

FOR INFORMATION – APPEAL DECISION

DATE WRITTEN	24 th June 2021
REPORT AUTHOR	Judith Jones
CASE OFFICER	Tom Bramley
COMMITTEE	Planning and Regulatory
COMMITTEE DATE	7 th July 2021

Application No. P/20/0312	Date 15.12.20	Determining Authority MTCBC
Proposed Development	Location	Name & Address of Applicant/Agent
Fell tree (Oak)	17 Cwrt Bevan Merthyr Tydfil CF47 0AQ	Mr Christopher Reddy 17 Cwrt Bevan Merthyr Tydfil CF47 0AQ



TYPE OF APPEAL:	AGAINST REFUSAL
APPEAL REFERENCE NO.:	ENV/3269760
DATE DECISION RECEIVED:	13.05.2021
DECISION:	Dismissed

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 26/04/21

gan R Duggan, BSc (Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13/5/21

Appeal Decision

Site visit made on 26/04/21

by R Duggan, BSc (Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 13/5/21

Appeal Ref: ENV/3269760

Site address: 17 Cwrt Bevan, Merthyr Tydfil, CF47 0AQ

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
 - The appeal is made by Mr Christopher Reddy against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref: P/20/0312 dated 14 December 2020, was refused by notice dated 28 January 2021.
 - The work proposed is to fell one oak tree.
 - The relevant Tree Preservation Order (TPO) is the Merthyr Tydfil County Borough Council Tree Preservation Order, 1997 (No.3) relating to Trees on land at Mardy Hospital, Mardy Close, Merthyr Tydfil which was confirmed on 24 March 1997.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse consent to fell the tree is justified, having regard to the contribution that it makes to public amenity and the reasons put forward for felling.

Reasons

Amenity Value

3. The tree subject to this appeal is located within the rear garden of the appeal property and planted approximately 8 metres from it. The tree is a large specimen with no obvious signs of decay and the canopy is well formed but I note that some previous work has been done with the removal of lower limbs. As the tree is located in the rear garden of the property, I saw that views from public vantage points are limited but the canopy can be seen from outside the house on the estate road, neighbouring houses and from the adjacent vehicle turning area. Notwithstanding this, the tree continues to meet the criteria for assessing the amenity value of trees, making a positive contribution to the character and appearance of the development of Cwrt Bevan. Even if the tree was not visible from public viewpoints it would continue to be of considerable amenity value.
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4. The oak tree contributes positively to the wider character and appearance of the area, being one of a limited number of mature tree species along the boundary of the development and close to the appeal property. In this context the protected tree, along with the other trees, plays a significant part in softening views of the built environment, and I consider that the removal of the tree would have a harmful effect on the local environment and its enjoyment by local residents and visitors to the properties.
5. Felling the tree at this time would mean the removal of a feature which otherwise is likely to continue to enhance the quality of the public realm well into the future. Therefore, I conclude that the protected tree contributes to the amenity of its surroundings and that its removal would be harmful to the character and appearance of the area. It is in this context that I consider the potential impact of the tree on the Appellant and whether this justifies felling it. There is no doubt that it is a feature that provides a pleasant and satisfying aspect to the street scene and the locality as a whole, and accordingly there would need to be good reason to weaken it.

Justification for Felling

6. The basis of the Appellant's case are the concerns about the health and wellbeing of his child as the acorns falling from the tree pose a significant choking hazard and the garden has now become an unsafe place to play.
7. The judgment in *R v Test Valley Borough Council* [2001] EWHC Admin 1019 concerns the exemption to TPO controls where tree work is necessary for the prevention or abatement of a statutory nuisance. However, the possibility of any action under the exemptions remains a separate matter dealt with under separate legislation; TPO appeals should still be determined on their merits, having regard to the amenity value of the tree and the evidence provided in support of the proposed works, as I have done in this case.
8. Whilst I have sympathy with the Appellant in the matter of fallen debris and I do not underestimate the hazard that this may pose, such matters are a natural and ordinary consequence of having a tree of this species within a residential environment and inevitably carry little weight in favour of tree removal. I also have a great deal of sympathy with the health and wellbeing of the Appellant's son, but there is little by way of medical evidence that supports the arguments that any health concerns are directly related to the presence of the tree. Although I do accept that the tree is having a detrimental effect upon the living conditions of the Appellant's son to which I afford moderate weight.
9. The Cwrt Bevan development would have, as is normal, taken into account the proximity of trees during the planning process and that the position of the dwellings would have been designed to accommodate trees such as the appeal Oak. Such decisions are normally made in accordance with the relevant standards and take into matters such as future growth and condition of trees. Given the distance between the tree and house, I have no reason to suggest that wasn't the case in this instance.
10. When purchasing a property with a large tree it should be accepted that it is an integral part of that environment; otherwise the result would be a gradual erosion of the character and appearance of that area, as trees that people later object to are lost. Presumably the choice of residents to buy or live at their respective dwellings has been based, in part at least, on its position within an attractive environment.

Conclusions

11. With any application for works to protected trees a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area. In this case there has simply been insufficient evidence put forward to justify felling the tree. Thus, on the evidence before me, I find that there are limited grounds for felling the Oak tree having regard to the positive contributory impact it has on the visual amenity of the area.
12. I have considered all the matters raised by the Appellant in support of the Appeal, but none outweigh my conclusions on the main issue and that this appeal should be dismissed.
13. In coming to this conclusion, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WCFG Act). I have taken into account the ways of working set out at section 5 of the WCFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WCFG Act.

R. Duggan

INSPECTOR