
Appeal Decision

Site visit made on 14 January 2016.

by **Alan Engley** MARb (RFS) FARborA MIHort MICFor AARC

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

Decision date: 11 February 2016

Appeal Ref: APP/TPO/X5210/4899.

Land at 4B Hampstead Hill Gardens, London NW3 2PL.

- 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 (TPO).
 - The appeal is made by Mr L Brearley against the decision of the London Borough of Camden.
 - The application Ref: 2015/3497/T, dated 19 June 2015, was refused by notice dated 30 September 2015.
 - The proposed work is the felling of 1 Hornbeam tree.
 - The relevant TPO is the County of London (Hampstead No 12) Tree Preservation Order 1956, which was confirmed on 21 August 1957.
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Decision

1. I allow the appeal and grant consent for the felling of 1 Hornbeam tree in accordance with the application reference 2015/3497/T, dated 19 June 2015 and the documents submitted with it subject to the following conditions:
 - The tree works hereby permitted shall be carried out in accordance with the British Standard 3998 "Recommendations for Tree Work 2010".
 - This decision is valid for 2 years from the date of this notice after which the consent lapses.
 - Following the felling of the Hornbeam tree, 1 replacement tree is to be planted. I leave the precise planting position and tree species to be subject to agreement between the appellant and the Council. However, the replacement species should be capable of growing into a small sized deciduous tree and planted to the front of No 4B.
 - The specification is that it should be at least 1.8m in height and the planting shall take place in the first planting season, October to March inclusive, following the removal of the Hornbeam tree. The work should conform to the BS 8454 2014 "Trees from Nursery to Independence in the Landscape – Recommendations".
 - If, within a period of 5 years from the date of planting, the replacement tree is removed, uprooted, destroyed or dies another tree of the same size and species shall be planted within the first planting season following the removal, uprooting, destruction or death of the tree it replaces.

Main Issues

2. I consider that the 2 main issues in this appeal are:
 - The effect on the character and appearance of the street scene, locality and wider landscape if the proposed work is carried out; and
 - Whether the reasons given for the proposals are sufficient to justify that course of action.

Reasons

The first issue – the effect on the character and appearance of the street scene, locality and the wider landscape if the proposals are carried out

Character of the locality

3. Hampstead Hill Gardens is a fairly busy curving road through an established residential area where the properties are of mixed ages and designs characterised by substantial dwellings set in modest sized plots, on fairly level land. The relevant part lies within the Hampstead Conservation Area.
4. No 4B which has the appeal tree is set back on a bend on the southerly side of the road. Facing from the road, it is the left side, semi detached, 2 storey house built circa 1966 with a narrow hard standing and stone paving against the front elevation. The appeal tree grows towards the front left corner of the property, inside the brick built retaining walls.

Local tree cover and the amenity value of the appeal tree

5. The Council claim the tree provides a high level of visual amenity within the street scene and makes a positive contribution to the conservation area. The agent for the appellant is an arboricultural company. It considers that there are significant neighbouring trees that provide local visual amenity benefits.
6. The maturing medium sized Hornbeam (*Carpinus sp*) forms the inner component of 2 previously pollarded specimens. It is smaller than its companion, it has a sinuous trunk with old scars and it forks at a level about opposite the first floor window. It has a broadly ovoid shaped upper crown and despite historic pollarding it has an acceptable appearance.
7. It can be seen from some properties opposite and when approaching along the road from the southwest. Views of it from the north and east are obscured by walls and the intervening foliage of its companion tree.
8. Locally, there are a number of Hornbeam trees and a good scattering of mature deciduous specimens that altogether lend the area a pleasant, leafy character.

The effect of the proposals on the visual amenity

9. The agent claims that there is insufficient space in the property for a replacement tree but the building insurers are willing to fund a new specimen to be planted in a location to be agreed with the Council.

10. Its removal would result in the loss of an acceptably shaped tree, which is part of a local loose grouping of similar specimens and reduce the visual amenity. However, the loss would be mitigated in views from most points of the compass because of the close by companion tree provides a verdant backdrop, and by the planting of a replacement tree.
11. In my view there is insufficient room for a large growing replacement at the front of the house but with the removal of the appeal tree and its rootball, there is sufficient scope for a small to medium sized ornamental tree. There are methods available that could be adopted in order to plant a tree in this position such that its roots were not a cause for future problems to the house foundations.
12. Based on the above, I consider that the proposals would have an immediate negative effect on the visual amenity of the character and appearance of the locality, the street scene and the wider landscape. However, this would be compensated for given the passage of time by a new replacement tree.

The second issue – whether the reasons given for the proposed works are sufficient to justify that course of action

Subsidence damage to property caused by root activity

13. The arboricultural appraisal report dated 19 June 2015 describes the property as being subject to a previous subsidence claim in 2005 when 3 nearby TPO trees were identified as the cause of subsidence movement. Since then they were reduced in size and the property stabilised. However, the insured noticed cracking throughout the property in August 2014.
14. Site investigations were carried out by the use of trial pits and bore holes to reveal the foundation depth and design. Within the bore holes live *Carpinus* and a *Leguminosae* species roots were found within the clay soil beneath the foundations.

Cosmetic damage that could be repaired and previous tree surgery

15. The Council argue that the appeal tree appears to be in good health and has a significant safe useful life expectancy. It considers the evidence supplied with the application is inconclusive and the BRE classification of the damage is slight and is considered to be cosmetic which could be repaired.
16. The Council assert the level monitoring appears to show the levels rising at the relevant part of the property during the spring and summer months with the lowest points during the winter months at the start of recording and this does not tally with the expected movement where vegetation is concerned and recommend further monitoring.
17. The Council consider the evidence provided insufficient to demonstrate that the appeal tree is a cause of damage, and that a persistent moisture deficit exists, leaving no alternative to felling. It points out that the tree was previously reduced and maintained by crown reduction and this practice should be continued on a regular cycle.
18. The agent considers that the appeal tree has been pruned on several occasions but the tree management has clearly failed to prevent a

reoccurrence of damage, and given the proximity of the tree to the property, further pruning will not arrest seasonal movement in the building.

Clay shrinkage caused by the influence of vegetation

19. The engineers for the appellant are satisfied that the current building movement and the associated damage is a result of clay shrinkage causing subsidence and that other possible causal factors had been discounted. They are satisfied that the desiccation is at a depth beyond normal ambient soil drying processes, such as evaporation and is indicative of the soil drying effects of vegetation.
20. The agent considers that level monitoring from 16 January 2015 to 19 May 2015 showed significant uplift of the building consistent with hydration and the volume recovery of the clay sub soil from a root induced desiccated state and the greatest amplitude of recovery is located towards the front left hand end of the front elevation and is consistent with the soil drying effects of the appeal tree.
21. The agent considers the uplift of the building is likely to have occurred prior to the commencement of monitoring in January 2015 and the recovery recorded over the monitoring period is consistent with vegetation induced movement. In addition, the Council were provided with supplementary level monitoring data to 3 August 2015, which identified downward movement located at the front of the property.
22. The agent disagrees that persistent moisture deficit is required for there to be no alternative action to felling, because properties can suffer damage during seasonal desiccation alone where no persistent soil moisture deficit is present.
23. The agent concludes that the principal cause of the damage is the appeal tree with the larger companion Hornbeam and the *Wisteria* climber both being secondary factors and an arboricultural solution to mitigate the current damage is to remove the appeal tree because pruning as a means of mitigating the vegetative influence, it is not a viable alternative solution.
24. The appeal tree is the smaller of the 2 close by Hornbeam trees; however its companion could also have roots up to and beneath the house foundations and the retrieved live *Carpinus* roots may belong to either of the trees.
25. The appeal tree is the closest to the damaged building material and from the evidence before me I am persuaded that it is most likely to be having the greatest adverse influence on this part of the property regarding the soil moisture loss and subsequent damage.

Surgery as a means of soil moisture loss control

26. As set out by the Council, the previous pruning would have had some beneficial effects and I accept that ongoing repeated surgery at the same levels could also be beneficial. However, the tree has much growth potential and because of which I take the view that pruning in this case is an uncertain remedy and in any event it would require frequent undesirable surgery.
27. Overall, I consider recurrence of the damage is a potential risk and an unfair burden on the occupants and owners of the property. Therefore, its removal

now followed by replanting can be justified on grounds of removing the risk of future damage caused by the appeal tree and the planting of a replacement specimen that would secure long term amenity benefits for the area.

28. In light of the foregoing, I have decided on the second issue that on balance, the reasons given for the proposals are sufficient to justify that course of action.

Conclusions

29. My conclusions on the 2 main issues have led me to the view that the appeal tree makes a positive contribution to the amenity of the street scene and the wider landscape and the proposals would cause harm. However, I consider the loss of amenity would be short term and mitigated by the planting of a replacement that would provide long term amenity benefits.
30. In reaching my decision I have taken into account all other matters raised by the parties. Therefore, the appeal is allowed. In order to ensure sound arboricultural practices are adhered to I have imposed conditions requiring the tree works to be carried out to the relevant standards.
31. In order to ensure continuity of tree cover, I have imposed conditions regarding the planting of a replacement tree. However, I leave the precise planting position and the replacement species to be agreed between the appellants and the Council.

Alan Engley

Arboricultural Inspector



Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can require the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals. Some other specialist casework types have different processes and timescales; information about which can be provided on request.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal.

This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to clarify matters as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-consider an appeal or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further planning authority in the case once their decision is issued. It is the role of our Quality Assurance Unit to impartially investigate complaints about decisions, an Inspector's conduct or supporting administrative procedures. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it.

We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams and Inspectors. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

We aim to reply as soon as we can. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector or staff member and line management team concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.



Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary and Health Service Ombudsman, who can investigate complaints of maladministration against Government Departments or Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will have visited the site and will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but the Courts have judged it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – The appeal decision will highlight what the Inspector found unacceptable about the proposed development. In some cases it may be possible to address these problems, in which case you should talk to your Local Planning Authority's planning officers or take advice from a planning consultant.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You should contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Our Annual Report and Accounts contains details of our performance. It also includes details of how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'below')

Contacting us

Complaints & Queries in England

Please refer to our website:
<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback/>
or write to:

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

Phone: 0117 372 8252

General Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033

Website: www.ombudsman.org.uk

E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: <http://www.justice.gov.uk/about/hmcts/>

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/> However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

High Court Section
The Planning Inspectorate
1/25 Hawk Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5645

General Enquiries

Phone: 0303 444 5000
E-mail: enquiries@pins.gsi.gov.uk

Complaints

Complaints & Queries in England

Please refer to our website:
<http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>
or write to:

Quality Assurance Unit
The Planning Inspectorate
1/23 Hawk Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5884

Cardiff Office

The Planning Inspectorate
Room 1-004, Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033
Website: www.ombudsman.org.uk

