Appeal Decision

Site visit made on 24 November 2009

by Jonathan Fulcher

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

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Date:
26 JAN 2010

Appeal Ref: APP/TPO/M3835/849
74 Arundel Road, Worthing, West Sussex BN13 3EL

- 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 one silver birch tree protected by a Tree Preservation Order.
- The appeal is made by Mr I Woodward-Court of Plainview Planning as agent for Mr S Myers against the decision of Worthing Borough Council.
- The application Ref: WB/09/0555/TPO dated 3 July 2009 was determined by notice dated 25 August 2009.
- The work proposed is the felling of one birch tree.
- The relevant Tree Preservation Order is the Borough Council of Worthing Tree Preservation Order No. 77 of 2001, which was made on 3 October 2001 and confirmed on 17 December 2001.

Decision

1. I allow the appeal and grant consent to the felling of the silver birch tree, subject to the following conditions:-

   a. A replacement tree shall be planted in the north west corner of the garden of the new dwelling. The replacement tree shall be a heavy standard size fastigiate beech (*Fagus sylvatica* 'Dawyck') of 12-14cm girth and shall be planted within 12 months of the date of the removal of the birch tree hereby permitted.

   b. This consent is valid for two years from the date of this decision after which the consent lapses.

Main Issues

2. In my view the main issues in this case are:-

   i) The effects of the proposed felling on the character and visual amenity of the area.

   ii) Whether or not there are sufficient grounds for the works as proposed.

Reasons

The tree

3. The appeal tree is a maturing silver birch tree in the front garden of 74 Arundel Road, about 18m from the road frontage. The birch tree is about 13m in height with a trunk diameter of 37cm and the first main branches arise at about 2m. There is no disagreement between the parties on the health and condition of the tree.

The character and visual amenity of the area

4. Arundel Road, the A27, is the main road from Arundel to Brighton, passing along the north edge of suburban Worthing. The road is busy, particular at rush hours, with much passing traffic. In the vicinity of the site of the appeal tree the character is suburban, with houses on both sides of Arundel Road and residential streets to the north and south off Arundel Road. Although the ground falls away slightly on the south side of the A27, there are no long views to the south from the road and the vegetation and houses on this side of the road are effectively the limits of view. This gives the vegetation on the south side of the road considerable amenity value, as it is highly visible and it provides landscape screening between the road and the houses. There are many trees visible from Arundel Road, along the road itself, in verges of residential trees off Arundel Road, in gardens adjacent to the road and over and past the house. The dwellings (the original dwelling and the new dwelling currently under construction in its garden) on the land of the appeal tree are screened from views from Arundel road by a belt of trees and vegetation in and closely adjacent to what was effectively the rear garden of 74 Arundel Road.

The effects of the proposed felling on amenity

5. The appeal tree is an attractive specimen in its own right, but in amenity and tree preservation order terms this is relevant only if the tree or sufficient parts of it are visible from a public place. The erection of the new dwelling very effectively screens the tree from views from Arundel Road, as the existing dwelling screens views from Cheviot Close. In both cases only a small part of the top of the crown is visible. I note that this point is made in the planning officer's report to committee dated 245 August 2009 relating to this application and I agree with it. I therefore find that the loss of the appeal tree would have a small and almost imperceptible adverse effect on character and visual amenity of the area.

Grounds for felling

6. The new building has been erected in accordance with the details in the consented planning application. Inaccuracies in the plotting of the position of the appeal tree on the application plans have lead to a situation where the tree now stands in the access to the garage. The relationship now is such that the tree obstructs reasonable access to the garage. Although the final access surfacing had not been installed at the time of my site visit, it also seemed reasonably clear that the access could not be installed without damage to the roots of the tree. I have seen no evidence relating to special construction of the access to take account of tree roots, but the relationship is such as to render such measures unlikely to avoid significant damage to the roots of the tree. In addition the crown of the tree touches and overhangs the roof of the new dwelling.

7. The DETR publication *Tree Preservation Orders – A Guide to the Law and Good Practice* (DETR March 2000) says that the LPAs consent is not required for the cutting down or carrying out work on trees if required to implement a full planning permission. It seems reasonably clear to me that the removal of the appeal tree is required to allow the full planning permission to be implemented in any reasonably practicable terms. One interpretation of this might suggest that the tree could simply have been cut down. However, an

application has been made and an appeal lodged, so due process is to be observed. I find, therefore, that the appeal tree obstructs the practical implementation of the planning permission and that its removal is warranted on those grounds.

8. There is space within the garden of the new dwelling for a tree to replace the appeal tree. The appeal submissions refer to the suggestion of the LPA that a fastigiate beech be planted and the agreement of the appellant to this. I find that a replacement planting condition is reasonable and in formulating an appropriate condition I will use some of the agreed specification from the committee report of 25 August 2009.

Conclusions

9. I find that the appeal tree makes a small and barely perceptible contribution to the character and visual amenity of the area.

10. I find that the felling as proposed would have a very small adverse effect on the visual amenity of the area.

11. I find that the grounds for the proposed felling outweigh the adverse effects on the visual amenity of the locality and I therefore allow the appeal.

12. I find that a condition requiring a replacement tree is appropriate and therefore apply such a condition to this decision.

Jonathan Fulcher

Arboricultural Inspector