



Appeal Decision

Hearing Held on 25-26 June 2024

Site visit made on 26 June 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/TRN/A5840/9440

Land at 105 Page's Walk, Southwark, London SE1 4HD

- The appeal is made under regulation 18 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (the Regulations) against a tree replacement notice (TRN).
 - The appeal is made by Shiva Ltd against the issuing of the notice by the Council of the London Borough of Southwark.
 - The Council's reference is 22/EN/0129.
 - The notice was issued on 4 October 2022.
 - The requirements of the notice are: You must plant one London Plane (*Platanus x hispanica*) standard form tree with a stem girth of no less than 25cm at the place shown marked with a cross on the attached plan.
 - The period of compliance with the notice is Five months from the date this notice takes effect stated in paragraph 6 below.
 - The appeal is proceeding on grounds set out in section 208(1) (a), (aa), (b), and (d) of the Town and Country Planning Act 1990 (the Act).
 - The trees are preserved by virtue of Section 211 of the Act due to being within the Page's Walk Conservation Area (the PWCA), which was designated on 30 June 1986.
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Decision

1. The appeal is dismissed, and the Tree Replacement Notice (the TRN) is upheld, subject to the variations listed below.
 - i) The text under section 4 (WHAT YOU ARE REQUIRED TO DO) of the TRN shall be re-worded as follows: 'You must plant one London Plane (*Platanus x hispanica*) or one Italian Alder (*Alnus cordata*) standard form tree with a stem girth of no less than 25cm, or if it is previously agreed in writing by the Local Planning Authority in advance of planting, an alternative species of a different size and specification, at the place shown marked with a cross on the attached plan'.
 - ii) The text under section 5 (TIME FOR COMPLIANCE) of the TRN shown as 'Five months from the date this notice takes effect stated in paragraph 6 below', shall be deleted and replaced with 'the planting of the tree must be undertaken between 1 November 2024 and 31 March 2025'.
 - iii) The date on which the TRN takes effect shall be the date of this decision.

Application for costs

2. At the Hearing an application for costs was made by Shiva Ltd against the Council of the London Borough of Southwark in relation to this appeal and appeal Refs APP/A5840/W/23/3323681, APP/A5840/W/23/3331037 and APP/A5840/W/24/3342742. This is the subject of a separate Decision.

Procedural Matters

3. The hearing was held in relation to the appeal proceedings set out in the banner heading above against the TRN and three other separate appeals on the land for three new dwellings¹. I have dealt with those other three appeals within a separate decision letter. However, as the Inspector for all four appeals, while I have considered each appeal on its own merits, I have had regard to my findings, where relevant, in relation to the other appeals.
4. The Council refers to the loss of the tree conflicting with Policy G7 of the London Plan (2021) (LP), Policies P13, P56 and P61 of the Southwark Plan (2022) (the SP) and paragraphs 2, 12 and 15 of the National Planning Policy Framework (2023) (the Framework). While such policies are not decisive in an appeal relating to a TRN for a tree in a Conservation Area, I have had regard to them as a material consideration insofar as they are relevant to this appeal.

Main Issues

5. The main issues are whether or not:
 - the provisions of sections 207 or 213 of the Act are applicable and the duty to plant the tree applies;
 - the requirements of the TRN are unreasonable in respect of the period, size or species of the tree specified;
 - the place upon which the tree is required to be planted is unsuitable for that purpose; and,
 - in all the circumstances of the case, the duty to plant the tree should be dispensed with.

Reasons

Sections 207 and 213 of the Act

6. By virtue of Section 213 of the Act a landowner is under a duty to replace trees removed, uprooted or destroyed within a Conservation Area at the same place as soon as they reasonably can. In this case the tree is within the Page's Walk Conservation Area (the PWCA). The duty can be enforced under Section 207 of the Act. A TRN may be served requiring replacement planting, within 4 years of the date of the alleged failure to comply with the duty to re-plant.
7. The provisions of 198(6)(a) and (b) of the Act are in respect of trees protected by a Tree Preservation Order under section 198. In this case the subject tree is not protected by a TPO made under section 198. Moreover, though it may permit works in named circumstances including that a TPO tree is dead, dying or dangerous, it doesn't prevent an authority from requiring replacement of a felled TPO tree under section 206 and 207 of the Act.

¹ APP/A5840/W/23/3323681, APP/A5840/W/23/3331037, APP/A5840/W/24/3342742.

8. The Council's view is that the tree is protected by virtue of PWCA, section 211 of the Act, and the controls under section 213 for a tree which has been removed, uprooted or destroyed in contravention of section 211, are those that are of relevance in this case. The Eucalyptus tree was planted in the late 1990s. At felling around February 2022, it had a height in the region of 9m and diameter of 25 – 30cm at 1.5m height, to it was protected by the PWCA. Adequate post-felling notification was not given, the duty to replace the tree has not been dispensed with, sections 207, 211 and 213 apply, and section 198 does not prevent this.
9. There is limited substantive evidence before me of the lean, stability and any danger from the tree. Though the appellant sought over the phone advice from an arborist, no formal written arboricultural survey is provided. The tree had a pronounced lean, some asymmetry and what appeared to be some helical twisting. However, the crown appeared to have a fairly even distribution of biomass, it had clearly grown adaptively with balance to respond to loadings, and I cannot discern there was any cracking along helical lines to suggest a significant risk of failure.
10. It is possible some pruning may have been required in the future, although it is not substantiated the tree would have been unsustainable to maturity. I am informed it was monitored, although the evidence does not demonstrate the lean had worsened to such an extent that there was a significant risk of failure. Neither does the evidence lead me to the view ground conditions resulted in an unstable root structure or there had been recent root plate movement before felling. I cannot conclude felling was necessary in these regards.
11. Though noting their high water uptake and the nature of foundations of nearby buildings and structures, the Eucalyptus was some distance from them. Given its relative location and appeal site ground conditions, I would not necessarily expect to see subsidence or heave at the neighbouring property or public highway resulting from the tree. Neither is substantive evidence is advanced demonstrating this had or was likely to occur. From my visit there was no sign of damage from the tree adversely affecting highway use. The nearest observable damage was from London Planes along Mandela Way in small pits very close to the footway/carriageway kerb within the highway.
12. Being planted as part of a meantime use as a temporary feature, does not prevent it being protected by the Conservation Area designation or mean the duty should be dispensed with. It is not clear which species of Eucalyptus it was or that it would have grown to have harmfully affected occupiers of neighbouring properties. It may have resulted in dappled shading and sunlight for part of the day and some leaf litter. However, I see no reason to believe it was inherently incompatible with its location. Neither do these matters in isolation mean the duty to plant a replacement tree should not apply.
13. Therefore, for the reasons set out above, the provisions of sections 207 or 213 of the Act are applicable, and the duty to plant a tree applies.

Period, size or species

14. There is no requirement for a like for like species replacement in a TRN. London Plane trees of varying size and stature are a common sight nearby. The largest most mature specimens I saw were approximately 20 – 25m in height, which is not dissimilar to the ultimate urban growth potential of some

Eucalyptus. However, in my experience London Planes might typically ultimately grow to approximately 30 – 35m high with a crown spread of up to approximately 18m. However, they are a slow growing deciduous species, and such a size, if reached, would not be for several tens if not potentially hundreds of years. Although this is not always certain.

15. London Planes have benefits such as being tolerant to the urban environment, to cyclical heavy pruning, and a high pollution uptake and carbon capture making them a good tree for helping to mitigate climate change. I note the appellant's concerns about future highway damage, but this tree would be much further from the highway boundary with a larger rooting area, so it is highly unlikely to result in damage like that I observed along Mandela Way.
16. A deciduous tree canopy is not the same as a built structure, the crown is raised, it is open, dappled and has seasonal variation. Although the potential ultimate height and crown spread of a London Plane has some potential for adverse effects upon the neighbouring occupiers in respect of daylight, sunlight, overshadowing and outlook for a proportion of the year, without any future maintenance. Ideally a tree should be planted that does not result in a foreseeable future issue for neighbouring properties. However, this is by no means certain, and it would be very much in the longer term if it at all, and some maintenance of urban trees is not uncommon or unreasonable.
17. I sought views upon other species that could be planted. Of those I heard, an Italian Alder is of lesser height and reduced crown width but still represents a tree of a sufficient overall stature that is likely to be tolerant to the site conditions, with little potential to result in harmful effects to daylight, sunlight and outlook to nearby occupiers. There are other similar suitable species. Therefore, I have re-worded the TRN to accommodate more flexibility, to include the option for an Italian Alder, or another tree of a suitable the size and species, at the Council's discretion.
18. I heard no evidence that gives me concerns that the size of the tree at planting, or the planting period I have set out, which was a similar timescale put to me by the Council, are unreasonable and could not be complied with.
19. For the reasons set out above, the requirements of the TRN are not unreasonable in respect of the period and size of the tree specified. Without any future maintenance in the very long term, there is some potential for some adverse effects upon neighbouring occupiers from a London Plane. Therefore, I have added some flexibility into the TRN requirements for an Italian Alder, or a different tree to be agreed if it is considered necessary.

Unsuitability of place

20. Neither the previous Eucalyptus nor proposed London Plane or Italian Alder trees would be suitable for a small residential garden. However, the appeal site is not a small residential garden, does not have consent to be, and would not be from my decisions upon the other appeals subject of the hearing. I understand the Council is considering another application (Ref. PW-2), with which the tree may not be regarded as compatible. So far as I am aware that application is yet to be determined.
21. There might be some policy support for future site redevelopment, but there are a number of matters which would need to be addressed. A tree resulting

from the upholding of a TRN would not necessarily prevent future development occurring, but it is a matter that would need to be taken into consideration in reaching a decision upon any future application.

22. In principle a new tree would not be incompatible with re-wilding of the appeal site as suggested and the ground conditions would not prevent planting of a suitable species. As it would be rooted around the same location as the Eucalyptus I see no reason the size, species or location would not be suitable for the continued use of the appeal site for a use for the display of art as has taken place in various forms.
23. In their current form, the excavations associated with an assessment of archaeological potential may well inhibit the planting or future growth of the tree. The tree might make the Antepavilion Found(ation) installation and that for future experimental architecture, unable to take place as envisaged. However, it is apparent that the art installations and displays have varied over time, and part of the earthworks may be able to remain or be adapted. There would also be scope for other types of artwork display. The planting of the tree would not ultimately prevent its use or benefit for such purposes in some form. Moreover, it appears part of the current excavation has been facilitated by the removal of a protected tree, and there is no demonstration of an archaeological justification for remains remaining uncovered, or not planting a tree.
24. I sought the parties' views of the location of the tree and the requirements of section 213 Act. Based upon what I heard 'at the same place' means there is no scope for a TRN to designate other wider areas of the land as a planting location. That is not to say such a location could not be agreed by other means, but it would not be appropriate for it to be agreed via this TRN appeal.
25. For the reasons set out above, the place upon which the tree is required to be planted is not unsuitable for that purpose.

All circumstances

26. Whether or not the relevant part of the site should have originally been included within the PWCA boundary, it still forms part of it. The PWCA Appraisal (2012) (the CAA) identified the site was having a detrimental impact upon the PWCA. The site has evolved over time and may well continue to do so. However, based upon what I saw and the evidence before me, it appears to me the site with the tree, made an overall minor negative contribution to the character, appearance, and significance of the PWCA around the time of felling.
27. The CAA recognises trees are not prevalent, but some greenery is present in back gardens and other wider trees provide an important green backdrop. The Eucalyptus was not referred to as a feature of significant value in the CAA. However, before it was felled the tree was a prominent structural landscape feature, that provided some softening and screening of the built form and synergy with trees oversailing the PWCA, which would have grown further.
28. Given its form, position and scale, the tree was a positive feature to the character and appearance of the PWCA. Its loss is considered to have resulted in a negative effect upon the character and appearance of the PWCA. Its loss would also have resulted in some minor harm in respect of mitigating climate change. Initially the TRN tree would not be of the same size and stature as the Eucalyptus when felled, but it would still be a prompt gain to the PWCA and

amenity. With future growth it would mitigate the harm that has occurred to the character and appearance of the PWCA. Therefore, having regard to the PWCA and section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, a replacement tree is necessary to mitigate the harm that has occurred from the felling.

29. While not determinative, a replacement tree would help to achieve the aims of Policy G7 of the LP and Policies P13 and P61 of the SP insofar as these seek to retain trees of value, including to biodiversity, local character and appearance. It would not be necessary having regard to Policy P56 of the SP as this relates to loss of residential amenity, or Framework paragraphs 2, 12 and 15 as these explain the plan-led system, set out the primacy of the development plan, and the Framework as a material consideration.
30. It is possible requiring a replacement tree could discourage temporary tree planting. However, the practice of planting trees for a period of around 20 years in a Conservation Area with the intention to remove them not likely to be particularly common. Therefore, I give limited weight to this argument. The appellant has undertaken various acts of horticultural and arboricultural philanthropy nearby. Of the examples provided some of these have clearly been undertaken with care, diligence, at some expense, and have been to the benefit to those areas. However, they do not mitigate the specific harm that has occurred from the loss of the appeal tree to the PWCA, so they attract limited weight.
31. Having regard to all the evidence before me and what I heard, I do not consider in all the circumstances of the case, the duty to re-plant should be dispensed with.

Other Matters

32. I have given the scope for the agreement of a tree of an alternative size and species, which could involve a smaller tree that would not be protected by the Conservation Area designation upon planting. The power to issue a TRN does not extend to imposing a requirement that the tree be retained and to do this would be outside the scope of powers available to me. The Council's view is that a TPO could be served in advance of planting, and there is nothing before me to counter that argument. On this basis, I have required the planting to take place between 1 November 2024 to 31 March 2025 to give sufficient time for a TPO to be considered, if it is necessary.

Conclusion

33. For the reasons set out above, the appeal is dismissed, and the TRN is upheld, with amendments I have referred to above, as set out in my decision paragraph. Having discussed the matters with the parties and having regard to their views, I am satisfied the modifications are not prejudicial to either party.

Dan Szymanski

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Russell Gray, Company Secretary, Shiva Ltd;
Mr Ravi Bhaskaran, In-house Architect, Shiva Ltd;
Mr Alex Brown, Admin of Shiva Ltd.

FOR THE COUNCIL:

Mr P Ricketts BA (Hons) MRTPI, Council of the London Borough of Southwark;
Mr L Bullen BA (Hons), Council of the London Borough of Southwark;
Mr M Lambert BA (Hons), PgDip, LRTPI, Council of the London Borough of Southwark;
Mr A Murphy BSc (Hons) MRICS of Atitlan Consulting;
Mr T Cutts, Council of the London Borough of Southwark.

INTERESTED PARTIES:

Mr Herbert Saller (Local Resident).

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

PW-1: Decision letter for Appeal Ref. APP/A5840/W/23/3326266;
PW-2: Email submission of 21 June 2024 of Design & Access Statement, Pre-Application Design Statement, Drawings NMC01 and NMC02;
PW-3: Site photographs of 25 September 2021;
PW-4: Site photographs of 4 January 2022;
PW-5: Draft planning obligation Ref. Application 23/AP/2688, 26 June 2024;
PW-6: Email dated 25 June 2024 from the Borough Archaeologist;
PW-7: Pages Walk Terrace Property Prices (Source: rightmove);
PW-8: Residential Valuation Report for Land at 12 Crucifix Lane, SE1 3JW by Hortons Group (Valuation date 28 March 2024);
PW-9: Email dated 13 July 2024 from R Gray in respect of replacement tree planting circumference.