

First Report of

Ian Murat

July 2016

SPECIALIST FIELD:	Arboriculture
ASSISTED BY:	
ON BEHALF OF:	Mr. S. Richardson
ON INSTRUCTION OF:	Bowcock & Pursaill LLP
SUBJECT MATTER:	Breach of TPO and Conservation Area Rules
INCIDENT DATE	November 2016 – March 2016

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1.0 Introduction

Formal Details

- 1.01** My name is Ian Murat. My specialist field is arboriculture. I am a Registered Consultant of the Arboricultural Association. Full details of my qualifications and experience entitling me to give expert opinion evidence are in Appendix 1.

I was instructed by Bowcock & Pursaill LLP Solicitors, 2 Ridge House, Ridge House Drive, Festival Park, Stoke on Trent, ST1 5SJ.

Summary Background of the Case

- 1.02** In this case, Mr. Richardson is accused of breaching the rules regarding tree works within a Conservation Area and those rules regarding trees protected by a Tree Preservation Order.

Summary of My Conclusions

- 1.03** This report will show that, in my professional opinion, a number of trees have been poorly pruned but with corrective pruning, these defects can be rectified. The soil mounded against the tree stems has not caused any damage. The trees in question have good canopy density and vigour and, soil levels have been returned to the original level.

It is not possible to determine from the condition of the stumps, the physiological and structural condition of the trees that have been felled for safety. However, the Defendant received written advice from a surveyor advising that the condition of the trees presented a threat to the neighbouring properties. The trees along the eastern boundary are growing adjacent to an existing track of which there is free use.

In the absence of a formal written notification or consent, then there appears to have been a breach of the rules regarding Conservation Area Notification or Tree Preservation Order Consent.

The Relevant Parties

- 1.04** The relevant parties in this matter are:
- Mr. Richardson (Defendant).
- High Peak Borough Council (Plaintiff).

Technical Terms and Explanations

- 1.05** I have indicated any technical terms in **bold type**. I have defined these terms when first used. I have also included in Appendix 3 extracts of published works I refer to in my report.

2.0 Issues to Address and a Statement of Instructions

- 2.01** I have received an email with a number of attachments that are the Plaintiff's evidential Witness Statement. The email sets out the circumstances of the Plaintiff's case and my instructions.

The Purpose of the Report

- 2.02** The purpose of the report is to address the issues raised in the instruction email and assist the Court as to whether or not, the Defendant has breached the rules regarding tree works within a Conservation Area and those rules regarding trees protected by a Tree Preservation Order.

3.0 Technical Investigations

Site Visit

- 3.01** I undertook a site visit on 12th July 2016. The Defendant showed me the site and the areas of alleged damage to trees. Other than that, he took no part in the investigations. The trees are in leaf and other vegetation has grown.
- 3.02** The site is well documented in other material including a planning application. But, by way of summary, the property is now a detached residential property in mature grounds at the southern end of Chinley village on a site sloping from south to north. The site comprises the residential property in mature landscaped grounds. Along the site's western boundary with Whitehough Head Lane are a linear group of mixed broadleaved and coniferous trees. In the last southern third of the site is a redundant parcel of land that has historical dumping of material including soil, hard-core and timber and the foundations of walls and buildings. The southern boundary with a farm track has small groups and individual mature trees. The site's egress is in the southern western corner.

- 3.03** There are number of group of trees and individual trees that are alleged to have been damaged or removed. The Plaintiff presents these trees on three site plans numbers Plan A, B and C.

Erratum

- 3.04** There is an error in the plans presented by the Plaintiff. The Plaintiff's expert refers to Plan C describing damage to Trees T6, T7, T8. However, there is no T6. There is a T9 but there is no reference to T9 in the Statement. It has not been possible to make any comment on T6 as there is no indication as to where this tree is located.

Tree Consent

- 3.05** The Defendant advised me that he been granted consent to remove trees along the southern boundary of the site. These trees are those that form the boundary with the farm track. From the Summons, I understand that these trees are referred to as item No. 2. From an examination of the site in the area referred to in the Summons and by reference to Plan A, these are the only trees that accord with the description. They are a linear group of mixed broadleaved and coniferous trees.
- 3.06** In terms of loping. The trees had had lower branches removed on the northern stem. The removal of lower branches has no impact on tree physiology or visual amenity. The tree branches are small in size, some of which are dead due to natural branch suppression. Not all the trees could be examined as the contractor employed by the Defendant was undertaking the consented works. As consent has been given for works in this area, it appeared unnecessary to make any further investigations as the consent appears to supersede the Summons.

Roadside Trees 1 – 9

- 3.07** I have examined the linear group of trees along the western boundary. These trees appear to be those located on Plan B and referred to as Items No.7 and No.8 on the Summons. The trees are mix of species and appear to be naturally seeded. They are individually, unremarkable, mediocre specimens of limited merit or of such impaired structural and physiological condition that they are considered to have a low amenity value. As a group, from the main public vantage points along Whitehough Head Lane, they have some landscape value.
- 3.08** These trees were referred to in a letter from Derbyshire Highways dated 21st July 2015. The substance of the letter is that the trees constituted an issue with the highway and its safe use and the owner was to have them pruned. The letter states; “*as soon as possible*”. It is understood the works were undertaken on the 10th December 2015.
- 3.09** Using the Plaintiff’s schedule at 4.2.1 of the Witness Statement, Trees 3 – 9 are the trees that affect the highway and thus required to be dealt with. Trees 1 and 2 appear to be located at the site’s entrance and thus not directly affecting the highway. There is evidence of pruning and it is not to BS 3998 – 2010. However, having examined the trees and noting their genus, the trees could be the subject of corrective pruning with no harm to their physiology. Any impact on visual amenity is very short lived. The trees are willow and sycamore; they are very fast growing specimens that quickly recreate their canopy density. In a very short period of time there would be little evidence the trees had been pruned.

- 3.10** The remaining trees along the roadside have been subject to pruning or felling. Two stumps were noted, at less than a metre in height adjacent to the road. The pruning generally is not to BS 3998 but can be corrected, again with no impact on tree physiology or visual amenity.
- 3.11** Located in the group is the stump of a large poplar. This is plotted on Plan A. There is no reference to this tree, thus it appears the removal of the tree on the grounds of being exempt from planning control by virtue of its condition is accepted by the Plaintiff.

Trees on Plan A

- 3.12** Plan A notes five trees, an area of cleared vegetation, and an area noted G1, where soil was mounded up beneath trees. The soil beneath the trees has been removed. Any difference in soil height is historic as is any dumping of timber. The degree of decay and dislocation indicates the timber has been in situ for many years. There is no evidence of T5, nor did I see any of the “numerous small trees” referred to in the Plaintiff’s Statement. The site has weed growth but no natural regeneration from stumps that would be expected. The trees exhibited good foliage density and vigour.

3.13 Trees T2, T3, T4 have been felled. There is insufficient information from the stumps to advise if the trees were exempt from planning control. The trees are adjacent to third party property – a large shed building. Their removal does not gain anything in terms of available useable land. They are next to an existing track. The felling of the trees by complete felling rather than sectional dismantling appears to have resulted in the additional felling of smaller self-set sycamore growing along the edge of the track. However, the trees are only small in stem diameter and were not visible from public vantage points. There is no suggestion these trees would have developed into visually appealing specimens, particularly as they were located beneath the canopy of T3. There is also the point that they may well have been in the path of safe operations and thus removed or been damaged from the lowering of large pieces of tree(s).

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3.14 The Defendant has advised that he was made aware by a surveyor in 2014 that the site, in this location, had trees that were considered dangerous and that they need to be attended to.

Plan C

3.15 Plan C refers to three trees numbered T7 – T9 and references a planning application HPK/2016/0058. The Summons refers to trees at Item 9 but they are not numbered the same. As noted at Paragraph 3.04, there is an error which has lead to confusion as to what is being referred to by the Plaintiffs. In the Plaintiff's Statement, at 2.16, it is stated that damage has occurred to the trees by vehicles. The area of damage is an existing track that serves the property. It travels around the eastern boundary of the site and then across the northern boundary to a garage structure.

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It is clearly a track as hard-core are materials laid on the ground. The hard core surface is of an historical nature. There is nothing preventing the Defendant from using this as a track if he so wishes.

4.0 Issues to be Addressed

4.01 To the extent that any of the issues concern matters of law, I defer to the Court.

4.02 I have been instructed to address the following issues:

- Whether the pruning carried out and referred to as exhibit MG13 as stated in the Witness Statement of Monica Gillespie was undertaken unprofessionally and to a poor standard.
- Whether the semi mature walnut tree referred to as Exhibit MG15 was in a good condition.
- The condition of trees T2, T3 and T4 (exhibit MG6) as shown in photos 1 and 2 of Exhibit MG14.
- Whether any damage has been caused to neighbouring trees by clear felling of trees T2, T3 and T4 instead of by dismantling the trees.
- Whether the conditions of trees T2, T3 and T4 were likely to have presented a threat to neighbouring properties/building in the immediate future given their condition.
- Whether any damage has been caused due to the soil and rubble mounded up for a long period around the base of the trees as shown in Exhibit MG14-phot 4 and MG18 photo 5 and the likelihood that the trees life has been shorten and that the trees will begin to show signs of terminal decline within the next 2-5 years.
- Whether the pruning of the mixed broadleaf evergreen have been carried out unprofessionally leaving truncated branches and areas of ripped bark.
- Whether the works carried out to the trees shown at Exhibit MG17 being the work carried out to the ivy and hanging branches of shrubs have been carried out in accordance with BS3998: 2010 Tree Work- Recommendations.
- Whether any damage has been caused due to the soil and rubble being mounded up for a short period around the base of the trees as shown as T6, T7 and T8 on the plan exhibited as MG12 and the likelihood that the trees life has been shorten and that the trees will begin to show signs of terminal decline in the near future. [sic]

Issue 1

- 4.03** *Whether the pruning carried out and referred to as exhibit MG13 as stated in the Witness Statement of Monica Gillespie was undertaken unprofessionally and to a poor standard.[sic]*

The pruning undertaken to the trees is not in accordance with BS 3998 – 2010. The BS advocates ‘target’ pruning where branches are removed at specific points in relation to certain features seen on the tree, be this a branch collar or branch bark ridge.

Issue 2

- 4.04** *Whether the semi mature walnut tree referred to as Exhibit MG15 was in a good condition.[sic]*

I cannot say if the tree was in good condition as it is no longer present on site.

Issue 3

- 4.05** *Whether the conditions of trees T2, T3 and T4 were likely to have presented a threat to neighbouring properties/building in the immediate future given their condition.[sic]*

It has not been possible to determine the condition of T2, T3 and T4 from the stumps that remain. However, Mr. Richardson did receive a copy of the report from a professionally qualified surveyor who has surveyed the property during a mortgage application that pointed out there were trees on the property in poor condition that threatened neighbouring buildings.

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Issue 4

- 4.06** *Whether any damage has been caused to neighbouring trees by clear felling of trees T2, T3 and T4 instead of by dismantling the trees.[sic]*

My survey identified that only laurel shrubbery had been damaged. The felling of the trees by complete felling rather than sectional dismantling appears to have resulted in the additional felling of smaller self-set sycamore growing along the edge of the track. However, the trees are only small in stem diameter and were not visible from public vantage points. As noted in Paragraph 3.13, they may well have been removed in any case had they prevented the safe dismantling of the tree.

Issue 5

- 4.07** *Whether the conditions of trees T2, T3 and T4 were likely to have presented a threat to neighbouring properties/building in the immediate future given their condition.[sic]*

It is likely that the condition of the trees presented a threat to the neighbouring property. The size of the stumps in the ground indicates the trees were of a substantial size, both in terms of overall trunk diameter and height thus, if they had failed they would have damaged the large shed building in the neighbouring property.

Issue 6

- 4.08** *Whether any damage has been caused due to the soil and rubble mounded up for a long period around the base of the trees as shown in Exhibit MG14-phot 4 and MG18 photo 5 and the likelihood that the trees life has been shorten and that the trees will begin to show signs of terminal decline within the next 2-5 years.*

Photograph 4 in the Plaintiff's appendix MG 14 shows material around the roots. The Plaintiff's Statement notes at Paragraph 2.13 that the soil had been removed. The soil was only around the trees for a very short period of time. The soil mounding around the trees includes a period during the "dormant" period when tree activity virtually ceases. There is no evidence in the Plaintiff's Witness Statement to say how long the soil had been around the trees. The soil levels are at the original levels. The trees show no evidence of decline. I do not believe these trees will decline.

Issue 7

- 4.09** *Whether the pruning of the mixed broadleaved evergreen have been carried out unprofessionally leaving truncated branches and areas of ripped bark.[sic]*

The work has been undertaken unprofessionally when compared to the work that would be undertaken by a competent arboricultural contractor. However, the pruning work can be rectified, cutting back to correct pruning points as determined by BS 3998 – 2010. It is noted that some of the trees that were described as being incorrectly pruned are now being felled under a separate consent.

Issue 8

- 4.10** *Whether the works carried out to the trees shown at Exhibit MG17 being the work carried out to the ivy and hanging branches of shrubs have been carried out in accordance with BS3998: 2010 Tree Work- Recommendations.[sic]*

Works to ivy and shrubs are not items dealt with in BS 3998 – 2010.

Issue 9

- 4.11** *Whether any damage has been caused due to the soil and rubble being mounded up for a short period around the base of the trees as shown as T6, T7 and T8 on the plan exhibited as MG12 and the likelihood that the trees life has been shorten and that the trees will begin to show signs of terminal decline in the near future.[sic]*

I am unable to answer this question. It appears to be a repeated question.

- 4.12** In respect of breaching the rules regarding tree works within a Conservation Area and those rules about trees protected by a Tree Preservation Order. Where trees are located in a designated Conservation Area, six weeks written notification is to be given, excepting exempt trees, of the intent to undertake works. Councils use a model form for this purpose but a simple letter fulfils this. If no notification has been given then there is a breach of the requirement to notify. Notifiers then wait for six weeks whilst the council considers the work and its options. Where there has been no communication, after six weeks the work notified may be undertaken. Where there is communication, the council outlines its response and it is dealt with accordingly.

In terms of tree(s) protected by Tree Preservation Order. The applicant applies for formal permission using a model form. The council has eight weeks to determine the application. Consent or a refusal of consent is given in writing to the applicant.

In either case, no work may be undertaken until either the notification period has lapsed or there has been correspondence from the council or, formal written permission is obtained from the council consenting to works.

An exception is where a tree(s) is considered to be exempt from notification or consent due to its condition. In either case it is recommend that five days' notice is given to the council advising of the works. Then only the works required to abate the danger are permitted. The onus is on the notifier or the applicant to substantiate the exemption.

Another exemption is where work is required by, in this case, an Act of Parliament – Highways Act 1980. Notification or consent does not appear to be required to implement clearance of the highway under Section 154 of the Highways Act.

5.0 Conclusions

Based on my investigation I have come to following conclusions:

- 5.01** Pruning and felling works have been undertaken to trees. In respect of the trees along the roadside, the Defendant was sent a letter by the Highways Authority telling him to undertake the work to clear the highway “*as soon as possible*”. Planning Practice Guidance Tree Preservation Orders and trees in Conservation Areas notes the following at Paragraph 081:

Paragraph: 081 Reference ID: 36-081-20140306

What is the exception for work to comply with an Act of Parliament?

The authority’s consent is not required for carrying out work on trees and woodlands subject to an Order if that work is in compliance with any obligation imposed by or under an Act of Parliament. This exception will apply, for example, where the Forestry Commission has granted a felling licence under the Forestry Act 1967.[sic]

Therefore, the works to the trees along the roadside *may not* have required permission under the Highways Act 1980 (154).

- 5.02** It is not possible to determine from the condition of the stumps the physiological and structural condition of the trees that have been felled for safety. However, the Defendant received written advice from a surveyor advising that the condition of the trees presented a threat to the neighbouring properties. The Defendant has acted upon that advice. If the trees were in such a poor condition, then they would be exempt from planning control. Five days’ notice of the intent to undertake the works should be given to the council. Some minor trees were removed during the felling of trees T2, T3, T4. The trees were small in stature and were directly in the path of the trees even if they had been removed by dismantling.

- 5.03** The pruning work is not to that advocated by BS 3998 – 2010. The Standard makes reference to target pruning where branches are removed at a branch collar or branch bark ridge. Long stubs or internodal cuts are not recommended. However, many of the trees can be rectified and the stubs cut back to appropriate pruning points without any damage to tree physiology or visual amenity. It appears that some trees that were noted as being poorly pruned are now consented to be felled.
- 5.04** The soil mounded against the tree stems has been removed. There is no evidence that it has caused any damage.
- 5.05** In the absence of a formal written notification or consent, then there appears to have been a breach of the rules regarding Conservation Area notification or Tree Preservation Order Consent.

I declare that:

I understand that my overriding duty is to the court and I have complied with, and will continue to comply with, that duty.

This report is true to the best of my knowledge and belief, and I know that if it is introduced in evidence then it would be an offence wilfully to have stated in it anything that I knew to be false or did not believe to be true.

Signature *I Murat*.....

Name: Ian Murat M.Sc., F. Arbor. A. CEnv, MCIEEM

Date: July 2016