



Appeal Decision

Site visit made on 19 April 2017

by **Nigel Harrison BA (Hons) MRTPI**

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

Decision date: 02 May 2017

Appeal Ref: APP/TPO/6026

73 Martin Croft, Silkstone, Barnsley, S75 4JS

- 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 Kathleen Marshall against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref: 2016/1402 dated 2 November 2016, was refused by notice dated 22 December 2016.
 - The work proposed is 'felling of Oak tree (T2) and replacement.
 - The relevant Tree Preservation Order (TPO) is Barnsley Metropolitan Borough Council TPO No 3/80 which was confirmed on 2 June 1980.
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Decision

1. The appeal is allowed and consent is granted to fell the oak tree protected by Barnsley Metropolitan Borough Council Tree Preservation Order No 3/80 in accordance with the terms of the application, Ref:2016/1402 dated 2 November 2016, subject to the following conditions:
 - 1) A replacement tree of minimum size 'selected standard' as specified by BS 3936 Part 1 Specification for Trees and Shrubs shall be planted in a location as near as practicable to the tree to be removed. The planting shall be carried out during the first available planting season (November to March) following the removal of the oak tree. Details of the exact species and location of the replacement tree shall be submitted to and approved in writing by the Local Planning Authority, with the species being suitable for a small garden location and taking account of the proximity of existing dwellings.
 - 2) If, within a period of five years from the date of the planting of that tree, the tree 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 shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.

Main Issues

2. I consider the main issues in this case are the impact of the removal of the Oak tree on the character and appearance of the area, and whether sufficient justification has been demonstrated for the felling.
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Reasons

3. Turning to the first issue, the appeal concerns a large mature oak tree located in the front garden of the appellant's property. The tree is one of a number of widely spaced trees along Martin Croft which appear to follow the line of a former field boundary. The TPO was made at around the time that this development of bungalows was built, and it has clearly matured further since that time. Being close to the highway it can be viewed from many public vantage points, and is prominent in the street scene. However, the tree has a bifurcated stem and has been pruned on previous occasions, giving it a poor form compared with others in view. Whilst its loss would have a detrimental effect on the character and appearance of the area, the larger and more well-balanced oak trees along Martins Croft would remain and provide a significant impact within the local treescape. In addition, a replacement tree would, over time, make some compensation for its loss. As a result, the harm that would arise from removal of the oak tree carries moderate weight.
4. Therefore, any reasons to justify the removal need to be convincing. It is to those reasons, the second main issue, to which I now turn. The reasons put forward are straightforward, in that the physical presence of the tree is causing worry and stress to the appellant, which has become seriously deleterious to her health and well-being and harms her ability to continue to enjoy her home. This is partly due to the ongoing maintenance burden from falling leaves, acorns and other debris, and moss growth of the pavement caused by shading.
5. The appellant's doctor has submitted a letter in support of the proposal to remove the tree. The letter refers to her frailty and to a specific condition - *senile macular degeneration* which affects her vision and makes it increasingly difficult for her to manage the tasks of daily living. It also states that the tree is causing stress which has resulted in poor sleep and anxiety. These concerns are also supported in representations made by neighbours.
6. Although the tree lies to the north of the dwelling, because of its size and proximity to the front elevation, it is also evident to me that its canopy casts shade and restricts daylight reaching the front-facing habitable room windows. I have no doubt that this level of shading from the dense canopy will make these rooms appear gloomy, particularly during the summer months when the tree is in full leaf.
7. Ordinarily, none of these matters would provide justification for the removal of the tree. However, I am in no doubt that the tree is having a significant detrimental effect on the quality of life enjoyed by the appellant and this is something that attracts considerable weight. I have also taken account of the fact that the appellant has lived with the tree for many years and has regularly carried out maintenance work when necessary. Whilst further pruning of the tree could be considered as an alternative, it is likely that very significant pruning would be required in order to overcome the problems caused by the presence of the tree. Such works in themselves would be harmful to the appearance of the tree and would provide little long-term relief to the appellant.

Conclusion

8. In the normal course of events there would be a strong presumption against removal of healthy, protected trees. In this case the tree makes a moderate

contribution to the visual amenity of the area and its loss would cause some harm to the character and appearance of the immediate surroundings. However, it is evident it causes significant stress and worry to the appellant and impacts on her health. Moreover, the front garden is a relatively small one, and the tree undoubtedly darkens the front-facing rooms of the bungalow. On balance I consider that these factors outweigh the harm that would be caused to the character and appearance of the area if the tree were to be removed.

9. I have also had regard to the Council's concerns that allowing a tree to be removed because of its effect on the appellant's health and well-being could set a precedent whereby the Council might find it difficult to resist other proposals to remove trees where personal circumstances or health concerns are put forward in justification. However, each application and appeal has to be assessed on its own merits and on the basis of the evidence submitted. Therefore, given my conclusion regarding this particular tree, its moderate effect on local amenity, and its position close to the property in a small front garden, and the very specific circumstances of the appellant, I do not consider that a harmful precedent would be set.

Conditions

10. The Council has not put forward any conditions. However, I consider that conditions are needed to ensure the planting and future maintenance of a replacement tree, and it seems to me that one of the more ornamental species would be more appropriate for the size of garden.

Nigel Harrison

INSPECTOR

