

Enforcement Appeal Decision

Appeal Reference:	2023/E0034
Appeal by:	Mr Colin Strawbridge
Appeal against:	A Tree Replacement Notice dated 19 th October 2023.
Alleged Breach of Planning Control:	The alleged unauthorised removal of two Lawson Cypress trees protected by a Tree Preservation Order.
Location:	Lands at Bayview House, Londonderry, BT47 6SN.
Planning Authority:	Derry City and Strabane District Council.
Authority's Reference:	LA11/2022/0269/CA.
Procedure:	Informal Hearing on 3 rd July 2024.
Decision by:	Commissioner Jacqueline McParland, dated 23 rd July 2024.

Grounds of Appeal

1. At the hearing, the appellant confirmed that the appeal was brought on grounds (d) and (e) as set out in Section 165(1) of the Planning Act (Northern Ireland) 2011 (the Act).

Ground (d) - that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry.

2. The appellant's argument were confined solely to the second element of ground (d) – that the replacement trees would be contrary to the practice of good forestry. The appellant stated that the replacement trees would not grow at the areas marked blue on the map which accompanied the notice as those locations were too close to an existing wall within the garden and would not receive sufficient sunlight.
3. The two Lawson Cypress trees which were felled from the garden of Bayview House were recorded in a 2004 tree survey. In this survey they were both noted as being mature, having a single stem, with heavy side branches and an upright form. Therefore, I can infer that they had grown and thrived in that location for more than 20 years. The Notice requires that two trees are required to be planted within the areas marked blue on the map which accompanied the Notice. Whilst these areas are to the north of the house, they are of a sufficient distance from the house to receive sunlight. The areas marked blue illustrate areas previously covered by the

crown spread and are of sufficient size which would allow the appellant the opportunity to move the replacement trees away from the wall. No persuasive evidence was submitted to demonstrate why the two replacement trees required by the Notice would not grow and thrive at the same place as the two trees which were felled.

4. Furthermore, at the hearing the appellant stated that the specification of the trees to be replaced would also be contrary to the practice of good forestry. He stated that smaller trees would grow better as they would have more room to become established once planted. However, I agree with the Council that the specification of trees required by the Notice are industry standard, which would come with a root stock or root ball and would be more likely to survive than a whip. These mature replacement trees would be less likely to become overgrown with weeds and other vegetation such as ivy, which are present on site. Accordingly, the appellant offered no persuasive evidence why the planting of the replacement trees would be contrary to the practice of good forestry. The ground (d) of appeal fails.

Ground (e) - that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

5. The appellant's case under his ground (e) of appeal mirror those considered under his ground (d) of appeal. The appellant alleged that the trees which were felled had turned yellow and brown at the crown, however he supplied no persuasive evidence to support this. As discussed above, the appellant also offered no persuasive evidence why the places in which the trees are required to be planted are unsuitable for that purpose. As stated above, the two Lawson Cypress trees that previously occupied those places, grew and thrived for years. Accordingly, I am not persuaded that the areas coloured blue in which the replacement trees are required to be planted are unsuitable for that purpose. The ground (e) of appeal fails.

Decision

The decision is as follows: -

- The appeal under ground (d) fails;
- The appeal under ground (e) fails; and

The Notice is upheld.

COMMISSIONER JACQUELINE MCPARLAND

List of Appearances

Planning Authority: Mr John Loughlin
Mr Paul McCahill

Appellant: Mr Colin Strawbridge

List of Documents

Planning Authority: "A1" Statement of Case

Appellant: "B1" Statement of Case