



Appeal Decision

Site visit carried out on 31 July 2017

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 11 September 2017

Appeal Ref: APP/TPO/6028

20 Belsize Square, London NW3 4HT

- 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 Horse Chestnut tree protected by a Tree Preservation Order.
 - The appeal is made by Nutmeg Properties Limited against the decision of the Council of the London Borough of Camden.
 - The application No 2016/5512/T, dated 10 October 2016, was refused by a notice dated 24 December 2016.
 - The work proposed is to fell the tree, remove the stump and replace with an agreed tree.
 - The relevant Tree Preservation Order is The London Borough of Camden Tree Preservation Order No C958 2011, Land at or adjacent to 20 Belsize Square, London NW3 4HT, which was confirmed on 2 October 2012.
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Decision

1. For the reasons that follow, the appeal is dismissed.

Main Issue

2. Tree Preservation Orders seek to protect trees in the interest of public amenity. Thus, the need for any work to a protected tree, including removal, must be weighed against the resultant loss of amenity. The main issue in this case therefore, relates to the effect of the proposed felling of the Horse Chestnut on the amenity of the area, and whether any resulting harm is justified in the circumstances of this case.

Reasons for the Decision

Amenity Value

3. The appeal site lies within Belsize Conservation Area. I saw that it is not only the streets of mid-19th Century Italianate villas that are an integral part of its special interest, the predominance of gardens and trees also make a significant contribution to the character and appearance of the conservation area.
4. The Horse Chestnut the subject of this appeal is located within the small foregarden to the appeal property, set behind a low boundary wall that runs along the back of the footway. The arboricultural report submitted with the application confirms that, many years ago, the tree was pollarded to around two metres above ground level, from which point two large stems have arisen which then sub-divide at around three metres above ground level, going on to form a crown of lower order branches in the usual way.

5. The tree currently reaches a height of approximately 16 metres. The arboricultural report confirms that there is no indication of decay present in the base of the tree and, whilst the limbs arising at the fork at around 3 metres above ground level are tightly appressed, there is no indication of current mechanical weakness at this major junction. The tree is, though, affected by *Cameraria ohridella* (horse chestnut leaf miner). However, whilst the infestation causes discolouration and defoliation before normal autumn leaf fall, there is currently no evidence to suggest that this is causing, or is likely to cause long term harm to the tree.
6. Notwithstanding that infestation, I do not agree with the appellant's consultant that, on aesthetic grounds, the tree is a net detractor by late summer. On the contrary, it is a distinct and highly prominent feature with a commanding presence in the streetscene at this end of the Square, with no other trees in the immediate locality matching its considerable stature. Neither do I consider it to be of particularly poor form such that it is a detractor in winter months. Indeed, a third party representation specifically comments on its treasured expansive silhouette and branches in the winter.
7. The tree is a very prominent feature in the street, with a high public amenity value. It makes a significant contribution to the character and appearance of the conservation area, providing visual interest to this residential area. As such, the tree contributes scale and maturity to the locality, forming a pleasant contrast to the suburban built development that surrounds it, with the potential to contribute to the amenity of the area for many years to come. Loss of the tree would have a significant negative impact, harming the character and appearance of the area and its visual amenities.

Justification for the proposed works

8. I understand that the subsoil underlying the appeal site is London clay and am advised that, in 2011, historic damage to the property was observed, consistent with the movement of footings relating probably to movement in one of the preceding drought years. I am mindful, in this regard, that the tree is in close proximity to the front wall of the house.
9. Whilst photographs taken in June 2011 are provided showing damage, including cracks and some movement within the boundary wall, cracks to either side of an access door to the front of the lower ground floor and cracks to the lintel above the openings also within the front elevation of the lower ground floor, that damage has since been made good. Even though the report confirms that the movements have apparently not yet recurred, it is maintained for the appellant that the tree is '*clearly causing massive disruption*'. Whilst I saw a crack in the garden wall between No 20 and its neighbour, and noted some slight disturbance to the neighbour's wall along the rear of the footway, there was no obvious disturbance, for instance, to the adjacent paving slabs or to the front boundary wall at the appeal property. There is no substantiated evidence either, for example, of crack/level monitoring over an appropriate period to demonstrate any progressive seasonal movement post-2011 that might be attributable to moisture usage of the tree, or of any soil analysis which might demonstrate desiccation.
10. The appeal property faces roughly north/northeast. As such, the tree does not affect direct sunlight to front facing rooms. I am in no doubt however, that in such close proximity, it does have a material adverse impact on the amount of

daylight to those rooms. I note, in this regard, that the Council has indicated that it would have no objection to a reduction to the crown should such an application be submitted. Although no mention is given in the officer's report as to the extent of what might be considered acceptable in this regard, the appellant refers to a conversation with the officer on site, where a reduction to a height of some 13 metres was apparently mentioned. In my assessment, an appropriate crown reduction, combined possibly with a thinning exercise, could allow more light to penetrate through the branches into the property whilst enabling the tree to continue to make an important contribution to the character and visual amenities of the area.

11. In support of the appeal, my attention is directed to apparently consented heavy reduction works to a horse chestnut to the front of No 12 Belsize Square, carried out in around 2014, which reduced the height of the tree to approximately nine metres. The appellant is aggrieved that an application to reduce the height of the tree the subject of this appeal, also in 2014, was refused by the Council. I am mindful, in this regard, that whilst the tree at No 12 is not covered by a TPO, its location within a conservation area means that applications for works are subject to similar considerations as apply in considering works to a protected tree. However, there is no suggestion that the decision of the Council was appealed at the time and no detail is before me of the background to that consent or the reasons given for the works. I have no way of knowing, therefore, whether the circumstances in that case were directly comparable to that at the appeal site. The extent of any pruning works to the tree at No 20 Belsize Square would need to be the subject of a formal application the Council in the first instance, supported by appropriate evidence in terms of the need for the works.

Conclusion

12. I have considered carefully all of the factors in this case. It is clear that the appellant is unhappy with the tree in such close proximity to the property. However, the problems identified are a natural characteristic of most trees. Moreover, there appear to be measures that could, with the benefit of consent, mitigate at least some of the effects of the shading experienced. I fully recognise that, even were such works undertaken, the tree would continue to grow and that the problems with reduced daylight and, potentially, structural movement could necessitate further works in a few years' time. I appreciate, in this regard, the considerable burden that the management of protected trees can place on the private landowner, including in this case the potential costs of ongoing repairs. Be that as it may, good tree husbandry usually does require ongoing maintenance of some sort or other.
13. In this case, I consider that even in their totality, the other considerations raised are not so great as to justify the loss of a protected tree of considerable public amenity value. This is a very pleasant and attractive area, with the tree the subject of this appeal being an integral part of that environment – the loss of trees such as this would lead to a gradual erosion of the quality of the townscape. Therefore, for the reasons given above, I conclude on balance that removal of the Horse Chestnut is not justified and the appeal does not succeed.

Jennifer A Vyse
INSPECTOR