The Planning Inspectorate

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2 The Square
Bristol
BS1 6PN

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Ms J Wellstead
Eastleigh Borough Council
Civic Offices
Leigh Road
Eastleigh, Hampshire
SO50 9YN

Your Ref: T/13/73065

Our Ref: APP/TPO/ W1715/3494

Date: 19 December 2013

Dear Ms Wellstead

THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: MR RICHARD COLE
SITE: 58B WINCHESTER ROAD, CHANDLERS FORD, EASTLEIGH, HANTS SO53 2GN

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 26 November 2013.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An application under Section 288 of the Town & Country Planning Act 1990 must be made to the High Court promptly and in any event within 6 weeks of the decision in question. This is an absolute time limit that cannot be extended by the Court.

A challenge must be made on one or both of the following grounds:

(1) the decision is not within the powers of the above-cited Regulations;

(2) any of the relevant statutory requirements have not been complied with.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

If you have any complaints or questions about a decision, or about the way we have handled

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the appeal write to:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone No. 0303 444 5884

Or visit:

http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely

Kevin Gordon

Kevin Gordon
Environment Appeals Administration

Enc

The Planning Inspectorate

Appeal Decision

Site visit made on 26 November 2013.

by Alan Engley **MArb (RFS) FArborA MIHort MICFor AARC**

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

Decision date: 20 DEC 2013

Appeal Ref: APP/TPO/W1715/3494.
Land at 58B Winchester Road, Chandlers Ford, Eastleigh, Hants SO53 2GN.

- 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 Richard Cole against the decision of Eastleigh Borough Council.
- The application Ref: T/13/73065 dated 8 August 2013, was refused by notice dated 18 September 2013.
- The proposed work is to reduce branches overhanging a fence by 2m and remove 1 low branch from an Oak tree.
- The relevant Tree Preservation Order (TPO) is the Eastleigh Borough Council Tree Preservation Order No 311 relating to Winchester Road (56-Halfway Inn), Hillside Close, Clanfield Drive, Clanfield Way, Clanfield Close, Chandlers Ford, which was confirmed on 18 May 1995.

Decision

1. I allow the appeal in respect of reducing branches overhanging the fence by 2m and removing 1 low branch from an Oak tree in accordance with the terms of the application reference T/13/73065, dated 8 August 2013, and the documents submitted with it, subject to the following conditions:

    - This decision is valid for 2 years from the date of this notice after which the consent lapses.
    - Five days notice shall be given to the local planning authority prior to the commencement of any operations authorised by this consent.
    - All tree works agreed to under this consent shall comply with the BS 3998 'Tree Works Recommendations 2012'.

Main Issues

2. I consider that the 2 main issues in this appeal are:

    - The effect on the character and appearance of the locality and wider landscape if the work is carried out; and
    - Whether the reasons given for the proposals are sufficient to justify that course of action.

Reasons

The first issue – the effect on the character and appearance of the locality and wider landscape if the proposals are carried out

Character of the locality

3. Winchester Road is a busy, main route leading out of Chandlers Ford. The relevant part is an established residential area where the properties are of mixed ages and designs and line both sides of the road. No 58B, which has the appeal tree, is part of a new residential development of houses and an apartment block, set back on the southerly side of the road, and approached by a shared drive. The topography is gently hilly land that slopes up to the northeast.

4. It is a 2 storey detached house built on the up sloping land ; against the rear elevation is a fairly level concrete slab patio that covers about half the depth of the modest sized rear garden, it is built up to a brick retaining wall that has steps along its left side leading up to a small lawn. The wall is topped by a metal railing fence. The rear garden boundary is a dense Holly hedge, the appeal tree grows against this hedge, 10.5m from the rear house elevation and 3.4m from the right side boundary fence.

Local tree cover

5. Beyond the rear boundary hedge and lining the main road are a good number of fully mature, mostly deciduous trees. Within the new development there are a number of mature trees and lining the shared drive is a row of Silver Birch of modest stature.

6. The appeal tree is a fully mature Oak (*Quercus robur*), it has a near upright trunk with a large, wide spreading, slightly asymmetrically shaped crown. Its top can be seen when approaching along the drive and from the rear of some local properties and in views from the east and south and together with its local companion trees, they lend the area a very pleasant sylvan character.

Amenity value of the appeal tree, the impact that the proposed works would have on it and the character and appearance of the landscape

7. The Council argue that the proposals will make the tree look very one sided and be detrimental to its appearance. The cuts would reduce the length of the branches on one side of the crown, to where the pruning points are about 5-8cm diameters and remove one circa small branch. The agent for the appellant considers that the surgery can be carried out without the loss of its shape.

8. In my opinion the surgery would be very noticeable from the rear garden of 58B and obvious in views from the neighbouring property 58C and can be seen in views from the rear of No 54; however it would not be very apparent from other viewpoints, especially when approaching along the drive when the tree is in leaf, because the work would be mitigated by the verdant backdrop.

9. I accept that it would result in the pruning of one side of the crown only. However in my opinion the amount of surgery would not result in an

unacceptably lopsided appearance. It would reduce its overall size and therefore its amenity to the locality, but not by an unacceptable amount.

10. I conclude on the first issue that the appeal tree significantly enhances the visual amenity of the area however the pruning would have a very minor negative impact on its appearance, and the amenity of the locality, street scene and wider landscape.

The second issue – whether the reasons given for the proposed works are sufficient to justify that course of action

Tree debris, pigeons and health and safety

11. The appellant claims that the tree produces unacceptable amounts of tree debris and honeydew across the patio, which is a well used area. In addition pigeons use the tree and their droppings are a health hazard. The Council argue that the proposals will not significantly ease the reasons provided for the works. The large tree has a dense crown and its outer branches spread across the patio by several metres.

12. On the day of my visit I noticed quantities of leaves, bird droppings and honeydew across the lawn, steps and patio, and the surfaces beneath its canopy. I can appreciate that the leaf litter will increase during the autumn months.

13. In my view the proposals are modest and I am convinced that they would reduce the tree debris and pigeon roosting positions, to more acceptable levels and they can be justified because it would lessen the negative effect the tree has on the patio and its users.

14. I have therefore decided on the second issue that the reasons given for the proposed works are sufficient to justify that course of action.

Conclusions

15. My deliberations on the 2 main issues have led me to the view that the appeal tree makes an important contribution to the amenity of the area and wider landscape. It has limbs that cause problems because they spread widely across the patio. I am satisfied that the proposals are modest, but sufficient to reduce the nuisances that they create, without destroying its appearance or unacceptably reducing its amenity to the area. In making my decision I have taken into account all other matters relating to the tree.

16. In order to ensure the works are properly executed, I have adopted the Council's suggestions and imposed conditions requiring that they are to be carried out to an acceptable standard. I have therefore allowed the appeal subject to conditions.

Alan Engley
Arboricultural Inspector

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

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& Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal & Tree Preservation Order (TPO) appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended. A challenge against a Tree Replacement Notice (TRN) appeal must be received by the Administrative Court within 28 days of the date of the decision, unless the court extends this period.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

High Court Section
The Planning Inspectorate
4/06 Kite Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0117 372 8962

General Enquiries
Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints
Complaints & Queries in England

Please refer to our website:
http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/
or write to:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0117 372 8252

Cardiff Office
The Planning Inspectorate
Room 1-004, Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033
Website: www.ombudsman.org.uk
Email: phso.enquiries@ombudsman.org.uk

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL; telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200;
website: http://www.ajtc.gov.uk/ However, it cannot become involved with the merits of individual appeals or change an appeal decision.

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An Executive Agency in the Department for Communities & Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can require the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals. Some other specialist casework types have different processes and timescales; information about which can be provided on request.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to clarify matters as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-consider an appeal or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further planning authority in the case once their decision is issued. It is the role of our Quality Assurance Unit to impartially investigate complaints about decisions, an Inspector's conduct or supporting administrative procedures. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams and Inspectors. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

We aim to reply as soon as we can. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector or staff member and line management team concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary and Health Service Ombudsman, who can investigate complaints of maladministration against Government Departments or Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will have visited the site and will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but the Courts have judged it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" –The appeal decision will highlight what the Inspector found unacceptable about the proposed development. In some cases it may be possible to address these problems, in which case you should talk to your Local Planning Authority's planning officers or take advice from a planning consultant.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You should contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Our Annual Report and Accounts contains details of our performance. It also includes details of how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'below)

Contacting us

Complaints & Queries in England

Please refer to our website:
http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/
or write to:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252

General Enquiries
Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales
The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk
Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.