



Appeal Decision

Site visit made on 18 August 2020

by Elaine Benson BA (Hons) DipTP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Appeal Ref: APP/TPO/B3030/7876

26 Blenheim Avenue, Lowdham, Nottingham, Nottinghamshire NG14 7WD

- 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 Mr Lee Kummer against the decision of Newark and Sherwood District Council.
 - The application Ref: 20/00378/TPO, dated 7 March 2020, was refused by notice dated 30 March 2020.
 - The work proposed is fell Willow.
 - The relevant Tree Preservation Order (TPO) is N93 (Formerly land NE of Lowdham Railway Station), which was confirmed in 1988.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are the likely effect of the proposed tree works on local amenity and whether the reasons for felling the tree are sufficiently justified.

Reasons

Amenity

3. The appeal tree is a Willow standing in the rear garden of 26 Blenheim Ave (No 26), close to the boundary with No 30 Blenheim Ave (No 30). The Willow is around 12-14m tall, with a crown spread of some 8-10m. It appears to be in good structural and physiological condition. The Willow has previously been pollarded in accordance with a 2010 consent. There is no indication of any disease or decay on the pruning wounds.
4. The Willow tree is visible for a wide area from the adjacent road. It is part of Group 6 of the TPO protected trees which comprises 3 Limes, 4 Poplars, 4 Horse Chestnuts and 3 Willows running along the rear boundaries of Nos 26-39 Blenheim Ave. The Group is also viewed in the context of the other linear Groups identified in the TPO.
5. In the appellant's opinion the Willow has no amenity value. However, I find that as an important part of Group 6, the Willow makes a significant contribution to the attractive character of the surrounding area. Its removal would result in significant harm to amenity.

6. Within this context, it is necessary to determine whether the reasons for felling the tree are sufficiently justified.

Reasons for proposed works

7. It is proposed to fell the Willow due to its size and location which the appellant considers excessively shades his rear elevation and garden and those of No 30. Furthermore, the tree blocks light to the kitchen at No 30. The Willow drops large amounts of leaves and twigs all year round, covering both gardens and blocking drains and guttering.

Assessment

8. I have had regard to the orientation of Nos 26 and 30, the height and density of the crown and other aspects of the Willow's relationship with those properties. The tree certainly has an impact on the amount of daylight reaching the gardens beneath the canopy. However, the limited evidence of excessive shading of the garden-facing rooms, including kitchens, is unconvincing. Nonetheless, in such situations limited daylight usually goes hand-in-hand with living in an area defined by mature trees which contribute to a pleasant living environment.
9. The appellant states that there is a constant stream of falling leaves and twigs, which are more excessive in autumn. However, fallen leaves and other debris are common matters which should be considered when making a decision to live in a property containing or adjacent to trees, particularly protected ones. Additionally, the management of those trees as well as the maintenance of drains and guttering etc, including the cost, should also be taken into account as part of ongoing property maintenance. The nuisance factors identified do not justify felling the Willow. Notwithstanding these conclusions, the appeal evidence indicates that there may well be other means by which to limit the identified effects of the Willow, such as reduction pruning or pollarding, which would also secure its continuing contribution to local amenity.
10. The appellant refers to a clause in the property Deeds which seeks to prevent anything being done on the property or estate that could be or become a nuisance, annoyance or injury to any part of the estate or its occupiers. However, the clause appears to relate to the activities of the owners/occupiers of dwellings on the estate and in my view could not reasonably relate to the presence of a tree which significantly pre-dates those properties. But in any event, this appeal decision relates only to protected trees legislation.
11. The proposed replacement planting of 2 fruit trees would not replicate the size, scale or appearance of the mature Willow and would not mitigate against its loss.
12. In the normal course of events there is a strong presumption against the removal of an apparently healthy, protected tree. There is no arboricultural justification for felling the appeal Willow. Having considered all of the evidence put forward, I conclude that the reasons for felling the Willow are insufficient to justify the proposed works. Accordingly, the appeal is dismissed.

Elaine Benson

INSPECTOR