

Appendix A

Appeal by Katie Buxton

Tree Replacement Notice at 4 Ringwood Meadows, Brimington, Chesterfield.

SP/4901.315

1. The appeal is made against the requirements of a Tree Replacement Notice issued on 27th January 2020. The notice requires the planting of a Maple Tree *Acer Platanoides Crimson King* as near as is reasonably practical to the position of the original tree conforming to BS 4428:1989. The tree is required to be a heavy standard with a stem circumference of 8-12cm and which required planting 29th February 2020 to 30th March 2020.
2. The appeal has been dismissed and the Tree Replacement Notice (TRN) upheld subject to the following variations: the date on which the TRN takes effect shall be the date of this decision and the time for compliance shall be 2 calendar months from 1 October 2020
3. The main issues in this appeal are whether the planting of a tree in accordance with the TRN is required in the interests of amenity; whether it would be contrary to good forestry practice; whether the place on which the tree is required to be planted is suitable for that purpose and whether in all the circumstances of the case the duty to plant a tree should be dispensed with.
4. The TPO was made when the site of the former Ringwood Centre (the Centre) became available for development. T32 Maple, which is the subject of this appeal, was identified as having no significant defects and as being of good form. Following the development of the site, T32, a further protected Maple (T31) and other trees which have since been removed were incorporated into the garden of 4 Ringwood Meadows (No 4).
5. Tree T32 stood around 4 metres from the western boundary of the garden. The tree was mature, of good form and visible from the surrounding houses, the direction of the Centre and probably above or between houses in longer distance views.

In many views it would have been seen alongside T31 as one half of a pair of Maples. On or before May 2018, T32 was felled without consent. The Section 210(1) offence led to the prosecution of the appellant and Mr Buxton who were convicted and fined. The conviction did not require the planting of a replacement tree. However, the Magistrate did confirm that the Council had the powers to secure a replacement for the removed Maple tree and that this was a separate matter.

6. The appellant was informed and later reminded by the Council of her duty to plant another tree of an appropriate size and species in the same place as Tree T32. No responses were received by the Council. A TRN was therefore served on the 27th January 2020 requiring the planting of an Acer Platanoides 'Crimson King'.
7. The duty to plant a tree in replacement for the felled protected tree has not been complied and under these circumstances the Council's duties include taking action to secure a replacement tree if it is considered that it would enhance and contribute to the amenity of an area. To avoid any misunderstanding, this duty relates to local character and appearance, rather than the amenity, or living conditions, of the appellant.
8. The many mature trees in the locality are an important part of its character and appearance. The incremental loss of its trees would, over time, diminish these qualities. A hedgerow separates No 4's garden from an adjacent field. The planting of a replacement tree close to this boundary would strengthen this landscape feature, whilst also contributing to the maturity of the surrounding area. Additionally, a replacement tree would help to 'soften' the fairly recent development of No 4 and its neighbours. The inspector concluded that the replacement Maple is required in the interest of local amenity.
9. The appellant stated that she was unaware that T32 was protected and that the tree was not removed with malicious intent. She states that it was removed because of its proximity to the house; the nuisance it caused in terms of the unmanageable amount of leaves and 'helicopters' it generated, which also caused the grass to die, and because it

decreased her children's and dog's enjoyment of playing in the garden, thereby harming the family's amenity. She added that her next-door neighbour has a young child and that the planting of a tree so close to their shared boundary would cause them the same problems that the appellant has experienced.

10. The inspector considered the reasons put forward were insufficient to justify the permanent loss of the protected tree. Moreover, the house at No 4 was newly built and its garden contained a number of trees when the appellant first occupied the property. In the inspectors view, the decision to purchase a property containing trees, and in particular protected trees, should take into account the presence of and required management of those trees as part of ongoing property maintenance. Furthermore, the appellant's reasons for felling the tree and the family's circumstances would change over time, whereas a replacement tree would provide a long-term continuity of public visual amenity in the local area.
11. The appellant had not suggested any alternative size or species of tree to be planted and seeks agreement not to plant a replacement tree. No convincing case had been put forward as to why the planting of a tree would be contrary to the practice of good forestry. Following the felling of the tree, the garden was landscaped. These works included decking over the area where T32 stood. Whilst there is no doubt that the appellant has spent a considerable sum on the garden, the works have been carried out in the knowledge that the matters arising from the removal of a protected tree had not been resolved. Nonetheless, the area where T32 once stood is now unsuitable for planting a replacement tree.
12. However, the Council suggested an alternative location along the western boundary of the garden where the tree would be well away from the house and the neighbouring garden and where it could be planted without disturbing the hard landscaping. The appellant's garden is not on a significant slope as she suggests and there is no convincing evidence to support the assertion that any tree would naturally lean towards neighbouring properties. The inspector judged that the alternative location put forward by the Council would be

acceptable, notwithstanding that play equipment would have to be moved.

13. The inspector considered the time period since the tree was felled and the appellant's perception that the Council continues to 'pursue' her. She also noted that the experience of the court process and the publicity that followed has caused health issues and embarrassment. Nonetheless, the appellant's compliance with the duty set out above would have brought this matter to a conclusion sooner. Whether or not the appellant previously offered to plant a replacement tree to avoid the court proceedings and why the Council decided to proceed with the prosecution were not matters before the inspector.
14. The inspector concluded that no convincing reasons had been advanced as to why the requirements of the TRN are unreasonable in respect of the interests of amenity and good forestry practice, or why the revised place identified for the tree to be planted is unsuitable for that purpose. The inspector considered the Council has specified a suitable replacement tree for this garden and the TRN is reasonable in terms of the size and species of tree required. Furthermore, the location of the tree is appropriate and would allow the tree, as it matures, to be seen within the context of the remaining tree in the garden, the hedgerow behind and other trees in the locality, particularly those in the land formerly associated with the Centre, by the occupiers of nearby properties and glimpsed in more distant views.