Appeal Decision

Site visit made on 12 October 2010

by Jim Quaife **Dip Arb (RFS), F Arbor A, CEnv**

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

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Date:
19 OCT 2010

Appeal Ref: APP/TPO/M3835/1370
89 Poulters Lane, Worthing, West Sussex, BN14 7SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to trees protected by a Tree Preservation Order.
- The appeal is made by Mr Whitley against the decision of Worthing Borough Council.
- The application Ref: WB/10/0500/TPO, dated 3 June 2010, was refused by notice dated 4 August 2010.
- The work proposed is to fell two Hawthorn trees.
- The relevant Tree Preservation Order (TPO) is The Worthing Borough Council, TPO No. 5 of 2010, Land at 89 Poulters Lane, Worthing, which has yet to be confirmed as the six month confirmation period has not expired (the TPO was made under section 201 on 16 July 2010).

Decision

1. I allow the appeal and grant consent to fell the two appeal trees subject to the following three conditions.

   (1) The felling of the appeal trees shall be carried out within one year of the date of this decision.

   (2) Two standard trees of species and size to be agreed in writing with Worthing Borough Council shall be planted in accordance with recognised good practice before the 31st December 2011. The trees are to be planted as agreed in positions no further than two metres from the road frontage boundary wall.

   (3) If within a period of five years from the date of planting a tree (or any other tree planted in replacement for it) is removed, uprooted, destroyed or dies, another 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 tree.

Preliminary Matters

2. The existing TPO (No. 24 of 1998, Nos. 85, 87 and 89 Poulters Lane, Worthing) protects the two appeal trees as a Group G1 and has not been revoked. The new TPO (No.5 of 2010) includes the two appeal trees within an enlarged Group G1, with the addition of two Beech trees. I have determined this appeal on the basis of the 2010 TPO as it has resulted from a more recent assessment of the appeal trees.

Main Issues

3. The impact of the felling of the trees on the character and appearance of the surrounding area.

4. Whether the reasons given for felling the trees are sufficient to justify that course of action.

Reasons

The impact of the felling of the trees on the character and appearance of the surrounding area

5. Poulters Lane is a busy 'A' road running east/west through the northern part of Worthing and is straight and level. There are various trees and hedges along both sides of the road and in the vicinity of No. 89 on the southern side there are brick walls to about one metre or so with a mixture of large and small trees. On the northern side of the road the walls and hedges are generally higher and there is a greater proportion of larger trees. There are also street trees forming an intermittent avenue so that the landscape character of the road is pleasantly verdant.

6. The road is residential with the majority of houses being detached and of two storeys. No. 89 is one such house and is situated on the southern side of the road opposite Offington Gardens. There is a Lime to about 12 metres in height in the street pavement about half-way along the road frontage and the entrance drive is at the western end.

7. The two appeal trees are identified within the First Schedule of the TPO as being within the Group G1, which also includes two young Beech trees.

8. The appeal trees are two mature Hawthorns (*Crataegus monogyna*) to about 5 metres in height, situated next to each other behind a low, Ivy-clad road frontage wall and a hedge. The two Beeches are at each end and there is a Cypress hedge about 5 metres high down the eastern boundary of the front garden.

9. The site is in full view from the approache down Offington Gardens and there are oblique views from each direction along Poulters Lane. The combined visual impact of the road frontage trees is prominent, but augmented to a considerable extent by the street tree. The growth potential of the two Beeches is very considerable, whereas the two appeal trees may not achieve much additional height.

10. The appeal trees' prominence in the landscape is as part of the TPO Group and combined with the hedge and street tree. As such they add to the general foliage mass and their removal would detract from the character and appearance of the area to some extent. Accordingly the appeal trees should not be removed unless there are persuasive reasons to do so.

Whether the reasons given for felling the trees are sufficient to justify that course of action

11. The appeal trees both have prolific Ivy growth throughout their crowns. The eastern tree is in satisfactory structural and physiological condition and the crown break is at about 1.5 metres. The western tree's crown break is at about 1.8 metres and although structurally sound it shows clear signs of physiological decline, although there is no obviously visible indication of why this is so.

12. No evidence has been submitted to demonstrate whether this decline is due to the Ivy or is irreversible in any other terms.

13. The appellant wishes to remove the appeal trees to enable the road frontage screening to be enhanced with a hedge and to plant a single tree in a more central position on the front garden lawn.

14. The street Lime has considerable potential for growth and the two Beeches in the TPO Group even more so. To my mind if one projects the likely situation in say fifteen years time, there might be three large trees in very close proximity to each other. The shade cast by Beech is dense and anything growing underneath would need to be a shade-tolerant species.

15. The front gardens in this part of Poulters Lane are maintained to a good standard and the informality of the trees and hedge on the road frontage of No. 89 does not necessarily detract from this, but I can understand why there is a desire to "tidy" it up.

16. It seems to me that the potential growth of the Lime and Beeches will cause an increasing compromise the growth and condition of the appeal trees and it may be better for them to be replaced with more suitable species.

17. The current value they have in the landscape relates to the screening effect they have on the road frontage at a lower level than the larger trees. A replacement tree in the centre of the lawn would not restore this screening, but is a choice available to the appellant irrespective of this appeal.

18. The replacement of the appeal trees in their present positions with more suitable species would reduce the current compromise to the private amenity of the property and would restore the benefit to public amenity once the replacement trees had become established in the landscape.

Conclusion

19. No evidence has been provided to demonstrate that the condition of the appeal trees is sufficiently poor that it cannot be improved.

20. However, whilst I do understand the appellant's desire to improve the visual appearance of the road frontage to his property, I regard the continuance of the road frontage screening as important.

21. The growth potential of the two Beeches within the TPO Group G1 together with the presence of the Lime in the street is such that the long term potential of the appeal trees to provide that screening is in doubt due to suppression.

22. Consequently I am inclined to agree to the removal of the two appeal trees provided that two replacement trees are planted at the road frontage to maintain the screening.

23. I am content for the appellant and the Council to reach mutual agreement about the species of the replacement trees, but suggest that consideration is given to their shade tolerance.

24. Accordingly I allow the appeal and impose a condition with regard to the allowance of time to fell the appeal trees, and two further conditions in respect of two replacement trees. The need for two replacement trees is to provide continuity of screening in the landscape, and the replacement trees should be planted and maintained properly.

Jim Quaife

Arboricultural Inspector

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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 & Tree Preservation Order (TPO) 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. A challenge against a Tree Replacement Notice (TRN) appeal must be received by the Administrative Court within 28 days of the date of the decision, unless the court extends this period.**

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.

Contacting us

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

Complaints
Complaints & Queries in England

Please refer to our website: http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm or write to:

Quality Assurance Unit
The Planning Inspectorate
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2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0117 372 8252

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
Email: phso.enquiries@ombudsman.org.uk

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: www.courtservice.gov.uk

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.

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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 ask for 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.

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 explain things 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-open an appeal to re-consider its merits 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 direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. 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. 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 give a full reply within three weeks wherever possible. 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. If this is likely to delay our full reply we will quickly let you know.

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 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.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.

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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 their 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 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 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?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"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 could 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 against the targets set for us by Ministers and 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 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England

Please refer to our website: http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm or write to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle 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.