

## Appendix A

### Appeal by Samantha Asquith

Works to Protected Tree at 9 Norbriggs Road, Woodthorpe,  
Chesterfield.

CHE/18/00807/TPO

2/1908

1. Planning permission was refused on 17<sup>th</sup> January 2019 for felling a protected Ash tree at 9 Norbriggs Road, Woodthorpe for the following reasons:
  - The tree is in a reasonably sound condition with no visible defects to the structure;
  - The tree is of amenity value in a prominent position;
  - Loss of Light and overshadowing is not significant and dropping of minor debris is not a sufficient problem;
  - No monitoring data, soil analysis or structural engineers report is provided alleging any subsidence.
2. An appeal against the decision has been determined by the written representation appeal method and has been dismissed.
3. The main issues are the likely impact of the felling of the protected Ash tree on the amenity of the area and whether the reasons given are sufficient to justify the proposed course of action.

#### *Amenity*

4. The tree is a mature Ash of around 20m high with a crown spread of some 7-8m. The tree forks at about 2m, producing 2 main stems with what appears to be a good union. The canopy breaks at about 8m. The Ash is somewhat sparse of secondary branch structure in the inner crown due to past pruning works which include crown lifting. The Ash appears to be healthy with no visible defects. It stands around 26m from the appeal property (No 9) and is close to the side of a brook running along the boundary. The appellant estimates that the tree is about 15m from her detached garage. The canopy extends over the adjacent pavement, including a well-used bus stop, and a care home complex.

5. The tree is at the edge of a group of trees located around the brook and has an attractive appearance. In some views the Ash is viewed against other trees in the group. Nonetheless, the tree has good amenity value and it can be seen from Norbriggs Road, Cranleigh Road and Burkitt Drive as well as from the surrounding highway and footpaths. The trees in and around the appeal site contribute significantly to the area's attractive appearance and the Ash makes an important contribution to this as an individual specimen.
6. The inspector concluded that the appeal tree positively influences the character and amenity of the surrounding area, both on its own merits and as part of the group. The felling of the Ash would harm the identified amenity. It is therefore necessary to consider whether the proposed works have been justified.

*Reasons for the proposal*

7. The application was supported by an Arboricultural Report. The report indicates that the soil contains clay particles which increases the potential for subsidence. The garage is the closest structure to the Ash and is within its zone of influence. The appellant considers it likely that cracking in the garage walls and floor is caused by the tree. The Ash may have also caused blockage to a nearby drain which recently had to be cleared. The tree is growing on the side of the steep bank of a brook and is causing actionable nuisance to its side retaining wall which holds back the appellant's garden. The Ash has no buttress flare or supporting root system from the brook.
8. The appellant states that evidence of the damage to the garage and retaining wall should be proportionate to the application/appeal case and the values involved. She indicates that the cost of monitoring, trial pits and instructing a structural engineer as the Council requested would be around £5000 and unreasonable in this case. She considers that it is more appropriate to look at the likely cause of damage.
9. The Ash is the only tree in the garden and the cracks are in the flank wall nearest the tree. This raises the possibility that the tree is causing the damage. Mature Ash trees of the same distance from buildings have been recorded as causing damage. It would be appropriate to assume this tree could

cause damage to the garage as it is within its zone of influence. The type of cracking observed is consistent with tree root damage, as is a crack in the concrete floor of the garage. The damage to the retaining wall of the brook is likely to have been caused by the Ash tree's roots as they can be seen behind the wall and appear to have pushed it outwards. The collapse of the retaining wall could destabilise the bank and the appellant's garden. The appellant believes that the wall could not be repaired or replaced to the required standard whilst also retaining the tree.

10. The large, mature tree dominates the garden and significantly overhangs public areas. The garden around the Ash is unused due to the tree's dominance and this impacts on the appellant's enjoyment of the garden and what can be carried out there. It is unlikely that a tree of the Ash species would be proposed for this residential location if it were assessed on its suitability. The species' natural growth pattern is to become a large dominant tree. Ash trees have a habit of limb failure and this is evidenced by the number of branches on the ground. The tree has been high pruned which has changed the sail and tree dampening dynamics. This is likely to lead to more falling branches and possibly the loss of larger limbs. Recent works to the tree have revealed staining within the branches which need to be monitored. The canopy of the tree extends over an unsheltered bus stop. The appellant states that waiting passengers, including schoolchildren, are at risk of falling branches as are the elderly people and those with mobility issues who use the access to the neighbouring care home. This moderate risk should be monitored regularly. The appellant states that the highways assessment of the tree's safety does not appear to have been carried out by a trained and licensed assessor in accordance with QTRA regulations and should not be used to make any tree management decisions.
11. The appellant notes that the January 2019 TEMPO assessment of the tree was carried out after the confirmation of the TPO. It appears to her that the report has been produced only to refuse the application for tree works. It would have been appropriate to also include the original record from the time of making the TPO. The appellant queries the score given to the 'condition and suitability for TPO' grading of the

tree and notes that both parties have downgraded the life expectancy of the Ash to 20-40 years. She considers that this indicates that there are significant impairments that it will not recover from. In such conditions, the possibility of felling and replacing the tree should be raised. The appellant questions whether the Ash should have been protected by a TPO.

12. The Council concluded that the Ash is a large tree clearly visible from public areas, whereas it is part of a larger landscape group, is not seen as a single tree and cannot be easily viewed when travelling along the road. It is not prominent and is not clearly visible from a public area.

### *Assessment*

13. The appellant's desktop study indicates that the appeal site's soil composition, which includes clay, could result in subsidence. Her evidence concludes that the appeal tree presents a threat to the foundations of the garage. Whilst the inspector accepted that any necessary investigations should be proportionate, the Ash is growing directly next to a water source. No verifiable evidence has been provided to confirm that the tree's roots have reached the garage or the drain. Furthermore, there is no limited, proportional evidence to discount other causes of the identified damage. As a result, factors including the structural integrity of the garage, ground investigations to identify the extent of the tree roots and the relationship between the garage and the brook do not appear to have been considered. Therefore, whilst the garage is within the zone of influence of the Ash tree and it could have caused the cracks in the garage, the inspector concluded that the appellant's concerns are unsupported by any convincing evidence.
14. It is undisputed that the growth of the Ash has affected the retaining wall of the brook. Nevertheless, there is no technical assessment to suggest that the condition of the wall warrants immediate remedial work and no convincing evidence is provided to support the appellant's assertion that the wall could not be repaired if the tree remains. There is a risk of branches and debris falling, even in apparently healthy trees. Removing trees due to safety or other serious concerns is usually only justified where there is clear evidence of a defect or other considerations which make the particular trees in

question a greater risk than most other trees. However, no signs of decay, structural weakness or any other problem with the health of the Ash have been identified. The inspector agreed with the Council that the staining of some recently pruned branches should be monitored, but this is not a sufficient reason to justify felling the Ash. It is acknowledged that Ash trees drop a considerable amount of dead wood, however this could be removed as part of regular, routine tree management.

15. The inspector concluded that there is little convincing evidence with this appeal of an unacceptable risk of branches dropping from the Ash. Furthermore, there is no reason to doubt that consent for pruning the canopy over the bus stop would be granted if it were found to be necessary on safety grounds. The appellant comments that a licensed assessor is required to carry out a QTRA assessment of the Ash. The Council has not had the opportunity to respond to this point. Nonetheless, it is a matter for the Highway Authority to determine how it carries out its statutory responsibilities for highway safety and it is accountable for its decisions. But in any event the inspectors decision does not turn on this evidence.
16. The inspector considered the overall size and location of the Ash, including the extent and density of the canopy observed at the site visit, together with all the other evidence in this appeal. In the inspectors judgement the tree does not cause an unacceptable loss of light to No 9's front garden or make the area around it unusable. The appellant offers to provide a replacement tree in order to preserve amenity. However, a suitable replacement tree planted in a similar position would take a considerable number of years to reach a stature comparable to the Ash. In the inspectors view, when choosing to live in a property close to trees, it is necessary to consider whether or not their proximity is acceptable. Furthermore, one must accept that trees are an integral part of the streetscape and that the quality of the surrounding area would be gradually eroded if trees were to be removed, particularly when there is no arboricultural or other convincing justification to justify this course of action.

17. Whether or not the Ash merits the TPO or is an appropriate species for a residential area were not matters before the Inspector. The inspector considered that the Council's decision to carry out a further TPO assessment in response to the appellant's report is reasonable and the identified error makes little overall difference to the result. But in any event, the inspector found that the tree contributes to local amenities and the identified harms cannot be attributed definitively to the Ash. The inspector concluded that the reasons for the proposed works do not justify the loss of amenity resulting from the felling of the Ash.