



Planning Panel

Sir Charles Frossard House

La Charroterie

St Peter Port

Guernsey GY1 1FH

Appeal Decision Notice

Planning Tribunal Site Visit held on 13th July 2016.

Members: Mr. Stuart Fell (Presiding), Mrs. Sheelagh Evans, Mr. John Weir.

Appeal Site: Land at Gandhi Ahimsa, Montville Road, St. Peter Port

Property Reference: A408060000

TPO Reference: PT84

Date of confirmation of the Order: 16/05/2016

Appeal Case Reference: PAP/012/2016

- The Appeal is made under section 20 of The Land Planning and Development (Special Controls) Ordinance, 2007.
- The Appeal is by Mr. J. O. Braddon against the Development and Planning Authority's confirmation on 16th May 2016 of a Tree Protection Order that it had made on 20th January 2016 in respect of a group of trees located at Gandhi Ahimsa, Montville Road, St. Peter Port.

Decision

1. The appeal is allowed and the Tree Protection Order is quashed.

Procedural matter

2. Although the Tribunal's site visit took place on 13th July 2016, the issue of this decision has been delayed due to staff holidays within the Development and Planning

Authority's office, which delayed the completion of the Authority's appeal statement.

The site

3. Gandhi Ahimsa is a detached house standing in a large plot located on the south side of the cul-de-sac at Montville Road. The eastern end of Montville Road follows a straight line, and includes a number of other substantial residential properties that lend it a suburban character. However, immediately beyond Gandhi Ahimsa the road winds to the north-west and is more heavily planted, and the private access track that runs to the south along the western boundary of the appeal property is also heavily planted on both sides.
4. The garden of the appeal house is slightly elevated relative to the surroundings, as Montville Road falls gently to the west. The garden boundaries are formed of earth banks that were densely overgrown at the time of the site visit. The garden is somewhat neglected as the appellant, Mr. Braddon, lives in England.

The Tree Protection Order

5. The Tree Protection Order was entered into the Tree Protection Register on 20th January 2016, an action that was triggered by enquiries from the appellant about the possible redevelopment of the site. Having considered the representations against the proposed Tree Protection Order that were subsequently made by the appellant, the Order was confirmed by the Development and Planning Authority on 16th May 2016.
6. The Order encompasses a group of Evergreen Oaks within the garden of Gandhi Ahimsa; there are eleven such trees and these are indicated on a plan that forms part of the Order. Ten of these trees grow in a line running roughly parallel to the boundary that adjoins the track to the west, the other being located near the house and immediately adjacent to the property boundary on Montville Road.
7. In its confirmation of the Order, the Authority helpfully summarised the objections that had been made by Mr. Braddon in the following terms:

"Owner objects to protection of trees because they are "not stable" and are dangerous; in high wind any of the stems could develop a split and unexpectedly fall. [Also asked who would be liable for damage or injury caused by protected trees, so has already been advised that responsibility for ensuring the trees remain reasonably safe remains with the owner of the trees, and that certain maintenance works to protected trees are exempt from requiring planning consent]".

8. The Authority also explained its reasons for making the TPO as follows:

"These Evergreen Oak trees contribute very significantly to the amenity of the Montville Road locality – they are the most dominant group of trees in this neighbourhood which is characterised by mature trees around long-established suburban houses. Their loss would

significantly detract from the landscape character and visual amenity of the locality. While the TPO does not preclude ordinary/emergency tree maintenance or consideration of applications for development, it does preclude pre-emptive clearance or cutting back of the trees to facilitate development of the land”.

Grounds of Appeal

9. The grounds of appeal are set out in two letters from the appellant to the Authority, one of which is undated but clearly written just after receipt of the confirmation of the Tree Protection Order; the other is dated 14th June 2016. These letters again raise concerns about the safety of the trees. The possibility of the future redevelopment of the house is mentioned, as is the desire to remove some of the low branches that grow horizontally so as to facilitate any development proposal. A specific request was made to exclude from the Order the tree which grows close to the house, partly on the basis that this does not form part of the larger group of trees on the western boundary, and partly because the tree had already been partly cut down because of a serious split, and can no longer be regarded as an attractive specimen.
10. The appeal is supported by a tree survey dated February 2016 that was prepared by Richard Loyd of Tree Dimensions, a local Arboricultural Advisory and Consultancy service. The survey is not complimentary about the condition of the trees or their management. In commenting generally on the state of the garden, it is noted *“The site comprises of various trees.....which have mostly been crudely truncated and reactively managed”.*
11. In respect of the line of protected Evergreen Oaks that extend along the western boundary of the garden the report states: *“The form and scaffold structure of these trees is a result of close planting [with], as is clearly evident, the initial projected purpose for establishing them as a hedge and not as individual trees. The truncation of these trees during early formative years and then negation of any ongoing remedial husbandry work has resulted in reactive measures being employed over the last ten years or so as the length of stems increase”.*
12. The report goes on to say: *“As part of the reactive remedial work to restore a modicum of stability to the elongated stems, the truncation of some of them has been undertaken. This robust method of husbandry work to Evergreen Oaks is commonplace within the Island and intrinsically creates a workable lower canopy line often only having to be revisited every twenty years”.*
13. It continues: *“In the case of your trees, their current structural condition is unsustainable and will only deteriorate as the canopies’ growth rate exceeds the size of the structural scaffold. I therefore see little option other than to recommend the continuation of this reduction work along the tree line if you are to retain these trees in a structurally sound condition”.*
14. The survey includes an assessment of each of the trees and classifies them in accordance with British Standard 5837. Fifteen individual trees along the western boundary are identified and mapped. Five specimens in this linear group are placed in Category B, which indicates trees of moderate quality with an estimated remaining life expectancy of at least twenty years. These trees have already been truncated.
15. The remaining ten trees are said to fall in Category C, which indicates specimens of low quality with an estimated remaining life expectancy of at least ten years, or young trees with a stem diameter below 150mm; the survey schedule provides clarification by stating that all the trees in this category have diameters **greater** than 150mm. The Tribunal infers from this

classification that the consultant regards the trees in question as being of low quality. These trees are between fifteen and eighteen metres in height and the consultant's recommendation is that they should all be truncated to five metres so as to render them structurally stable.

16. The report reaches a different conclusion in respect of the isolated tree identified as T1 located next to the house, which is regarded as unsuitable for long-term retention because it has already been poorly truncated and will be difficult to retain. The report states: *"This Oak was inspected by the States Arboricultural Officer in 2003 and condemned due to major structural damage. The extensive splitting through the length of the trunk was deemed so severe that an exemption letter was issued to allow for this tree to be removed. The remnants of the tree are in a poor structural condition and its complete removal should be undertaken to avoid damage from future component failure"*.
17. The report goes on to question the justification for this Tree Protection Order, stating: *"Given that the fundamental reason for making a Tree Protection Order is if it appears expedient in the interests of amenity to make a provision of such an order, however, a tree protection order should not be considered on trees that are dead, dying, or have become dangerous. As the condition of a significant proportion of these trees is poor and without remedial works being carried out to promote the retention of them, the application of a protection order should be considered incredulous and without any due consideration for their pragmatic management as part of sound arboricultural practice. The long-term retention of these trees given the current condition of them is unattainable and therefore any consideration for protection can only be made following remedial structural works as leaving them in their current state given advice sought, could be construed as negligent"*.
18. The Tree Dimensions report also draws attention to alleged inaccuracies in the Order, notably in respect of the quantity of the trees described.
19. Section 20 of the Land Planning and Development (Special Controls) Ordinance, 2007 states that an appeal against a Tree Protection Order may be brought on the ground that:
 - (a) it is not in the interests of amenity to provide for the protection of the tree, group or area of woodlands in question or of any tree in such group or area, or
 - (b) the confirmation of the order was (for any other reason) ultra vires or unreasonable.
20. Having assimilated the content of the appeal documents, including the report prepared by Tree Dimensions, the Tribunal concludes that this appeal can legitimately be brought under both the grounds set out in s20 of the Ordinance.
21. In its principal appeal statement the Authority makes no specific response to the report by Tree Dimensions. Having been asked by the Tribunal to confirm that it does not wish to comment on the matters raised therein, the Authority's only response is that the discrepancy in the number of trees shown in the Order and the number defined in the consultant's report is explained by a different approach to the counting of multi-stemmed trees. The Tribunal has accordingly no reason to challenge the substantive findings and conclusions reached in the Tree Dimensions survey report regarding the condition of the trees, and more specifically that ten of the trees near the western boundary will need to be truncated to approximately one third of their present height if they are to survive in the longer term and be rendered reasonably safe.

The Tribunal's assessment

22. The Tribunal looked first at the line of trees along the western boundary of Gandhi Ahimsa. When travelling west along Montville Road this tree group is visible over the garden of the appeal property and was seen to contribute to the attractive sense of termination and enclosure that is generated at the point where the road swings gently to the north-west. From the point at the northern end of the private access track, the tunnel effect created by these overhanging trees within the elevated garden, in conjunction with other trees to the west side of the track, results in an appealing rural scene which belies the underlying suburban land use of the surroundings. However, it is the Tribunal's view that the self-evidently poor condition of many of these trees detracts to some degree from their visual appeal.
23. Having inspected this group of protected trees the Tribunal has no doubt that it has significant amenity value and that the loss of these trees, were they to be felled, would substantially harm the character and visual amenity of the locality.
24. However, the unchallenged conclusion of the Tree Dimensions report is that the majority of the trees in this group urgently need significant remedial work if they are to survive, and that such work is likely to materially reduce their amenity value. As there is no evidence that the Authority has given proper consideration to this important matter in determining the amenity value of this linear tree group, the Tribunal accordingly concludes that the Tree Protection order is not soundly based.
25. In relation to the tree located next to the house, identified as T1 on the Tree Dimensions report, the Tribunal saw that this specimen has a distorted shape as a result of earlier work referred to in paragraph 16, and has a somewhat awkward visual and physical relationship with the house and the roadside boundary. Moreover, this specimen is isolated from the tree group on the western boundary of the garden and the Tribunal concludes that its contribution to the amenity of the wider surroundings is accordingly limited. Given the limited life expectancy of this tree, and the concerns about safety that have not been challenged by the Authority, the Tribunal concludes that the inclusion of this tree in the Tree Protection Order cannot be justified.

Conclusions

26. The Tribunal has determined that the isolated tree T1 has limited amenity value because of its poor condition and form, and its awkward relationship with the house and boundary. It has also found that the Authority failed to give proper consideration to the poor condition of the majority of trees in the linear group on the western edge of the garden and the likely negative consequences for visual amenity of the necessary remedial work, which is required for safety reasons. For these reasons the Tribunal's overall judgment is that the Tree Protection Order has not been made on a reasonable basis. The Tribunal has considered all other matters raised in the written representations and seen during its site visit but these do not alter its conclusion that the appeal succeeds on both grounds (a) and (b) of section 20 of the Special Controls Ordinance. Given the provisions of section 8(3) (a) of The Land Planning and Development (Appeals) Ordinance, 2007, the Tree Protection Order is accordingly quashed.

Stuart Fell

Presiding Member

Date of Decision: 14th September 2016