



Appeal Decision

Site visit made on: 30 July 2014

By: **Jim Unwin** BSCFor MICFor FARborA CEnv.

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

Decision date: 11 September 2014

Appeal Ref: **APP / TPO / L3245 / 3898**

At: **No.65 Wenlock Road, Shrewsbury, SY2 6JU.**

- 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. Christopher Roberts, against the decision of Shropshire Council.
- The application reference 14/00953/TPO dated 02 March 2014, was refused by notice dated 16 April 2014.
- The work proposed, and appealed, is refusal of consent for felling one monkey puzzle tree, T1 of the TPO.
- The relevant Tree Preservation Order (TPO) is *The Shrewsbury & Atcham Borough Council Tree Preservation Order (65 Wenlock Road, Shrewsbury)*, which was confirmed on 10 October 1990.

Decision

1. I dismiss the appeal to fell one monkey puzzle tree T1 of the TPO, standing in the front garden of No.65 Wenlock Road, Shrewsbury.

Main Issues

2. I consider the main issues in this appeal are:
 - The impact the proposal would have on the appearance and character of the locality, and
 - whether the reasons given for felling the monkey puzzle tree are sufficient to justify that course of action.

Reasons

- ***The impact the proposal would have on the appearance and character of the locality.***

Character of the locality

3. The A458 Wenlock Road is one of two main roads leaving the eastern part of Shrewsbury: running quite straight in a south-easterly direction from The Column roundabout to open countryside and the A5 southern ringroad almost 2km away. Domestic properties line sections of both sides of the road behind asphalt footways, ranging from Victorian terraces to much larger detached houses, and Twentieth-century houses.

No.65 is semi-detached and together with No.63 are the northern end of a long row of similar two-storey houses, set a reasonable distance back from the road behind front gardens, in long and narrow plots running north east from the road. Immediately to the north is The Armoury, a cul-de-sac edged by houses of various ages. For instance, No.15 in the southern corner nearest No.65 is very recent. Opposite No.65, two-storey terraced houses run to the north, set well back behind front-garden parking bays. Opposite No.65 to the south west is a larger two-storey property set back behind a brick wall.

4. No.65's rear garden was not entered at the site visit, but extends over 25m to the north east, and provides the property's main private outdoor amenity space. The front garden is about 6.3m wide by about 8m long. It comprises lawn and bare ground (under the tree) and an asphalt drive running past the side of the house.

Local tree cover

5. The section of Wenlock Road near No.65 does not contain any street trees, relatively few trees in gardens, and very few in front gardens. About 45m north from the appeal tree a silver birch about 10m tall and a 16m lime tree edge The Armoury. A mature copper beech 20m tall stands in a rear garden about 35m south west from the appeal tree. Over 35m north east from the appeal tree is a mature gum tree in the rear garden of No.67.

Amenity value of the appeal tree

6. The appeal monkey puzzle is an evergreen conifer with a deep and dense canopy. I measured the tree to be 12.25m tall, with radial crown spread of 3.3m to the north-west and north-east (towards the house), 3.7m south-east and 4.1m south-west. The monkey puzzle is completely isolated from other trees, is located 3.8m back from the kerb, and 1.8m back from the low front fence of No.65.
7. At the site visit the appeal tree was prominent in views in both directions along Wenlock Road. Given the relative paucity of frontage trees, the appeal monkey puzzle is a striking landscape feature. I agree with the local authority's assessment that the tree provides significant amenity value in the street scene along a main route into and out of Shrewsbury.

Impact of tree removal on local amenity value

8. I note and sympathise with the appellant's assessment that the appeal tree provides no amenity value to neighbouring properties, mainly because it has grown too large. This view is supported by third-party neighbours Mr & Mrs McCormick at No.76 Wenlock Road, Joanne Messer of No.15 The Armoury, and Meriel Jones of No.63 Wenlock Road. However, its prominence in the local street scene means that removal of appeal tree would require strong justification.

- ***Whether the reasons given for felling the appeal monkey puzzle tree are sufficient to justify that course of action.***

Light

9. The appeal monkey puzzle has a deep and dense evergreen canopy. At the site visit in mid-afternoon the tree was shading the single ground and single first-floor windows in the front elevations of both No.65 and No.63. This is significant afternoon shading, and I sympathise with residents for the extra electricity they consume for lighting within Nos.63 & 65's front rooms as a result. The front windows face south-west so can only receive direct sunlight for a brief period in late morning (with the tree in situ). The tree will not shade windows during the morning, but it will block daylight. The front garden of No.65 is almost bare ground, resulting from shading, water interception by the crown, and by roots of the appeal tree drying soil.
10. I acknowledge here the concern about shading from the appeal tree by Meriel Jones of No.63, but do not consider that No.15 The Armoury suffers much light loss from the appeal tree, because the southern corner of the garden is 10m from the tree, and the house is further away, allowing ample daylight to pass around the tree.
11. The shading of No.63's & No.65's windows by the appeal tree is quite severe. In recognition of these shading problems, the local authority has suggested it would support an application for pruning of the appeal tree. Pruning such as crown lifting and thinning out the lower retained canopy could allow materially more daylight to reach windows.
12. The monkey puzzle has a stem diameter of 54cm measured at 1.5m height, and the canopy is flat-topped. Both parameters suggest the tree is nearly fully-grown in this location. Therefore, I note the appellant's concern about growth rate since 1990, but future growth should be much slower, and pruning measures to improve light should be effective for a reasonable length of time.

Condition of appeal tree

13. The appeal tree has a healthy canopy. No evidence of rootplate instability or stem defects which could pre-dispose the appeal tree to windthrow have been submitted to the appeal, and I saw none at the site visit. If the tree did fall, it could reach parts of five properties on the north-eastern side of the road, but would not reach any properties on the opposite side including No.76. It could fall onto the footway only 1.8m to its south west, and it could reach the road only 3.8m away, and the footway on the opposite side of the road. I place little weight on the low risk of the appeal tree blowing over, as justification for its removal.

Drains

14. A drain passes in a westerly direction very close to the northern side of the tree. I note that Gittins Brothers have rodded the drain on several occasions, and found roots. As they suggest, it is quite possible the proximity of the tree has caused direct root pressure to deflected adjacent sections of clay pipe and either opened joints or caused cracks; through which roots can enter.

15. However, drains function can be assured by regular cleaning. No evidence has been presented to the appeal that the drain cannot be internally sleeved or otherwise repaired, if necessary, with the tree in situ.

Conclusions

16. The appeal monkey puzzle is a healthy tree, free of visible defects, providing very high amenity value to its location over a main route into and out of Shrewsbury.
17. The appeal monkey puzzle does block significant light from front windows of two properties. Light to nearby windows can be improved by pruning.
18. No evidence has been presented to the appeal of instability in the tree's rootplate, and the evidence of drain damage sufficient to justify removing a healthy tree is weak.
19. Therefore, on balance, I dismiss this appeal to fell the monkey puzzle T1 of the TPO, standing in the front garden of No.65 Wenlock Road, Shrewsbury.

Jim Unwin

Arboricultural Inspector.



Our Complaints Procedures

Complaints

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Applications and orders to amend the rights of way network can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This can sometimes lead to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding application appeals and orders works. When this happens we will try to explain things as clearly as possible. Sometimes the objectors, applicant, the authority or another interested party may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open a case to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how long an order making authority took to submit an order to the Secretary of State) in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way appeals and orders and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. However, the law does not allow us to amend or change the decision.



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Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Why can't the decision be reviewed if a mistake has happened?" – The law does not allow us to do this because a decision is a legal document that can only be reviewed following a successful High Court challenge.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"How long will I have to wait for a reply to my complaint?" – We will aim to send a full reply within 20 working days. In some cases where the issues raised are complex, a more detailed investigation will be needed, often requiring the views of those involved with the case. This may mean that we cannot reply to you as quickly as we would like.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us').

Contacting us

Website

www.planningportal.gov.uk/planning/counterside

General Enquiries

Phone: 0303 444 5000

E-mail: enquiries@pins.gsi.gov.uk

Complaints and Queries in England:

Please refer to our website:

<http://www.planningportal.gov.uk/planning/inspectorate/customerfeedback/feedback>

or write to:

Quality Assurance Unit
The Planning Inspectorate
1/23 Hawk Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5884

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

Parliamentary and Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Complaints Helpline: 0345 015 4033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk



Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further Information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: <http://www.justice.gov.uk/about/hmcts/>

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/> However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

High Court Section
The Planning Inspectorate
1/25 Hawk Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5645

General Enquiries

Phone: 0303 444 5000
E-mail: enquiries@pins.gsi.gov.uk

Complaints

Complaints & Queries in England

Please refer to our website:
<http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>
or write to:

Quality Assurance Unit
The Planning Inspectorate
1/23 Hawk Wing, Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN
Phone: 0303 444 5884

Cardiff Office

The Planning Inspectorate
Room 1-004, Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health

Service Ombudsman
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0345 015 4033
Website: www.ombudsman.org.uk

