



TREE PRESERVATION ORDER (TPO) APPEAL FORM
The Town and Country Planning (Tree Preservation) (England)
Regulations 2012 – SI No. 605, Regulation 19

Before completing this form please read "Guide for Appellants (Tree Preservation Orders – consents for works)"

WARNING Your appeal must reach the Planning Inspectorate within 28 days from receipt of the decision against which you are appealing.

Appeals received after the deadline will only be accepted in exceptional circumstances.

If you need this document in large print, on audio tape, in another language or in Braille, please call 0303 444 5000.

PLEASE PRINT CLEARLY IN CAPITALS USING BLACK INK

A. APPELLANT

Name Joshua Lustman

Address 176 Bury Old Road, Salford

Postcode M7 4QY

Daytime Tel

Email

I prefer to be contacted by: ☒ Email ☐ Post

B. AGENT: If acting on behalf of the appellant, you will be our main contact on all matters relating to this appeal and we will direct all queries and correspondence to you. It will be your responsibility to keep the appellant informed.

Name N/A

Organisation

Address

Postcode

Daytime Tel

Email

I prefer to be contacted by: ☐ Email ☐ Post

C. APPEAL SITE

Address where the appeal tree is (trees are) located:

174 Bury Old Road, Salford, M7 4QY

Do you own the site: Yes

No

If no

- 1) give details of your interest in the site (eg tenant, neighbour): I am the neighbour and the tree is encroaching onto my property
- 2) give the name and address (if different from the above) of the owner and/or occupier of the site. We will need to contact them to make arrangements for our Inspector to gain access to the site: Harvey Simon, 174 Bury Old Rd, Salford, M7 4QY. The tree can be seen from the street or from my property at 176 Bury Old Rd

D. COUNCIL/DECISION

Council: Manchester Council

Council Contact Name: John Kelsey

Telephone Number: 0161 234 4597

Full title of tree preservation order (if known): City of Salford (No. 4) TPO 1969

Date of Council's decision (if applicable): 4 October 23

E. APPEAL

Please tick only the relevant boxes.

I am appealing against:

The Council's refusal of consent to fell the tree

~~The Council's failure to issue a decision (deemed refusal of consent)~~

~~Condition(s) attached to the consent~~

~~The Council's refusal to agree a matter that required their agreement under the terms of a condition of consent.~~

F. GROUNDS OF APPEAL

Please provide at least one reason for each of the boxes you have ticked in section E. You must explain fully why you disagree with the council's decision, where one has been issued. To do this, you need to go through the reasons for the decision, and explain why you disagree. Only the reasons within the council's decision and the reasons put forward by you at application stage should be included on your appeal form. You should not introduce any new reasons for the appeal.

Your appeal should relate to the same works as those specified in your application to the council. Exceptionally we may be able to accept your appeal even if you are seeking a variation to the works originally applied for. We will only be able to do so if the changes do not materially alter the nature of the application and, if no one who should have been consulted about the proposed works would be prejudiced by our doing so. For instance, you may have originally applied for consent to crown thin a tree by reducing the percentage of leaf area by 20%, whereas on appeal you may seek a lesser reduction of 10%. However if on appeal you appear to be seeking more works than originally applied for, it is recommended that you submit a new application to the council rather than seek to amend your original application at appeal stage because the Inspector will not consider any works above those which were put forward in your application form.

Similar limitations apply in respect of the reasons you give for seeking consent, especially under the fast-track procedure where the council has no opportunity to respond to your grounds of appeal. The Inspector will only consider the matters that were before your council when the decision on your application was made. This means that if the reason you submitted on your application form was that the tree was causing overshadowing, you should not, on appeal make a claim that tree roots are causing subsidence. If you want to make a different case for the work applied for you should make a fresh application to the council.

We will also look at the original application to check that it clearly specifies the proposed work. If we decide that the works you have applied for are so vague that we cannot be sure how much work is involved, we may decide that the appeal is invalid and reject it. For example it is not sufficient to specify that you want to remove some of the lower branches, or you wish to reduce the tree by 15%. This is too vague and fails to indicate the extent of the works.

If you choose the recommended Fast Track appeal procedure (see section G) the reasons you set out below will be treated as your statement of case. It is important that you set them out in full because you will not get an opportunity to add to them later.

The decision on your appeal will take into account the contribution that the tree(s) make to the character and appearance of the area and the reasons set in support of your application/appeal. Please bear in mind that the Planning Inspectorate has no jurisdiction to resolve allegations of maladministration or complaints about the time taken by the Council to issue a decision, since such matters are not relevant to the merits of the proposal.

If you are appealing to fell a tree or against a condition requiring replacement planting please indicate the species and size of any tree(s) you would be prepared to plant if the appeal were to be allowed:

Number of trees and Species: 1 tree, preferably an evergreen such as a conifer or loral.

Size: A young tree

F. GROUNDS OF APPEAL (cont)

Re: application to fell the large beech tree at 174 Bury Old Rd

In section 198(6) of the Town and Country Planning Act 1990, the law allows for the following trees with a TPO on to be felled; (a) *to those that have become dangerous*, and (b) *to those so far as may be necessary for the prevention or abatement of a nuisance*.

With respect to (a) above the guidance states; *'there must be a present danger which need not be limited to disease or damage to the trees themselves'*. I believe that a number of the reasons I have put forward in my original application demonstrate that the large tree and its branches are causing a danger to me, my wife and young child, as well as any visitors we may have, especially elderly relatives.

Our steep, concrete path gets very slippery from both the moss/algae growth caused by the tree's excessive shading, and the tree's shed leaves & beech nuts on the path. It can be very difficult to push up my child in the pram without slipping back quite a few times, with risk of falling and breaking bones, and more worryingly of the pram rolling down the path into the busy main road. I feel that the council have not addressed this point made in my original application, and seem to be more worried in amenity value than in the more important concern of the health and safety of me, my family and visitors.

The council also did not consider the fact that in strong winds large branches have been blown down, both onto our path and the road. This clearly poses a danger were someone to be hit by one of them.

Although I am not a tree expert, were the council to have inspected the tree, they would have seen that it is perched on high embankments that have started to break up. There is no clear place that the tree's roots are anchored to apart from these embankments, and I am concerned about the stability of the tree, especially in strong winds, causing terrible havoc and possible loss of life. Surely health and safety risks as above to us and the public passerbys would outweigh an added amenity value of the tree.

The council suggested repairing the 'adjacent wall'. The issue is not the wall, but the embankments. Repairing these will be costly and I am not convinced it would actually secure the tree that much.

I believe that the above justifies in its own merit the felling of the tree, due to the dangers that the tree causes.

In addition to the above, section 198(6) (b) of the act allows a tree to be felled *'for the prevention or abatement of a nuisance'*. This surely means that if the tree causes a nuisance, it may be felled, even if it were not dangerous. If the legislation were to be interpreted that the 'nuisance' has to be related to 'danger', it would already have been included in the first category (a) regarding the dying, dead or dangerous tree. The fact that it is brought in legislation as a second point, demonstrates that the 'nuisance' need not be related to danger, but to any other factor that causes an inconvenience.

Therefore the points I mentioned above, together with the other points in my application, would fall into the 'nuisance' category of the legislation. The excessive shading and moss growth, slippery drive, leaf and beech nut collection, embankment rebuilding, telephone wire complications, threat to my drains, complications of building a new driveway and the mere fact that it is difficult to climb my path would surely be described as a 'nuisance'.

Under common law a landowner can cut the branches from a neighbour's trees if they overhang his or her property. The overhanging branches are regarded as a 'nuisance' and may be cut at the boundary between the two properties whether or not they are causing any damage. The cut branches, including any fruit, remain the property of the neighbouring owner. The same rule applies to encroaching roots.

In my case, the legal owner of the tree is my neighbour at 174 Bury Old Road. I am the one who is suffering from the many large branches and roots overhanging and encroaching into my land (as explained in my application), as well as the fact that the tree's trunk has encroached into my boundary and takes up valuable space in my potential driveway. As can be seen by the common law case, this would constitute a 'nuisance' and under law would seem to allow me to cut down everything that enters my property.

At the very least, the council should have allowed me to cut down everything on my side of the boundary, although based on all the points and interpretations of the legislation, I believe that I should be allowed to fell the tree. Local amenity value cannot outweigh the various issues there are with the tree. An inspection should verify the points I have raised.

I appreciate your time looking into this matter for me, as I just don't see how the council are justified in their decision.

G. PROCEDURE – (See Section 9 of the Guide for Appellants before making your choice)

Appeals dealt with by the Fast Track procedure are usually decided more quickly than those which proceed through a hearing or a more formal local inquiry and because of this we recommend the Fast Track procedure.

However, if you or the Council ask to be heard by the Inspector we will organise a hearing which will take the form of a round table discussion. In very exceptional cases, where complex legal matters are at issue, a substantial number of third parties are involved and/or formal cross examination is warranted, we may decide to hold an inquiry.

Please tick one box only.

☒ I wish my appeal to be decided through the Fast Track procedure

☐ I wish to appear and be heard by an Inspector

H. SITE VISIT – Please note: no discussion about the merits of the case will take place during the site visit.

Are you willing for an Inspector to enter the site and conduct the visit unaccompanied?

☒ Yes

☐ No

If Yes, please give details below of anything the Inspector needs to know with regard to how to access the site:

The tree and its issues can be clearly seen from my path, as well as the street

If No, please outline below why this is not possible, why you need to be there or why you need to be represented during the Inspector's visit:

Are there any Health and Safety concerns that the Inspector will need to be aware of prior to the site visit?

☒ Yes

☐ No

If Yes, please detail the concerns below:

As outlined in the application, my path may be slippery, due to the moss growth and leaves etc

I. SUPPORTING DOCUMENTS

In support of your appeal form please send a copy of your application for consent and a copy of the Council's decision (where one has been issued).

Please tick the boxes to show which documents you are enclosing and list any other documents you are submitting in the space below. If you cannot send a copy of the tree preservation order – we will ask the Council to send a copy together with the relevant background papers.

I enclose:

1. A copy of my application for consent Yes 1

If you do not have a copy of your application please state the council's application reference number here (it should be stated on your decision if one was made):

2. A copy of the Council's decision (if one was issued) Yes 2

J. CONFIRMATION

DECLARATION

1. I understand that:

- a) the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my appeal.
- b) details from this form, including my name, the site description and reasons for making this appeal may appear on the Appeals Casework Portal.

By signing this form I am agreeing to the above use of the information I have provided.

2. I have completed all sections of the appeal form and confirm that the details are correct to the best of my knowledge.

3. I have sent a copy of this appeal form and enclosures to the Council.

Signature *Joshua Lustman*

Date

Name (in capitals) JOSHUA LUSTMAN

On behalf of (if applicable)

For more information about how we process your personal information please see "A Guide for Appellants (Tree Preservation Orders- consents for works)."

Please send the completed form and supporting documents to:

Trees and Hedges
Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0303 444 5000

or e-mail it to: treeandhedgeappeals@planninginspectorate.gov.uk

What happens next:

- 1.** You must send a copy of this completed form to the Council including copies of any supporting documents you send to us.
- 2.** When we receive your appeal form we will check it against background documents supplied by the Council before telling you whether your appeal is valid.
- 3.** At the end of the appeal process we will send you the Inspector's decision, including the reasoning in writing.

K. SUPPLEMENTARY SHEET