The Planning Inspectorate

# Appeal Decision

Site visit made on 19 June 2017

**by Joanna Reid BA(Hons) BArch(Hons) RIBA**

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

**Decision date: 06 July 2017**

**Appeal Ref: ENV/3160296**
**22 Bishops Court, Eastleigh, Hampshire SO50 6PE**

- 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 Miss Frederique Cacheux against the decision of Eastleigh Borough Council.
- The application Ref: T/16/78950, dated 20 July 2016, was refused by notice dated 26 August 2016.
- The work proposed is fell 1 no. Tulip tree, crown lift 1 no. Holly by 20% & crown thin 1 no. Laurel by 50%.
- The relevant Tree Preservation Order (TPO) is The Borough of Eastleigh Tree Preservation Order No. 811, 22/23 Bishops Court, Eastleigh, SO50 6PE, which was confirmed on 13 December 2016.

## Decision

1. The appeal is dismissed.

## Preliminary matter

2. The application was determined by the Council on the basis that the Tulip Tree was protected by the 1976 Tree Preservation Order No. 26 Stoke Knoll, Church Road, Bishopstoke, Eastleigh (the 1976 Order). However, at appeal stage the Council was unable to provide evidence that the 1976 Order had been confirmed and, therefore, it made the new Order that is referred to in the banner heading above. The Planning Inspectorate, acting on behalf of the Secretary of State, took the decision to continue with the appeal, on the basis that all parties would want to see the case progress to an Inspector's decision rather than to require a further application to be submitted to the Council.

## Reasons

3. The Holly and Laurel that are referred to in the description of the work are not subject to the TPO, so I shall take no further action in respect of them.

4. The appeal tree is a large mature Tulip tree of good size and reasonable form that is situated towards the far end of the back garden of the appeal dwelling, fairly close to its side boundary with 21 Bishops Court. Due to the fairly steeply sloping topography, ground level by the Tulip tree is higher than the ground floor of the appeal dwelling. The Tulip tree appears to be healthy, and no evidence from a competent arboricultural specialist has been put to me to show otherwise.

5. The Tulip tree is in a mainly residential area, where the mostly 2-storey dwellings in Bishops Court are of a similar age and style and would appear to postdate the Tulip tree. The back garden of the appeal dwelling adjoins an area of public open space that includes a good-sized grass covered mound at the end of Saville Close, where the dwellings include low-key bungalows close by. Due to its natural form and height, the Tulip tree is widely visible from the surrounding area, where it makes an important positive contribution to the sense of place. Due to the lie of the land and the well-spaced dwellings in the road, the Tulip tree is important to the street scene in Bishops Court, and it has a partial screening effect which contributes to good levels of privacy in neighbouring gardens. It is also important to biodiversity interests on and around the site. Thus, the Tulip tree has significant public amenity value.

6. Turning to the appellant's reasons for wishing to fell the Tulip tree, the appellant says that in storms or strong winds branches falling from the Tulip tree could endanger the occupiers, their home, neighbouring occupiers and their homes and members of the public using the open space at the back of the site. Whilst there would always be some risk of such an eventuality, privately owned trees are the responsibility of the land owner. The risk of falling branches should reasonably be managed by measures including routine inspection and maintenance by a competent arboricultural specialist, including obtaining necessary consent for works. As the appellant explains that the Tulip tree takes up much of the back garden, she should have been aware of its presence, that it is subject to a Tree Preservation Order, and should have taken the cost of its maintenance into account before choosing to purchase the property. Whilst I have had regard to the appellant's concerns, insufficient evidence has been put to me to show that the Tulip tree should be felled.

7. The appellant has referred to other nearby developments where many trees were said to have been felled, but they attract little weight because I have almost no information about them. The appellant has also offered to plant a replacement tree. However, even if an appropriate replacement were to be specified, it would take many years to mature, and its benefit to future generations would not outweigh the unacceptable harm to public amenity that the unjustified loss of the Tulip tree would cause in the meantime.

8. Therefore, I consider that the reasons that have been put forward are insufficient to justify the removal and replacement of the Tulip tree, which has significant public amenity value. For the reasons given above and having regard to all other matters raised, the appeal fails.

*Joanna Reid*

INSPECTOR