



## Appeal Decision

Site visit made on 17 August 2020

**by E Symmons BSc (Hons) MSc MArborA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 November 2020**

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### **Appeal Ref: APP/TPO/N1350/7835**

### **47 Blackwell Lane, Darlington, DL3 8QF**

- 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 a tree protected by a Tree Preservation Order.
  - The appeal is made by Mr Waistell against the decision of Darlington Borough Council.
  - The application Ref: 20/00022/TF, dated 10 January 2010, was refused by notice dated 10 January 2020.
  - The work proposed is T14 – Sycamore, fell.
  - The relevant Tree Preservation Order (TPO) is The Council of the County Borough of Darlington Tree Preservation (No. 1) Order 1951, which was confirmed on 28 December 1951 and varied on 6 March 2012.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. The appeal tree is part of TPO Group 29 (G29) which is shown to include a mixed group of deciduous tree species. The validity of the TPO is questioned due to the appeal tree potentially being self-seeded. TPOs protect a tree due to its contribution to visual amenity, irrespective of whether it was planted or self-seeded. There is nothing to suggest that this mature sycamore was not present at the time the TPO was made. Moreover, in 2012 the TPO was reviewed and G29, including this sycamore, was retained as protected. Consequently, I consider that the tree is protected, and I have determined the appeal accordingly.

### **Main Issues**

3. The main issues are the effect of removal of the tree on the character and appearance of the area, and whether the reasons given for its removal justify that course of action.

### **Reasons**

#### *Character and appearance*

4. The sycamore tree sits within a group of mature trees in the rear garden of the neighbouring property at 47 Blackwell Lane (No 47) and directly adjacent to the appellant's garden boundary at 43 Blackwell Lane (No 43). The area surrounding these gardens has a mature sylvan character with many mature trees in both public and private land.

5. The tree was surveyed in 2010 as part of an Arboricultural Impact Assessment (AIA)<sup>1</sup> and categorised as retention category C1. There is disagreement between the parties regarding the importance of the tree within the streetscene. From my observations, the tree has value as part of a group when seen over rooftops from Grange Road as it sits within a linear landscape feature which adds to the general character of the area. Furthermore, it forms part of a tree group seen from Blackwell Lane and the adjacent golf course where, despite sitting behind other trees, it adds depth to those groups.
6. The tree therefore has moderate visual amenity value and its removal would result in moderate harm to the character and appearance of the area. Consequently, any arguments to remove the tree must be balanced against this. It is to this justification which I now turn.

### *Justification*

7. I acknowledge that the tree, and those around it being to the south west of the appellant's garden will block sunlight however, this is unlikely to be for the entire day. Furthermore, the tree overhangs only a modest proportion of the overall garden area with other parts unaffected. For No 47, the tree is one of four large trees within the garden, all of which will cast shade. It is not clear whether the occupant of this dwelling finds shade problematic or is actively seeking removal of this tree. Moreover, shade is an inevitable consequence of purchasing a property with surrounding trees in an area defined by its mature landscape and I therefore give this reason limited weight within my decision.
8. The submitted excerpt from the AIA states that the tree has a Safe Useful Life Expectancy (SULE) of 5-20 years. This is justified by a slight lean, decay (extent unquantified), stem damage and a fork with included bark. These issues are not elaborated upon within the AIA and the tree was classified as being in fair condition. No recent arboricultural evidence to show that the tree's condition has deteriorated has been submitted. Moreover, during assessment of the application, the Council's arborist assessed the tree's condition as reasonable with a SULE of 40 years plus.
9. I acknowledge the appellant's concern regarding potential consequences of the tree's failure. However, neither arboricultural opinion states that the tree is in poor condition or poses a safety risk and I saw nothing during my site visit which leads me to a different view. The condition of the tree therefore, currently, does not provide justification for its removal.
10. During my visit I observed that the tree has displaced and partially ingrown part of the timber boundary fence. I also have little doubt that the tree has contributed to the crack visible in the rear wall of the concrete storage-bay. However, alternative solutions to mitigate the damage do not appear to have been explored and, from my experience, it would be possible to accommodate both the tree and repair the fence and wall using appropriate engineering techniques. This reason, therefore, does not support removal of the tree.
11. I note that the appellant has planted other trees in the garden and is willing to plant more. However, this is a large tree in fair condition and any replacement would take many years to reach the same stature and level of visual amenity value. As such, replacement planting would not be sufficient to mitigate the

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<sup>1</sup> Dendra Consulting Ltd, 43 Blackwell Lane, Darlington; Hardy\_Blackwell\_001AIA\_R2.1.

harm that would arise to the character and appearance of the area from its removal.

12. The tree's removal would be at odds with Policy E13 of the Borough of Darlington Local Plan 1997. Reasons given regarding shading, damage to the adjacent boundary fence and wall and relating to the condition of the tree provide inadequate justification for its removal.

### **Conclusion**

13. With any application to remove a protected tree, a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the visual amenity of the area. In this case, removal of this tree would result in harm to the character and appearance of the area. Insufficient justification for this course of action has been demonstrated.
14. For the reasons stated above, the appeal is dismissed

*E Symmons*

INSPECTOR