of 20% an Oak (T4) of TPO 0977 - permitted.

Public consultation

No public comments were received as a result of neighbour consultation or other publicity.

The local planning authority reasons for refusal

The local planning authority (LPA) reasons for refusal;

- (i) Further assessment is required to prove what fungal pathogen the tree has;
- (ii) The tree is important in the landscape;
- (iii) No evidence to justify a 5m reduction;
- (iv) It would not make sense to carry out a reduction.

Continues on page 8

K. SUPPLEMENTARY SHEET K1

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The application process

Planning Practice guidance on *Tree Preservation Orders and trees in conservation areas* (formerly *Tree Preservation Orders: a guide to the law and good practice* (now archived)) states that:

"In considering an application, the local planning authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it".

Furthermore, it states that

"In general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work".

Impact on local visual amenity

Amenity Assessment

In respect of Tree Preservation Orders (TPOs) Planning Practice guidance states that;

"Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

I have reviewed the public visibility of the appeal tree at the primary cardinal points and included the results of this assessment at table 1 below. The cardinal point locations are indicated on the location plan provided.

Table 1. Assessment of appeal tree visibility from public locations based on 8 cardinal points.

Cardinal point	Location	Extent of tree visible	Comments
North	Lower Bere Wood	none	Tree obscured by other trees and property.
North East	Lower Bere Wood	none	Tree obscured by other trees and property.
East	Lower Bere Wood	<1/3	Tree obscured by other trees and property.
South East	Lower Bere Wood	none	Tree obscured by other trees and property.
South	Upper Bere Wood	1/3	View of tree obscured by property and garages. Small line of sight between dwellings.
South west	Upper Bere Wood	none	Tree obscured by other trees and property.
West	South Africa Lodge	None	Private views from care home only.
North West	South Africa Lodge	None	View of tree obscured by care home only.

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K. SUPPLEMENTARY SHEET K1

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As can be seen from table 1, above, the primary public viewpoint for the tree is from Upper Bere Wood where the tree is at best glimpsed.

Therefore, the relative public visibility is limited, and thus overall amenity limited.

Likely impact of the proposal on the amenity of the area

Given the amenity assessment above it is difficult to agree with the LPAs statement that the tree is important in the landscape. It is a large, mature oak and, in general terms, it may be considered that such old or veteran trees have an attachment to our history and thus value which causes us to seek their retention and provide a keenness for them to thrive and prosper.

However, as much as this is admirable, the relevant test here is likely impact on amenity. The tree is surrounded closely by modern housing which detracts from the trees immediate landscape, masks the bulk of the tree from public view and places modern living on its doorstep.

The acceptance of the trees stature is reflected in the keenness for the appellant to retain the tree. The proposed work will not significantly impact on amenity, nor did it the last time the work was carried out under consent from the local planning authority (LPA) nor the time before that.

Justification for tree works

The LPA contends that the work is not justified because;

- (i) It would not make sense to carry out a reduction;
- (ii) There is no evidence to justify a 5m reduction and;
- (iii) Further assessment is required to prove what fungal pathogen the tree has.

With respect to each point in turn. Firstly, the tree has a history of crown reduction, of varying extents to the point at which the tree is now a main stem with scaffold limbs pruned at a midpoint along those scaffolds after which new young growth extends from prune points on those large limbs. In effect the tree is now a partly retrenched pollard. I fail to see that pruning does not make sense. I fully understand that quantum of pruning may be a point of discussion (one would have hoped that this could have been resolved through discussion at the application stage), however the concept of pruning should not be - especially considering the defects noted and the obvious and documented history of crown works.

With regard to justification, the tree shows clear basal defects which indicate a tree in less than perfect health and condition. This then provides for consideration at another stage of the tree risk assessment methodology. For this I favor guidance contained in Lonsdale (2000) *Hazards from trees*. Lonsdale is highly regarded in the industry with key texts forming guidance throughout. In addition I rely upon the methodology as detailed by the LANTRA professional tree inspection certificate which again relates closely to Lonsdale. This provides for assessment as follows;

- target evaluation;
- hazard evaluation;
- risk evaluation;
- recommendations;
- timescale and review.

I have provided information on the tree context and thus the target evaluation earlier in this text. I consider proximity to housing and the location of frequently used maintenance buildings under the tree to be valid reasons for increased concern in respect of target appraisal. The appeal tree is a mature specimen located beside and within falling distance of high value targets with daily frequent occupation.

The appeal tree, given its height, girth and spread, is entering the later stage of maturity and has clearly observable and notable defects. I am not sure whether past pruning was in connection with these defects or merely from a desire to retrench the crown into later maturity - either seems sensible.

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K. SUPPLEMENTARY SHEET K1

Continued from page 9

The appellant holds a duty of care in law which, in the event of tree failure, could be tested on a basis of reasonable practicability and reasonable foreseeability.

The recent judgment in Cavanagh is also useful in that, in describing a tree that failed the judge states that;

"[The tree] presented a higher risk than a smaller tree; than a younger tree; than a tree leaning away from the road. And there was another feature. If it failed it would undoubtedly cause severe damage"

The judge further adds that;

"In my judgment it was also part way to being a "high risk category tree". It was large. It was mature on the cusp of being old. It was heavy. It was leaning in the wrong direction. True, it appeared healthy to all but a detailed visual inspection; there was no excessive dead wood or lack of foliage. But it was clearly a higher risk than a smaller tree; than a younger tree; than a lighter tree; than a tree leaning the other way. And it was in a position of extreme high risk where, if it came down it was liable (as it did) to cause severe injury and / or other damage. Like all trees it could be struck with disease at any time. Latent root rot might be developing but not showing"

It is therefore reasonable to conclude that a risk level exists - based upon visual examination - above that considered as low as reasonably practicable. The risk level would increase over time if the tree is left to regain a full crown following previous reduction. This would negate the efforts to reduce aspects that contribute to risk of failure such as end weight, limb size and sail area and potential weakness at point of new growth attachment to the cut limbs. In my view once crown intervention and management starts - in relation to clear issues requiring such - then cyclical management must continue or the tree owner risks accusations of negligence.

I do not consider that full diagnosis of the pathogen is required. The tree is large, old and over sails a variety of high value targets. The tree displays defects which will affect its safe useful life expectancy. The tree has been previously pruned to counter issues of health, proximity, risk management or a combination of these aspects. In my opinion the facts presented suggest the following options -

- Fell the tree or;
- Retain the tree and maintain a pruning regime to limit its size to current proportions or;
- Retain the tree and continue retrenchment pruning.

All concerned wish to see the tree remain. Of the other options I consider this could have been dealt with by discussion during the application process or by a reasonably worded condition attached to consent to limit works to that agreed or deemed appropriate by the LPA. Given the facts presented I do not consider that doing nothing is valid nor do I consider full diagnosis of the pathogen a reasonable option to burden the appellant with and question what it will bring to the table.

In light of the above facts I consider a reduction of crown is part of the ongoing cyclical management of the tree.

Conclusion

The proposed work was not copied in full on the decision notice or the officers report. The effect of this may be that the explanation that a 5m reduction was approximate and the suggested reduction was back to previous prune points was omitted.

Previous crown management has been carried out on at least two occasions bringing the tree to its current structure.

The tree is masked from public view and is in close proximity to modern housing and maintenance sheds.

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K. SUPPLEMENTARY SHEET K1

Continued from page 10

Crown reduction is a prudent means by which to retain the tree and manage risk of harm and represents the next phase of cyclical crown management.

I respectfully request that the appeal be allowed.

The appellant would be happy to accept a planning condition that limits the extent of pruning if the inspector considers this to be a more balanced approach.

END OF DOCUMENT

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