



Appeal Decision

Hearing held on 26 November 2013

Site visit made on 26 November 2013

by Susan Heywood BSc (Hons) MCD MRTPI

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

Decision date: 7 January 2014

Appeal Ref: APP/TPO/N1350/3307

17 Compton Grove, Darlington, Durham DL3 9AZ

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to trees protected by a Tree Preservation Order.
- The appeal is made by Mr Daniel Midcalf against the decision of Darlington Borough Council.
- The application Ref: 13/00255/TF, dated 6 April 2013, was refused by notice dated 7 June 2013.
- The work proposed is as follows: T1 – fell; T2 – fell or crown lift to 5m; T3 – fell; T4 – fell; T7 – carry out crown lifting to 2.5m; T8 – fell; T9 – fell; T10 – fell; T11, T12 and T13 – remove lower level overhanging branches.
- The relevant Tree Preservation Order (TPO) is Tree Preservation (No. 3) Order 1962, which was confirmed on 5 September 1962.

Decision

1. The appeal is dismissed insofar as it relates to T1 – fell; T2 – fell or crown lift to 5m; T7 – carry out crown lifting to 2.5m; T10 – fell; T11, T12 and T13 – removing lower level overhanging branches.
2. The appeal is allowed insofar as it relates to felling of T4 and T8 and consent is granted to undertake work to trees protected by Tree Preservation (No. 3) Order 1962 at 17 Compton Grove, Darlington, Durham DL3 9AZ in accordance with the terms of the application, Ref 13/00255/TF, dated 6 April 2013 (in so far as the application relates to T4 and T8), subject to the following conditions:
 - 1) The works to which this permission relate must be completed not later than two years from the date of this consent, after which time the consent is no longer valid.
 - 2) Details of the species and location of replacement trees shall be submitted to and agreed in writing by the local planning authority. The replacement trees shall be planted, in accordance with the approved details, within the planting season following the felling of trees T4 and T8.
 - 3) If, within a period of two years from the date of the planting, any of the replacement trees is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 4) All trees supplied shall comply with the requirements of *BS 3936: Specification for Nursery Stock*.
- 5) All tree work operations undertaken under this consent shall comply with *BS 3998:2010 – Tree Work Recommendations*.

Procedural Matters

3. As the description of the works proposed on the application form incorrectly describes some of the tree species I have omitted these from the description above. At the hearing it was agreed that the trees are the following species: T1 – Monkey Puzzle; T2 – Norway Spruce; T3 – Cypress; T4 – Holly; T7 – Yew; T8 – Sugar Maple; T9 – Holly; T10 – Holly; T11 – Sycamore; T12 – Horse Chestnut; T13 – Lime.
4. The TPO covers a large area and the trees within the TPO are described as “The several trees of whatever species standing in the area numbered A1 on the map”. At the hearing the Council confirmed that, due to its age, T3 is not covered by the TPO. Consent is not therefore required to fell this tree. It was confirmed that the same applies to T9 (although consent to fell this tree was refused by the Council). On this basis I will not consider T3 or T9 further in this decision. I have taken all other trees within the appeal site to be covered by the TPO.
5. The Council’s decision notice did not refer to trees T7 or T8 (or T3 mentioned above) in the reason for refusing consent. In their appeal statement the Council indicated that they would be happy with the proposed works to T7 (crown lift to 2.5 metres). However, at the site visit the Council expressed concern regarding the extent of the works proposed. I consider this matter later in this decision.
6. In relation to T8, the Council’s statement indicates that this tree is a Cedar in good condition and form. However, at the site visit, it was confirmed that this tree is a Sugar Maple and the Council would have no objections to its removal. This is also considered later in this decision.
7. The Council accepted that pruning works could take place to some of the trees, rather than felling. They also indicated that whilst they would not be happy with some of the proposed pruning works, a lesser, or different extent of works may be acceptable. However, in this case, there is no expert arboricultural evidence presented by the appellant which would indicate the scope of any work which may be agreed. Neither did the parties suggest sufficiently precise conditions which would specify the extent of the works which may be acceptable. Accordingly, if the appeal were to be allowed for pruning works, it would be difficult to ensure that the permission is sufficiently precise to adequately protect the trees from overly extensive works. Accordingly, I have assessed the appeal only on the basis of the works proposed. This would not prevent the appellant from seeking expert advice, should he choose to do so, and making a subsequent application to the Council for specified pruning works.

Reasons

8. No. 17 Compton Grove is located within a cul-de-sac of properties built in the mid 1970’s. The TPO covers a wide area encompassing the cul-de-sac and its

surroundings and incorporating a large number of mature trees. Consequently, the surrounding area has a well-wooded character.

T1 – Monkey Puzzle

9. T1 is some 14 metres in height and is situated in the front garden of No. 17. Despite some previous pruning which has removed some limbs close to the house it retains a good form. The tree is visible from various points along Compton Grove. It is also a feature in views along Thornbury Rise and parts of Carmel Road North, both located to the east of the appeal site. Due to its location, at the front of the property, its size, and its unusual and distinctive appearance the tree is a striking and prominent landscape feature which makes a considerable contribution to the visual amenity of the area.
10. The appellant seeks to remove T1 because it has previously been implicated in damage to a drain at the front of the house. However, I heard that at the time the damage was noted there were two Cypress trees in the front garden which have since been removed. No analysis was undertaken of the roots found within the drain and the appellant accepted that it is possible that the Cypress trees were culpable in this damage rather than the Monkey Puzzle tree. There are methods by which the drain could be protected from further root damage and without information which would demonstrate that the Monkey Puzzle tree was the likely cause of the damage, there is insufficient justification to remove the tree on this basis.¹
11. There is also concern that, due to the proximity of T1 to the house, branches could cause damage to the roof during high winds. The lower branches of the tree overhang the single storey garage roof by about 2 metres and there is a possibility that these branches would come into contact with the roof during high winds. However, the Council accepts that some branch removal or reduction could take place to overcome this potential problem. The possibility of damage to the roof would not therefore justify removal of the tree.
12. Although the occupiers wish to extend their driveway, there is sufficient space to the western side of the drive, away from the tree, for this to be carried out. Finally, I acknowledge that the tree will shed some debris, but this is simply a fact of living close to trees and is not a sufficient justification for its removal.
13. Accordingly, the circumstances in this case do not justify the harm to the visual amenity of the surrounding area that would be caused by felling T1.

T2 – Norway Spruce

14. T2 is located within the rear garden of No. 17. It is some 19 metres in height and significantly overtops the dwelling such that it is visible from many points within the cul-de-sac, from Carmel Road North and from Staindrop Road to the north. In many of these vantage points it is seen against the backdrop of the trees on Greystones Drive or in the adjoining garden at No. 19. But, it sits forward of those trees, closer to the dwelling, and its distinctive tapering form visually distinguishes it from the surrounding trees. Thus the tree is a striking feature in its own right as well as making a contribution to the verdant character of the surrounding area.

¹ A suggestion was also made, in the appellant's grounds of appeal, that the tree's roots may have been lifting the floor of the utility room. However, the appellant's surveyor's assessment is that this was probably caused by water damage from an earlier burst pipe within the property.

15. I acknowledge that there is a reduced branch growth and spread towards the south of the trunk, owing to the proximity of the tree to the canopies of T12 and T13. Nevertheless, this is not apparent in most of the public views of the tree, particularly those gained from within the cul-de-sac. In these views, the canopy has an attractive tapering form. Whilst I accept that the unequal growth is more apparent from within the garden, this does not make the tree an unattractive feature. Rather, it is part of the natural form of the group of trees within which it sits. Furthermore, this imbalance will be less noticeable in the summer months when T12 and T13 are in leaf and more fully encompass the area to the south of T2. Accordingly, I consider that this aspect of the tree's growth does not significantly detract from the contribution it makes to the visual amenity of the surrounding area.
16. The appellant states that the tree is leaning, but this is not a pronounced feature and there is no suggestion that the tree is unstable or suffering from any defects which would make it liable to fail. I acknowledge that this is a large and prominent tree within the garden. Its position, towards the centre of the garden, also causes more interruption to the usable garden area than is the case with the trees closer to the boundaries. Removal of the tree would open up the space and allow more of the garden to be utilised. Whilst I accept that this would benefit the occupiers, there is a large amount of garden area to the east of the tree which is grassed and usable. The tree is also offset from the main living areas in the dwelling and there is therefore a reasonable outlook from these into the more open part of the garden.
17. The ground below the tree is dry and bare where grass clearly will not grow. However, this is as a result of the position of all of the tall trees to the south of the garden, not just T2. Removal of T2 would be unlikely to significantly improve this situation. Although one of the branches of the tree is close to the roof on the south western corner of the dwelling, there is sufficient clearance between the dwelling and the tree to ensure that this does not cause a significant problem.
18. I do not underestimate the impact of such a large tree on the living conditions of the occupiers of the property, but a balance needs to be struck between the wishes of the occupiers and the amenity value of the tree. In this case, the impact of the tree on the living conditions of the occupiers is not so harmful as to provide sufficient justification for the loss of a tree with high amenity value.
19. As an alternative to felling this tree, the appellant seeks to crown lift it to around 5 metres from ground level. The extent of the proposed works would create an unnatural and top-heavy appearance which would be uncharacteristic for this type of tree. Whilst this work would not be visible from outside the garden, it would be poor arboricultural practice which would create a number of large wounds on the tree, increasing the potential for disease and consequent loss of the tree in the longer term. The crown currently begins at around 2.5 metres from ground level, therefore allowing access beneath it. I acknowledge that the proposed works may increase the amount of sunlight reaching the garden, beneath the crown of the tree. However, due to the position of trees within the garden at No. 19 and the proximity of the property itself at No. 19, this would only have an impact for a small period of time towards the end of the day. There is therefore insufficient justification to allow the extent of works proposed to this tree.

T10 – Holly

20. T10 is approximately 10 metres high and is located to the eastern boundary of the property. It is visible in the gap between No's 15 and 17 Compton Grove and is also visible as part of the group of trees viewed from Carmel Road North. It has a reasonable form although the Council indicate that it would benefit from some judicious pruning. In itself it has a moderate amenity value. Its greater value is as part of the group of trees along the boundary with Carmel Road North. Its loss would reduce the depth of tree cover in this area, thus eroding the verdant nature of the surroundings and causing harm to the character and appearance of the area.
21. The appellant accepts that removal of this tree would not be a priority, although it is claimed that this would increase light to the garden and allow more of it to be used. Given the position of the tree, in the corner of the garden, its removal would not be of great benefit in opening up the garden area. Neither would its removal be likely to significantly increase the amount of light reaching the garden due to the position of an existing tree to the immediate east, within the garden of No. 15. There is therefore insufficient reason to justify removal of this tree.

T7 – Yew

22. The appellant seeks to crown lift T7 to 2.5 metres above ground level in order to allow more light into the garden. It was confirmed that it was the intention to remove some of the lower limbs in their entirety. At the site visit, the Council indicated that, whilst they would not object to the removal of some secondary limbs, they would be concerned at the extent of the proposed works.
23. The tree currently has a naturally shaped and attractive crown and the proposed works would harm this natural form. In addition, it is unlikely to significantly increase the amount of light penetrating beneath the tree due to the existence of dense foliage to the east of the tree, along the boundary with Carmel Road North. Accordingly, insufficient justification exists to allow these works which would harm the natural form of the tree.

T11 - Sycamore; T12 – Horse Chestnut; T13 - Lime

24. T11, T12 and T13 are located within a group of large trees, which are around 25 metres tall, located within Greystones Drive to the rear of the property. Due to their size and prominent location in the street-scene, the trees make a very significant contribution to the visual amenity value of the surrounding area.
25. The appellant wishes to remove some of the lower branches of T11 which overhang the garden at No. 17. The first limb protrudes from the trunk at around 7 metres from its base but it extends to within around 3 metres from the ground above the garden. A further limb is located just above this. These branches are likely to sag further into the garden in the summer months when they are heavy with foliage. On the southern side of the tree limbs have been removed in order to allow access to Greystones Drive and, as a result, the crown begins further up the trunk. Whilst this previous pruning work gives the tree a somewhat managed appearance, the differentiation in the height of the crown does not currently detract from its visual amenity value. However, the removal of additional limbs on the opposite side of the tree would further erode

its natural form and the tree would have an overly managed appearance as a result. I appreciate that the limbs extend into the garden by around 9 metres and that removing them would increase the amount of sunlight reaching the garden. But, because of the size and position of other trees along that boundary, this would only have an impact for a very limited amount of the day.

26. The Horse Chestnut (T12) and the Lime (T13) are located within the verge at Greystones Drive beyond the rear boundary with No. 17. The appellant seeks to remove some of the lower branches of these trees to increase light penetration beneath the crowns. However, such work would erode the natural form of the trees and harm their visual amenity value. Furthermore, it would be unlikely to allow a significant amount of additional light into the garden, particularly in the summer months when the surrounding trees are in leaf.
27. I can understand the desire to remove selective limbs from these trees as they will undoubtedly significantly overshadow the south facing garden at No. 17, particularly during the summer months. I do not therefore doubt that any increase in sunlight would be seen as beneficial for the occupiers. But, these and the surrounding trees have been present for a very long time and the impact upon sunlight in the garden is an inevitable consequence of their age and size. The proposed works would have a harmful impact on the appearance and visual amenity value of the trees and are not justified by the circumstances in this case.

T4 – Holly

28. T4 is around 7 metres high and its trunk leans significantly towards the Cypress at T3 (T3 is not covered by the TPO and the appellant proposes to remove it). The lean to the trunk gives the tree a poor form and it therefore has a low amenity value. Its loss would not harm the verdant character or appearance of the surroundings. Removal of both T3 and T4 would be likely to increase the amount of light reaching the garden to some extent (although this will be limited due to the positions of surrounding trees, not least the large pines in the garden of No. 19).

T8 – Sugar Maple

29. T8 is located close to a large tree stump adjoining the boundary with Carmel Road North and close to the canopy of T7. Whilst this species can be a striking and attractive tree, in this location it has insufficient space to thrive. It is already crowded by surrounding trees and has a sparse and spindly form as a result. It does not therefore have a high amenity value. The Council is satisfied that this tree can be removed and I agree that this would not harm the character or appearance of the surroundings.

Overall Conclusions

30. For the above reasons I conclude that the appeal should be dismissed in part and allowed in part, subject to a number of conditions which I consider to be necessary in the interests of the character and appearance of the area.
31. The Council have suggested a condition relating to replanting of suitable tree species to replace those to be felled and this is necessary in order to ensure that the verdant character of the surroundings is retained in the long term. A condition has also been included to ensure that the replacement trees are of an appropriate specification and that further planting takes place should the

replacement trees fail. Conditions requiring the work to be supervised by a competent forester would not be reasonable, but a condition is imposed to ensure that the works are carried out in accordance with best practice in order to avoid damage to any surrounding trees during felling operations. A suggested condition to indicate that the replacement trees would be covered by the TPO would not be valid and it has not therefore been imposed.

Susan Heywood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr & Mrs Midcalf Appellant and wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr Haynes Senior Arboricultural Officer
Darlington Borough Council
Mr Edwards Planning Officer
Darlington Borough Council

DOCUMENTS

- 1 Council's letter of notification of appeal and circulation list
- 2 Suggested condition, submitted by Council