

Zac Denton

From: Juan Baeza
Sent: 16 October 2018 12:36
To: 'Adam Kahan'
Cc: Tracey Headley-Smith; Zac Denton; Neil Crowther; Lesley
Subject: RE: R/114/15/HH and R/188/18/HH

Dear Mr Kahan

When officers visited following your reporting of tree works they found no evidence of working on site to implement R/114/15/HH. If before the 22nd October and before a decision on R/188/18/HH is made works to implement R/114/15/HH are carried out then an alleged breach of condition number 8 would be investigated. Mr Denton would have been correct to say that if the permission were to be implemented and the applicants failed to protect trees and hedges on site boundaries in a manner agreed with the Council or removed any existing trees/hedges on any site boundaries then condition 8 would have applied and a breach of that condition could be alleged to have taken place. A breach of a planning condition is a criminal offence as is works to a TPO tree without first obtaining consent.

Regards

[REDACTED]

From: Adam Kahan [REDACTED]
Sent: 16 October 2018 12:16
To: Juan Baeza
Cc: Tracey Headley-Smith; Zac Denton; Neil Crowther; Lesley
Subject: Re: R/114/15/HH and R/188/18/HH

Dear Mr Baeza

What evidence do you have that development was not intended to commence? That is contrary to the understanding of the neighbours, that the applicant has stated that if R/188/18/HH is refused they will start digging on R/114/15/HH before 22 October in order to keep that permission.

It can be argued that the felling of the trees, without which it would not be possible for either development to be constructed, is clear evidence of intent to proceed. The trees had previously existed for several decades.

I contend that you have no evidence to support the view that there is no intention to proceed with the earlier permission if the new application fails, whereas the evidence of the tree felling supports the opposite view.

I note that you have at no point denied that Mr Denton assured me that the trees were protected. Nor has any evidence been provided of written permission to fell the trees.

Yours sincerely
Adam Kahan

On 16 Oct 2018, at 12:01, Juan Baeza [REDACTED] wrote:

Dear Mr Kahan

I can only reiterate my advice in earlier emails to you. Condition number 8 was not seen to bite as development had not nor was it intended to commence to implement R/114/15/HH. Enforcement action concerning the works/removal of trees is therefore not applicable and will not be taken.

Thank you for your comments in relation to R/188/18/HH. They will be taken into account when the report is prepared by Mr Denton the case officer.

Regards

From: adam kahan [REDACTED]
Sent: 16 October 2018 11:50
To: Juan Baeza
Cc: Tracey Headley-Smith; Zac Denton; Neil Crowther; Lesley
Subject: Re: R/114/15/HH and R/188/18/HH

Dear Mr Baeza

Thank you for responding swiftly. I appreciate these matters require careful consideration according to Arun's planning regulations, so that if necessary they can be accurately reviewed in any subsequent appeal or court case. It is essential to keep to facts that can be supported by evidence.

Re R/114/15/HH

Thank you for confirming that R/114/15/HH is approved and in force until 22 October 2018, which confirms it was the relevant permission on the date that the trees were felled recently. The fact is that permission was granted with a condition that the trees and hedges were protected before and during the development. Mr Denton assured me verbally that it had similar effect to a TPO and that if the trees were damaged that Planning Enforcement would take action.

On the date the trees were felled no written permission had been sought or received as required under condition 8.

Therefore the trees were felled illegally.

Therefore you should take action.

Re R/188/18/HH

Thank you for confirming that this application is awaiting a decision.

The objections in my original letter stand:

The applicant incorrectly stated that no tree were near the development and that none would be damaged. The fact that such trees did exist is proven. The contention above is that they were felled illegally.

The applicant's drawings and documentation were and remain factually incorrect (although post-decision date and post-felling trees the applicant has submitted a new drawing).

The application breaches multiple elements of Arun's regulations. Furthermore, the "incorrect" statements in the application cannot be argued to be errors by an inexperienced applicant; the fact (evidence provided by the applicant is available) is that the applicant is an experienced developer of over 20 projects. The application should be rejected, because it breaches Arun regulations.

I look forward to ADC's response to the facts.

Kind regards,
Adam Kahan

On 16 Oct 2018, at 10:31, Juan Baeza [REDACTED] wrote:

Dear Mr Kahan

Thank you for your email. I am sorry to hear that you find my response illogical.

On reflection I think it would have been helpful if the words 'hereby approved' had been added to condition number 8 after 'development' and before 'commences'. This permission was valid for 3 years and lapses on the 22 October 2018. A materially different application was submitted under R/188/18/HH and is awaiting a decision. If this application is approved it will have the effect of superseding R/114/15/HH and will be the one that needs to be complied with if works at the site commence to construct the One & two storey extension to (South) side & rear (East) applied for.

As a result I remain of the opinion that the recent tree works did not require consent and were not a breach of condition number 8.

Regards

[REDACTED]

From: adam kahan [REDACTED]
Sent: 12 October 2018 14:50
To: Juan Baeza
Cc: Lesley; Tracey Headley-Smith; Christopher Doidge; Zac Denton; Neil Crowther; Karl Roberts; Cllr. Richard Bower
Subject: Re: R/114/15/HH and R/188/18/HH

Dear Mr Baeza,

Your explanation is illogical. The condition 8 of R/114/15/HH specifically refers to protecting the trees and hedges "**BEFORE THE DEVELOPMENT COMMENCES**".

That is certainly the interpretation given by your colleague Mr Denton in our telephone conversation a couple of weeks ago, when we discussed the precise event of the trees being removed prior to the works and in which he stated that the condition had similar effect to a TPO and that should any such incident take place it would be subject to enforcement procedure by ADC.

Mr Crowther and Mr Roberts - it is extraordinary that your staff appear willing to permit the deliberate action by the applicants in flouting the conditions that your own department placed on this project.

You must take charge of this process and enforce your own rulings.

I repeat my demand to see the written permission that was required, by your own order, in advance of any felling of the trees.

Yours sincerely
Adam Kahan

On 12 Oct 2018, at 14:29, Juan Baeza [REDACTED] wrote:

Dear Sirs

In the absence of Tracey I am taking the opportunity to respond to this reported incident with comments under each of the points below.

[REDACTED]

From: Lesley [REDACTED]
Sent: 10 October 2018 23:01
To: adam kahan
Cc: Tracey Headley-Smith; Zac Denton; Juan Baeza; Neil Crowther; Karl Roberts; Christopher Doidge
Subject: Re: R/114/15/HH and R/188/18/HH

Dear Tracey Headley-Smith.

I beg to disagree with the conclusions you have drawn from your visit today.

1. As Planning Application R/114/15HH has not been withdrawn surely it remains valid??
The conditions of its approval had to be complied with BEFORE work started. The

property owners have breached the conditions . It is irrelevant that work has not started. As no works to implement this permission have been witnessed to be taking place then the permission (R/114/15/HH) has not been implemented and consequently the conditions do not apply. As you know there is a current application R/188/18/HH where the intention appears to be that R/114/15/HH is not implemented as a link between the two extensions is proposed with the new application.

2. I think you have been misled about the extent of the removal/ felling of the trees. I assume you took your own photos of what little is left of the two trees. The magnolia tree was felled COMPLETELY - not just " a few branches". It would be straightforward to confirm the extent of the work by discussing it with the reputable tree surgeon who did the work. I have the firm's details which I will release to you -subject to getting their consent.

What remedies do neighbours have in this regard.?

Are you going to continue fail to impose any sanctions on the owners?

As previously advised these trees are not protected so permission was not required to do works to them and no breach has therefore taken place.

If not, you are - by default- granting Carte Blanche to the property owners to fell any other trees and hedges at their property, irrespective of the impact on neighbours and the ambience of the Sea Estate and ,in my opinion , contravention of the conditions of the planning application.

A new plan detailing trees on the site has been recently submitted as part of application R/118/18/HH. It is now available to view on the web site.

Regards. John Boardman.

Sent from my iPad

On 10 Oct 2018, at 16:30, adam kahan [REDACTED] wrote:

Dear Ms Headley-Smith,

Thank you for attending the site promptly.

Condition 8 of R/114/15/HH states that:

“The existing trees and hedges on the site boundaries shall be retained and protected in a manner to be agreed with the Local Planning Authority before the development commences and for the duration of the development and shall not be damaged, destroyed, felled, lopped or topped during that period without the previous written consent of the Local Planning Authority. Any trees removed without such consent or dying or being seriously damaged or becoming seriously diseased during that period shall be replaced in the following planting season with trees of such size and species as may be agreed with the Local Planning Authority.”

Attached is a recent picture (submitted to Mr Denton on 19.09.18) of the large magnolia tree and the smaller fig tree on the east side of 81 Sea Avenue, which had protected the view between that property and mine for many years. Those were felled yesterday. A two storey high magnolia, higher than the roof of the house, is not “possible branch removal from another tree” as you may have been misleadingly informed..

Please would you therefore send me a copy of the “previous written consent of the Local Planning Authority” that was required if these were to be felled before the development commences.

If that consent cannot be produced then the applicants are in breach of the condition 8 which requires that the trees were protected **before** the works. That is in line with the assurance that I was given by Mr Denton that the condition protected the trees and hedges with ADC’s authority.

The applicants, by felling the trees that existed on the site where the extension is planned, without the necessary permission, have completely flouted ADC's authority. That situation cannot be allowed to go unchallenged.

It is relevant here to note that in the case *Greyfort Properties v Secretary of State for Communities and Local Government*[2011] EWCA Civ 908 and the earlier case of *Whitley v Secretary of State for Wales* (1992) 64 P&CR 296 the courts have clearly determined that if a condition of planning permission has not been complied with then this is a breach of planning control and the permission has not been lawfully implemented and the development cannot lawfully commence.

I look forward to ADC's response.

Yours sincerely
Adam Kahan

<IMG_0545.jpeg>

On 10 Oct 2018, at 15:27, Tracey Headley-Smith [REDACTED]

[REDACTED] wrote:

Good Afternoon Mr Kahan

With reference to the above, I and the case officer for R/188/18/HH visited the site today.

Planning permission R/114/15/HH has not been implemented so there is no breach of condition 8. This permission will expire on 22 October 2018 unless implemented. Application R/188/18/HH has not yet been decided. Limited works appear to have been carried out including the removal of a small fig tree and possible branch removal from another tree. This does not constitute a breach of planning control. The trees are not subject of a TPO or in a Conservation Area so are not protected.

Should you require any further information, do not hesitate to contact this office.

Regards

