



Appeal Decision

Site visit made on 24 September 2024

by S D Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 14 October

Appeal Ref: APP/TPO/W1715/9633

1 Portchester Rise, Eastleigh, Hampshire SO50 4QS

- 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 Carl Rivers against the decision of Eastleigh Borough Council.
 - The application is Ref: T/23/94817.
 - The work proposed is T1 oak – fell due to extensive decay to stem and buttress roots.
 - The relevant Tree Preservation Orders (TPO) are Eastleigh Borough Council Tree Preservation Order No. 5 (Byatt Lane), which was confirmed on 26 June 1970 and Eastleigh Tree Preservation Order No. 313 confirmed on 6 February 1995.
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Decision

1. The appeal is allowed and consent is granted to undertake work to a tree protected by Eastleigh Borough Council Tree Preservation Order No. 5 (Byatt Lane) confirmed on 26 June 1970 and Eastleigh Tree Preservation Order No. 313 confirmed on 6 February 1995, at 1 Portchester Rise, Eastleigh, Hampshire SO50 4QS in accordance with the terms of the application Ref: T/23/94817 and subject to the following conditions:
 - 1) The tree work for which consent is hereby granted shall be implemented within two years from the date of this decision.
 - 2) All tree work operations agreed to under this consent shall be carried out in accordance with BS 3998:2010 'Tree Work Recommendations'.
 - 3) Prior to undertaking the felling of the oak tree a plan showing the position for planting one replacement English oak (*Quercus robur*) of container grown stock and at least 2 metres in height from ground level shall be submitted to and approved in writing by the local planning authority. The replacement tree shall be planted in accordance with the approved plan during the first planting season (October to March inclusive) following the felling of the tree. Planting must be in accordance with BS 8545:2014 'Trees from the nursery to independence in the landscape – Recommendations.'
 - 4) If, within a period of five years from the date of planting, the tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the replacement tree unless the local planning authority gives its written consent to any variation.

Main Issues

2. The main issues are the effect of the felling of the tree on the character and appearance of the area; and whether the reasons given justify such felling.

Reasons

3. Number 1 Portchester Rise is a house and garden in a relatively modern estate of houses set in reasonable sized gardens. The appeal tree is part of a long relatively narrow belt of woodland which is protected within an Area TPO under the TPO No. 5 (Byatt Lane) and as an individual tree under TPO No. 313. Following residential development the woodland winds between houses and part of it is situated in the garden of No 1.
4. The mature appeal tree is in the rear garden of No 1. Following crown reduction there has been subsequent vigorous regrowth. The crown is well formed and dense. It is particularly attractive in views from Hazelwood Grove cul de sac and parking/turning area. It can also be seen from Portchester Rise above the house roof and behind other mature trees and from Boyatt Lane. Individually and together with the many other trees in the area it provides an attractive setting for the houses and a pleasant verdant environment in which to live and work.
5. The loss of the tree would reduce the tree cover and would have a substantial harmful effect on the character and appearance of the area. Accordingly the need for the felling must be weighed against the resultant loss to the amenity of the area.
6. The Council has refused earlier applications to remove the tree. An extension to the house and hard landscaping has recently taken place. Whether or not tree protection measures were put in place the oak appears not to have been substantially adversely affected by these works. However, as a result the living accommodation and patio areas are close to its stem.
7. A substantial limb has been lost with decay found below it. The appeal application is accompanied by the Tree Safety Survey February 2023. After removal of heavy ivy growth fungal fruiting bodies identified as *Ganoderma applanatum*, have been found at the base of the tree. There is an historic pruning wound at about 1.7m which has failed to occlude. Resi F400 microdrill testing was carried out on two occasions. Initially extensive decay at the base of the stem and a column of decay extending up the stem was found; the residual wall thickness of wood was found to be between 9cm and 11cm and some of this wood was found to be degraded.
8. Testing took place at a height of 20cm intervals at about 15cm above ground and was supplemented by higher up tests as reference. The lower drills found significant deterioration of wood between and within buttress roots. There was little evidence of compartmentalisation around the decayed areas suggesting decay is progressing at a significant pace and that the tree is unable to produce enough sound wood to replace that lost to decay. Although some sound wood was found decay in the east and south buttress roots is of particular concern given the stress likely to arise as the canopy is weighted towards the west.
9. Oak trees can stand for many years as a hollow structure supported by sound buttress roots. However, once those buttress roots lose their structural integrity the risk of failure increases to an unacceptable level. The Council

accepts that there are areas of decay in the tree; recognises that veteran features are emerging; and suggests that sensitive management options that would allow for the retention and natural decline of the tree should be put in place.

10. Veteran trees are entire ecosystems in their own right and Government Guidance¹ recognises that ancient and veteran trees are exceptionally valuable and are irreplaceable eco/diversity habitats. The Guidance also recognises that such trees can be found in many places including woods, pastures, historic parkland, hedgerows, orchards, parks or other areas. In addition the National Planning Policy Framework (the Framework) advises that development resulting in the loss or deterioration of irreplaceable habitats should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists.
11. Whilst the exceptional reasons envisaged in the Framework do not apply in this case, development in the vicinity of the tree took place some years ago. Moreover, in 2022 the Council granted planning permission for extensions to the host property which bring living accommodation closer to the tree. Accordingly there is conflict between the proximity of people and property with the desire to retain the oak as an emerging irreplaceable habitat.
12. There are means of managing the natural declining process of older trees for example retrenchment pruning as described in BS3998:2010 'Tree Work: Recommendations.' However, it seems to me that management towards increasing of veteran features and further decline should only occur in carefully selected locations where it will be compatible with site usage and with future management requirements.
13. In this case the tree is close to the house at No 1 and it overhangs neighbouring property. It seems to me to be unreasonable to require residents to live in such close proximity to a tree which is decaying and unreasonable to expect the implementation of a substantial management regime in a situation where proximity to the tree is unavoidable. Given the extent of the decay that has been identified I conclude that the foreseeable risk to people and property from failure of such a sizeable decaying tree is sufficiently great so as to override the substantial harm that would be caused to the character and appearance of the area.
14. The appellant is willing to plant a replacement English oak which would provide some compensation for the loss of the tree. This would not achieve the same level of visual amenity for many years but would nevertheless add to visual amenity in due course and would add diversity to the age profile of local trees. It would also in due course develop as a habitat for local species albeit not to the extent of a veteran tree.
15. As well as the standard time for carrying out the tree works, I have imposed a requirement to ensure a replacement tree is planted in an appropriate position. Details of protection and aftercare, compliance with the appropriate British Standard, together with a requirement for substitute planting should the replacement tree fail or be removed, are also necessary to ensure the proper establishment of a tree that will flourish and provide a satisfactory level of

¹ [Ancient woodland, ancient trees and veteran trees: advice for making planning decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/ancient-woodland-ancient-trees-and-veteran-trees-advice-for-making-planning-decisions)

visual amenity. These are all necessary for certainty and in the interests of the character and appearance of the area. No specific reason has been given by the Council for a need for a ten year period for replacement planting so I have imposed the more usual five year period.

16. The appellant is advised that special care should be taken not to disturb wild animals that are protected by the Wildlife and Countryside Act. This includes birds and bats that nest or roost in trees. The bird nesting season is generally considered to be 1 March to 31 August. It is also advised that implementation of any tree works should be by suitable qualified and insured operators in view of the age and condition of the tree.

Conclusion

17. With any application for works 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.
18. I conclude that in this instance sufficient justification has been demonstrated for the proposed felling to outweigh the substantial harm that would be caused to the character and appearance of the area. For the reasons given above the appeal should be allowed.

S Harley

INSPECTOR