



Appeal Decision

Site visit made on 6 November 2008

By **Ian Murat** MSc F Arbor.A CEnv

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

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Date:

- 9 JAN 2009

Appeal Ref: APP/TPO/N1350/149

10 Thorntree Villas, Middleton-St-George

- 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 two horse-chestnuts protected by a Tree Preservation Order.
- The appeal is made by Mrs J Murray against the decision of Darlington Borough Council.
- The application Ref: 08/00402/TF, 7 May 2008, was refused by notice dated 19 June 2008.
- The work proposed is felling.
- The relevant Tree Preservation Order (TPO) is The Borough of Darlington Tree Preservation (No 8) Order 1979 Thorntree House, Neasham Road, Middleton St George.

Decision

1. I allow the appeal, and grant consent to fell two horse-chestnuts on land at 10 Thorntree Villas, Middleton St George, Darlington in accordance with the application 08/00402/TF dated 7 May 2008 and the plans submitted with it, subject to the following conditions:
 - Two replacement trees of a size, species and in a position to be agreed with the local planning authority shall be planted within 12 months of the date of the removal of the horse-chestnuts hereby permitted.
 - If the replacement trees are destroyed, die or are removed within 5 years of the date of planting, replacement trees of the same size and species shall be planted at the same place during the next available planting season.

Main Issues

2. I consider the main issues in this appeal are:
 1. The effect on the appearance and character of the local area if the horse-chestnut trees are felled.
 2. Whether the reasons given for felling the trees are sufficient to justify that course of action.

Reasons

The first issue - The effect on the appearance and character of the local area if the horse-chestnut trees are felled.

3. The trees are prominent in the landscape being visible from a number of public vantage points in the immediate area. I do not accept the submission that they are just visible, they clearly are. I accept the submission by the Council and third parties that they are component parts of the Conservation Area and that their removal will have some detrimental impact.
4. On the first issue, there would be a material adverse effect on the appearance and character of the Conservation Area if the horse-chestnuts were removed.

The second issue - Whether the reasons given for felling the trees are sufficient to justify that course of action.

5. The trees are located in the rear garden of a recently constructed property as part of a small development of houses. The property faces in a south westerly direction with trees located in the rear garden area close to the boundary.
6. Being a recent development, it will have been subject to the measures outlined in BS 5837:2005.
7. BS 5837:2005, Trees in relation to construction - Recommendations gives recommendations and guidance on the principles to be applied to achieve a satisfactory juxtaposition of trees and structures. The Standard recognises that there can be problems of development close to existing trees which are to be retained. The Standard provides guidance on how to decide which trees are appropriate for retention, on the means of protecting these trees during development and on means of incorporating trees into the developed landscape.
8. The guide gives advice on tree protection measures. Tree protection is based on a multiple of the stem diameter measured at 1.5 metres above the ground. The two trees measure 750 millimetres and 870 millimetres respectively. Tree protection is a multiple of 12 giving 9 and 10.4 metres separation between the trees and any development. I have measured the separation as 7.6 and 7.1 metres.
9. The Standard, at paragraph 5.3, gives advice on above ground constraints particularly in respect of unreasonable obstruction of sunlight or daylight to the development. This is further reinforced by Section 6.3. The trees have a canopy spread towards the property of 7 metres. The canopies exhibit evidence of being reduced to clear the building. There is no reasonable private amenity space that can be enjoyed without interference from the trees. Any pruning that could be employed would need to be to such a degree that it would be detrimental to tree physiology as well as visual

amenity. Likewise, the use of light demanding rooms is impaired to the detriment of their reasonable enjoyment by the location of the trees.

Conclusions

10. I accept that the trees cause significant shade that will increase as they continue to grow. There are no satisfactory pruning regimes that would reduce the impact of shading/dominance to the property.
11. In my view, whilst there would be a material adverse effect on the appearance and character of the Conservation Area and the area as a whole following the removal of the trees, this does not outweigh the unacceptable living conditions they cause. The trees are, in my opinion located considerably closer than the minimum distances advised in the British Standard. I accept that the trees cause significant shading/dominance and that heavy pruning would not be satisfactory.
12. In order to ensure the continuity of tree cover in this part of Middleton St George I have imposed a condition on replanting.

Ian Murat

Arboricultural Inspector

