



Appeal Decision

Site visit made on 11 November 2019

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/TPO/B9506/7432

Busketts House, Brighton Road, Sway, Hampshire SO41 6EB

- 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 Mr Leigh Webb against the decision of New Forest National Park Authority.
 - The application Ref: TPO/19/0281, received by the Authority on 26 March 2019, was refused by notice dated 3 May 2019.
 - The work proposed is T1 Scots Pine, to be felled to ground level, approx. 19m.
T2 Scots Pine, to be felled to ground level, approx. 12m.
 - The relevant Tree Preservation Order (TPO) is Tree Preservation Order No. 6/04, land of Forest Lea, Eagle Oak House, The Towers (formerly Tower House) and new development south up to the boundaries of Haymeads and Spinney Cottage, Sway in Hampshire, which was confirmed on 14 July 2005.
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Decision

1. The appeal is allowed and consent is granted to fell two Scots pine protected by the Tree Preservation Order No. 6/04, land of Forest Lea, Eagle Oak House, The Towers (formerly Tower House) and new development south up to the boundaries of Haymeads and Spinney Cottage, Sway in Hampshire, in accordance with the terms of the application TPO/19/0281, received by the Authority on 26 March 2019, and subject to the following condition: -
 - 1) Following the felling of the trees, two replacement Scots pines shall be planted within the property. Details of the location of the replacement trees is to be submitted to and agreed in writing by the local planning authority. The planting of the replacement trees shall take place in the first planting season (November to March inclusive) following the felling of the trees hereby consented to be removed. The replacement trees shall be a minimum of 8-10cm in girth and shall be maintained for a period of 5 years. If within a period of 5 years from the date of planting, the tree (or any tree planted in replacement of it) is removed, uprooted, destroyed or dies, another Scots pine shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree.

Procedural Matters

2. There was no declaration date upon the original application. The Authority received the application on the 26 March 2019, and so I have referred to this date above.

3. The original application requested the felling of three trees, that is two Scots pines and a sycamore. However, the latter is not protected. As the Authority have considered the application solely with regard to the felling of the two Scots pines, so shall I.
4. The pine trees have been referred to by the parties in a variety of ways. Within the original application and the appellant's grounds of appeal they are described as T1 and T2, with the Authority referring to them by the numbers allocated within the TPO, that is T23 and T34. From the evidence before me they are the same trees, and I have referred to them using the appellant's numbering.

Main Issue

5. The main issue is the effect of the proposed felling of two Scots pines upon the character and appearance of the area, and whether sufficient justification has been demonstrated for the works.

Reasons

6. Busketts House is a detached house positioned within a generous garden. Forming part of a small estate of individually styled houses, within the gardens of these properties there are several tall trees, both evergreen and deciduous. The number and size of the trees gives a mature and sylvan appearance to the area, forming leafy skylines and backdrops to the houses. This and the presence of large trees along and near property boundaries gives a green sense of enclosure and privacy to the dwellings.
7. The Scots pines that are the subject of the appeal are part of a deep row of trees near to the rear boundary of Busketts House. Within this row there are other pines and a mix of deciduous specimens, albeit the pines form a linear group close to the garden boundary. Given the height and positioning of the pines, these trees make a distinctive evergreen backdrop to Busketts House, contributing to the verdant enclosure of the property. The pines can be seen from a number of public and private vantage points, including from the cul-de-sac serving Busketts House and also from Oakenbrow. The pines make a positive contribution to the appearance of the area, and as such the reasons for felling the trees need to be convincing and conclusive.
8. The trees have distinctive forms, with the stems of both leaning towards the lawn. T1 in particular has an abrupt curvature at a low level. In both cases there was no apparent recent or historic root plate movement, and given the proximity of other trees nearby, including those that have been felled, the leaning nature of the stems is likely to have been a consequence of growing as part of a close-knit group. The asymmetric crowns of both trees are small and restricted to the upper extents. The pines have smaller and sparser canopies than the others nearby, but despite this they can be seen from the public realm and form part of the linear evergreen group that contributes towards the verdant variety of the area.
9. There are a number of branch stubs present upon the two pines, including some recent ripped-away limbs, with one of the trees having a long deep wound deriving from such an occurrence. Both trees also have several large wounds upon their stems and limbs caused by the contact from a beech growing between them. From my ground level inspection I saw that the

- constant friction is preventing the wounds from healing. There are multiple occurrences of the bark having been abraded, with deep wounds being eroded.
10. In addition, lower down its stem, T2 has a large bulge, with a rib of around 3m long on the opposite side with bark detachment apparent. Neither of the parties has referred to the presence of these lower stem defects on T2. Bulges can develop for a number of reasons, including being a response to trauma. Ribs can be a sign of cracking, and given the length of the rib and its profile, irrespective of the absence of any assessment of the feature by the parties, in this instance the presence of both defects on the lower stem of T2 is a cause for concern as regards the health and stability of this tree.
 11. Neither of the parties has provided either monitoring evidence or an assessment of any of the wounds and defects referred to above. Irrespective of this and the lower stem defects present upon T2, the number and extent of the contact wounds is such that with both pines there is a question mark over their long term future. Multiple contact wounds are apparent on both trees. Some of these wounds are large, and the constant rubbing of the beech upon both pines is such that the wounds are not healing. Given the number, size and depth of the wounds and that they will continue to develop, in due course they are likely to be a means of ingress for decay directly into the stems of the trees. Consequently, the potential for harm resulting from the failure of the trees in their residential context has to be given considerable weight.
 12. In the normal course of events there would be a strong presumption against the removal of a healthy protected tree that makes a contribution to the character and appearance of the area. However, in this case the pines have several issues that when taken as a whole raises a question mark over their long-term health and vitality. This is of concern given their height and position within a domestic garden, and also their proximity to other residential properties. The pines can be seen from the public realm, but they comprise part of a larger group, and there are other tall trees very close by, including the young beech. Although the pines contribute to the evergreen row, the small canopy sizes and condition of the trees is such that they are not the most prominent pines within the group. On balance, and having regard to the particular circumstances in this instance, I have to undertake a cautious approach, as the combination of factors is such that the trees pose an unacceptable risk to people and property. On that basis the trees are to be felled.

Conditions

13. The Authority has not suggested any conditions, and part of the appellant's case is that the felling of the pines would allow the growth of the young beech. Whilst the beech would contribute towards the mix of species, there would be provision within the garden to plant replacement pines in order to maintain the variety of trees. Such replacements would have the additional benefit of enhancing the age-range of trees in an area where there are a large number of mature specimens, thereby maintaining the evergreen variety that is such a feature of the character and appearance of the area.

Conclusion

14. With any proposal for works to a protected tree the effect needs to be weighed against the resultant loss of amenity to the area and the potential harm to

people and property. The trees contribute to the sylvan nature of the area, but in this instance I am concerned that the combination of wounds and defects present in both trees poses an unacceptable risk to people and property. Thus, for the reasons given above and having considered all other matters raised, the appeal is allowed.

J J Evans

INSPECTOR