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Mr A Hutson – Trees & Landscape Officer
Planning and Public Protection
Culture and Environment
London Borough of Camden
Town Hall
Judd Street
London, WC1H 8ND

Your Ref: 2012/5484/T
Our Ref: APP/TPO/X5210/3031
Date: 21 June 2013

Dear Mr Hutson

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: Lillian Valchar
SITE AT: 15 Heath Drive, Hampstead, London NW3 7SN**

I enclose a copy of our Inspector's decision on the above appeal following the hearing on 11th June 2013.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An application under Section 288 of the Town & Country Planning Act 1990 must be made to the High Court promptly and in any event within 6 weeks of the decision in question. This is an absolute time limit that cannot be extended by the Court.

A challenge must be made on one or both of the following grounds:

- (1) the decision is not within the powers of the above-cited Regulations;
- (2) any of the relevant statutory requirements have not been complied with.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

RECEIVED

24 JUN 2013

Culture & Environment



If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:

Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone No. 0303 444 5884

Or visit:

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback>

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely



Gemma Palmer
Environment Appeals Administration

Enc



Appeal Decision

Hearing held and site visit made on 11 June 2013

by **Phil Grainger BA(Hons) MRTPI**

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

Decision date: **21 JUN 2013**

Appeal Ref: **APP/TPO/X5210/3031**

15 Heath Drive, Hampstead, London NW3 7SN

- 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 Lillian Valchar, on behalf of no. 15 Heath Drive Residents, against the decision of the London Borough of Camden.
 - The application ref: 2012/5484/T, dated 12 October 2012, was refused by notice dated 13 December 2012.
 - The proposed work is felling a hawthorn tree.
 - The relevant Tree Preservation Order (TPO) is the County of London (Hampstead No. 18) Tree Preservation Order 1957, which was confirmed on 19 November 1958.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Miss Valchar (also known as Miss Coffey) is one of the residents of no. 15 Heath Drive on whose behalf the application was originally made. She was the only one named on the appeal form but I was told at the hearing that she was acting on behalf of the others. I have reflected this in the heading above.
3. It was agreed on site that the appeal tree is a cultivar of the Midland Hawthorn known as Paul's Scarlet. This has bright red flowers which were prominent at the time of my visit. It has been pollarded in the past and shows some signs of decay at some of the past pruning points. However, there is no dispute that the tree could remain safely for many years to come.
4. The proposal to fell it formed part of a package of works aimed at facilitating the planting of a yew hedge to replace the privet hedge and fence that formerly bordered the Heath Drive and Ferncroft Avenue boundaries of no. 15. All the other works were approved and have been implemented including the crown lifting of two holly trees that are protected by a different TPO¹. Other works needed to be notified to the Council because the site is within the Redington / Froggnal Conservation Area.

Main Issues

5. These are the amenity value of the tree; the effect that it may have on the newly planted yew hedge; and whether any harm to visual amenity that would result from felling the tree would be outweighed by other matters, in particular any benefit to the new hedge.

¹ The London Borough of Camden Tree Preservation Order No. 19

Inspector's Reasoning

6. There are many street trees, typically mature London Planes, along Heath Drive and Ferncroft Avenue, the two roads that adjoin the appeal site. In addition, there are other trees, bushes and hedges within or around many of the front and side gardens. Together these provide a green and leafy setting to the buildings that is an important and very characteristic feature of the conservation area.
7. The appeal tree, which is agreed to be about 4m high, is smaller than the London Planes and many other street and front garden trees. That said, it has an attractive crown and is on a part of Ferncroft Avenue that lacks larger trees since the recent felling of a mature but diseased London Plane within the adjoining section of footway. This is, I understand, a change since the Council refused consent to fell the tree and has increased its visual amenity value, as the appellants' agent accepted. Moreover, although in his view the increase has been only slight, I consider that the amenity value of the tree, which the Council had originally referred to as merely 'decent', is now significant.
8. I have taken into account that the tree will be in flower for only a relatively short period and that at other times it will stand out less than it did when I saw it. I have also taken into account that as the London Planes in the wider area, which have recently been pruned, re-grow and put on foliage they will become more dominant. Nevertheless, having had regard to all this I am satisfied that the hawthorn will remain an important element of the streetscene for many years to come, probably until the young London Plane that has been planted to replace the one recently felled reaches a substantial size. Moreover, it would be many years before any replacement for the appeal tree had a similar impact.
9. I have noted the appellants' view that the tree has an awkward visual relationship with the newly planted yew hedge. However, even if there are no other trees actually growing within hedges in the near vicinity there are certainly many that are close to and overhang hedges. Moreover, although there are some formal hedges, such as the appellants are trying to achieve here, within the conservation area there are also many less formal ones. In my view it is the widespread presence of hedges, trees and other vegetation that is critical to the character and appearance of the conservation area, not the particular form that they take.
10. Taking all this into account I am satisfied that the relationship between the hawthorn and the yew hedge is not particularly odd or inharmonious and that it does not justify felling the tree, given its intrinsic amenity value. That is the case even now but would be even more so if the hedge grows and fills out. This would reduce or eliminate the modest gaps that currently exist between the hedge and the trunk of the tree as well as thickening up the thinner parts of the hedge generally.
11. The appellants are concerned that the presence of the hawthorn will prevent the hedge thriving and filling out in this way in the section closest to the tree. However, the watering system that has now been installed should significantly reduce the risk of this. Certainly there is no clear evidence of any substantial harm having occurred to this section of hedge to date. The plants closest to the tree have put on some modest new growth in places and though they may have died back slightly elsewhere this is well within the range of growth and die back that has occurred on individual plants across the full length of the hedge. In fact the only plant showing serious signs of distress is the one furthest from the appeal tree (and at the end of the watering system).

12. I conclude that there is no clear evidence of the appeal tree having had a seriously harmful effect to date and no compelling reason to expect that it will do so in future provided the watering system is retained. Moreover, it would be open to the residents to re-apply for consent to fell the tree if, contrary to my expectations, evidence of such harm did emerge in future. I conclude that this matter falls far short of justifying felling the tree, certainly at this time, given its visual amenity value.
13. As for other possible benefits, any security risk posed by the small gaps between the hedge and the tree trunk seems insignificant given the existence of an ungated pedestrian access close to it. Moreover, even if this access were to be gated in future it would take some years for the hedge generally to thicken out so as to be an effective barrier. In addition, I see no reason why the low wall or plinth around the site boundary could not be rebuilt, if this is considered necessary, without the need to fell the tree and no evidence to the contrary has been provided. Finally, although the crown of the hawthorn extends close to the newly planted London Plane in the footway any conflict could be resolved, if necessary, by a modest cutting back of the appeal tree. None of these matters therefore justifies felling the tree.

Other matters

14. Although the Council's refusal was based primarily on visual amenity it also made reference to biodiversity. The appellants' agent was surprised at this reference and felt that biodiversity was not a relevant consideration. However, as discussed at the hearing, government advice indicates that in making a TPO matters such as this may be taken into account, even though they would not in themselves warrant making an Order. If that is so then, by analogy, it seems to me that it may sometimes be appropriate to take such matters into account when considering an application for tree works.
15. In this case it will be clear from my earlier conclusions that biodiversity matters are not essential to my decision. That said, there may be some merit in the argument that a lower level tree, especially one that flowers (albeit briefly), adds to the range of habitats in the area. However, it appears that this is not a native naturally occurring tree; only the cultivar of one. Taking all this into account I conclude that any wildlife benefit of retaining the tree is modest. Nevertheless, to the extent that it exists and is relevant this matter points in the same direction as my conclusions on visual amenity. Accordingly it can only serve to reinforce my conclusions without being necessary to them or significantly altering the overall balance of considerations.

Conclusions

16. I conclude therefore as follows. With the loss of the nearby mature London Plane the appeal tree is now an important feature in a part of the streetscene lacking the large trees that are characteristic of much of the conservation area. It therefore has significant visual amenity value and contributes towards the retention of one of the important characteristics of the area. This outweighs any very modest visual benefit that extending or completing the hedge within this area might have especially given the lack of evidence that the tree causes any significant harm to the newly planted yews. None of the other matters raised are sufficient to materially alter the balance of considerations. On the contrary, any biodiversity effect points in the same direction. I therefore conclude that the appeal should not succeed.

P Grainger
INSPECTOR

