



Appeal Decision

Site visit made on 25 November 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 DECEMBER 2025

Appeal Ref: APP/A5840/C/23/3331423

Land at 467A Lordship Lane, LONDON, SE22 8JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Andre Saint Hilaire against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 15 September 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the engineering operation comprising the excavation of the rear garden, and the erection of retaining walls in the approximate location shown outlined in blue on the attached plan ("the Unauthorised Development").
 - The requirements of the notice are: 5.1 Remove the retaining walls in the rear garden whilst supporting the Land; 5.2 Replace the excavated soil in the rear garden and return the rear garden at the Land to its condition before the breach occurred; and 5.3 Remove from the Land all materials, rubbish and debris resulting from the carrying out of the above steps.
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by in paragraph 6 of the notice deletion of the wording "Three months" and substitution with the wording "Five months".
2. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a) and the deemed planning application (DPA)

Preliminary Matters

3. The revised National Planning Policy Framework 2024 came into force during the course of the appeal. The revisions made have not had a direct bearing on the issues which are central to this appeal.
4. I have taken the name of the appellant from the enforcement notice since it appears that there was a typographical error in the appeal form.

Main Issue

5. The main issue is the effect on protected trees in the vicinity of the appeal site.

Reasons

6. The appeal property is a dwelling sitting adjacent to the flatted development at Norman Court. Norman Court's plot contains multiple trees protected by a Tree Preservation Order (TPO). An Ash tree identified as T1 sits extremely close to the appeal building, with another protected Ash (T2) positioned beyond the appeal property's rear boundary. Both of the affected trees make a positive contribution to the character of the area by providing a sense of urban greenery.
7. Land levels within the host property's rear garden rise steeply in a north easterly direction where the rear boundary adjoins the neighbouring property at Mount Adon Park. The appeal development relates to the excavation of the property's rear garden and erection of retaining walls.
8. The host property was extended pursuant to a 2022 planning permission¹. A subsequent 2023 application² for works to the T1 Ash was refused with reference to 'inaccurate' information related to the 'permissibility of root disturbance to the Ash tree for which no extant planning permission was in place'. Further applications³ in respect of 'Construction of a concrete retaining wall and part cutting of protruding root edge' to a TPO protected Ash tree were turned away as invalid. The Council later declined to determine an application for retrospective consent⁴ for 'Construction of rear garden and side boundary concrete retaining walls and part cutting of protruding root edge' to a TPO protected Ash tree⁵.

Assessment

9. The excavation works undertaken at the appeal property have resulted in the removal of large quantities of soil in locations where the roots of both the T1 and T2 Ash trees were growing. Works undertaken including the construction of the retaining wall in the vicinity of the T1 Ash tree appear to have resulted in visible damage to significant roots at the base of this protected tree.
10. The appellant has submitted an Arboricultural Method Statement⁶ (AMS) and Arboricultural Addendum Note⁷ (AAN). Neither of these offer any assurance that the works undertaken have not adversely affected the longevity of the protected trees or that these will not continue to have a harmful impact going forward. Equally, there is no in-depth assessment of the extent to which measures proposed would mitigate against harm caused.
11. As regards the T1 Ash tree, it seems highly likely that the appeal development has adversely impacted the longevity of this tree given the location of works well within the RPA and indeed very close to the base of this tree, meaning that the retaining wall essentially runs below the root system of this tree. I note comments in the AMS and AAN related to the structural condition of this tree including as regards 'significantly lapsed' management including by reference to: very close proximity to the property; 'major deadwood overhanging dwelling with lapsed management'; and 'historic pruning history being significant and being lapsed by at least 5 years'.

¹ Ref: 22/AP/1517

² Ref: 23/AP/1522

³ Refs: 23/AP/1953; 23/AP/2377

⁴ Ref: 23/AP/2690

⁵ Pursuant to s70C of the Town and Country Planning Act 1990

⁶ Dated July 2023

⁷ prepared in connection with application ref 23/AP/2690

However, these aspects do not justify the significant damage which appears to have resulted from the appeal development

12. Turning to the T2 Ash tree, given the position of this relative to the appeal development and that the T2 tree's RPA only slightly projects into the host property's garden, it is possible that the appeal development has not adversely affected the longevity of the tree. I have borne in mind also site-specific circumstances related to the T2 tree including that the AMS references this as having a 'Lapsed managed form growing against boundary wall to west'. Nonetheless, the appeal development has resulted in excavation of large quantities of soil where this tree's roots were growing and no substantive evidence is provided indicating that this has not harmed the health of the T2 protected tree.
13. The AMS also recommends works within the grounds of Norman Court with the aim of improving the rooting environment but I have no evidence as to what extent this would mitigate against harm caused. Conditions proposed by the Council seek to protect the longevity of the protected trees but there is no suggestion that proposed conditions would overcome the harm caused if the appeal development were to remain.
14. I find then on the evidence before me, that the appeal development has had a harmful effect on protected trees in the vicinity of the appeal site. There is conflict with Policies D3 and G7 of the London Plan (2021) which seek to protect London's urban forest. The appeal development also is contrary to Policies P14, P21 and P61 of the Southwark Plan (2022) which together seek to ensure that development conserves the significance of assets including TPO protected trees and requires that new development must retain significant existing trees in view of their amenity, environmental and financial benefits. The LPA has not explained its basis for alleged conflict with Policy P56 which is directed at amenity impacts.

Other Matters

15. I acknowledge comments that the appellant was not aware that the affected trees were subject to a TPO and had not intended damage to protected trees, with the intention being to create a more useable area of garden for children. I note submissions that the works were considered necessary in view of the trees not having been properly managed causing encroachment meaning the works were 'structurally necessary' to prevent future soil movement and 'immediate danger'. I have though no detailed evidence indicating that the appeal development was necessary on this basis and so cannot accord this any significant weight.
16. Neither party has expressed any view on the impact of the appeal development on the setting of the Dulwich Village conservation area but in view of my assessment on the main issue, this matter would not lead me to any different overall conclusion. Concerns related to Council's handling of the application/enforcement process are not for me in dealing with this appeal.

Conclusion on ground (a) and the DPA

17. On the available evidence, the appeal development has had a harmful effect on protected trees in the vicinity of the appeal site and conflicts with the development plan, read as a whole. No material considerations are advanced which warrant a decision other than in accordance with the development plan. As such, the appeal on ground (a) fails and planning permission will be refused in respect of the DPA.

Period for compliance

18. While no appeal has been made on ground (g) that the period for compliance falls short of what is reasonable, I am empowered⁸ to make any correction or variation to the notice provided that this would not result in injustice. Bearing in mind the extent and nature of the works required, it would be reasonable to afford the appellant a small extension to the compliance period to enable adequate time for these to be arranged and completed. An extension of two months would not result in any injustice and would afford a reasonable period in the circumstances. I shall vary the notice accordingly.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

V Bond

INSPECTOR

⁸ By s176(1) of the 1990 Act