The Planning Inspectorate

Appeal Decision

Hearing held on 11 April 2012
Site visit made on 11 April 2012

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

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

Decision date: 10 May 2012

Appeal Ref: APP/TPO/W1715/2264
6 Pardoe Close, Hedge End, Southampton SO30 0NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Mr Chris Buchanan against the decision of Eastleigh Borough Council.
- The application Ref: T/11/69618, dated 22 August 2011, was refused by notice dated 1 November 2011.
- The work proposed is to fell and remove an Oak Tree at rear.
- The relevant Tree Preservation Order (TPO) is No. 588 6 Pardoe Close, Hedge End 2007, which was confirmed on 4 April 2007.

Decision

1. I dismiss the appeal.

Main Issues

2. I consider the main issues in respect of this appeal are the effect on the character and appearance of the surrounding area if the oak was to be felled; and whether the reasons given for felling the tree justify that course of action.

Reasons

The First Issue - Character and appearance

3. The mature oak, identified as T1 in the TPO, is situated in the back garden of No. 6, a detached bungalow. There is no dispute that it is in good health and vigour and there is nothing before me, or that I saw on site, to indicate that the tree is suffering from any decay or disease that would foreshorten its long life expectancy. It was agreed that the tree is around 15 metres tall.

4. In wider views, given the position of the tree to the rear of the dwelling, it is the upper part of the crown appearing over rooftops that is apparent. This is clearly seen in views from Pardoe Close and in more distant views from Richlans Road, Smith Grove and Nursery Grove, giving the tree significant public amenity value. While it is seen in conjunction with the other trees, in certain views the oak appears prominently as a stand alone specimen tree. It forms part of the landscape setting of the village, contributing an important element of its skyline.

5. The oak makes a significant contribution to the amenity of the area and this is reflected in some of the letters of objection to its removal. In my judgement, a significant gap in the skyline would be created by the removal of the tree. This would be apparent from the wider public views described above as well as the views from adjacent rear gardens. Any replacement would be likely to take a considerable amount of time to fill the gap left by its removal. In which case the felling of the tree would result in significant harm to the character and appearance of the area.

The second issue – the justification for felling the tree

6. I note that the letter in support of the proposal prepared by Alan Brind Tree Service Ltd, dated 15/8/11, recommends the felling of the tree as the most practicable option, on the grounds of damage to the foundations of the dwelling, damage to the glazed roof of the conservatory, damage to drains, bird droppings and shading. However, there is nothing before me to indicate that the tree is making the dwelling structurally unsound or uninsurable. Moreover, insufficient evidence has been submitted to demonstrate that the tree roots are causing problems with the drains or that any such problems could not be overcome through pruning.

7. From my visit and the evidence put before the hearing, there is no dispute that the oak can give rise to bird droppings and shading. This has had an effect on the practical use of the back garden for recreation and clothes drying. The appellant also argued that complaints have been received from neighbours in respect of bird droppings, falling leaves and shading associated with the oak although insufficient evidence has been submitted to substantiate this claim. I am in no doubt that the bird droppings are unsightly and have given rise to the appellant's health concerns regarding children playing in the garden, as well as the need to regularly clean the patio area and conservatory glass.

8. Nevertheless, bird droppings and shading are natural phenomena associated with trees and this is something the appellant should reasonably have anticipated when deciding to buy the dwelling. Moreover, insufficient evidence has been submitted to demonstrate that measures, short of felling, have been explored to discourage birds from roosting in the tree and (notwithstanding the appellant's concern that any remedial work to the tree would not totally alleviate the problems, would have ongoing cost implications and would harm the health and amenity value of the tree) to demonstrate that any shade cast by the tree could not be overcome through ongoing judicious pruning and thinning, without compromising its health and vitality.

9. I note that in the past, a branch has dropped onto the roof of the conservatory breaking some glass panes and the appellant is fearful that another branch or the tree itself could come down in a storm. Although I am sympathetic to these fears which are heightened because of the proximity of the tree to the conservatory, I have insufficient evidence before me (notwithstanding that no guarantee could be given that any healthy tree could not come down in a storm) to demonstrate that the structural condition of the oak would give cause for concern about its stability.

10. While it is the case that the tree's canopy overhangs the conservatory (rather than the original dwelling) by around 3.5 metres, it was not disputed that the possibility of further damage to the conservatory could be reduced by the removal of dead wood and/or selective pruning. Furthermore, falling tree litter

and fear caused by the movement of the trunk and branches in high winds are consequences of living with trees, and I consider that any harm being caused to living conditions in this regard would not justify the felling of this protected tree.

11. The appellant moved into the dwelling in May 2010 in the knowledge that the oak is an integral part of the area's mature sylvan environment. In view of the lack of sufficient evidence to demonstrate that other methods, short of felling, have been explored to discourage birds from roosting in the tree and to reduce shading, as well as to adequately demonstrate that the tree's roots are damaging nearby drains and foundations, and that the tree is structurally unsound, I am unable to conclude that the oak is harming living conditions in ways that can only be remedied by its felling.

12. Accordingly, although no development plan policies have been drawn to my attention, I consider that the works would conflict with the established planning principle of safeguarding amenity.

Conclusion

13. For the reasons given above, I conclude that the removal and replacement of the oak would not be justified.

Richard McCoy

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr L Madden NCH Arbor	Director, Alan Brind Tree Service Ltd
Mr C Buchanan	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Claydon-Bone NCH Arbor, Cert. Prof. Tree Ispec.	Tree Officer, Eastleigh Borough Council

DOCUMENTS HANDED IN AT THE HEARING

1 Letter from appellant's partner
2 Conditions

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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 WC2A 2LL. Telephone 0207 947 6655. 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.