



Appeal Decision

Site visit made on 12 July 2022

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Appeal Ref: APP/TPO/N1350/8746

225 Carmel Road North, Darlington DL3 9TF

- 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 Donald Jones against the decision of Darlington Borough Council.
 - The application Ref: 21/00497/TF dated 1 May 2021 was refused by notice dated 5 August 2021.
 - The work proposed is: Fell Austrian Pine tree in Group G1.
 - The relevant Tree Preservation Order (TPO) is The County Borough of Darlington Tree Preservation (No 3) Order, 1962 which was confirmed on 6 July 1962.
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Decision

1. The appeal is allowed, and consent is granted to fell one Austrian pine tree in Group G1, protected under the County Borough of Darlington Tree Preservation (No 3) Order, 1962 in accordance with the terms of the application Ref: 21/00497/TF dated 1 May 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than two years from the date of this decision.
 - 2) Prior to undertaking the permitted works, a scheme for planting a replacement Austrian Pine tree, to be planted during the first planting season (October – March) following the permitted works, shall be submitted to and approved in writing by the local planning authority. The submitted details are to include the location of the proposed replacement tree, and its proposed height and girth at planting. The replacement tree shall be supplied in accordance with BS 3936-1: 1992 Nursery Stock - Specification for trees and shrubs (or an equivalent British Standard if replaced), BS 8545: 2014 Trees from nursery to independence in the landscape – Recommendations, and the National Plant Specification. The local planning authority shall be notified two weeks in advance of replacement tree planting.
 - 3) If within a period of five years from the date of planting, the replacement tree, (or any tree planted in replacement for it), is removed, uprooted, destroyed or dies, or becomes in the opinion of the local planning authority, seriously damaged or defective, a tree of the same species and size as that originally planted shall be planted in the same place.
 - 4) All tree work shall be carried out in accordance with British Standard BS 3998: Tree work: Recommendations (or an equivalent British Standard if replaced).

Preliminary Matters

2. The Council formally adopted the Darlington Borough Local Plan 2016-2036 (February 2022) (DLP) during the appeal process. Both main parties have had the opportunity to comment on the implications of the relevant policies in the DLP for the appeal. I am satisfied that no interested party has been prejudiced by this approach.
3. In accordance with the Planning Practice Guidance, while I have taken account of the policies that the Council considers to be relevant in the DLP, these have not been decisive in my determination of this appeal.

Main Issues

4. The main issues are the effect of felling the Austrian Pine tree on the character and appearance of the area and whether sufficient justification for the proposed felling has been given.

Reasons

Character and appearance

5. The large mature Austrian pine tree is located on a slightly raised area in the side garden of 225 Carmel Road North (No 225). The evidence before me estimates the tree to be 80 years old, some 7.5 metres from the corner of the house with a top height of 22 metres. The tree has a canopy spread of 14 metres to the south and 2.5 metres to the north. The tree is one of a group of Austrian pines within the side garden.
6. The group of pine trees with their clear trunks and stature provide a striking contrast with the other mature trees and shrubbery in the border to the front of No 225. The appeal tree together with others in the group forward of the house, are prominent from the street because of their size and form. Nevertheless, there are a substantial number of mature trees along the Carmel Road North frontage that provide a mature and attractive setting for the dwellings and add considerably to the local environment.
7. Whilst the appeal tree makes a positive contribution to the group and the street, due to the variety, maturity and height of other trees within the street scene, I conclude that the appeal tree makes a moderate contribution to the overall character and appearance of the area. Even so, it is a tree which plays a valued part in the group TPO. The reasons to justify the felling of the tree must therefore outweigh that harm.

Reasons for felling

8. I observed at my site visit that the tree leans considerably towards No 225. Much of the canopy, which is limited to roughly the top third of the tree, sits above the house roof and there are signs that the roof has been damaged. Although I cannot be certain that the tree is the cause of the roof damage, if the tree, or any limb from it falls, it will most likely fall on to the roof of the house.
9. Whilst the evidence submitted by the appellant is relatively limited, the appellant has lived in the property for 22 years and is the custodian of several such trees. The appellant has monitored the tree over an extended period and has sought professional advice. The appellant considers that the lean of the

tree towards the house has increased¹, the monitoring wire that previously monitored the lean of the tree has snapped and the tree has an extensive area of canopy directly over the house roof. The Council acknowledges that the tree is leaning but indicates that the tree is in reasonable condition and further monitoring could be undertaken. The Council considers that there is no evidence that the tree has heaved within the ground, but this is contrary to the tree report and the appellant's assessment.

10. Although the ground level adjacent to the tree is uneven and the land drops away considerably to the north, there is nothing before me to indicate that adjacent building works are the cause of the increased lean of the tree, and I saw no evidence of heave at my site visit. Even so, I recognise the concern of the appellant regarding the movement of the tree in adverse weather conditions, particularly where such a large part of the canopy is above the roof.
11. The crown spread of the tree is mostly on the south and west, and the tree crown is considerably weighted towards this side and overhangs the house roof. Consideration could be given to pruning the tree to reduce the weight of the crown in the direction it is leaning and to provide clearance of the roof. However, extensive pruning would be needed to provide sufficient roof clearance and the form of the tree, and its appearance would be significantly undermined by the removal of a large part of the tree crown. The tree could continue to be monitored as the Council suggests, but this would leave the roof vulnerable to damage.
12. Although not determinative, the Council cites conflict with Policy ENV4 of the DLP which amongst other matters seeks to enhance visual amenity, biodiversity and landscape. The removal of the tree would conflict with this policy, nevertheless, seeking a replacement tree would in time add to the landscape and visual amenity of the area.
13. Moreover, the other pine trees in the group appear to be of a similar age and the removal of the pine would allow a replacement to be planted which would provide continuity of tree cover when the other trees decline.
14. With any application to fell a protected tree a balancing exercise needs to be carried out. The need for the proposed felling must be weighed against the resultant loss to the amenity of the area. In the normal course of events there would be a strong presumption against the removal of a protected tree. In this case the proximity of the pine tree to No 225, and the effect of the potential failure of the tree or limbs falling from it on to the house is compelling. Therefore, overall, I find that sufficient justification has been provided to fell the tree and the moderate amenity value of the tree is outweighed.

Conditions

15. The appellant has suggested replacing the tree with a European beech, but the Council proposes a replacement pine. The stature of the Austrian pine tree replicated along the side boundary is part of the character of the group and a replacement Austrian pine is warranted. I have imposed a condition requiring a replacement tree. I have also imposed a condition requiring a further

¹ as evidence by appendix 2 of the appellant's tree survey (Simply Tree Care dated 23.05.2021)

replacement in the event of failure, and that all works are carried out according to best practice.

Conclusion

16. For the reasons given above, I conclude that the removal of the Austrian pine tree is justified. Therefore, the appeal is allowed subject to conditions.

Diane Cragg

INSPECTOR