



Decision by J Alasdair Edwards, a Reporter appointed by the Scottish Ministers

- Tree works consent appeal reference: TWCA-300-2
- Site address: Woodlands, Findhorn, Forres, IV36 3YY
- Appeal by Mrs Judith Marten against the decision by Moray Council
- Application for tree works consent dated 9 March 2021 refused by notice dated 6 May 2021
- The works proposed: removal of 2x Monterey Cypress
- Date of site visit by Reporter: 23 August 2021

Date of appeal decision: 02 September 2021

Decision

I allow the appeal and grant tree works consent subject to the four conditions listed at the end of the decision notice. Attention is also drawn to the single advisory note at the end of the notice.

Reasoning

1. The key issues in this appeal are whether the proposed felling would:
 - harm the amenity of the area
 - be of detriment to biodiversity
 - impact positively on the amenity of the appellant's and neighbouring property.
2. The Moray Council (Findhorn Village Entrance) Tree Preservation Order (No 1) 2018 took effect on 16 October 2018. The order protects all mature trees of any species within a mapped area on the entrance to Findhorn either side of the B9011. The order covers some 15 properties and their respective gardens including the appeal site at Woodlands. Unless exempt, any works to trees in the area covered require consent.
3. Woodlands is a detached stone house set in gardens of grass and shrubs with a variety of mature tree species, primarily pine to the west of the house with a mix of evergreen and deciduous elsewhere. Two mature cypress trees located directly on the eastern boundary of the appeal site are proposed to be felled. No measurements are provided in the submissions but, as observed on site, the trees are of a height well in excess of two-storeys (the height of Woodlands); with trunks of 230 centimetre and 105 centimetre circumference at base; and wide spreads of up to four metres near the ground. These trees do not fall within any exemption stipulated within the tree preservation order and, therefore, require consent for felling.

4. Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended) allows the creation of tree preservation orders in the interests of amenity and/or to protect trees or woodlands of historical/cultural importance. In this case, there is no indication that the tree preservation order relates to cultural or historic interests. The submissions refer primarily to amenity which I refer below.

Amenity of the area

5. The council explains that the tree preservation order was promoted to recognise the importance of woodland as a gateway feature into Findhorn. I agree that the presence of mature trees, primarily pine, on the entrance to the settlement and along the B9011 provide a pleasant appearance and soften the urban edge. However, the appeal site is located to the west behind two other properties on this approach (Roundhouse and Millbrae) where only the upper most tips of the cypress trees are visible over the Roundhouse's roof. The primary focus on the entrance to Findhorn is along the road where there is a dense enclosure of trees on either side which the trees subject to this appeal do not contribute. In my opinion, the two cypress trees within the appeal site provide negligible amenity value as part of the wider woodland protected by the tree preservation order. In support of this conclusion, I note that the council suggests crown management to reduce the cypress trees by two metres in height. This topping would effectively reduce the height of the trees to the extent that they would no longer be visible on the approach into Findhorn along the B9011.

6. The council also suggests that the order was promoted as a response to the threat of felling to create housing plots. However, that is not the case here as the cypress trees are part of an already established house and garden.

Biodiversity

7. Furthermore, the council explains that the order was promoted to provide biodiversity. Neither party has submitted any information in relation to the biodiversity value of the cypress trees. My attention has not been drawn to any bird nesting or bat roosting activity associated with the trees. The presence of the trees has, as observed on site, degraded the grass and vegetation below and surrounding the trees to an area in excess of 30 square metres on the appeal site to the detriment of flora. In my opinion, the non-native cypress trees have limited biodiversity value.

Amenity of the appellant's and neighbouring property

8. The cypress trees are substantial and are of a height that should they fall uncontrolled they could pose a risk to the house and occupants. However, there is no dispute that the trees are in good health; and there is no evidence from parties to suggest that the roots are unstable or that the trees are damaged to the extent that they are unsafe.

9. I agree that based on the bulk and height of the trees that there could be some loss of light to east-facing windows in the appellant's property (a living room and bedroom on the ground floor in particular; and to a lesser extent a bedroom on the upper floor). Any loss of light would occur in the morning. However, the bedrooms are primarily for sleeping with limited occupation during the day and the upper bedroom has a separate south-facing window. In addition, the living room has a large south-facing bay window with relatively unobstructed views across the River Findhorn providing a good alternative light source. In relation to loss of sunlight to the appellant's property I find no justification to fell the trees.

10. As indicated above, the shadow cast and the shedding of foliage from the trees has resulted in a sizable degraded area in the garden. However, this represents a small proportion of the overall garden which has ample areas of grass and healthy vegetation. Consequently, I do not find the trees unduly affect the owner's enjoyment or use of the garden as a whole.

11. Aerial photography taken in summer 2019 shows that the trees were casting a shadow directly over the south-western corner of the neighbouring property Millbrae (and a substantial area of garden ground). Due to growth, the extent of shadow would likely have increased over the last two years. The aerial photography shows that shadow would affect a single bedroom window on the ground floor and a single window on the upper floor used for living space. As expressed previously, the impact on the bedroom is not persuasive being that it would not be used much during the day. The impact on the upper floor would likely be more intrusive but there are other windows and habitable spaces within the dwelling which would be afforded south-facing light. Despite that conclusion, and acknowledging the argument presented by the council that there is no statutory right to light in Scotland, I agree with the appellant that replacement of the trees would be beneficial to the neighbour's amenity.

Other matters

12. The submissions refer to impacts on drainage pipes but no evidence has been provided to substantiate this point. Parties are in dispute regarding the qualifications of the council's arborist. However, I note that the council's specialist has the required minimum qualification for carrying out tree surveys and making recommendations which is satisfactory for the purposes of this appeal.

Conclusion

13. I find that the two cypress trees contribute little to the woodland on the entrance to Findhorn and have limited biodiversity value. The presence of the trees has degraded the appellant's garden to some extent and removal would be of benefit to the amenity of neighbours. The replacement with two native deciduous trees (as promoted by the appellant's arborist) would provide an opportunity for biodiversity. I have considered all the matters raised but find that none lead me to conclude otherwise. I find that tree works consent should be granted for the felling of the two Monterey Cypress trees subject to the four conditions suggested by the council.

J Alasdair Edwards

Reporter

Conditions

1. Consent is valid for two years from the date of this notice.

Reason: to enable the planning authority to have regard to future amenity.

2. The works shall be carried out in accordance with British Standard BS 3998:2010 'Tree Work – Recommendations' by a fully certified and insured arborist.

Reason: to safeguard the health and condition of trees.

3. The works shall not damage other trees in close proximity, leading to a loss of amenity value.

Reason: to safeguard the health and condition of trees in close proximity.

4. Two replacement trees (ratio 1:1), of a minimum 'Standard' specification, shall be planted during the planting season immediately following the completion of tree works. Details of the siting, species, height (at the time of planting) and protection measures of replacement trees shall be submitted to and agreed in writing by the planning authority prior to planting.

Reason: To maintain the amenity value protected by The Moray Council (Findhorn Village Entrance) Tree Preservation Order (No 1) 2018.

Advisory note

1. Works should not be undertaken during the bird nesting season.