



Appeal Decision

Site visit made on 15 March 2022

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/TPO/C3430/8467

39 Tudor Way, Cheslyn Hay, Walsall W56 7LN

- 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 Darren Ansell against the decision of South Staffordshire Council.
 - The application Ref: 20/01015/TTREE, dated 20 October 2020, was refused by notice dated 24 February 2021.
 - The work proposed is: Fell 2 No. Oak Trees
 - The relevant Tree Preservation Order (TPO) is the South Staffordshire District Council TPO No 122 1993, which was confirmed on 22 February 1994.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the trees on the character and appearance of the area, and whether sufficient justification has been given for their removal.

Reasons

3. The oaks are sited on the rear boundary of 39 Tudor Way, and before the garden boundary was moved, were located within the adjacent public footpath. They are roughly 12 metres tall, and have the asymmetry, slight suppression and underlying naturalistic form of specimens that have developed mainly in a rural environment.
4. There has been some unsympathetic pruning to both trees in the past, with the removal of large lower limbs as well as the inappropriate removal of smaller branches within the canopy, leaving unsightly stubs. Nonetheless, I agree with the Council that they contribute to the green corridor between two residential developments and to the rural character of the footpath. I conclude therefore that they make a moderate contribution to the character and appearance of the area.
5. A brief arboricultural report has been submitted which states that there is a high proportion of dead wood, rot and weak limbs in the oaks. The description of the rot and damage is imprecise and is not accompanied by photographs. As such it is difficult for me to reach any conclusion in this regard, particularly as I was viewing from the ground. Reference is made to epicormic growth but

this is not a sign of disease, but generally a response to excessive pruning. Deadwood can be removed without formal consent from the Council.

6. Consequently, there is very little before me to indicate conclusively that either of the trees is a safety hazard, or diseased or damaged to such an extent as to require felling. Even if I gave the conclusions of the report full weight, it is unclear why formative or selective pruning could not address those concerns.
7. A structural report was submitted with the application, but the author's qualifications and experience in this area are unclear. Moreover, the report indicates that the trees are far closer to the dwelling than I observed to be the case. Nor does the report clarify whether the cracking identified is cyclical, which would be expected where the actions of trees on shrinkable clays are concerned, or progressive. The report also refers to heave affecting the foundations, when the usual effects of tree root action on shrinkable clays is subsidence. Given these discrepancies, I give the report limited weight.
8. I appreciate that there is some cracking at the junction of a new extension and the original dwelling, and this may be related to rotational movement as suggested in the report. However, it is unclear to me why the trees should be identified as the cause of that movement. In my experience rotational movement is more generally related to a failure of support or the differential expansion of adjoining structures. Although the oaks' root zone may extend across the garden to the dwelling, this does not necessarily equate to structural damage. The National Housebuilding Council Guidance sets out formulae for measuring the zone of influence of different species on different soil types, and recommendations for foundation types and depths. In this case it is to be expected that the new extension's foundation was designed to accommodate the existing trees.

Other matters

9. I appreciate that other properties have had trees removed but this does not necessarily set a precedent. The reasons for their removal are not before me and in any case each appeal is determined on its merits.

Conclusion

10. Trees do not have to be balanced or symmetrical to contribute to the character and appearance of an area. Although these oak trees make only a moderate contribution to the visual amenity of the area, there is a presumption against the removal of protected trees. This is reinforced by Policy EQ4 of the Core Strategy, which states that trees should be retained unless it can be demonstrated that removal is necessary, and Paragraph 131 of the National Planning Policy Framework. This states that existing trees are to be retained wherever possible.
11. In this case the evidence before me does not set out compelling reasons for the oaks' removal. I conclude therefore that insufficient evidence has been provided to demonstrate that felling is necessary, and nor is there anything before me to set out why lesser works would be inappropriate or unsuitable to address the concerns raised. The appeal is dismissed.

A Edgington INSPECTOR