



## Appeal Decision Notice

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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Tree works consent appeal reference: TWCA-300-4
- Site address: 5 Dunkinty, Linkwood, Elgin IV30 8RA and Dunkinty House, Linkwood, Elgin IV30 8RA
- Appeal by Leon R. Chessor against the decision by Moray Council
- Application for tree works consent dated 25 March 2022 refused in part by notice dated 3 May 2022
- The works proposed: Removal of dangerous trees
- Date of site visit by Reporter: 29 June 2022

Date of appeal decision: 22 July 2022

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### Decision

I allow the appeal and grant the tree works consent subject to the 4 conditions listed at the end of the decision notice.

### Reasoning

#### *Background*

1. The key issue in this appeal is whether the impact of the proposed tree removal would harm the amenity of the area, whether it would be to the detriment of its cultural heritage or whether it would impact positively on the amenity of the area, taking into account the impacts on the safety and hence amenity of the appellant's property.
2. Section 160 of the Town and Country Planning (Scotland) Act 1997 (as amended) allows the designation of a tree preservation order (TPO) in the interests of amenity, and or to, protect trees or woodlands of historical or cultural importance. In this case, there is no indication that the TPO relates to cultural or historic interests. The submissions from the appellant and the council refer primarily to safety and amenity. I have no evidence that the houses or trees are located in a conservation area or are otherwise subject to any heritage designation.
3. The Moray Council (Dunkinty House, Elgin) Tree Preservation Order 2003 took effect on 17 September 2003. The TPO protects an area of woodland containing a mixture of what is described as ornamental and amenity trees on an eight hectare site around the grade 'A' listed Dunkinty House, Linkwood in south-east Elgin. Since the date of the order residential development has taken place on land that it partly covers and there are now dwellinghouses and their curtilages around many of the protected trees.
4. On 23 March 2022 an application was submitted to Moray Council (the council) by the owner of the house at 5 Dunkinty, Elgin to carry out work on trees protected by the TPO. Specifically consent was sought to remove five Scots pine trees numbered in the

application as TO186, TO205, TO208, TO209 and T0210, and to remove the north-west limb and rebalance the crown of one Scots Pine tree TO185.

5. In my determination of this appeal there are several aspects of amenity that I must address. Firstly, there is the amenity which includes the safety to be enjoyed by the appellant and his family in the house and its garden at 5 Dunkinty. The trees subject to my assessment are visible, to a greater or lesser degree, from outwith the property at 5 Dunkinty and so I must also have regard to the amenity they afford and which is currently enjoyed by occupants of the houses elsewhere at Dunkinty and Dunkinty House.

#### *The council's case*

6. In reaching its conclusions the council has received specialist professional advice from arboricultural consultants Urban-Arb based upon primarily a visual inspection and in order to verify the appellant's case. In its decision of 3 May 2022 the council partly granted and partly refused the application. Specifically the council granted permission to remove one Scots pine [T0210] and remove the lowest north-west limb to rebalance the crown of one Scots pine [T0185], subject to four conditions attached to the consent. The council concurrently refused permission to remove one Scots pine [T0208] because it considered that the tree is not in poor health or structural condition; and three Scots pine trees [T0186, T0205 and T0209] because insufficient evidence had been provided to establish whether significant internal disfunction is present within the stems of these trees.

#### *The appellant's case*

7. In 2015 the appellant acquired the house and the trees within its curtilage at 5 Dunkinty from its builder. The house, and some seven others, are located within an enclosed area to the north of Dunkinty House. After his acquisition it became apparent to the appellant that the Scots pine trees within the property's boundary were in what he describes as a poor condition, consequent of exposure to the high speeds of prevailing westerly winds. The appellant adds that he would not wish for safe, healthy trees to be removed and he does not condone the irresponsible felling of any tree. However because of potential safety implications it is submitted that the council previously consented to the removal of eight Scots pines at 5 Dunkinty. Pointing in particular to three notable high wind events during named storms in 2021 and 2022, it is contended that had those trees not been removed there could have been what is described as "catastrophic consequences" for the appellant's house, neighbouring properties, and their residents.

8. In support of his wish for the trees' removal the appellant has submitted two tree surveys, one less detailed and undated was undertaken and prepared by Highland Groundcare. Because of his ongoing safety concerns the appellant sought further professional arboricultural advice from Wakeley Tree Surgeons in March 2022 who carried out a survey of the eight remaining Scots pines, six of which are located in the curtilage of his house at 5 Dunkinty, and a further two [trees TO185 and TO186] in proximity to, but beyond the curtilage of the house and in the wooded grounds of Dunkinty House.

9. The appellant's report, using ground visual inspection techniques, highlights the condition and health of the eight trees. The report recommends the removal by March 2023 of five trees [TP186, T0205, TO208, TO209, and TO210], remedial work to one [TO185] and, by March 2025, a reinspection within three years of two trees [TO206, TO207]. The appellant's tree survey did not identify direct evidence or sighting of protected species, although the wider area at Dunkinty is acknowledged as an integral part of the wider

greenspace habitat. Neither has the council brought to my attention any aspect of local biodiversity that could be adversely affected if the trees were to be removed.

10. Four photographs submitted in evidence illustrate the cross sections of four of the trees that were removed previously, each displaying a central void and other signs of the deterioration of the integrity of their stems. A further two illustrate the status of the branches of two trees. The trees in question pose what the appellant describes as a significant risk and threat to life and property; this outweighs any value of the trees which may serve the environment or amenity. Accordingly the appellant's arboricultural advice recommends five trees for removal.

### *Assessment*

11. I carried out an unaccompanied inspection of the curtilage of 5 Dunkinty, informed by the appellant's site plan comprising an aerial photograph and annotated with the location of each of the trees subject to the appeal, and I cross-referenced the arboricultural reports prepared for the appellant and the council. I have no reason to counter the council's position with regard to the removal of tree T0210 and the removal of the lowest north-west limb of T0185. Consequently the matters at appeal concern four of the trees and I will refer to each tree with the TPO reference numbers which coincide with the references in each report. In this regard I turn firstly to those three trees for which the council requires further evidence prior to determining the appellant's request for their removal.

12. To the council in respect of the Scots pine trees T0186, T0205 and T0209, further evidence is required to establish whether significant internal disfunction is present within the stem of these trees. Ideally, as so advised by Urban-Arb, this would be in the form of resistograph or tomography testing. Nevertheless Urban-Arb recognise that this type of testing is not commonly available in the North of Scotland and so evidence in the form of core sampling or small diameter drill testing would be sufficient. The testing should be undertaken by a suitably qualified arboriculturist and should clearly demonstrate that there is internal disfunction that is likely to have a significant effect on the structural integrity of the tree.

13. In respect of Scots pine T0186, which is outwith the curtilage of 5 Dunkinty and within the grounds of Dunkinty House. It is some 22 metres high and I estimate it to be around 10 metres from the closest part of the appellant's house to where it leans. Its obvious limited needle cover and several pruning wounds, its loss of limbs and a break in its crown serve to reduce the amenity value of the tree and could in turn limit its future health. Tree T0205, with a height of 13 metres has little, if any, amenity value due in particular to the absence of its main leader and its display of dead branches. Finally in respect of the 19 metres high tree T0209 I observed the earlier pruning wounds, the break in its crown and its restricted canopy to the north.

14. In these three cases I conclude that each of the trees makes only a limited contribution to the overall amenity currently enjoyed by observers who reside elsewhere in the new houses at Dunkinty. Neither are the three trees readily apparent from other public places. In any event, they grow against the backcloth of similar but more distant and, in the main, established coniferous trees in the grounds of Dunkinty House. I have no evidence of an objection from any party to the proposal for their removal. I judge that the presence of these three trees does not add significantly to the amenity of the existing woodland setting at Dunkinty; their removal would not diminish to any significant degree the otherwise attractive wooded setting of the newer houses at Dunkinty.

15. The close proximity and juxtaposition of each of these trees to the structure of the appellant's house and its garden was readily apparent to me. Indeed the construction of the house at 5 Dunkinty, in such close proximity to the trees, could inevitably cause, over time, increasing concerns about the amenity and safety of its occupants. I have noted that, in the view of the council's advisers, further evidence is required for the assessment of the health and condition of the three trees. However there is currently no certainty that any further investigation of the trees would conclude that felling is not necessary. Without the removal of these three trees, given their age, health and limited distance from the building, there could be a continual risk of the trees, or parts of their structure, falling within the curtilage of the house with potentially significant adverse consequences. A condition of their removal would in any event require the planting of a suitable replacement species.

16. The appeal seeks permission to remove tree TO208, a 12 metres high Scots pine which the council refused permission to fell because it was considered not to be in poor health or structural condition. To the contrary the appellant's arboricultural advice highlights a significant distortion and a heavy lean to the south-west over the property boundary, a dead branch at 3.5 metres and that the tree is suppressed by larger trees. It is recommended the tree is removed by March 2023 but the council considers that further information is required to justify the removal of the tree and the consent should be refused at this time. The council's advisors agree that the tree has been suppressed by neighbouring trees and consequently it is described as being heavily biased to the south west, although it is submitted that this does not mean that the tree is currently in poor health or structural condition.

17. On my inspection I observed the tree, because of its lower height to those on either side, made a proportionally lesser contribution to amenity. Like the others on the eastern and southern boundary of the curtilage of 5 Dunkinty the tree is most commonly viewed against the backcloth of other protected trees within the grounds Dunkinty House. Even though I note that there is no apparent underlying problem with the tree's health or structure nevertheless I conclude that it is not an appropriate species to be within a domestic curtilage, close to an occupied dwellinghouse and its garden. Its condition may well deteriorate over time and its removal, accompanied by a requirement for suitable replacement planting would offset any current loss to amenity that it otherwise provides.

### **Overall Conclusion**

18. There is little doubt in my mind that the character and appearance of the neighbourhood around 5 Dunkinty is enhanced by the presence of the mature trees that once were in the grounds of Dunkinty House and are protected by the council's TPO. They provide an attractive sylvan setting to the houses which are, without exception, located within generous garden ground and a layout that generally tapers away from the protected trees. From my observations the house and garden at 5 Dunkinty is the closest domestic property to the bulk of the protected trees. Nevertheless its plot layout and its location are not readily conducive to allowing, over time, for a satisfactory coexistence between the house and the woodland. Originally forming part of a wider woodland plantation, the construction of the house at 5 Dunkinty, and the inclusion of the mature trees within its curtilage, has fundamentally altered their contribution to amenity that the trees previously afforded.

19. In reaching my conclusions I have had regard to all other matters raised by the appellant and the council. I judge that the benefits of allowing the removal of the trees, as sought by the appellant, outweighs the contribution to wider amenity that would continue if

the trees were to be retained. I have identified no other factors which would lead me to different conclusions.

*Chris Norman*

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. Three 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 (Dunkinty House, Elgin) Tree Preservation Order 2003.

**Advisory note:** It is an offence under the Wildlife and Countryside Act 1981 to carry out works which would destroy a bird's nest. I recommend that the appellant satisfies himself that no nesting birds would be affected by works to remove the trees referred to above.