



LEGAL BRIEFING

Palm Developments Ltd v Secretary of State for Communities and Local Government & Medway Council

[2009] EWHC 220 (Admin), Mr Justice Cranston

The Facts

In 2001, a developer, "Palm Developments", purchased Trenchmann's Wharf. This industrial site in North Halling, Kent adjoins the River Medway and had been a lime and cement works until the Second World War. It has since been abandoned and today the buildings have largely disappeared, leaving only the remains of floor slabs and roadways between the former structures. The disused works have gradually been colonised by vegetation and numerous species of trees now exist on the site.

Palm Developments submitted an application for planning permission to Medway Council to use the land as a commercial wharf. The application was refused and Palm Developments did not pursue an appeal due to the lack of detail available with respect to the landscaping works necessary for the proposed development.

The Council then took steps to protect the trees and woodland in Trenchmann's Wharf with a Tree Preservation Order ("TPO") under its powers as defined in the Town and Country Planning Act 1990 ("1990 Act").

The developer subsequently decided to carry out a full survey of his site. In order to allow for adequate vehicular access into the site and undertake a levels survey, Palm Developments sought consent from the Council for the removal of scrub, shrubs, saplings and certain identified trees. It claimed that any small trees and vegetation having a diameter of less than 75mm at 1.5m above ground level were not 'trees' and therefore were exempt from the TPO.

The Council refused the application. An inspector, appointed by the Secretary of State following a public inquiry, concluded that it was simply not necessary to clear the site to the extent Palm Developments had applied for. The reason for the removal of the vegetation and trees did not justify the proposed works. She considered the likely impact of the proposed works on the amenity value of the woodland and recommended that the appeals be dismissed, noting that:

"If the whole purpose of the TPO is to safeguard the woodland as a whole, then there must be some common-sense commitment to regeneration in the form of the trees reproducing themselves or re-growth..."

The Secretary of State agreed with the reasoning of the inspector and rejected the appeal.

Palm Developments commenced proceedings under section 288 of the 1990 Act which gives the court discretion to quash a decision of the Secretary of State.

The Issue

What is a 'tree'?

As there is no statutory definition, in the context of Tree Preservation Orders (TPOs) which aim to preserve trees, groups of trees and woodlands, does a 'tree' include a young tree or sapling?

The Decision

Mr Justice Cranston held that:

“...with tree preservation orders there are no limitations in terms of size for what is to be treated as a tree. In other words, saplings are trees. Moreover, a tree preservation order for a woodland extends to all trees in a woodland, even if not in existence at the time the order is made.”

He referred to the fact that other legislation expressly provides for exemption when a particular size limitation or restriction is included within the Act. For example, the size exemption is explicit in the Forestry Act 1967. A license for the felling of a tree is not required if its trunk does not exceed 8 centimetres. The 1990 Act is however silent on this issue.

This conclusion contradicts Lord Denning’s ruling in *Kent County Council v Batchelor* (1976) where he held that saplings are not trees and, in a woodland, a tree was only a tree if its trunk had a diameter of at least seven inches.

Mr Justice Cranston found that the Secretary of State was entitled to follow the inspector’s approach, including her decision that the TPO covered saplings and small trees. The section 288 application was therefore dismissed and permission to proceed to judicial review was refused.

Comment

TPOs for woodlands now appear to cover saplings and trees at all stages of their lives, developers and designers must take care when deciding on development proposals. It cannot be assumed that all saplings and small trees can automatically be removed. This could potentially limit the site’s development options and understanding these limitations at an early stage in the design process will minimise the risk of delay due to costly redesign.

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July 2009
