The Planning Inspectorate

Appeal Decision

Hearing and site visit held on 16 November 2022

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 13 January 2023

Appeal Ref: APP/TPO/Y3805/8074
73 Downsway, Shoreham-by-Sea, West Sussex BN435GN

- 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 Mrs Patricia Lovegrove against the decision of Adur District Council.
- The application Ref: AWDM/0866/20, dated 22 September 2019, was refused by notice dated 6 August 2020.
- The work proposed is to fell one Acer tree and remove all roots.
- The relevant Tree Preservation Order (TPO) is the 'Trees at Downsway, Shoreham-by-Sea (13.53/2/00/SU)' TPO, which was confirmed on 23 January 2001.

Decision

1. The appeal is dismissed.

Main issues

2. The main issues in the appeal are, firstly, whether the appeal tree is of sufficient amenity value to the public to warrant the protection given to it by the TPO; and if so, whether the reasons given are of sufficient weight to justify its removal.

Reasons for decision

Amenity value

3. The Acer tree which is the subject of the appeal is numbered T26 in the TPO. It is a multi-stemmed specimen, with a dense, compact canopy and a well-balanced shape. The tree is of medium height, and approaching full maturity. These attributes give the tree an attractive and pleasing appearance.

4. Downsway is a well-used residential road, forming part of one of the main local distributor routes serving this part of Shoreham. The appeal tree stands just inside the open-plan front garden of No 73, on the outside of a bend, and on the corner formed by Downsway's junction with the cul-de-sac Saxons. A few yards to the east of this, Downsway becomes Mill Avenue, and then meets The Drive at a triangular T-junction. A similar distance to the west is the junction with another cul-de-sac, Annington Gardens. The tree is clearly visible in views along Downsway from all of these directions. As such, it is a prominent feature in the street scene.

5. Travelling further west and south along Downsway, beyond Annington Gardens, there are a large number of other street trees, including some other acers of a similar size to the appeal tree. But in the northernmost section of the road, where No 73 is located, the other trees are generally smaller in scale and more ornamental in nature. The appeal tree is therefore the only one of any landscape significance in this vicinity. As such, its role in the street scene takes on added importance.

6. Taking account of all these considerations, i.e. the tree's own intrinsic quality, its local prominence, and the relative scarcity of other trees nearby, I conclude that the Acer tree in question is a valuable local landscape feature, contributing significantly to the visual amenity of the area. It follows that, for its removal to be justified, compelling reasons would need to be shown.

Justification for felling

7. At the hearing, I saw that a section of the block-paved driveway has buckled, with a raised ridge running diagonally across the surface, close to the front door of the house. The resulting unevenness, in the paving and kerb, spoils the property's neat appearance and presents a potential trip hazard. I can therefore fully understand and sympathise with the appellant's desire to rectify the situation, and to do so in a manner that provides a long-lasting solution.

8. The ridge which is visible under the driveway is not apparent under the intervening area of lawn, and the line that it takes across the paving is somewhat tangential to the position of the Acer tree. But even so, in this case there is nothing to suggest that any other factor is at work, other than root action. Given also that the only other nearby vegetation comprises smallish, low-growing shrubs, the only realistic source for any roots large enough to cause such an effect would appear to be the appeal tree. Consequently, whilst the evidence is not entirely conclusive, I agree on balance that the tree is the most likely cause.

9. Felling the Acer, and then reconstructing the driveway, would thus be one way of remedying the damage. But this does not mean that that is the only potential solution. At its nearest point, the edge of the affected section of paving is some 3-4m or so from the tree. At the hearing, the Council's Tree Officer confirmed that in his view the roots under this part of the driveway could safely be removed, under arboricultural supervision, without adversely affecting the tree's health or stability; and that in this type of situation a root barrier could be used, to prevent any further incursion. This evidence has not been challenged, and I see no reason to disagree with it.

10. Based on the available evidence therefore, it seems to me that it would potentially be possible to reinstate the driveway, and protect it against any recurrence of the existing problem, without the need to fell the tree. I accept that, in the absence of any site-specific technical investigations, it cannot be said with absolute certainty that this alternative would be guaranteed to be effective in this particular location. However, on the balance of the evidence before me, there seems a reasonable prospect. As long as that prospect is available and potentially realistic, the felling of the tree cannot be said to be necessary.

11. The insertion of a root barrier system would undoubtedly incur a significant cost. However, that cost would be offset to some degree by the fact that the

costs of felling the tree and digging out the entire root plate would no longer be needed. In the absence of any figures for either option, I have no evidence on which to conclude that the retention of the tree and insertion of a root barrier should be regarded as unduly onerous on cost grounds. I also acknowledge that consent would still be required for any root pruning, but in view of the Tree Officer's comments at the present hearing, I am satisfied that there is a reasonable prospect of such consent being granted.

12. I appreciate that the current situation has been a long-running source of stress for the appellant and other family members, and indeed continues to be so. I am keenly aware that, in all probability, my decision will not bring an end to that situation. But I must balance this consideration against the harm to the area's visual amenity if the tree were to be removed. I must also take account of the apparent availability of an alternative solution.

13. In all the circumstances, I conclude that the case advanced for the felling of the appeal tree does not outweigh the amenity value that the tree contributes to the public realm in the vicinity of the site.

Conclusion

14. For the reasons set out above, the loss of the appeal tree is not justified based on the evidence before me. The appeal is therefore dismissed.

J Felgate

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Patricia Lovegrove	Appellant
Ms Maria Lovegrove	Family member

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jeremy Sergeant	Arboricultural Officer