



Appeal Decision

Site visit made on 8 April 2010

by **Mick Boddy F Arbor A FICFor CEnv**

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

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Date:

21 APR 2010

Appeal Ref: APP/TPO/R1845/1098

7 Pintail Grove, Kidderminster, Worcestershire, DY10 4RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent for the felling of a Norway maple protected by a Tree Preservation Order.
- The appeal is made by Mrs S M Ross & Dr C F Ross against the decision of Wyre Forest District Council.
- The application Ref: 09/0813/TREE, dated 19 November 2009, was refused by notice dated 14 January 2010.
- The relevant Tree Preservation Order (TPO) is the County of Worcester (Spennells, Kidderminster) Tree Preservation Order, 1972, which was confirmed on 17 May 1973.

Decision

1. The appeal is dismissed.

Main Issues

2. I consider that the main issues in this case are:
 - (i) Whether the proposed removal of the Norway maple would have a detrimental impact on the amenity of the area and set a precedent for potential applications for the removal of further trees from the nature reserve within which it is growing.
 - (ii) Whether or not there are sufficient grounds for the proposed removal of the tree.

Reasons

Amenity Value

3. The Norway maple is a healthy mature specimen, of approximately 17 metres in height, growing immediately beyond the rear (northern) boundary of the appellants' property, within the Spennells Local Nature Reserve. It is a tree of reasonable form, which I consider makes a positive contribution to this area of mixed species woodland.

4. There is a public footpath and associated footbridge a short distance to the north-east of the tree and a further footpath and footbridge to the rear of 11 Kittiwake Drive to the west. Additionally, there is informal public access throughout this area of the woodland and I therefore consider the Norway maple affords a significant degree of public visual amenity.

Precedent

5. It is assumed that the Council deal with any request or TPO consent application for work to trees within the nature reserve on its own merits. However, granting consent for the removal of a healthy protected tree such as this could be used as evidence to support future applications for the removal of other trees within the woodland where the circumstances are similar. I therefore consider that it was reasonable for the Council to take this into account when determining the application.
6. On this first issue I have concluded that the proposed removal of the Norway maple would have a detrimental impact on the woodland in visual amenity terms and may set an unwelcome precedent, making it more difficult for the Council to refuse any future similar applications.

Grounds put forward for felling the tree

Reduction in light to rear of property

7. The rear of the house faces in an almost northerly direction, so the windows on this elevation will benefit from very little direct sunlight. Whilst the Norway maple may restrict the ambient light to the kitchen and other rooms on this side of the house to a degree, I do not consider this negative impact to be sufficient to warrant any action.

Safety

8. The main trunk of the maple forks into three principal stems at 3 metres. From a ground level assessment the tree appeared to be in reasonable overall physiological and structural condition. A fractured branch is lodged in the southern side of the mid-crown and it appears that this may have failed due to squirrel related bark damage. A smaller broken branch is lodged in the centre of the crown. As these branches could fall into the appellants' garden if they become dislodged, it would be desirable for them to be removed.
9. There were no indications that the tree is at particular risk of further branch shedding.

Other problems associated with the tree

10. There will be a degree of seasonal inconvenience and additional maintenance associated with the tree in terms of the collection of fallen leaves in the autumn and dealing with the flowers shedding in the spring but this is an unavoidable consequence of owning a property close to a tree. Whilst it may not be possible to eliminate the problem of the gutters becoming blocked by leaves and other debris, this could be reduced by the installation of proprietary leaf guards.

11. The rear garden is approximately 14 metres wide by 12 metres deep. The southern side of the crown of the Norway maple has been significantly raised and the majority of the remaining branching extends to the north away from the garden. However, several young branches have regenerated from around the previous pruning points and these overhang the rear border and the raised decking area in the north-eastern corner of the garden. The removal of these regenerating branches would help to reduce the negative impact of the tree on the appellants' property with negligible impact on its appearance or long term health.
12. At the time of the site visit (3-15pm) the majority of the rear garden was in direct sunlight, and largely unaffected by the maple tree. It would appear that it should be possible to dry washing in the garden with minimal risk of this being affected by deposits from the tree or droppings from birds alighting in its crown. The removal of the regenerating low branches referred to in paragraph 11 would be of further help in addressing this problem.
13. The roots of the maple that extend beneath the garden will be competing for moisture with the lawn and plants in the border to a degree. However, this did not appear to be having a significantly deleterious impact.

Boundary fence

14. Whilst there is a degree of clearance between the upper section of the trunk of the maple and the boundary fence, a buttress root projects to the south, beneath the adjacent panel. It was apparent that it had been necessary to remove a short section of the bottom rail of this panel to allow it to be bent around the buttress root to maintain the alignment of the fence. Although I acknowledge that this is a minor inconvenience and potential source of frustration for the appellants', I consider the extent of the root encroachment is currently insufficient to offer significant support to the request for the tree's removal.
15. Although I sympathise with the appellants, I do not consider that the problems associated with the maple and additional associated maintenance issues are currently sufficient to warrant its removal. Some improvement in the current situation could be achieved by the implementation of relatively modest pruning works and the appellants may wish to explore this alternative action with the Council.

Conclusions

16. In view of my of my decisions on the two main issues, I have concluded that there is currently insufficient justification for the removal of the Norway maple tree and I therefore dismiss the appeal.

Mick Boddy

Arboricultural Inspector