

PLANNING APPEAL DECISION

Lead Officer: Tony Pomfret – Development Control Manager

To inform Members of recent appeal decisions in respect of application to fell trees at 18 and 20 Beck Rise, Beckermeth, Cumbria.

Recommendation: That the decisions be noted in the context of the Council's Local Plan Policies.

Resource Implications: Nil

1.0 SUPPORTING INFORMATION

1.1 Permission to fell one Elm Tree and one Acer Tree situated in the rear gardens of 18 and 20 Beck Rise, Beckermeth respectively and protected by Tree Preservation Order No. 65 was granted in September 2009 subject to the following replanting conditions:-

18 Beck Rise 1 x Alnus incana (Grey Alder)
 1 x Sorbus aucuparia (Mountain Ash)

20 Beck Rise 1 x Alnus incana (Grey Alder)
 1 x Corylus avellana (Common Hazel)

1.2 Following a Hearing subsequent appeals against these decisions have been ALLOWED and the replanting condition amended as follows for both properties:-

“One x Alnus sp. to be planted in the front garden. The tree shall be of a light standard size (6-8cm in girth and 2.5-2.75m in height) and in bare root form. It should be planted within the first planting season following the date of this decision.”

1.3 The Inspector considered that the replanting conditions originally imposed are not reasonable given the soil conditions, the waterlogged nature of the rear gardens and the inappropriate species required. Notwithstanding this, the Inspector deemed that replanting within the front gardens of both properties is required to compensate for the loss of the trees subject to the TPO. Copies of the Inspector's decision letters are appended to this report.

1.4 It should be noted that Best Value Performance Indicator (BVPI) 204, which measures the number of allowed appeals arising from refusals of planning permission does not include appeals relating to conditions or trees.

Contact Officer: Rachel Carrol–Planning Officer

Background Papers: Copies of the Inspector's decision letters are appended.



Appeal Decision

Hearing held on 2 November 2010

Site visit made on the same day

by **Jacqueline North, BSc MSc**

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

Decision date: 8 December 2010

Appeal Ref: APP/TPO/Z0923/898

18 Beck Rise, Beckermot, Cumbria, CA21 2YN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of consent to undertake work to a tree protected by a Tree Preservation Order subject to conditions.
 - The appeal is made by Mr Lewthwaite against the decision of Copeland Borough Council.
 - The application Ref RC/4/09/2396/TPO, dated 20 June 2009, was approved on 21 September 2009 and consent was granted subject to conditions.
 - Consent was granted to fell one elm tree.
 - The condition in dispute is No 2 which states that: A small replanting scheme shall be carried out comprising: 1 x *Alnus incana* (Grey Alder) 1 x *Sorbus aucuparia* (Mountain Ash).
 - Both trees shall be of a light standard size (6-8cm in girth and 2.5-2.75m in height) and in bare root form. Each tree should be planted during the winter time to ensure establishment and in accordance with BS4428:1989 (general code of practice for landscaping conditions). The reason given for the condition is: No reason is given for the condition.
 - The relevant Tree Preservation Order (TPO) is Copeland Borough Council (Beck Rise, Beckermot) Tree Preservation Order, 1998, which was confirmed with modifications on 29 April 1998.
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Decision

1. I allow the appeal, and amend condition 2 as follows:

- 1) One x *Alnus* sp. to be planted in the front garden. The tree shall be of a light standard size (6-8cm in girth and 2.5-2.75m in height) and in bare root form. It should be planted within the first planting season following the date of this decision.

Procedural matter

2. The Elm had been felled by the date of my site visit although its root plate was still present in the rear garden of No. 18.

Main Issues

3. I consider that the main issue to be is the condition necessary or reasonable having particular regard to the soil conditions, frequency of waterlogging of the appeal site and the specified species, and having regard to local and national policy on trees subject to a Tree Preservation Order.

Reasons

4. The Elm was felled following the granting of consent Ref RC/4/09/2396/TPO and an additional inspection in October 2009, although the root plate has been retained. The area around the tree root plate and land leading to the rear of the house was very damp, the grass having a spongy texture. The rear gardens in this part of Beck Rise are subject to frequent flooding. Backfilling of the land occurred when the dwellings were erected following 2001 planning permissions and damage to the field drainage systems may also have taken place. These factors have contributed to the drainage and flooding problems in the gardens. Disruption to the soil around the tree roots and the waterlogged nature of the land are likely to have been a factor in the decline in the health of the Elm. It is likely that these factors are harmful to the health of other trees in the garden.
5. Whilst the appellant does not dispute the need for a replanting scheme, the waterlogged soil conditions and propensity of much of the rear garden to flood restricts the space available to undertake the scheme required by condition 2 of permission RC/4/09/2396/TPO. In addition, the soil conditions result in the site being unsuitable for many species, including those specified in condition 2, as Grey Alder tolerates moist, heavy soils but not waterlogged conditions, similarly the Mountain Ash would not tolerate long periods of waterlogging. It is unlikely that the trees would establish and thrive if they were planted in waterlogged soil. Therefore the species are not appropriate for the existing soil conditions.
6. Policy ENV 10 of the adopted Copeland Local Plan (LP) states that where trees are lost through development they must be replaced at a ratio of at least 2:1. I consider that a replacement tree is required to compensate for the felled tree, but the soil and drainage conditions in the rear garden of No. 18 do not currently provide suitable conditions for the replanting scheme required by the Council.
7. The front garden of No. 18 is not subject to the same soil or water conditions as the rear garden. It has few features, with no trees or shrubs, in contrast to many of the other front gardens in Beck Rise. In my opinion, a Birch tree (*Alnus* sp.) in the front garden would be visible to many of the occupiers of dwellings in the cul-de-sac and their visitors. It would be of local amenity value, adding visual interest to a relatively bare front garden. I appreciate that LP Policy ENV 10 would require two replacement trees to be planted. However, given the existing unsuitable conditions in the rear garden and the contribution to local amenity of a tree in the front garden, a single tree would compensate for the loss of the Elm in the rear garden.

Conclusion

8. Having considered all matters raised, I conclude that condition 2 is not reasonable given the soil conditions, the waterlogged nature of the site and the inappropriate species required. However, a replanting scheme is required, to compensate for the loss of a tree subject to a TPO and therefore the appeal is allowed and the permission varied with another condition imposed.

Jacqueline North

Inspector

APPEARANCES

FOR THE APPELLANT:

I R Rostron	Appellant's agent
N Lewthwaite	

FOR THE LOCAL PLANNING AUTHORITY:

H Morrison	Senior Planning Officer
R Carrol	Planning Officer
R Mellor	Landscape Officer
M Jewell	Legal Services

INTERESTED PERSONS:

H Tyson	Local farmer
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Appeal Decision

Hearing held on 2 November 2010

Site visit made on the same day

by **Jacqueline North BSc MSc**

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

Decision date: 8 December 2010

Appeal Ref: APP/TPO/Z0923/899

20 Beck Rise, Beckermot, Cumbria, CA21 2YN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of consent to undertake work to a tree protected by a Tree Preservation Order subject to conditions.
- The appeal is made by Mr M Wright against the decision of Copeland Borough Council.
- The application Ref RC/4/09/2397/TPO, dated 20 June 2009, was approved on 21 September 2009 and consent was granted subject to conditions.
- Consent was granted to fell one Acer tree.
- The condition in dispute is No 2 which states that: A small replanting scheme shall be carried out comprising: 1 x Alnus incana (Grey Alder) 1 x Corylus avellana (Common Hazel).

Both trees shall be of a light standard size (6-8cm in girth and 2.5-2.75m in height) and in bare root form. Each tree should be planted during the winter time to ensure establishment and in accordance with BS4428:1989 (general code of practice for landscaping conditions).

- The relevant Tree Preservation Order (TPO) is Copeland Borough Council (Beck Rise, Beckermot) Tree Preservation Order, 1998, which was confirmed with modifications on 29 April 1998.

Decision

1. I allow the appeal, and amend condition 2 as follows:
 - 1) One x Alnus sp. to be planted in the front garden. The tree shall be of a light standard size (6-8cm in girth and 2.5-2.75m in height) and in bare root form. It should be planted within the first planting season following the date of this decision.

Procedural matter

2. The Acer had been felled by the date of my site visit although the root plate remained towards the end of the rear garden of No. 20.

Main Issues

3. I consider that the main issue to be is the condition necessary or reasonable having particular regard to the soil conditions, frequency of waterlogging of the appeal site and the specified species, and having regard to local and national policy on trees subject to a Tree Preservation Order.

Reasons

4. The Sycamore was felled following the consent Ref RC/4/09/2397/TPO and an additional inspection in October 2009, although the root plate has been

retained. The area around the tree root plate and land leading to the rear of the house was very damp, the grass having a spongy texture and standing water present in the area around the root plate. The rear gardens in this part of Beck Rise are subject to frequent flooding. Backfilling of the land occurred when the dwellings were erected following 2001 planning permissions and damage to the field drainage systems may also have taken place. These factors have contributed to the drainage and flooding problems in the gardens. In addition, there was a large, stagnant area of water in the field adjacent to the rear garden of No. 20. Disruption to the soil around the tree roots and the waterlogged nature of the land are likely to have led to the decline in the health of the Sycamore as this is a species which does not tolerate its roots being frequently submerged.

5. Whilst the appellant does not dispute the need for a replanting scheme, the waterlogged soil conditions and propensity of much of the rear garden to flood restricts the space available to undertake the scheme required by condition 2 of permission RC/4/09/2397/TPO. In addition, the soil conditions result in the site being unsuitable for many species, including those specified in condition 2, as Grey Alder tolerates moist, heavy soils but not waterlogged conditions. The Common Hazel would tolerate frost, shade and exposure but not long periods of waterlogging. The trees would not be likely to establish and thrive if planted in waterlogged soil. Therefore the species are not appropriate for the existing soil conditions. In addition, Hazel is not normally available in the light standard size specified in condition 2.
6. Policy ENV 10 of the adopted Copeland Local Plan (LP) states that where trees are lost through development they must be replaced at a ratio of at least 2:1. I consider that a replacement tree is required to compensate for the felled tree, but the soil and drainage conditions in the rear garden of No. 20 do not currently provide suitable conditions for the replanting scheme required by the Council.
7. The front garden of No. 20 is not subject to the same soil or water conditions as the rear garden. It has few features, with no trees or shrubs, in contrast to many of the other front gardens in Beck Rise. In my opinion, a Birch tree (*Alnus* sp.) in the front garden would be visible to many of the occupiers of dwellings in the cul-de-sac and their visitors. It would be of local amenity value, adding visual interest to a relatively bare front garden. I appreciate that LP Policy ENV 10 would require two replacement trees to be planted. However, given the existing unsuitable conditions in the rear garden and the contribution to local amenity of a tree in the front garden, a single tree would compensate for the loss of the Sycamore in the rear garden.

Conclusion

8. Having considered all matters raised, I conclude that condition 2 is not reasonable given the soil conditions, the waterlogged nature of the site and the inappropriate species required. However, a replanting scheme is required, to compensate for the loss of a tree subject to a TPO and therefore the appeal is allowed and the permission varied with another condition imposed.

Jacqueline North

Inspector

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