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## Appeal Decision

Site visit made on 9 May 2025

**By Simon McGinnety MSc M. Arbor. A**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

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### Appeal Ref: APP/TPO/N1350/9537

### 67 Milbank Court, Darlington, Co. Durham DL3 9PF

- 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 (TPO).
  - The appeal is made by Ian Robert Hodgson against the decision of Darlington Borough Council.
  - The application Ref: 22/01281/TF, dated 7 November 2022, was refused by notice dated 17 January 2023.
  - The work proposed is the felling of 1 No cypress tree.
  - The relevant TPO is The County Borough of Darlington Tree Preservation (No. 3) Order 1962, which was confirmed on 5 September 1962.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the proposed felling on the character and appearance of the area; and whether sufficient justification has been demonstrated for the felling.

### Reasons

#### Character and appearance

3. Milbank Court is a small estate of mixed style housing, positioned and accessed from Milbank Road to the north and situated to the east of Carmel Road North. There are large coniferous and broadleaf trees within the court, with a group of large and mature trees in the gardens of the houses on the western side of Milbank Court abutting Carmel Road North; this group includes the appeal tree. The presence of these mature trees is consistent with the generous tree cover that runs adjacent to Carmel Road North, adding to the attractive and verdant landscape and contributing positively to its character and the visual amenity of the area.
4. The appeal tree is a large and mature cypress. It is positioned to the west of the appeal house, in what is a relatively long but narrow garden, and is centrally

placed on the north to south axis. The tree is considerably large and a dominating feature of the garden and due to its height, it is clearly visible from the surrounding streets of Milbank Road and Clareville Road. Furthermore, while the views of the tree are partially obscured due to the presence of other trees from some viewpoints from the south of Carmel Road North, it is nevertheless visible and contributes to the visual amenity, adding to the character and appearance of the area.

5. I have no doubt that the proposed removal of the cypress tree would have a harmful impact on the visual amenity, even when taking into consideration the presence of other mature trees within the gardens on the western side of Milbank Close. In addition, I do not consider the proposed replacement with a plane tree would mitigate this harm. It would take a considerable time for a replacement to attain a similar stature, and it would then be subject to many of the concerns that have formed the reasoning for the application to remove the cypress.
6. As a result of the harm the proposed felling works would have on the character and appearance of the area, adequate justification should be provided to support the necessity for such works, and it is to these matters I now turn.

#### Justification

7. I found nothing on my site visit to suggest that the tree is anything other than healthy and the tree report provided with the application and subsequent appeal contained nothing to demonstrate otherwise. Trees can periodically shed small branches; however, this can usually be managed through prudent tree maintenance. In addition, I did not observe any breakage points or tear out wounds in the crown of the tree to suggest there has been significant previous branch failure, nor any notable significant weaknesses in the structure that would predispose it to future branch failure.
8. I note the reference to the possible identification of honey fungus around the tree, but this was not supported in the tree report, and I saw nothing on my site visit that indicated the presence of honey fungus.
9. The matter of reasonable enjoyment of the garden is afforded significant weight. The position of the tree, in what is a very narrow garden, means it is an imposing feature and will put some limitation on certain activities within the garden space. The tree is undoubtedly influencing the ground conditions. The ground around the tree is very dry, to which the tree most certainly contributes, and is likely to prevent or hinder the establishment of a lawn or other plants in this space. Furthermore, the tree is likely to cast shade, less so on the appeal house or garden due to the position of the tree relative to the arc of the sun, but it will cast a large shadow over the gardens to the north of the appeal house. This matter was raised in a supporting statement that I have considered as part of this decision

10. Notwithstanding the weight afforded to the reasonable enjoyment of the garden and accepting the influence which the tree will have on a section of the garden, there remains a lot of space in the garden that is unaffected by the tree. While finely balanced, weighed against the resultant harm the removal of the tree will have on the wider landscape and character and appearance of the area, the harm to the wider landscape outweighs the inconvenience caused by the tree casting shade, preventing plant or lawn growth or the perception that the tree is dangerous.

### **Conclusion**

11. As with any application to carry out works to a protected tree, a balancing exercise needs to be undertaken. The necessity for the works applied for must be weighed against the resultant harm to the character and appearance of the area.
12. The felling of the cypress would be harmful to the character and appearance of the area and having considered all the evidence before me, I find nothing of sufficient weight to support the necessity for the proposed felling that would outweigh the harm caused by such work. The appeal is therefore dismissed.

*S. McGinnety*

INSPECTOR