



## Appeal Decision

Hearing Held on 17 August 2022

Site visit made on 17 August 2022

**by Richard McCoy BSc MSc DipTP MRTPI IHBC**

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

Decision date: 12 September 2022

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### **Appeal Ref: APP/TPO/N1350/8173 12 Cardinal Gardens, Darlington DL3 8SD**

- 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 Mrs Lesley Horner against the decision of Darlington Borough Council.
  - The application Ref: 20/00678/TF, dated 4 August 2020, was refused by notice dated 5 October 2020.
  - The work proposed is the felling of an Austrian Pine.
  - The relevant Tree Preservation Order (TPO) is (no. 3) 1962, which was confirmed provisionally on 6 July 1962.
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### **Decision**

1. I dismiss the appeal.

### **Procedural matter**

2. The Council adopted the Darlington Local Plan 2016-2036 in February 2022 which replaced both the Borough of Darlington Local Plan 1997 and the Darlington Core Strategy 2011. Policy E13 on which the refusal of consent was based has been superseded. While there is no direct replacement of this Policy in the new Local Plan, the Council explained that it relies upon paragraph 131 of the National Planning Policy Framework and paragraphs 089-100 of the National Planning Practice Guidance in relation to works to trees. The parties were given the opportunity to comment on the implications of this to their respective cases and I have taken their comments into consideration in determining this appeal.

### **Main Issues**

3. The main issues are the effect of the proposed works to the tree on the visual amenity of the area and whether the reasons given for the works justify that course of action.

### **Reasons**

*The 1st issue – visual amenity*

4. The above TPO relates to a large number of trees specified individually and to groups of trees. The parties confirmed, from the Schedule to the TPO, that

Trees T59-T69 form a linear group to the rear of the dwellings on this part of Cardinal Gardens and that the Austrian Pine, the subject of this appeal, is identified in the Schedule as T61. It stands to the rear of no. 12, a large, detached dwelling, close to the boundary with no. 11.

5. The tree is a mature specimen and has an imposing presence. It is seen in conjunction with the other mature trees and makes a very positive contribution to this impressive group of trees. Given its height, it appears in gaps between dwellings and above the roof tops. I observed that it is prominent in views from various points along Cardinal Gardens which is a long, dog-leg spine with short cul-de-sacs leading off. It is also seen from the footpath along the green in front of Worseley Park and from St Claire's Court. As such, it forms an important part of the wider landscape setting of the area, contributing a strong element to the local skyline. The area is characterised by built form and the Pine forms part of a group of trees that provide a green setting to the area, giving it significant public amenity value.
6. I consider that a significant gap in the tree cover would be created by the removal of the Pine. This would be apparent from the vantage points identified above and would not be compensated for by the other nearby trees. Any replacement tree would take a considerable amount of time to fill the gap left by its removal. In which case, the felling of the Pine would result in significant harm to the visual amenity of the area as it would remove an historic landscape feature that makes a significant contribution to its character and appearance.

*The 2nd issue – the justification for the proposed works to the tree*

7. Concerns were raised that the tree has, and will continue, to shed branches. Its size and proximity to the dwellings at nos. 11 and 12 means that the occupiers have a heightened fear of property damage and personal injury. The appellant confirmed that the tree has recently shed branches in periods of high winds and during snowfall, with each of the conservatories at nos. 11 and 12 being damaged. Both the appellant, and her neighbour, raised health and safety concerns regarding the tree.
8. In this regard, my attention was drawn to a report submitted by the appellant from Barnes Associates Ltd, dated 25 July 2020. This noted that the tree has a marked lean and limited foliage due to a previous crown lift which has also given it a high centre of gravity. The report raised concerns that the tree may not have sufficient foliage to sustain normal growth and carry out normal physiological activities. It further noted that the Pine is likely to have limited ability to dampen movement and absorb wind loading. It recommended that the most cost effective and sustainable management option would be to remove and replace the Pine.
9. However, the report also pointed out, based on the level of assessment (a Level 3 investigation by Sonic Tomography), that the Pine appeared to have sufficient strength to sustain itself and is currently, relatively stable. From what I observed, the Pine appeared to be in good vitality. It did not show signs of advanced or terminal decay and there is nothing before me to demonstrate that it is in need of remedial works that would advance its decline or that it is unstable due to problems with a lack of sufficient foliage or previous loss of bark.

10. While I am sympathetic to the concerns of the appellant and her neighbour regarding the recent branch loss and property damage, and uncertainty regarding the insurance/liability implications of this situation, the submitted evidence does not show that measures short of felling, such as ongoing tree management to monitor the branches within the raised canopy and review the health of the tree, have been fully explored to reduce the likelihood of the tree becoming a safety risk. The shedding of branches is a natural phenomenon associated with trees, particularly in high winds, but the risk can be ameliorated through ongoing tree management and removal of deadwood.
11. The submitted report concluded that branches can break from trees in a strong breeze and opined that management of the Lime's canopy is not possible as it is expected that the tree would not respond well. However, there is nothing before me to substantiate this claim. Moreover, the report further notes that ongoing management could assess the branches after strong winds and the canopy could undergo deadwood removal and minor remodelling. While no guarantee can be made that any given tree will not shed branches in high winds, I saw nothing on site to indicate that this Pine is likely to be more prone than other trees of similar age/species.
12. My attention was drawn to an approval to fell a nearby Beech protected as part of a group under the same TPO. However, I do not have the full details of that decision before me but note that the tree was considered to be in decline. In any event, I do not consider that decision to be directly comparable to the specific circumstances of this appeal.
13. Accordingly, it has not been demonstrated that the proposed works are a proportionate solution to the concerns raised and meet the requirements of sound arboriculture. I consider that the proposed works would be contrary to paragraph 131 of the NPPF which seeks to retain existing trees wherever possible.

### **Conclusion**

14. For the reasons given above, I conclude that the removal of the Pine would not be justified and the appeal is dismissed.

*Richard McCoy*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mrs L Horner	Appellant
Mr T Horner	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr R Martin	Planning Case Officer
Mr P Haynes	Tree Officer
Ms L Hutchinson	Development Manager

### INTERESTED PERSONS:

Mr P Kelly	Neighbour
Mrs J Kelly	Neighbour

## **DOCUMENTS**

- 1 Council's Notification of the Hearing
- 2 Council's email to the Planning Inspectorate dated 15 August 2022
- 3 Extract from the NPPF showing paragraph 131

## **PLANS**

- A TPO (No. 3) 1962 Map A