

A1495



Appeal Decision

Site visit made on 29 January 2009

by **Mick Boddy F Arbor A MICFor CEnv**

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

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Date:

11 MAR 2009

Appeal Ref: APP/TPO/C1950/353

9 Gorseway, Hatfield, Herts, AL10 9GS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent for the felling of a beech tree protected by a Tree Preservation Order.
- The appeal is made by Mr & Mrs P Brien against the decision of Welwyn Hatfield Borough Council.
- The application ref: S6/2008/1270/TP received by the Council on 23 July 2008, was refused by notice dated 1 October 2008.
- The relevant Tree Preservation Order (TPO) is the Welwyn Hatfield Council Land at former Smurfit Sports Ground, Great Braitch Lane, Hatfield TPO 249, 2002, which was confirmed on 19 June 2002.

Decision

1. I allow the appeal and grant consent for the removal of the beech tree growing within the rear garden of 9 Gorseway, Hatfield, in accordance with the application ref: S6/2008/1270/TP, subject to the following conditions:
 - (i) The work for which consent is hereby granted shall be implemented within two years of the date of this decision.
 - (ii) Within twelve months of this decision, replacement planting shall be undertaken in accordance with a scheme which has been submitted to and agreed in writing by the local planning authority. The scheme shall include details of the number, species, size, position, ground preparation and measures to protect and/or support the tree during establishment.
 - (iii) If within a period of two years from the date of planting, the replacement tree (or any other tree planted in its place) is removed, uprooted, destroyed or dies, a further tree of the same size and species shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original.

Main Issues

2. I consider that the main issues in this case are:
 - (i) Whether the proposed removal of the tree would have a significant impact on the visual amenity of the area.
 - (ii) Whether or not there are sufficient grounds for the felling of the tree.

Reasons

The impact of the proposed removal of the tree

3. The beech is an estimated 12 metres tall, with a proportionately broad crown of an average radial spread of 6.5 metres. Situated in the enclosed back garden of the appellant's property, it is overlooked by the adjacent properties on Gorseway and also those on the southern side of Buttercup Close. Additionally, it is visible from Campion Road to the north-west.
4. Whilst I consider the removal of the beech would have some detrimental impact on the visual amenities of area, the significance of its loss would be limited by the presence of the lime (T1 of the TPO) in the rear garden of number 1 Gorseway to the north-west and two limes, of similar dimensions to the appeal beech, to the south-east, the closest of these being in the rear garden of number 11. From their positions, it would appear that it may have been the intention for the two further limes to be trees T3 and T4 of the TPO, although these are described as alders in the first schedule.

Whether the reasons given justify the removal of the tree

5. The principal reasons for requesting the removal of the beech tree are its size in relation to the dimensions of the garden and the associated shading and inconvenience it causes.
6. The rear garden is 10 metres wide by 7.5 metres deep and the beech is situated 900 millimetres in from the north-western boundary fence, at a distance of 7 metres from the rear elevation of the house. The trunk breaks into multiple upright co-dominant stems at 1.8 metres. The crown has an open form, having previously been thinned, and has been lifted to give a canopy clearance of 2.5 metres. The crown overhangs the garden of the neighbouring property to the north-west, number 7, by approximately 5 metres and also overhangs the rear garden of the property to the north on Buttercup Close.
7. Whilst the mean radial spread towards the appellant's house is 6.5 metres, one longer branch overhangs the guttering. The south-eastern section of the crown merges with the crown of the lime tree growing in the rear garden of the neighbouring property, number 11; this possibly being the misidentified T3 of the TPO.
8. The Council officer's delegated report correctly points out that due to the orientation of the property, natural light to the rear of the house would still be restricted even if the tree were to be removed.

9. Whilst I acknowledge that the garden is shaded by the house, I consider that the tree is disproportionately large for the size of the plot and has an overbearing impact on the appellants' property.
10. Although I am sympathetic to the Council's desire to retain the beech tree and the fact that its removal may prompt an application to remove the lime in the neighbouring garden, the current problems should have been foreseen when the development layout was being considered and designed out of the scheme. Whilst the retention of these protected trees would have certainly been desirable when the site was redeveloped, it would have been more appropriate for them to be located within public open space where they would have had greater visual impact and it would have been possible to afford them sufficient space to develop to their potential mature dimensions unfettered. Instead, it appears that insufficient consideration was given to their growth potential and proximity to the surrounding structures, resulting in an unsatisfactory relationship with adjacent properties.
11. Some temporary improvement in the current situation could be achieved by the implementation of further pruning to raise and reduce the radial spread of the crown. However, this would not be a long term remedy and on balance, I consider that the tree has an unacceptably overbearing impact on the appellant's property and as it is not yet fully grown the situation will deteriorate in the future. I therefore consider that the issues raised warrant the tree's removal, outweighing any negative impact that this may have on the visual amenities of the locality.

Other Matters

12. An e-mail in support of the application was submitted by Mr Jones of 7 Gorseway, which stated 'large parts' fall off the tree in severe weather conditions and this can be hazardous with children in the garden. Whilst I could see no indication that the tree is a particularly at risk of branch shedding, I do consider it excessively overhangs the neighbouring garden.
13. A further e-mail in support of the application was submitted by Mr Purbhoo of 13 Gorseway, to the south-east, although this does not raise any additional issues.
14. Whilst insufficient in isolation to warrant the tree's removal, its impact on the neighbouring properties adds further weight to the appellants' case.

Conditions

15. In order to maintain the level of tree cover in the area and in accordance with the appellants' offer to plant a replacement for the beech, I have imposed a condition requiring replacement planting to be undertaken in accordance with a scheme to be agreed between the parties.

16. Although there is some merit in the Council's argument that a replacement tree would not be without its problems, the selection of a more appropriate species and its careful siting will minimise these.
17. I have also imposed a condition requiring that the beech be removed within two years of the date of this decision, to give the Council the opportunity to re-assess the situation in the event of the works not being carried out within this period.

Conclusions

18. Whilst I find that the beech does make some contribution to the visual amenities of the area, on balance I consider that this is outweighed by the inconvenience it causes to the appellant and the fact that its long-term retention would be precluded by its growth potential. I therefore allow the appeal subject to a replanting condition.

Mick Boddy

Arboricultural Inspector