



Appeal Decision

Site visit made on 13 February 2024

by S D Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/TPO/W1715/9437

Land to the north of 58 to 63 Allbrook Knoll

- 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 trees protected by a Tree Preservation Order.
 - The appeal is made by the Estate Manager, Cranbury Estates Limited, against the decision of Eastleigh Borough Council.
 - The application Ref: T/22/93538, dated 1 August 2022, was refused by notice dated 10 October 2022.
 - The work proposed is remove small diameter (less than 30cm diameter at 1.5m) trees within 10m of the property boundary. Trees larger than 30cm diameter at 1.5m to be subject to a forestry thin to create a spacing of 7m between trees; retaining trees of good vitality, form and structure.
 - The relevant Tree Preservation Order (TPO) is Tree Preservation Order No 314 Allbrook Brickworks (North), Boyatt Wood, Eastleigh, which was confirmed on 19 July 1995.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council have suggested that the proposed work require a felling licence. To that end government guidance is clear in that where a TPO has been made, the consent of the local planning authority must be obtained (directly or via a felling licence application) before the trees can be felled legally under the Town and Country Planning Act 1990 as amended (TCPA). Furthermore, felling trees subject to a TPO, where a felling licence was required but not obtained, can result in an offence being committed under both the Forestry Act 1967 and the TCPA.
3. However, it is not for me to deliberate over whether or not a felling licence would be required (ie whether the proposed felling would be of sufficient volume) or whether any exceptions would apply. That is a matter for the appellant. My decision therefore is based solely on the main issues I am required to consider under the Regulations and as set out below.
4. The TPO covers a wider area than the appeal site and is a woodland category the purpose of which is to safeguard a woodland as a whole. Some trees may lack individual merit, but all trees within a woodland that merits protection are protected. In addition, trees and saplings which grow naturally or are planted within the woodland area are also protected by the TPO.

Main Issues

5. The main issues are the effect of the proposed work on the character and appearance of the area and whether the reasons given justify that work.

Reasons

6. The TPO applies to trees which have in the main regenerated on the former Allbrook Brickworks on land north of Boyatt Wood and east of the M3. It adjoins the houses on the Allbrook Knoll cul-de-sac. The proposed tree work relates to higher land to the rear of houses at Nos 58-63 Allbrook Knoll.
7. The trees are principally young to middle aged, tall self-set birch, willow and ash although there are also oaks, holly and some other understorey shrubs. The resultant woodland canopy is a strong continuous feature behind the roofs. It is a very attractive backdrop to the houses. The eroding of this canopy on the edge of the woodland would have a harmful effect on the character and appearance of the area. However, the work would only affect trees within a 10m strip so the effect on the woodland as a whole would be moderate.
8. Nevertheless any reasons given to justify the proposed work need to carry sufficient weight to outweigh the harm that would arise.
9. The application form states that local residents immediately adjacent are concerned about the risk from falling branches and trees. However, the accompanying letter states that due to the lack of obvious tree failures near to the properties there is no specific cause for concern other than the obvious closeness of some trees to the boundaries.
10. Trees are living plants so they cannot be managed in ways that are wholly free from risk or the need for maintenance and fear of future hazards is rarely going to be a valid reason for felling a protected tree. In this case, in the absence of a Tree Risk Management Plan, or other evidence about the condition of the trees, proximity of trees to boundaries and fear of failure would not justify the extent of work proposed. Nor is the proposal accompanied by any assessment of the effect of the removal of the trees on the slope behind the houses.
11. The sustainable management of woodland is a laudable aim that is supported by Government policy including the National Planning Practice Guidance and through grant schemes administered by the Forestry Commission. There is a presumption against permanent loss of woodland cover and central to sustainable forest and woodland management in the UK is the concept of achieving a balanced set of environmental, economic and social objectives¹. A woodland TPO is not meant to hinder beneficial woodland management and landowners are encouraged to plan and manage trees in a way which would benefit the woodland.
12. Trees of 30cm diameter at 1.5m high are relatively large trees and the work proposed mean relatively few trees would remain in the specified area. No recognition appears to have been given to the desirability of retaining certain species such as ash or oak in preference to others. Nor is it clear that thinning to a spacing of 7m would meet the UKFS definition of thinning². The Forestry

¹ [The UK Forestry Standard \(publishing.service.gov.uk\)](https://www.gov.uk/publishing.service.gov.uk); (UKFS)

² the removal of a proportion of trees in a forest after canopy closure, usually to promote growth and greater value in the remaining trees

Commission interpret this to mean the felling of no more than 30% of trees from any area, spread evenly among the retained trees. For these reasons I cannot conclude that the proposed work would accord with good forestry practice or Regulation 17(d).

13. It is unfortunate that the Council did not enter into a dialogue with the appellant about whether lesser work might be acceptable. I have specifically considered whether I could allow lesser work. However, I conclude it is not appropriate for me to do so, as any work proposed should be devised in the context of a management plan for the woodland as a whole, and no such plan is before me.

Conclusion

14. With any application for work to protected trees, a balancing exercise needs to be undertaken. The essential need for the work applied for must be weighed against the resultant loss to the amenity of the area.
15. I conclude that insufficient justification has been demonstrated for the work proposed to outweigh the moderate harm to the character and appearance of the area. For the reasons given above the appeal should be dismissed.

S Harley

INSPECTOR