



Appeal Decisions

Hearing held and site visit made on 15 February 2012

by **Phil Grainger BA(Hons) MRTPI**

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

Decision date: 1 March 2012

Appeal A Ref: APP/TPO/V5570/1787 **25 Richmond Crescent, London N1 0LY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent to undertake work to trees protected by a Tree Preservation Order (TPO).
- The appeal is made by OCA UK Ltd against Islington London Borough Council.
- The application ref: T110001, is dated 30 December 2010.
- The work proposed is to fell 3 Plane trees to ground level and treat the stumps with an appropriate herbicide.
- The relevant TPO is the London Borough of Islington Tree Preservation Order (No. 396) 2008 relating to 25 Richmond Crescent, London N1, which was confirmed on 21 July 2010.

Summary of Decision: the appeal is dismissed.

Appeal B Ref: APP/TPO/V5570/2050 **26 Richmond Crescent, London N1 0LY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a TPO.
- The appeal is made by OCA UK Ltd against the decision of Islington London Borough Council.
- The application ref: T110226, dated 9 June 2011, was refused by notice dated 3 August 2011.
- The work proposed is to fell one Plane tree to ground level and treat the stump with an appropriate herbicide.
- The relevant TPO is the London Borough of Islington Tree Preservation Order (No. 428) 2011 land at the rear of 26 Richmond Crescent, Islington N1 0LY, which was confirmed on 4 November 2011.

Summary of Decision: the appeal is dismissed.

Preliminary Matters

1. The existence of two separate applications and appeals reflects the fact that initially only 3 of the trees were protected by a TPO. The appellants made clear that they have always considered all 4 trees to be implicated and I have dealt with the appeals accordingly.
2. The plan attached to TPO No. 396 inaccurately shows the three trees to be at the rear of no. 25 Richmond Avenue. In fact, although they are in the garden of that property they are located behind no. 26. However, I have seen nothing to suggest that anyone has been misled by this; certainly the appellants were in no doubt that an application for consent to fell was required.
3. During the hearing it became clear that, in respect of Appeal A especially, if the appeals were allowed it could be difficult to plant replacement trees unless the stumps of the existing ones were ground out rather than being left and treated with herbicide as the applications had indicated. The appellants indicated that they would not object to the proposals being amended in this way and I have therefore considered the appeals on that basis.

Main Issues

4. In respect of both appeals these are:
 - the contribution that the tree(s) make to the character and appearance of the area and the amenities of local residents;
 - whether tree related shrinkage is, on the balance of probabilities, contributing to or causing the damage that has occurred at no. 25 Richmond Crescent and, if so, whether all the appeal trees are likely to be implicated; and
 - whether the extent of the damage is sufficient to justify felling the tree(s) having regard to such amenity value as they have and any other solutions that may be available.

Inspector's Reasoning

The amenity value of the trees

5. The trees are growing in an area of rear gardens surrounded by tall dwellings. Those on Richmond Crescent can be described as linked semi-detached properties (with a lower section joining the 3-4 storey main elements) whilst those on Richmond Avenue are genuine terraced properties.
6. The trees are tall (there is no dispute that they are over 22m high) and their canopies join to form what must, when they are in leaf, be a very high, extensive and impressive canopy. It is said by the Council to be one of the largest in the Borough. Be that as it may, the canopy covers a great deal of the overall garden area enclosed within the Crescent, and must be a most striking feature in summer months. Even in winter the trees are very impressive especially in this urban context.
7. Although I have not seen them in summer, the trees may be less effective at preventing views between the houses than might be expected, because of the height of the main canopies and the limited number of branches at lower level. Nevertheless, they must be a dominant feature of the gardens and clearly provide a great deal of pleasure for those living in the surrounding dwellings, in terms of their intrinsic beauty, the softening of views and giving an impression of privacy, as well as for the wildlife habitat that they provide. Although some residents would like to see them pruned, I do not doubt that the trees facilitate the peaceful enjoyment of many properties, and, even if they were not visible from public viewpoints, they would be of considerable amenity value.
8. In any event, the trees are in fact clearly visible from the adjoining public highways through the small number of gaps between buildings and over the lower sections of the buildings themselves. Indeed in some places the great height of the trees means that they can be seen even above the main parts of the surrounding buildings.
9. In addition, trees, many of them London planes, are widespread and distinctive features that contribute significantly to the character and appearance of the Barnsbury Conservation Area, within which Richmond Crescent is located. Moreover, it is not just street trees and trees in various parks and squares that have this effect. Trees in rear garden areas also make a noticeable contribution. Indeed, it would be uncommon for a large rear garden area in the Conservation Area to be as devoid of large trees as this one would be if the appeal trees were all to be felled.
10. I conclude that the appeal trees make a very substantial contribution to the visual amenity of the area, including the visual amenities of the occupiers of nearby dwellings. It is in this context that I consider the damage to the property and whether it justifies felling the trees.

The affected property and the damage to it

11. The property affected is no. 25 Richmond Avenue. It is three storeys high plus a basement and a loft conversion. It is at one end of the Crescent and has only a single storey garage building on its southern flank. On the other side it is attached to no. 26 across its full height.
12. At some point or points, apparently 40 years or more ago, quite substantial alterations were made to no. 25. Dormers were added at front and rear, much of an original rear wall was removed and replaced by a column to create a large open reception area, and a substantial conservatory style extension was built on the rear. In addition, the projection on the south flank wall, which seems originally to have been single storey, has been extended upwards to the height of the building.
13. Although the appeal trees seem generally to be slightly closer to no. 26 no evidence has been provided to suggest that there has been any damage to that property. As for no. 25, the cracking that has occurred is said by the appellants to be within BRE category 2 – ie 5mm wide or less. Traditionally, such cracking has been regarded as 'slight' and not necessarily indicative of serious implications for the integrity of buildings in terms of either their water-tightness or structural stability. That said, having seen the larger cracks, which tend to be on the rear elevation of the building or affecting the inserted column, I can understand that the occupiers would regard them as more than 'cosmetic'. Cracks of this size in load-bearing structures are, in my view, too large simply to be ignored or decorated over and are capable of justifying the felling of trees, even large and attractive ones, if that is the only way of returning the property to stability.
14. I have taken into account that the location of the cracks and the apparent absence of damage at no. 26 suggests that, on the balance of probabilities, the substantial alterations to no. 25, including additions at high level and the removal of lower load-bearing walls, have contributed to the damage that it is now experiencing. That is especially so as there is no evidence that there was any strengthening of the foundations. Nevertheless, those changes occurred many years ago, under different ownership, and the building existed in its altered form for many years before damage occurred. I do not regard this point as precluding the appeal trees being a significant contributory factor or that it would necessarily be inappropriate for them to be felled if it were clearly established that this was the case.

Whether the appeal tree(s) are implicated in the damage

15. When felling the trees was first proposed, only limited level monitoring data was available. Although the appellants feel that this was sufficient to enable future events to be predicted, I do not consider it unreasonable for the Council to have regarded the data as inconclusive. Be that as it may, monitoring has continued and clearly shows a cyclical movement, as the Council now accept. This, and other information brought out at or for the hearing, overcomes most of the perceived inadequacies in the information submitted with the application, apart from DNA testing. As discussed at the hearing I consider that it would not be sensible for me to ignore this undisputed additional evidence simply because it was not available to the Council when the applications were made.
16. In addition, not only does the data now clearly indicate a cyclical movement of ground levels at the rear of the property but that movement is considerably greater than at the front. It is also more than would be expected from the

normal shrinking of the underlying clay that would occur even in the absence of vegetation. Again this is accepted by the Council. I conclude that the damage that is occurring at no. 25 is the result, at least in part, of vegetation enhanced shrinkage effects.

17. The Council consider that vegetation other than the 4 appeal trees may be contributing to this effect. In particular they have drawn attention to some smallish trees, including a fig, a box and a leylandii cypress, as well as the substantial ivy growing up the side of no. 25. However, none of the root samples found in the trial pits dug around the property were positively identified as being from any of these species¹. In contrast both pits at the rear of the property, one on the side, and one dug below the property to investigate conditions at the inserted column all contained plane tree roots.
18. It is still possible that vegetation other than the appeal trees, especially the extensive ivy, may be having an effect, but there is no clear and conclusive evidence of this. I have also taken into account that although it was previously felt that trees other than the 4 planes were responsible for the cracking that has occurred at no. 25 their reduction and removal has not led to the structure becoming stable. However, even if that calls into question the quality of some of the past analysis, I am satisfied that the evidence now available points very strongly to at least one of the group of 4 planes that are the subject of these appeals being a significant contributory factor in the cracking.
19. In fact, at the hearing the Council accepted that at least one of the planes is having an effect. However it remains their view that DNA testing should be carried out to try to establish whether all 4 trees are implicated or just some of them. I return to this matter below after I have considered whether any solution other than felling any implicated trees is likely to be effective.

Whether there is any effective solution other than felling the implicated trees

20. The part of no. 25 that is closest to the appeal trees is a conservatory. An application for planning permission to replace this conservatory has been made by the occupier of the property and has been approved. It seems likely that if this permission is implemented satisfactorily it would overcome the effects that vegetation induced shrinkage is having on the existing conservatory. However, I understand that the householder is not currently committed to implementing the permission. In any event, damage is not limited to the conservatory or its junction with the main part of the house.
21. Turning to the effects on the main part of the structure, underpinning is in some circumstances an effective, albeit often more expensive and disruptive, alternative to felling trees. However, in this case it is the evidence of the appellants' engineering expert that the movements that have been recorded at the rear of the property are so great that he would not wish to recommend such a solution in isolation. The Council produced no expert evidence of their own to set against this.
22. In any event, no. 25 is not a stand alone structure, but is physically attached to no. 26. If no. 25 were to be underpinned sufficiently to overcome the effects of clay shrinkage it is necessary to consider what effect that would be likely to have on the structure as a whole.
23. No. 26 is if anything closer to the 4 plane trees and is thus clearly within their potential zone of influence. In view of this it seems likely that, on the balance

¹ Roots of an unspecified creeper were found in two pits at the rear of the property but there is visual evidence of a creeper other than ivy in this location.

of probabilities, there is movement at the rear of no. 26 that is not dissimilar to that observed at no. 25. So far there is no evidence that no. 26 has suffered damage as a result of this. However, if no. 25 were to be stabilised, a situation would be created where one part of this structure was moving up and down by a significant amount whilst another part was remaining relatively static. In such circumstances, there is a very real risk of cracks developing as a result of this differential movement. Again, the Council produced no expert evidence to the contrary, and I conclude that this is not a situation in which underpinning alone would be a satisfactory solution.

24. As for root barriers, these are likely to be expensive and raise ownership issues in this enclosed rear garden area. Moreover, even if there are no service runs that would preclude their use, the proximity of buildings other than the one currently affected suggests that introducing such barriers could well displace root activity so that vegetation enhanced shrinkage would affect other properties. Again I conclude that this would not be an appropriate solution in this case.
25. Finally, both the Council and local residents consider that crown reduction of the trees would be effective in reducing water abstraction and thus changes in levels at the rear of the property. Accordingly they feel that this should be tried before felling the trees is allowed. However, the appellants take the view that the evidence of trials carried out, in particular Hortlink², shows that crown reduction is not effective unless it is on a scale that is harmful to both the appearance and health of trees. Moreover, even then it would have to be carried out at frequent intervals thus placing, in their view, an unreasonable burden on the owners of the trees.
26. For my part, I note that Hortlink suggests that crown reduction can reduce tree water use and thus soil drying. However, it goes on to indicate that unless the reduction is severe the effects are small and even with a severe reduction the effects disappear after two years.
27. The Council pointed out that this study was based on a relatively small number of trees and that one of the authors of the report is currently seeking support for a more broadly based study to produce more robust conclusions. I have taken that into account together with the report produced by the London Tree Officers Association [LTOA]³ which indicates that those London Boroughs that have adopted a pro-active approach to pruning street trees are more successful in resisting subsidence claims and retaining trees.
28. However, the findings of the LTOA report may be influenced by a variety of factors. Moreover, whilst the Hortlink study may have involved only a small number of trees, one of the species that it specifically looked at was London plane and the specimens involved were 20m high. This seems highly relevant to these appeals. Furthermore, the findings appear to have been established under trial conditions. On balance I consider that the Hortlink study raises serious doubts, if nothing more, about the effectiveness of crown reduction as a means of eliminating vegetation enhanced shrinkage effects, especially where shrinkage has already begun to cause significant damage.
29. In addition, it seems likely that to be effective any crown reduction would need to be on a scale that could have implications for the appearance of the trees. I

² More precisely Horticulture LINK project 212 – Controlling water use of trees to alleviate subsidence risk – Final Report, May 2004

³ A Risk Limitation Strategy for Tree Root Claims – 3rd Edition – Revised May 2008

have taken into account the Council's suggestion that in London planes a 70% reduction in canopy volume could be achieved with a 30% reduction in height and outer branch length. However, even a 30% reduction of this sort could well significantly reduce the prominence of the appeal trees from public viewpoints. That said, I have no doubt that the overwhelming majority of local residents would much prefer this to the trees being felled.

30. Be that as it may, such a reduction would need to be repeated every two years or so if conditions are to be stabilised. I have very real doubts about the reasonableness of imposing such an ongoing requirement on the owners of the appeal trees. It is one thing for Councils, as the guardians of public trees, to adopt policies that seek to retain as many of them as possible in the public interest. However, I consider that it is less easy to justify requiring owners of trees in private gardens to be burdened with the expense of frequent and significant works for the benefit, largely, of others. Moreover, that applies even in cases like this where a good number of local residents feel they would be adversely affected in a variety of ways if the trees were felled.
31. Taking all this into account, I conclude as follows. On the information available there is a very real likelihood that crown reductions would not be an effective solution in this case. In any event this would impose an unreasonable requirement on the owners of the trees. Accordingly, and with some reluctance, I conclude that this is not an appropriate way forward. Nor do any of the other alternatives to felling appear to be practicable or satisfactory in the circumstances of this case.

Other matters and overall conclusions

32. Having considered the various options suggested I conclude that there is no effective way of dealing with the problems that are occurring at no. 25 without felling the trees that are implicated in the damage. Moreover, having taken into account the extent of the damage I am satisfied that it would be proportionate to allow this notwithstanding the very considerable amenity value that the appeal trees have.
33. That said, although the group of 4 planes is clearly implicated in the damage, the evidence available does not make clear whether all 4 trees are contributing to it or only some of them. I have taken into account that all 4 trees are sufficiently close to the affected property to be having an effect. I have also had regard to the appellants' contention that one tree is capable of having an effect as great as a small group and that whatever DNA testing might show it would be imprudent to retain any of the appeal trees.
34. Even so it would be unusual to allow the felling of an entire group of trees if all the current effects could be attributed to one of them. Moreover, the appeal trees have a very considerable amenity value. If only one of them could be retained the benefits for the local environment would be considerable.
35. As soon as proposals to fell the trees were received the Council requested DNA evidence to see whether it could be established which of them the roots that had been found came from. Such evidence was not forthcoming and as a result the Council did not validate or consider the Appeal A application to fell three of the trees⁴. Subsequently the Planning Inspectorate have accepted that an appeal against non-determination could be made. I explained to the hearing I was not party to that decision and that I did not consider my determination of

⁴ At that time the fourth tree was not the subject of a TPO. However, it was later given such protection and a subsequent application to fell it was refused.

the appeals to be fettered by that earlier decision. Evidence that was adequate for the purposes of validating an application would not necessarily be sufficient to justify felling the trees.

36. I have taken into account that there is limited genetic variation amongst London planes. Furthermore, the Council themselves accept that the three trees that are growing in a line, and appear to be of similar age, are most probably from a single clone. However, there is a possibility, if no more, that the fourth tree is not genetically indistinguishable.
37. I accept that testing would have cost implications for the appellants. Moreover, there can be no guarantee that it would be conclusive and I have noted that in the appellants' experience over many years only once has DNA testing of London planes provided useful information. However, even a result that was negative in that sense would in my view be helpful. If DNA testing proved that it was impossible to ascertain which tree or trees the roots under the foundations come from then in view of my other conclusions I consider that it would be difficult to resist their felling.
38. Moreover, whilst requiring such testing would lead to a further delay that would result in ongoing uncertainty for the householder as well as costs for the appellants, I consider that this is not disproportionate in this case given the very high amenity value of the trees. Nor do I share the appellants' view that the outcome of such testing is so inevitable as to make it pointless. Indeed, I note that both main parties are aware of at least one occasion when such testing did provide useful information, even if in the appellants' case they take the view that that may have been a fluke.
39. In the context of this particular case, where the loss of amenity if all 4 trees were to be felled would be very much greater than if just one could be retained, I consider that DNA testing should have been carried out to try to establish whether all or only some of the trees are implicated. This has not been done and for this reason, and this reason alone, I conclude that the felling of all 4 appeal trees is not justified at the present time.
40. I have had regard to the concerns of local residents regarding the possibility of heave if the trees are felled. However, I am satisfied from the evidence, including the lack of damage to other properties, their distance from the trees, the relative age of the trees and the buildings and the degree to which levels recover over winter, that this is unlikely. Moreover, if heave did occur and had a detrimental effect on nearby properties those affected would be able to pursue that matter in the normal way. This matter has not therefore affected my decision. Nevertheless, for the reasons set out earlier and having taken all other material considerations raised into account I conclude that neither appeal should succeed.

Decisions

41. I dismiss Appeal A and refuse consent to fell the 3 London plane trees in the rear garden of no. 25 Richmond Crescent. I also dismiss Appeal B.

P Grainger

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Ms M MacQueen	Arboriculturalist, of OCA UK Ltd, appellants
Mr T Freeman	Consulting Engineer, of Geo-Serve Ltd
Mr K Curling	Of Carmichaels, loss adjustors

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Tibbetts	Arboriculture Team Manager, Islington LBC
Mr J Ryan	Tree Preservation Officer, Islington LBC

INTERESTED PERSONS:

Ms E Cirillo	local resident
Mr S Flanagan	local resident
Mr J Browning	local resident
Ms P Cox	local resident

DOCUMENTS handed in at the hearing

- 1 The Council's letter of notification of the appeal
- 2 Ms Cirillo's slide presentation
- 3 Details of ongoing level monitoring, supplied by the appellants
- 4 Note regarding Hortlink project 212, supplied by the Council