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# Appeal Decision

Hearing and site visit held on 7 January 2015

**by John Felgate BA(Hons) MA MRTPI**

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

**Decision date: 26 January 2015**

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**Appeal Ref: APP/TRN/U5360/4077**

**44 Benthal Road, Stoke Newington, London N16 7BX**

- The appeal is made under regulation 18 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a tree replacement notice (TRN).
  - The appeal is made by Wintertrees Limited against the issuing of the notice by the Council of the London Borough of Hackney.
  - The Council's reference is 2013/0509/ENF.
  - The notice was issued on 23 June 2014.
  - The requirements of the notice are: *"To plant in the rear garden of the property one tree of the following species, of at least 4m (four metres) in height: field maple (*acer campestre*); or native cherry (*prunus avium* or *prunus padus*), single flowered only; or hornbeam (*cerpinus betulus*)"*.
  - The period for compliance with the notice is 6 months, from the date on which the notice takes effect.
  - The appeal is proceeding on the grounds set out in sections 208(1) (a), (aa) and (b) of the Town and Country Planning Act 1990.
  - The property is situated within the Cazenove and Northwold Conservation Area.
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## Decision

1. The appeal is dismissed and the Tree Replacement Notice is upheld, subject to the following variation:
  - *In Section 4 of the Notice, the words "4m (four metres)" shall be replaced by "2m (two metres)".*

## Legal basis for the decision

2. With regard to trees in Conservation Areas, Section 213(1) of the Town and Country Planning Act 1990 provides that, if any tree is removed, uprooted, or destroyed, it shall be the duty of the owner of the land to plant another tree, of an appropriate size and species, as soon as he reasonably can.
3. Section 213(3) states that the duty attaches to the person who is the owner of the land, and may only be enforced in accordance with Section 207. The latter section provides that, where the duty is not complied with, the local authority may serve a tree replacement notice (TRN) on the owner of the land.

## Reasons for the decision

*The appeal under Ground (a): that the duty to plant a tree does not apply*

4. There is no dispute as to the fact that, prior to 8 August 2013, a large sycamore tree stood in the rear garden of no 44 Benthal Road, and that the tree has since been felled. On my visit to the site, I saw the stump that now remains.

5. The appellant states that the felling was carried out by the occupier of the adjoining property, at the same time as some other trees were being felled on that site. I have no reason to doubt that account. However, in the relevant legislation, as set out above, the duty to plant a replacement tree is placed upon the owner of the land. That remains the position, irrespective of who was responsible for the action. **I appreciate the appellant's view that this is unfair** in the present circumstances, but nonetheless, the law is clear as to where the duty lies.
6. Moreover, even if another person had admitted responsibility, or if there were evidence to that effect (although neither of these is the case here), the Act contains no provision for serving a TRN on anyone else other than the owner of the land where the tree itself stood<sup>1</sup>.
7. It is not disputed that No 44 is owned by the appellant company, nor that Benthall Road is within a designated Conservation Area. The duty under S.213(1) of the Act therefore applies, and the appeal under Ground (a) must fail.

***The appeal under Ground (aa): that the duty should be dispensed with***

8. The Council estimates the height of the felled sycamore to have been around 15m. Although this is disputed by the appellant, judging from the stump, the **tree certainly had a substantial girth, and the Council's estimate does not seem unreasonable.**
9. Although it was at the rear of the property, from my observations it is likely that a tree of that size would have been clearly seen, through the gaps between properties, from points in Benthall Road itself, and in Brooke Road and Maury Road. In such a densely built-up area, any large, mature trees of this kind tend to play an important role in softening the urban landscape, and I have no doubt that the tree which was felled in this case would have made a valuable contribution in that respect. Had it remained, the tree would also have had some potential for further growth, which would have increased its value to the area in future years. The loss of the tree is therefore likely to **have had a significant adverse effect on the area's visual amenity.**
10. The purpose of the legislation relating to trees in conservation areas is directed towards protecting and enhancing the character and appearance of such areas. In the present case, that aim would not be fulfilled if the duty to replant were dispensed with. The appeal under Ground (aa) therefore also fails.

***The appeal under Ground (b): that the requirements of the notice are unreasonable***

11. The requirement in the TRN is to plant a replacement tree with a height of 4m at the time of planting. A tree of that height would be visible straight away, and would thus provide some immediate visual compensation for the loss of the sycamore. To that extent, I appreciate the reasons for the requirement as sought by the Council.
12. However, as the appellants point out, the property in question is a terraced house with no direct access to the rear garden, other than through the building

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<sup>1</sup> Section 209 of the Act contains provision for an owner, in certain circumstances, to recover costs incurred in complying with a TRN, from the person responsible for the cutting down of the tree. However, the liability for complying with the Notice remains with the person on whom it is served.

- itself. And even then, given the positioning of the door and window openings, cross-walls, corridors and staircases, there is no through-route that does not involve at least one right-angled turn, within a confined space. At the site visit, the **Council's tree officer** accepted that it is unlikely that a 4m tree could be transported through the building in this way without causing significant damage, both to the fittings and finishes, and to the tree itself, and I agree.
13. I accept that, if the replanting had been carried out while the property was undergoing renovation, it might have been a simpler operation. But that would have meant the appellants effectively forfeiting their right of appeal. In any event, the building works have now been completed, and I must judge the appeal based on the situation as it is now.
  14. It might be feasible for the new tree to be brought in by lifting it by hand over the adjoining garden fences, but that would require the agreement of the owners of those properties, and there is no certainty that they would wish to co-operate. It would be unreasonable to rely on a solution which is outside the **appellants' own control**.
  15. It would undoubtedly be possible for the tree to be hoisted over the building by **using a crane or 'cherry-picker'**. **However**, this option would clearly be the most expensive. The appellant estimated that the hire of the necessary equipment and an operator would be likely to cost in the region of £500, and **this was not disputed by the Council as a 'ball-park' figure**. Whilst there is no further evidence to support this specific figure, I have no doubt that the cost would be substantial. In my view, insisting on a solution which would impose additional costs of such magnitude, in the circumstances of this case, would be disproportionate to the benefits.
  16. At the hearing, it was agreed that a replacement tree of a smaller initial size would be likely to grow more quickly in the next few years after planting, so that after a period of time, the difference in size between the smaller tree and a 4m one, would reduce to nothing. In the case of a tree with an initial height of 2m, that period was said by the Council to be about 8-10 years. In addition, whilst I have no evidence as to how long a 2m tree would take to reach 4m, that period would clearly be less.
  17. I appreciate that a 2m tree would not have the same immediate benefit. But it is agreed that such a tree could be brought in through the building, without causing damage or excessive costs, and without reliance on other property owners. Although there would be some initial disadvantage to visual amenity, that disadvantage would last only for a limited period of time.
  18. In all the circumstances, I conclude that the requirement in the TRN for a tree of 4m in height is unreasonable, and that a height of 2m should be substituted. Accordingly, the appeal on Ground (b) succeeds, and the Notice is varied accordingly.

*John Felgate*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mr Abraham Saurymper                      Wintertrees Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Marcin Manikowski                      Planning Officer  
Mr Nick Jacobs                                      Tree Officer