



Appeal Decision

Hearing Held on 12 September 2023

Site Visit made on the same day

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Appeal Ref: APP/TPO/W1715/9446

Land to the north of 21 Silver Birches, Burlesdon, Hampshire, SO31 8LD

- 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 Patricia Duell against the decision of Eastleigh Borough Council.
 - The application Ref: T/22/93846, dated 20 September 2022, was refused by notice dated 1 November 2022.
 - The work proposed is cut back all branches overhanging properties 19 and 21 Silver Birches by up to 4 metres.
 - The relevant Tree Preservation Order (TPO) is Eastleigh Borough Council, Town and Country Planning Act 1990, Tree Preservation Order No. 368A, which was confirmed on 29 May 1997.
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Decision

1. The appeal is allowed, and consent is granted to cut back all branches overhanging properties 19 and 21 Silver Birches by up to 4 metres on one Oak protected by Eastleigh Borough Council, Town and Country Planning Act 1990, Tree Preservation Order No. 368A, at Land to the north of Silver Birches, Burlesdon, Hampshire, SO31 8LD in accordance with the terms of the application, Ref T/22/93846, dated 20 September 2022, subject to the following condition:
 - 1) The tree work hereby consented shall be completed within 2 years of the date of this consent and shall be carried out in accordance with the approved details and to British Standard for Tree Work 3998:2010 as far as possible, accepting that the number of wounds inflicted on the Oak may exceed those set out at Table 1.

Preliminary Matters

2. The application form states that the proposal is to substantially cut back branches that overhang both properties. The Council was rightly concerned that this was a vague proposal and introduced a revised description. At the hearing the appellant confirmed that she agrees to the use of the revised description of the proposed works. Accordingly, I have used the revised description above.
3. Additionally, the application form gives the appellant's address as the location of the Oak. The Oak is in fact located on land to the north of No. 21 Silver Birches. I have used this address in the banner heading above.

4. The Council granted consent to carry out lesser work, to reduce the lateral branches to the south of the canopy from branch tips by up to 2 metres. It refused the proposal to reduce the branches by up to 4 metres. The appeal has been lodged against the Council's decision to refuse the proposal to reduce the overhanging branches by up to 4 metres. The consented work is unaffected by this appeal decision.

Main Issues

5. The effect of the works on the character and appearance of the area, and whether sufficient justification has been demonstrated for the works.

Reasons

6. The site is a modern housing estate that was laid out in a manner that attempted to accommodate several substantial retained trees. Many of these are Oaks. The Oak subject of the appeal stands at one end of a belt of substantial mature trees. These form an edge to a large area of public open space that predominantly takes the form of a woodland and provides a valuable natural setting to the urban development of the estate.
7. The Oak is a substantial and mature open grown tree that established long before the area was developed for housing. Although it stands alongside other large trees, it has a crown that is distinct from the adjacent tree. It is highly visible from the immediate area of open space to the north, where it can be seen in its entirety and serves to screen the development from the open space.
8. There is also a view of most of the Oak from Cedar Close to the south, although this view is slightly more restricted as it is seen between existing dwellings. From here, along with other trees to the east, it provides a substantial verdant backdrop to the dwellings at the end of Cedar Close.
9. The Oak can also be readily viewed from the higher ground to the west, where Woodlands Way meets Silver Birches. From here the canopy of the Oak rises well above the surrounding development and stands prominently at the front of a substantial area of woodland that fills the whole of the sky line beyond the housing estate.
10. For these reasons the Oak has high amenity value. The Council suggest that the extent of pruning proposed would leave the Oak with a 'sided up' appearance, as the pruning result in the loss of a significant portion of the Oak's canopy. However, the visual impact of this would be quite limited. The work would have no meaningful impact on the appearance of the tree from the north. From the south the proposed pruning work would be viewed head on. The height of the Oak, and its west to east spread would be unchanged.
11. From the area of open space to the east the harm to the form of the Oak would be almost entirely screened by the substantial trees that stand alongside it. From the west the altered form of the Oak's canopy would be seen with a backdrop of similarly scaled trees; the work would thus have very little impact on its existing amenity value from this perspective. For these reasons I am satisfied that the work would not harm the existing amenity value of the Oak.
12. The proposed work would however inflict a significant number of large diameter wounds on the Oak. This is likely to be beyond the maximum number of recommended cuts set out at Table 1 of BS 3998:2010. Carrying out tree

surgery work of this scale would increase the potential for pests and disease to impact the Oak, which could have a negative impact on its longevity. The Oak is mature so is less tolerant of excessive wounding than a younger tree would be. The demise of the Oak would have a harmful impact on the character and appearance of the area. Consequently, the reasons given for the work need to be convincing.

13. The gardens at the rear of Nos. 19 and 21 Silver Birches are relatively small. The Oak grows immediately adjacent to the side boundary of the garden at the rear of No. 21 Silver Birches. Its canopy extends over this closest garden to the extent that it covers the whole garden area. The garden is thus entirely overwhelmed by the Oak due to the visual dominance of its canopy and its scale relative to the size of the garden. Additionally, the canopy extends up to the rear elevation of No. 21, and spreads over its roof.
14. Although its canopy is raised up above the garden level, the Oak severely restricts the ability to look from the garden towards the open sky. For these reasons the quality of the garden, its openness, usefulness, and the contribution that it makes to the wellbeing of the occupants of the dwelling are significantly impacted by the presence of the Oak. Although much less significant due to the increased distance, the Oak also has an adverse impact on the quality of the private garden to the rear of No. 19 Silver Birches for similar reasons.
15. Debris dropped from the Oak is a significant issue for the users of both gardens. The dropping of deadwood from time to time is also raised, although there is no evidence to suggest that significant volumes of deadwood still stand within the Oak, or that its condition is such that the extent of deadwood is increasing. Such everyday nuisances are ordinarily given little weight as they are part of living in an environment that is enhanced by mature and characterful trees. In this case however, given that the canopy of the Oak entirely covers the small garden at the rear of No. 21 Silver Birches, I am satisfied that it is reasonable to also give some weight to this matter. The problem would of course not go away following the work as the Oak would remain and a large part of its canopy would continue to extend over the closest garden. However, the extent of debris dropped from the tree would be modestly reduced by shortening the horizontal spread of the canopy.
16. With any application to carry out work to protected trees a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area. Planning Practice Guidance (PPG) establishes that in general terms, the higher the amenity value of the tree and the greater any negative impact of the proposed works on amenity, the stronger the reasons needed before consent is granted.
17. I have found that the Oak entirely overwhelms the small garden at the rear of No. 21 Silver Birches. Drawing the canopy back to the extent proposed so that the outlook is increased from the garden towards areas of clear sky would reduce the impression that the Oak overwhelms and crowds in on the garden, making it a space that is more useful and attractive to benefit the wellbeing of the dwelling's occupants. In terms of the potential impact on the health of the Oak, it otherwise appears to be in good condition and is therefore in good stead to withstand the extent of work proposed. I am therefore satisfied that the reasons for the work are sufficient to outweigh the potential risk to the Oak's health and its future longevity.

18. I have considered the condition suggested by the Council, taking into account the advice in the Planning Practice Guidance. I have imposed a condition that includes a reference to the British Standard, to safeguard the character and appearance of the area, whilst also noting that it is unlikely that the work would fully accord with the standard with specific reference to Table 1.

19. In summary, for the reasons given, the appeal should be allowed.

A Tucker

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Miss Patricia Duell 19 Silver Birches, Bursledon, Hampshire, SO31 8LD

Miss Amanda Lashley 21 Silver Birches, Bursledon, Hampshire, SO31 8LD

FOR THE COUNCIL

Mr Chris Stringer Tree Consultant for Eastleigh Borough Council

Miss Charlotte Holloway Hampshire County Council