

Statement of Case – Background

Historic England advice, in summary states that, whereas there is no statutory obligation upon the owner of a listed building to keep their property in a good state of repair, although it is usually in their interest to do so. However, local authorities can take action to secure the repair of a listed building when concerned about its continued conservation.

Damage to a heritage asset is often irreversible. Even if there is evidence of what was there before so it can confidently be restored, the patina of age, the craftsmanship, the archaeological interest and the plain sense of connection with the past through the age of the materials will be lost.

Quite separately it is an offence for anyone who would otherwise be permitted to do damage to a listed building (e.g. the owner) to do anything which causes or is likely to result in damage to a listed building with the intention of causing damage. Damage to a listed building by an unauthorised person other than the owner or occupier could be criminal damage under the Criminal Damage Act 1971.

Regular maintenance and repair are the key to the preservation of historic buildings. Modest expenditure on repairs keeps a building where the trade and routine maintenance especially roof repairs and the regular clearance gutters and downpipes can prevent much more expensive work becoming necessary at a later date (Ref: PPG 15 as was).

There is similarly no obligation on the owners of old buildings to put them into a condition where they are capable of resisting not only all ordinary but also all extraordinary forces that may be let loose to operate against them.

Occupiers of property are under a duty (the common duty of care) to take such care as is reasonable in all the circumstances to see that visitors will be reasonably safe for the purposes for which they are invited or permitted to be there. Occupiers of the property are required to protect anyone on their premises (including trespassers) from danger of which they are aware. This would appear to apply to trees where advice has been commissioned.

Where a building that immediately adjoins a highway becomes dangerous in a state where it could collapse and injure passersby or a neighbour the occupier may be liable under the laws of nuisance or negligence. This is taken to refer to trees as well.

Civil law requires the owner of the land on which a tree stands together with any party which has control over the tree's management has a duty of care at common law to all people who might be injured by the falling of all or part of a tree, the duty of care is to take responsible care to avoid acts or omissions that cause a reasonable foreseeable risk of injury to persons or property. In this case the risk has been professionally assessed on a number of occasions and recommendations made.

There is no apparent distinction or hierarchy in the application of policy to listed buildings and that relating to trees. However the legislation covering listed buildings is the Act; matters pertaining to tree protection are covered in an Order, essentially a subsection of the Town & Country Planning Act. This would suggest that the status of one is greater than the other and the Act should take precedence. It is certainly the case that whereas it is possible to replant the tree should it fail it is not possible to replace the inherent significance of a lost or damaged listed building however carefully and expertly reinstated. (see comment above).

The appellant has identified potential danger to other listed buildings the stability of the bank and the approximate public footpath/highway. Commentary on the LPA's consultants Cheshire Woodland

report (reference CW/10590 – R – 21) notes that the appellant's advisers had identified issues with the potential stability of the bank which is currently unretained. It also notes that the report nor the authors can provide guarantees the safety of the trees or branches will not fail.

Referring to the Sycamore tree T5, the Cheshire Woodland report suggests that is likely to acclimatise to change; the appellant's commentary however suggests that the more likely outcome is that exposure will destabilise it in the short term, presenting greater risk in the immediate future. The tree risk assessment notes that T5 overhangs the listed building by approximately 4 m and it should be pruned to maintain the 3 m clearance of the building. This was taken to mean that the tree should be pruned extent of 7 m but the impact of this intervention on the stability of the tree had not been assessed.

There is considerable ongoing concern about remaining tree and the stability of the bank on which the the subject of this appeal relies. A recent report by Sine Aequalis (July 2203) makes the following observations:

As a result of the partial removal of the former stand of six mature sycamore trees the one retaining tree is now more exposed to potential storm damage.

There is increased concern about the integrity of the tree anchorage and trial pitting was carried out in February 2023 to investigate this. The report concludes that root anchorages are inevitably compromised by the steepness of the slope and the loss of retaining structure.

The report observed that the ground was very difficult to excavate by hand due to the presence of well-bedded sedimentary rock with only a marginal layer of topsoil, it is therefore considered reasonable to assume that the presence of shallow bedrock has restricted root penetration and has had an adverse effect of the potential restructure anchorage residual tree.

An inspection of the sloping and shallow soil structure and roots, the location of the tree close to the edge of the former retaining wall and the knowledge that the trees were closely spaced all combined to suggest that overturning resistance could well be no more than say 60% of an ideal scenario. It should be noted this very difficult to estimate accurately the load testing is any way to determine this with any degree of certainty. The likely outcome of load testing is to destabilise the tree causing potential harm to the listed building in the process.

With the close proximity of the now occupied hall building failure could result in significant damage to roof and walls and possibly serious injury and fatality of one or more occupants especially if collapse is onto the upper bedchamber accommodation.

The report stresses again the legal obligation to protect both life and property, in this case the latter being a listed building. The commentary continues that the original standard six sycamores was clearly too close to the original Hall to be safe in the long term.

Neither the tree nor the historic context that lead to the proximity of the trees to the back of the hall has now been significantly altered, indeed compromised.

The overall conclusions and recommendations of the 2023 report is that there is an arguably significant risk to both listed fabric and human life during a storm or other event. As climate change accelerates it can also be argued that this risk will increase.

The single remaining tree is also of limited value and could be replaced by planting several new trees, better located and using approved indigenous species.

CASE

The appeal relates to the Sycamore tree (identified as T5), to the rear of the stable block of Bowden Hall.

The application was accompanied by a report by LandArb which recommended the removal of the tree and its replacement with alternative species elsewhere in the hall grounds in the appellant's ownership.

A very recent Structural Safety Assessment by Sine Aequalis report concludes *'There is significant risk to both listed fabric and human life should the original hall building be occupied during a significant storm event.'*

The tree is already causing damage to the listed building by virtue of clogging up the rainwater goods with leaf fall and corrosive excretions from insects etc. specific to Sycamore trees. This runs the risk of causing permanent damage by corrosion and damp penetration.

A large branch of (T5) overhanging the roof of the Coach House poses a risk of damage to life and property should it fail.

There is a risk of failing branches which overhang the Public Right of Way and Bowden Cottage land (Next door).

The structural stability of the unretained bank appears to have been destabilised by the removal of the other trees. The stability of the bank is of concern because if there were to be a failure the Sycamore tree would most likely fall on the listed building, causing extreme damage and catastrophic harm to the significance of the heritage asset.

The trees is a self-set Sycamores of negligible amenity value - it has an unbalanced crown pronounced lean towards the listed building and a large overhanging branch - it's the appellant's view that it is not attractive in its own right and there is not any particular public benefit from the tree's retention to outweigh the cessation of the identified potential harm to the listed building.

It is not agreed that the planting of sycamores was typical in this area; the former group was clearly self-set, as the trees were too close together to fully flourish and were also in far too close proximity to the listed building, on a retained bank which overhung the rear wall of the listed building. There would have been no advantage to purposely planting a set of trees in this arrangement.

The safety of visitors and users of the adjacent public roadway cannot be assured beyond reasonable doubt.

The tree is potentially a risk to the building and the retention is contrary to the LPA's duty to seek to ensure that development does no harm to listed buildingsS66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

'In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

This places a duty on LPAs to ensure that development does no harm to listed buildings and implies that where potential for harm is identified, preventative action would be desirable.

Paragraph 189 of the NPPF 2021 states that *'heritage assets range from sites and buildings of local historic value to those of high significance. These assets are an irreplaceable resource that should be conserved and manner appropriate to their significance....'*

Paragraph 195 requires local authorities to assess the particular significance of any heritage asset that may be affected by a proposal taken into account the available evidence and any necessary expertise. They should take this into account when considering the impact of the proposal on heritage assets to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal. In this case the local authority has prioritised the retention of an unprepossessing tree over the impact on the significance of a designated heritage asset despite the above advice and that of available necessary expertise.

Although there is no evidence on the part of the appellant; in fact quite the reverse, under other circumstances the failure to take advice which would result in the minimisation of harm or potential harm to the heritage asset could be considered deliberate neglect.

Historic England's advice is that *'There is no statutory obligation upon the owner of a listed building to keep their property in a good state of repair, although it is usually in their interest to do so. However, local authorities can take action to secure the repair of a listed building when concerned about its continued conservation'*.

There is an implied duty on all parties to do no harm. It must be preferable to deal with potential problems in advance when identified. In this case the risk is real, the concern for the well-being of the community and the listed building is genuine and the owner is resolute in his wish to ameliorate the situation in advance of a catastrophe of any proportion occurring.

The most appropriate solution is to cessate the identified danger to life, limb and listed building by removing T5 and replacing it with a number of trees of more appropriate indigenous species elsewhere on the extensive Bowden Hall site.