
Appeal Decision

Hearing held on 18 November 2014

Site visit made on 18 November 2014

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

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

Decision date: 7 January 2015

Appeal Ref: APP/TPO/A5840/4001

Old Alleynian Club, Dulwich Common, London, SE21 7HA

- 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 trees protected by a Tree Preservation Order.
 - The appeal is made by OCA UK Ltd against the decision of the Council of the London Borough of Southwark.
 - The application ref. 14/AP/1028, dated 31 March 2014, was refused by notice dated 15 May 2014.
 - The work proposed is to fell to ground level and treat the stumps of English Oak trees T2, T3 and T5 and Ash trees T1 and T4.
 - The relevant Tree Preservation Order (TPO) is the London Borough of Southwark TPO (no. 444) 2013, which was confirmed on 20 February 2014.
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Decision

1. The appeal is allowed and consent is granted to fell to ground level the English Oak trees T2, T3 and T5 and the Ash trees T1 and T4 at Old Alleynian Club, Dulwich Common, London, which are protected by the London Borough of Southwark TPO (no. 444) 2013, and treat their stumps, in accordance with the terms of the application, ref. 14/AP/1028 dated 31 March 2014, subject to the following condition:
 - 1) A scheme for the planting of five replacement trees, namely three English Oak *Quercus robur*, one Hornbeam *Carpinus betulus* and one Field Maple *Acer campestre*, shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include the position of planting and the specification of the trees to be planted. The works shall be carried out in the first planting season (November to March) following the removal of the English Oak (T2, T3 and T5) and Ash (T1 and T4) trees hereby permitted.

Preliminary Matter

2. It was noted at the hearing site visit that there are two separate stems at the location of tree T3 (an English Oak). However, it was accepted by both main parties that these appear to be joined at the base. As such, and for the avoidance of doubt, I have treated tree T3 as referring to both stems.

Main Issues

3. The main issues in this appeal are:

- (a) the effect on the amenity of the area if the disputed trees were to be felled and replaced; and
- (b) whether the reasons given for the works, which relate to damage to a nearby sports pavilion, are sufficient to justify that course of action.

Reasons

Amenity

4. The trees that are the subject of this appeal lie within a woodland belt separating the Old Alleynian playing fields (to the north west) from a golf course (to the south east). The belt of trees, which is protected by the above-noted woodland TPO, lies within the Dulwich Wood Conservation Area. It is closely related to the Dulwich and Sydenham Hill Golf Club Site of Importance for Nature Conservation. The wood is shown on historical maps of the area.
5. The five disputed trees lie on the north western edge of the woodland belt and are most easily seen from that direction. In views from the main road (Dulwich Common) they appear as part of the wooded backdrop to the playing field and pavilion. The tallest tree (an English Oak T5), which lies on somewhat higher ground than the other four, is particularly prominent in such views. It is not disputed that all five trees contribute positively to the verdant setting of this part of the conservation area. This contribution would be diminished by their removal.
6. Nevertheless, the presence of mature trees in the remainder of the woodland belt, including trees lying to the rear (south-east) of the disputed trees, would provide some visual continuity in the above-noted views in the event of the **trees' removal**. Together with the replacement planting suggested by the Council, which has been accepted in principle by the appellant (subject to agreement of details about their specification and location), this would to some extent reduce the adverse effect described above. However these factors would not fully compensate for the loss of the five mature specimens, four of which (T1, T2, T3 and T5) are accepted by both main parties to be in a fair condition. **For these reasons, I consider that the area's character and appearance would be harmed.**
7. National Planning Practice Guidance (PPG) states that where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation¹. The Council and London Wildlife Trust raise concerns about the **trees' biodiversity value**. **Although detailed survey evidence has not been submitted**, I have no reason to doubt that the woodland belt provides valuable habitats for a range of species, as well as providing ecological connectivity within the wider landscape. The English Oak T5 contains cracks and crevices that are likely to be of habitat value. Removal of the disputed trees would adversely affect the structure and range of habitats available within the woodland belt. Nevertheless, much of the woodland belt would be retained and replacement planting would be carried out. The appellant accepts that normal procedures in terms of contacting Natural England would be followed if protected species were to be discovered during operations, in line with relevant legislation. On balance, these matters would be sufficient to avoid material harm to biodiversity interests.

¹ PPG ID 36-008-20140306. This clarifies however that such factors alone would not warrant making an Order.

Justification for the Proposed Removal of Trees

8. A sports pavilion is located in front (to the north-west) of the trees that are the subject of this appeal. Structural damage to the building was first discovered in November 2011, including vertical, horizontal and diagonal internal cracks – both internally and externally. These were visible at my site inspection. Movement has particularly occurred at wall/ceiling interfaces and at the junction between a single storey rear addition and the main building. Although damage extends to various parts of the structure, it is particularly concentrated towards the rear and right-hand end of the building when viewed from the front elevation. **At the hearing, the appellant's consulting engineer estimated the costs of the required repairs to the building's structure to be some £20,000.** I have no reason to take a different view.
9. Site investigations and level monitoring have been undertaken since the initial discovery of damage. Trial pits and boreholes were dug to the rear of the building in 2011 and 2014. These showed that the building lies on a shrinkable clay subsoil containing roots from Oak and Ash – findings that are not disputed by the Council. While the Council has raised concern that the roots were not DNA-tested to establish which individual trees were involved, its arboricultural consultant accepted at the hearing that it was likely given the relationship of the five trees to the building (with separation distances of some 2 to 8 metres²) that roots from all five underlie the structure. I agree with that assessment. Other trees within the woodland lie significantly further from the pavilion and I have seen no suggestion that their roots may also underlie its foundations.
10. Damage to a drain running to the rear of the building was identified at an early stage after the initial discovery of structural problems. However, this was repaired in 2012. Level monitoring carried out since that date, over a period from January 2013 to August 2014, shows a clear pattern of continued movement³. This is seasonal, with the highest negative movements (implying a fall in level) taking place between September and November, and is at its most severe within those parts of the building (to the rear and the right hand side when viewed from the front elevation) that lie closest to the disputed trees. These positions broadly correlate with the damage already described.
11. **The Council comments that it is possible that the building's foundations were inadequate given the proximity of the structure to pre-existing mature trees.** Other than the two trial pits, details of the foundations have not been provided. The history of the pavilion is unclear. While my attention was drawn to a photograph showing a structure present in 1926-27, its form and materials differ somewhat from the present building. In any event, what is not disputed is, first, that a building has existed here since at least the 1960s and, second, that no evidence of damage had been experienced prior to 2011. Given that the building lies very close to some of the trees, notably tree T3, and that it existed for some 40-50 years without experiencing damage, I accept the **appellant's view that inherent defects are unlikely.** Furthermore, although the reasons for the timing of the onset of the present problems are unclear, I am

² The appellant's arboricultural consultant accepted at the hearing site visit that there were some errors in the notation of the building's footprint on the tree survey plan (job no. 55823 dated 11/03/14). It was established on site that tree T3 lies somewhat closer to the building than is suggested by the submitted plan.

³ The appellant's engineering consultant clarified at the hearing that there is an error in the site sketch (dated 01/09/14, ref. 00/28116) that accompanies the submitted level monitoring information, with the left-hand elevation (when viewed from the front of the building) being mistakenly notated as the front elevation.

satisfied from the evidence described above that the above-noted damage has been caused by the five trees that are the subject of this appeal.

12. In respect of works on protected trees, the PPG states that in general terms, the higher the amenity value of the tree and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted⁴. In the present case I am satisfied that the above-noted reasons are sufficient to justify the removal of the disputed trees and their replacement as described above. It is common ground that the proximity of these trees to the building would preclude the establishment of an effective root barrier. The costs of underpinning or the introduction of piled foundations would, on the **appellant's evidence** (which has not been substantively challenged), be unduly onerous bearing in mind the necessary costs of remedying the existing damage. Crown reduction would severely harm the amenity value of trees concerned and would be an unrealistic option for trees lying close to the building. **I have no reason to doubt the view of the appellant's engineering consultant** that any subsequent movement arising from heave could be appropriately accommodated.

Conditions

13. As already noted, it is necessary to ensure that replacement trees are planted following the removal of the disputed trees. **I have amended the Council's** suggested condition to include timing requirements, as discussed at the hearing. While the Council also seeks a condition requiring a protected species survey to be undertaken, such a requirement would fail the test of necessity given the relevant statutory protection.

Conclusion

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

M J Hetherington

INSPECTOR

⁴ PPG ID 36-091-20140306.

APPEARANCES

FOR THE APPELLANT:

Ms M MacQueen	OCA UK Ltd, Arboricultural Consultant
BSc CBiol MSB MICFor CEnv MAE	
Mr L Bryer	Cunningham Lindsay, Engineering Consultant
BEng CEng MICE	
Mr P Morgan	Old Alleynian Club
Dip A/M	

FOR THE LOCAL PLANNING AUTHORITY:

Mr O Stutter	London Borough of Southwark
MSc(Oxon) BSc(Env Sci) MArborA CEnv	
Mr G Underhill	D F Clark Bionomique Ltd
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FOR THE LONDON WILDLIFE TRUST:

Mr T Wileman	London Wildlife Trust
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