

Appendix A

Appeal by Mr D Pogson (of 31 Storrs Road)
Felling Protected Trees at 25a Storrs Road, Brampton,
Chesterfield.
CHE/22/00250/TPO

1. Planning permission was refused on 1st June 2023 for felling two protected Beech trees to the rear of 25a Storrs Road for the following reasons:
 - Trees not unreasonably burdensome;
 - No evidence of damage to property;
 - The trees is in sound condition and have good amenity value and felling is an excessive action.
2. An appeal against the decision has been determined at a hearing and has been dismissed. The main issue was whether the appeal trees have sufficient public amenity value to warrant their continued protection under the TPO.
3. The inspector saw on his visit that Storrs Road is a fairly well-used residential throughroad, classified as the B6150. In the southern section, where the appeal site is located, there is a moderate amount of visible tree cover, mainly in a small number of discrete groups, set within individual gardens and in the grounds of the Westfield School. The seven or eight surviving trees covered by the present TPO form one such group, of mixed species, focussed around No 25A and the private driveway shared by that property and No 25.
4. T8 and T9 are a pair of reasonably large, mature Beeches, situated in the rear garden No 25A. In terms of public views, they are most clearly visible from the section of Storrs Road between the driveway to Nos 25 and 25A and the flank wall of No 29, across No 29's side garden. In this view, whilst the trunks are hidden, the tree crowns are seen in full. Although this section of road is quite short, it is nevertheless more than sufficient for the trees to be noticed and appreciated by passers-by, especially those travelling on foot or by bicycle. From this angle, T8 and T9 are seen slightly apart from the remaining trees within the TPO group, and this separation adds somewhat to their prominence in the street scene.

5. As the appellant pointed out, visibility alone is not sufficient to warrant the making of a TPO. However, the Planning Practice Guidance (PPG)¹ does make it clear that visibility is one of the key criteria, along with a range of other factors, including size and form, and future potential. In the present case, despite some asymmetrical and poorly-executed pruning in the early 2000s, the trees have since been subject to remedial works and regular maintenance, which has helped them to recover their appearance as well as their health. As a result, when in leaf, both trees now appear reasonably evenly-shaped and well balanced. Seen together, in their present condition, they are in the inspectors mind not simply a visual presence but also a highly attractive feature in views from the street.
6. The inspector appreciated the appellant's view that the appeal trees are not out of the ordinary. But as far as the legislation is concerned, the only requirement in Section 198 of the 1990 Act is whether the trees' protection is expedient in the interests of amenity, and in the PPG the test is whether their removal would have a significant negative impact. In neither case is it necessary to show that the trees in question are exceptional. In the present case, it is notable that the appeal trees, due to their size, clearly stand out from the many smaller, ornamental and fruit-bearing species, which tend to make up the great majority of trees in any residential setting. Given the contribution that the appeal trees currently make to the street scene, as discussed above, their loss would cause a substantial adverse impact.
7. With regard to their physical condition, the severe pruning of the past has left some large wounds in both trees, but these have occluded over time, and do not now appear to present any obvious passage for pathogens. Both trees show some signs of die-back, but on the scale that currently exists, this does not indicate any serious threat to the trees' health. It is not disputed that the trees are healthy and stable, and in a sound structural condition.
8. Turning to their future potential, the trees' further life expectancy is estimated by the Council as 40-100 years, based on their current age and condition, and the species' known characteristics. The appellant, in contrast, suggests

only 5- 40 years, but this is based on the contention that within that time they will have outgrown their location, and thus require felling. In the inspectors view this argument is flawed because it appears to discount the role of good arboricultural management. From the evidence given at the hearing, it is clear that over recent years the trees have been reduced periodically, in a sympathetic manner, to prevent them from becoming over-large. This treatment does not appear to have damaged the trees' health or appearance. If a similar regime were to be continued, there seems no reason why the trees could not continue to offer significant public amenity value. Such on-going management would be subject to the need for further tree works consents, but it appears that the Council would be likely to look favourably on applications in accordance with this approach. On this basis, the Council's assessment of 40- 100 years' life expectancy seems to me realistic. Even at the lowest end of that scale, a future life of 40 years would be a significant period.

9. The PPG advises authorities to use a structured and consistent method to assess amenity value, and the inspector noted the appellant's criticisms of the 'TEMPO' system used by the Council. But the PPG does not prescribe any particular method, and whatever its shortcomings, TEMPO does meet these stated requirements. Given the inspectors findings above as to the appeal trees' condition, longevity and visibility, the inspector saw no reason to disagree with the Council's scoring. Even if the 'expediency' element of the assessment were omitted, the trees would justify protection based on their scores in the remaining categories. The Helliwell system favoured by the appellant is also a recognised method, but in the light of the above matters, the inspector considered the scores suggested on this basis somewhat low in several categories. Looked at alongside my own observations, the inspector found that the Council's TEMPO assessment reinforces the conclusions that he had come to.
10. There is little doubt that if the planning permission for a first-floor side extension to No 31 Storrs Road is implemented, this will largely obscure views of the appeal trees from directly in front of the property. However, the view from just beyond No 29, would not be affected. Given the greater field

of view from this latter point, with the trees being seen in a wider context, the inspector considered this by far the more important view, with the greatest impact on the street scene. He also agreed with the appellant that the limited views from Spruce Close, Westfield Close and Westfield School would not on their own justify the TPO, but this did not change his view that such protection is warranted because of the view that he had identified originally, from Storrs Road.

11. In the appeal that was dismissed in 2017, the inspector found that T8 and T9 enhanced the visual amenity of their surroundings, and that their removal would cause significant harm. That decision is not binding on any future appeals, including this one, but it is a material consideration which was taken into account. It is not known to what extent the trees' amenity value was contested, but it is evident that in order to reach his findings on that matter, the inspector clearly made his own assessment. The inspector appreciated that the appellant disagreed with some of the judgements made, but there is no suggestion that the inspector's assessment was flawed by any factual error or omission. Since the date of that decision, the permission for the extension to No 31 has been granted, which is a new factor, but for the reasons already explained, the inspector did not find this to be decisive. The trees are said to have been pruned subsequently, in 2018, but there is no clear evidence as to whether their size now is materially different from at the time of the last appeal. None of the evidence suggests any significant change of circumstances of a magnitude that could be said to undermine the previous inspector's conclusions on the matter of amenity.
12. The appellant made clear his willingness to carry out replacement planting, either in the garden of No 29A, or at No 31. Notwithstanding the Council's reservations, the inspector saw no reason why such planting could not be secured by condition, with the actual positions to be approved prior to planting. But given the nature of the location, where lower level views are screened by boundary walls and fences, it would take some years before any such new planting would be publicly visible, and very many more before it could make any real visual impression on the street

scene. The prospect of replacement planting would therefore not compensate for the loss of the existing appeal trees.

13. Having regard to all of the above, and in particular the two Beech trees' size, form, condition, life expectancy, and contribution to public views in Storrs Road, the inspector concluded that the trees have substantial amenity value, justifying the degree of protection given to them by the TPO.

Other matters

14. In view of this conclusion regarding the trees' amenity value, felling would only be justified if the reasons for that course of action were compelling. The inspector noted the appellant's view that TPOs are not suited to trees located in private gardens, but the legislation allows for Orders to be made in any situation where such protection is judged to be in the interests of amenity, and nothing in the relevant guidance discourages their use in domestic gardens. The inspector fully accepted that, in such cases, statutory protection will often impose additional financial burdens on the owner, and also that sometimes protected trees can unfortunately become a source of tension between neighbours, and consequent stress. Such unintended impacts, where they occur, are clearly regrettable. However, having regard for the purposes underlying the TPO regime, it seems to me that matters of this kind will very rarely outweigh the public interest that is served by enabling trees of high amenity value to remain. In the absence of any exceptional circumstances, there seems no clear reason why the present appeal should be any different in this respect. These considerations therefore do not justify the felling of the trees.
15. At the hearing, various other matters were raised by other parties, regarding the trees' impacts on other neighbouring properties. These matters included the effects on light, damage to a boundary wall, moss growth, the need to clear large volumes of leaves and debris from lawns and gutters, and fears for the safety of children and others from falling branches. Clearly these are all matters to be taken seriously, and the inspector had considerable sympathy for those who attended and spoke about them. However, in the present case none of these points were raised in written submissions, either at the application or appeal stages. The

Council therefore had no notice, prior to the hearing, that these matters were to be raised, and no opportunity to give them proper consideration. In the circumstances, were the inspector to attempt to reach a definitive conclusion on any of these, in the context of the present appeal, there would be a risk that this would cause procedural unfairness.

16. Having said this, it seems that whilst some of these issues might be considered as potential grounds for seeking a reduction in the trees' size, most would be unlikely to justify their complete removal. In the present appeal, the appellant has made it clear that the consent that he seeks is for felling, and not for any lesser works, and the decision deals with that proposal only. The inspectors decision with regard to this appeal does not preclude any party from making any further applications, and any such application would be for the Council to consider in the first instance.
17. As far as this appeal is concerned, the inspector found that none of the matters raised, by either the appellant or the other parties, outweighs the desirability of protecting the trees in question for their amenity value to the public.
18. For the reasons set out above, the inspector found that the two Beeches at the appeal site, T8 and T9, are trees of significant amenity value, whose removal would result in a significant negative impact on the local environment. As such, the trees justify the protection given by the TPO. No adequate reasons have been advanced to override that protection. The appeal is therefore dismissed.