



Adroddiad

Report

Gwrandawriad a gynhaliwyd ar 28/09/04

Hearing held on 28/09/04

gan/by **David Wilks** BSc(Hons) DipEM MRTPI MCMi FRSA

**Arolygydd penodwyd gan Cynulliad
Cenedlaethol Cymru**

**an Inspector appointed by the National
Assembly for Wales**

Dyddiad/Date **01 -11 -2004**

Appeal A – Ref: APP/E6840/T/04/514582

Site address: Land off Bulwark Road, Chepstow NP16 5JW.

- The appeal is made under Section 208 of the Town and Country Planning Act 1990.
- The appeal is made by Mr G D Phelps against a Tree Replacement Notice (TRN) dated 18 May 2004 issued by Monmouthshire County Council.
- The breach of control alleged in the notice is the failure to comply with a duty to plant trees under section 206 of the Act. The land concerned is affected by Area A3 of Tree Preservation Order 102 (TPO 102).
- The reasons for serving the notice state that prior to November 2000 a previous owner of the land received consent to carry out thinning works to trees. The trees were and remain protected by Tree Preservation Order 102, Area A3. The consent was conditional upon the landowner leaving the land subsequent to the approved works having taken place, in a suitable condition for the natural regeneration of new trees. Ownership of the land then changed hands and the appellant as the present owner inherited the duty to take appropriate steps to encourage the natural regeneration of new trees on the site. It appears to the Council that the duty has not been complied with. The Council have written on several occasions requesting that the appellant desists from dumping rubbish, starting fires, parking vehicles/ heavy plant, erecting structures etc., all of which actions have the effect of preventing the natural regeneration of the trees on the site. The Council is currently investigating a report that a structure has been erected upon the south-western part of the land. It therefore appears to the Council that the only way to ensure that the site regains its tree cover is for new trees to be planted.
- The requirements of the notice are to plant 50 new trees at the place shown encircled on the notice plan. The trees are to be 10 sycamore, 15 horse chestnut, 10 ash, 10 beech, and 5 Corsican pine (*pinus nigra*). The new trees to be planted 5m apart, with species intermixed, in order that the whole of the encircled area is planted evenly. The new trees must be of 'standard' size.
- The period for compliance with the notice is 6 months.

Summary of Recommendation: The appeal be allowed and the notice quashed.

Appeal B – Ref: APP/E6840/A/03/1153792

Site address: Land off Bulwark Road, Chepstow NP16 5JW.

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission. By letter dated 24 September 2004 the appeal was recovered for determination by the National Assembly for Wales because it is linked to Appeal A over which an Inspector has no jurisdiction.

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- The appeal is made by Mr J Phelps against the decision of Monmouthshire County Council.
 - The application (LPA ref: M/9646) dated 16 January 2004 was refused by notice dated 3 June 2004.
 - The development proposed is the erection of a detached dwelling.
 - The reasons for refusal of the application were:
 1. The proposed development would erode an important open space within the Chepstow Conservation Area, and would fail to preserve or enhance the character or appearance of the Conservation Area, contrary to policy BC2 of the Monmouth Borough Local Plan.
 2. The proposed development would represent a substantial built form within the former curtilage of Ashfield House, a Grade II listed building, and would significantly erode the space around that dwelling and harm its setting, contrary to policy BC6 of the Monmouth Borough Local Plan.
 3. The proposed development would inhibit the regeneration of trees within a group Tree Preservation Order and would be contrary to the provisions of policy C8 of the Monmouth Borough Local Plan.

Summary of Recommendation: The appeal be dismissed.

APPEAL A – Tree Replacement Notice.

Site description and history.

1. The notice (Doc 14) applies to land to the east of Bulwark Road also the subject of Appeal B, within the Chepstow Conservation Area (Plan A), which is affected by area A3 of Tree Preservation Order 102 (Plans B and C). The TPO (Doc 2) is dated 10 March 1975 and was made by the former Gwent County Council. It was confirmed by the Secretary of State for Wales on 27 August 1975 and reported to the County Planning Committee on 6 October 1975 (Doc 3). To the north of the land subject of the notice is the curtilage of a listed building at Ashfield House and to the south is the appellant's dwelling at Hardwick Court (Plan I).
2. The land covered by area A3 was originally part of the grounds of Ashfield House, which from the 1980s to the mid 1990s was owned by the Welsh Office. It was then sold and about 1999 the land was split in two, with Ashfield House being converted to flats and the appellant purchasing the remaining grounds in August 2000. The 2 areas are now divided by a false cypress hedge.
3. It is not known how many trees were covered by the area A3 designation at the time the TPO was made. Some 20 years later surveys submitted with planning applications in 1995 and 1997 (Plans G and H) suggest that between those dates a significant number of trees were removed by previous owners from that part of the land now owned by the appellant. In March 2000 the owner at the time applied to thin out a number of the remaining trees (Doc 4) and this was approved by the Council on 21 March 2000, subject to leaving a tree at every 2.5m which it was stated "would preserve the wooded nature of

the grounds and also allow for natural regeneration” (Doc 5). Subsequently, on 30 November 2000 the Council gave a further consent for the appellant to fell 3 pine trees (*pinus nigra*) (Docs 8 and 9) and confirmed that the removal of a diseased sycamore was acceptable on 4 September 2002 (Doc 12).

4. At the time of my site visit, the tree cover within that part of area A3 owned by the appellant appeared to be similar to that shown on Council photographs submitted with their appeal B statement (Photos 1 and 2). A group of trees was concentrated towards the lower eastern section of the land, with some mature individual trees located near the boundary with Bulwark Road. The main central area of the site north of Hardwick Court was virtually devoid of trees.

Case for the Appellant.

The main points were:

5. It is considered that TPO 102 itself may be invalid as no signed or dated copy has been submitted. In addition, the TPO uses an ‘Area’ classification in respect of the appeal land which is generally regarded as poor practice to be used only exceptionally until trees can be specified individually or as groups, as indicated in paragraph A5 of Technical Advice Note 10. The lack of action in following the TAN advice gives some indication of the real attitude of the Council to the value of trees on this site. Furthermore, part of the area circled on the TRN plan lies outside the A3 area of the TPO (Plan E) so the TRN is inaccurate.
6. The appellant believes that the TRN is flawed and should be quashed; and that there is no evidence to show that trees have been removed in contravention of the TPO. Having regard to the grounds of appeal available under section 208 of the 1990 Act, it is contended that the condition mentioned in the notice is not applicable; the requirements to plant trees should be dispensed with; the notice requirements are unreasonable; and the planting of trees is not necessary in the interests of amenity.
7. On the basis that the TRN has actually been served to enforce the so-called thinning condition attached to the consent given to a previous owner in March 2000, it appears clear that there was no survey plan accompanying the application for thinning which would identify the trees to be removed. Although the Council refer to previous surveys in 1995 and 1997 they have not been able to identify which trees, if any, were removed under the terms of the March 2000 consent or as a result of unauthorised removal due to what the Council describe as “over enthusiastic” thinning. In any event, it is a requirement of section 206(1) of the 1990 Act that trees of appropriate type and species should be replanted in the same place as those lost. This could not be met in the absence of any knowledge of which trees were to be replaced (Docs 15 and 16). The appellant believes that it might even be the case that the thinning work approved in March 2000 may not have been carried out as the site was sold soon afterwards. If so, there could be no breach of condition.
8. As the trees on the site are classified as an ‘Area’ and not woodland, only the trees existing at the time of the making of the Order are protected. In the absence of any survey at that time or when the March 2000 consent was given, then even if trees were thinned out, it is not known whether they were subject of the TPO or not. Any duty to

replace trees cannot be implemented until it is known which trees were or are protected and what is new growth since 1975.

9. Having regard to the foregoing points, it is contended that the TRN is unreasonable because it is not known which trees or how many trees have been removed in contravention of the Order or the condition. The Council suggest that the reason for replanting is to allow regeneration of woodland, but the site is not classified as woodland. The requirement for planting 50 trees goes beyond that which may have been removed and may well not be in the same place.
10. The use of the 'Area' designation suggests that it is the area as a whole which is important for local amenity rather than individual trees or groups. This implies that if the value of the area is maintained then any individual trees lost would not necessarily detract from the area. The amenity value of the area is being maintained by the combination of the large trees around the periphery of the site and within the curtilage of Ashfield House, together with the group of trees lower down the slope on the appellant's land. The TRN planting scheme confines planting to a central area to replace those which would allegedly have grown from natural regeneration. The Council seems to be under the false impression that the TPO applied to such an area as if it was woodland and so require new growth rather than replacement. This is not necessary for retaining the amenity value of the Area designation in the TPO and is beyond its scope. It must also be appreciated that any trees removed more than 4 years ago, such as those which seemed to have been removed between 1995 and 1997 according to the surveys at that time, cannot be replaced due to the provisions of section 207(2) of the 1990 Act.

Case for the Local Planning Authority.

The main points were:

11. The Council require the restoration of tree cover to the density pertaining prior to November 2000 by means of new tree planting, under the duty placed on landowners under section 206(1) of the 1990 Act. The part of the land that is now almost devoid of tree cover was, prior to 2000, a densely wooded area and this can be compared to a survey drawing submitted with a planning application in 1995 which illustrated all the trees existing at that time (Plan G and Plan F). It is not considered that the requirement to plant 50 new trees within the circled area shown on the notice plan at a spacing of 5m intervals is excessive (Plan D). It is not accepted that the area of planting included within the circle includes land outside the area of A3. Moreover the land is within a Conservation Area where the same tree replacement requirements apply.
12. The Council do not fully understand the appellant's claim that the alleged breach cannot affect the TPO given the length of time the Council have allowed to elapse to take action. In fact, there has been regular correspondence with the appellant's family about the condition requirement to allow the land to regenerate as woodland (Docs 6 – 11 and 13). The various unacceptable uses of the land have frustrated this requirement (Docs 6,10,11) and the TRN has been used as a last resort to enforce natural regeneration and the establishment of trees. The suggestion that the TRN has been served merely to thwart a planning application on the land is rejected.

Analysis and Conclusions.

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13. With regard to the appellant's concern about the procedures relating to the confirmation and signing of the TPO, the Council were unable to provide an original copy at the hearing. It was agreed that the appellant or his agent should be given the opportunity to examine it in the Council's archives or be given a signed and sealed copy of the confirmed TPO. This was done following the hearing and a copy has been submitted (Doc 2B). I am, therefore, satisfied that the TPO came into effect as confirmed and that there has been no prejudice to the appellant arising from the relevant procedures.
 14. The 'Area' designation in a TPO is normally applied as an alternative way of specifying scattered individual trees as a temporary measure until individual or group classification can be carried out. The fact this has not been done does not invalidate the TPO in any way, but it does make it difficult to identify the trees to which the Order applies especially when many years have passed since the original designation, as in this case. For clarification, I would also mention the Council's reference in their statement and other documentation to the protection of trees within a Conservation Area. This is a separate matter from the TRN as issued which makes no mention of section 213 of the 1990 Act. In any event, such provisions do not apply to land where a TPO is still in force, as in this case.
 15. The major concerns of the Council appear to stem from the allegedly excessive thinning of trees undertaken by a previous owner, but they have produced no evidence to show either which trees were felled with consent or those which may have been removed in contravention of the Order. The appellant does not know if such work was undertaken, but I am satisfied that it was having regard to several letters from the Council which confirm this (Docs 6,13,16). The letter of 14 March 2000 (Doc 4) applying for consent states that it was intended to complete the felling "early next week." In a letter to the appellant of 1 November 2000 (Doc 6) the Council confirmed that by that time the work had been carried out.
 16. It appears that the Council are seeking to achieve 3 things. First, they seem to want the trees that were thinned with consent to be replaced, but there is no duty to do this. Second, they want those trees which they claimed were thinned without permission to be replanted. I accept that such unauthorised work could have been in contravention of the Order, but there is no evidence to show which trees were involved, or how many of them there were as the application letter and Council response are extremely vague (Docs 4 and 5). It is, therefore, not possible to say whether they were trees which existed at the time the Order was made nearly 30 years ago and so it is not even known if they were all protected by the Order.
 17. Third, the TRN states that it is served due to a failure to comply with the duty to plant under section 206. This applies to the duty to replant in respect of trees removed in contravention of the Order, but not to a failure to comply with a condition, which appears to be the real reason for serving the notice. Under section 207(1)(b) the condition to be enforced must relate to that which requires the replanting of trees. In this case there is no actual requirement in the condition to replant trees, only a vague reference to allowing for natural regeneration. It follows that the condition lacks relevance and precision, so fails the tests normally applied to conditions.
 18. Even if it was accepted that trees would regenerate through self-seeding they would not be covered by the original Order as they did not exist when it came into force. Also,

there is no provision in the 1990 Act that trees planted in accordance with a condition are automatically protected.

19. A further matter to consider is that the circle drawn on the TRN plan where replanting is required to take place does extend slightly outside the northern boundary of area A3 (Plan E), although this is capable of correction, and that the number of trees required to be planted is 50. I note that the TRN does not cover all the land within area A3, but only that owned by the appellant. The Council refer to previous surveys which show around 50 trees in that area in 1995 and about 26 in 1997 (Plans G and H). Assuming that trees were felled without consent during that period, I was given no evidence to suggest the Council attempted to seek replanting by the owners at the time. As a TRN must be served within 4 years of any failure to comply with the replanting duty, it must be concluded that no action can now be taken to require replanting of any losses at that time.
20. Furthermore, the 1997 survey obviously preceded the application for thinning which was allowed in 2000 when it can be assumed many of the trees remaining from 1997 were allowed to be felled by the Council, although the number is not known. Several others have been given consent to be removed since or treated as exemptions, without any replanting conditions. I consider, therefore, that the requirement to plant 50 trees probably significantly exceeds the number which have been felled without consent and is unreasonable.
21. I have considered whether the notice could be corrected or varied to overcome the shortcomings I have referred to, but it is my conclusion that it is so fundamentally defective that this is not possible and that any attempt to do so would cause substantial prejudice to the appellant. Accordingly, I shall recommend that the appeal is allowed and that the notice be quashed.

APPEAL B – Section 78 appeal.

Site and surroundings.

22. The appeal site (Photos 1 and 2) covers an area of about 0.3ha within the Chepstow Conservation Area, to the east of Bulwark Road which leads off Hardwick Hill to the north. It includes land the subject of appeal A. From Bulwark Road the site slopes down eastward towards Rockwood Road. It was formerly part of the grounds of a 2 storey, Grade II listed building, Ashfield House, lying to the north. This is a late Georgian villa which in recent years has been converted to 4 residential flats and its curtilage divided in two. Adjoining the southern boundary of the site are several modern detached dwellings, including Hardwick Court from which access into the site would be provided along its existing driveway off Bulwark Road.
23. There are several large mature trees along the boundary of the site with Bulwark Road and an attractive group of trees in the lower north-eastern area of the site, but apart from a few small specimens the central area of the site appears as a clearing devoid of trees. The site is at a lower level than Bulwark Road and is partly screened by a roadside stone wall. There is a view across the site from outside the entrance to Ashfield House to the north and the canopy formed by trees within the site can be seen as a feature along and below the Hardwick ridge viewed from below to the north-east in the Portwall Road/Garden City area (Photos 3 and 4). The ridge is prominent in distant views from the same direction (Photo 5).

Planning history and policy background.

24. The appeal site and the nearby Ashfield House have been the subject of several planning applications for residential development. Three new dwellings in the house grounds were refused in 1996 (LPA ref: A39096) and 2 dwellings also refused in 1996 (LPA ref: M/55) for design and visual amenity reasons (Docs 17 and 18). In 1998 an application for 2 dwellings (LPA ref: M/1654) was refused on access grounds (Doc 19). A further application (LPA ref: M/2930) was also refused and the subsequent appeal dismissed (PINS ref: A/98/512705) (Docs 20 and 21). The main issues of the appeal concerned the effect on traffic and the character of the Conservation Area. Further applications for 2 dwellings in 2002 (LPA refs: M/7416 and M/7770) were also refused (Docs 22 and 23).
25. The parties refer to national guidance on development plans, Conservation Areas and Listed Buildings, Trees, and Design contained in Planning Policy Wales (PPW), particularly sections 3.1, 3.5 and 4.1, paragraphs 5.2.8, 5.5.13, 6.1.2, 6.3.2 and 6.4.7, and section 6.5; Technical Advice Notes 10 and 12; and Welsh Office Circular 61/96, paragraph 11.
26. The development plan for the area comprises the 1996 Gwent Structure Plan (GSP) and the 1997 Monmouth Borough Local Plan (MLP). GSP policy H2 and MLP policy H3 cater for new residential development within Chepstow; MLP policy BC2 relates to development within the Conservation Area and which affects its views or setting; policy BC6 seeks to safeguard the features and setting of listed buildings; and policy C8 seeks to ensure new development has regard to the retention of trees and woodland. Similar policies are contained within the emerging 2003 Monmouthshire Unitary Development Plan (UDP), particularly policies H3, CH1 and CH7. Supplementary Planning Guidance is being prepared as part of the UDP and includes a Landscape Study where LCA18 covers Chepstow (Doc 24). The Council's Design Guidelines 4 and 11 on historic landscapes and housing complement the foregoing assessment (Docs 25 and 26).

Case for the Appellant.

The main points were:

27. The importance of the appeal site to the Conservation Area lies in the value of groups of trees on the site. Apart from the driveway which would utilise a 'no-dig' method of construction, the proposal would not affect trees in the locality. Due to the site levels, the dwelling would only be glimpsed through trees along Bulwark Road and the tops of other trees would be seen beyond it. In wider views the important vista from the east would be retained with the mass of trees in the lower part of the site providing a screen from that direction. The siting of the building would not alter the well established pattern of development along Bulwark Road and would not intrude into the lower wooded area. It would not harm the character or appearance of the Conservation Area.
28. With regard to the listed Ashfield House and its setting, the proposal would be some distance away. The listing description contains nothing to suggest that the site was an essential part of the building's character or laid out to complement its design or function. An Inspector in the 1999 appeal relating to a proposal a similar distance from Ashfield House found no adverse effect on its setting.
29. In respect of the Tree Preservation Order, the proposal would not result in the loss of any existing trees or prejudice their future health. The Council complain that tree regeneration would be affected, but the TPO does not safeguard this. It is considered

that the Council have only raised this objection to support their case for the Tree Replacement Notice.

Case for the Local Planning Authority.

The main points were:

30. The Council's case relates to the effect of the proposal on the character and appearance of the Conservation Area, the effect on the setting of the listed building at Ashfield House, and the impact on the Tree Preservation Order. The site lies within the former grounds of Ashfield House and is considered to be an important open space on the historic edge of the town formed during its 19th century expansion. The erection of a dwelling would erode this space and fail to preserve or enhance the Conservation Area. The proposal would harm the landscape character of the site as a partially wooded undeveloped slope which is seen from nearby viewpoints as a relieving green space within an urbanised setting. The space is a remnant of the era when country houses in their own grounds, such as Ashfield House, were developed above the old town which reflected the increasing wealth and trade of Chepstow. The green spaces provided important breaks in the solid lines of houses on the ridge lines, but have been gradually eroded with modern development and the appeal proposal would perpetuate this intrusion.
31. Ashfield House is a late Georgian villa built at a time when Hardwick Hill was being developed to provide a better route to the west forming the transition between town and countryside. Incremental urban development over the years has compromised the spacious nature of the earlier dwellings (Plan K) and the proposal would be close to the listed building and adversely affect its mature setting, original social context and visual integrity.
32. The development of the appeal site which is covered by a Tree Preservation Order would destroy its openness and prevent regeneration of trees. It could also lead to problems for the occupiers in relation to nearby mature trees.

Analysis and Conclusions.

33. The main issue of the appeal is the effect of the siting, form and scale of the proposed dwelling on the character and appearance of the locality which lies within the Chepstow Conservation Area.
34. Policies BC2 and BC6 of the adopted Local Plan set out criteria for considering the effect of the proposal on the Conservation Area, including its visual character. I consider that the appeal site makes the following contribution to its character and appearance. First, it is part of the vista of the Hardwick ridge from the lower lying land to the north-east, which I agree with the Council is important as one of the remnants of open land and trees which provide relief to the built urban development and contribute to the visual character and appearance of the Conservation Area. Second, its verdant open quality provides a feature in its own right, which also augments the larger spaces to the south off Bulwark Road. Third, it complements the remaining historic spacious, landscaped character of dwellings to the north and west. Fourth, it caters for a view over the site from Bulwark Road towards Ashfield House and across the Conservation Area. Finally, the site is part of the setting of Ashfield House.

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35. Bearing the foregoing points in mind, I find the development of the site would have several shortcomings in terms of Local Plan policy BC2. In the important view from the north-east the openness of the hill slope has been eroded by modern development and has become increasingly dominated by built forms. The trees on the lower part of the appeal site above Hardwick Cottage are perceived as a visual entity with the large trees along Bulwark Road to provide a significant natural break which I consider should not be diminished. I accept that the construction of the proposed dwelling would not involve the direct loss of existing trees and that it would be largely hidden in views from the north-east by those trees on the lower part of the site. However, it would be partially seen in winter in that view and its scale and height would create a barrier to the view from Bulwark Road and disrupt the visual continuity of the trees on the upper and lower parts of the site. I would add that I believe it is the green space as a whole which must be considered in the context of its contribution to the Conservation Area, not just that part covered by trees.
36. There is a statutory duty to consider the setting of Ashfield House as a listed building and advice on the matter is contained in paragraph 11 of Welsh Office Circular 61/96. There is no evidence to show that the immediate setting of Ashfield House is an essential part of the building's character, for example being laid out specially to complement its design or function, but it must be appreciated that the contribution such buildings and their setting make to the wider townscape is important. The proposed dwelling would be about 35m from the listed building and on a higher finished level, with elevations of 2 storeys at the front and 3 storeys at the rear (Plan J). The appellant claims it is a similar distance from Ashfield House to the proposal which was dismissed on appeal in 1999, but in fact that was much further away (Doc 20). Although the proposed dwelling is sufficiently far away so as not to unduly overlook the flats in Ashfield House, I consider that it would intrude into its setting as viewed over the wall along Bulwark Road. Viewed from Hardwick Hill by the entrance to Ashfield House I consider the profile and height of the side elevation of the new dwelling, including its projecting balcony structure, would appear as an incongruous form which would detract from the townscape of the Conservation Area of which the setting of Ashfield House is part.
37. It is my conclusion that the dwelling would be unduly dominant and intrusive in respect of its relationship with the nearby listed building and the wider appearance of the Conservation Area. The parking and other domestic paraphernalia around the dwelling would probably add to the degree of impact. I consider the proposal would conflict with policies BC2 and BC6 of the adopted Local Plan. It would also conflict with principles concerned with the setting and vistas of historic features and Conservation Areas, the relationship of built form to space, and the siting of development, contained in the Council's supplementary design guidance being developed as part of the UDP process, although that carries less weight than the policies of the adopted development plan.
38. In relation to the Council's third reason for refusal of the proposal, I do not regard its impact on the re-generation of trees as a significant objection in itself. Within the area of the dwelling's 'footprint' and its immediate surroundings the 1997 survey suggests that there were few trees and the existing ground cover shows no obvious signs of tree regeneration, being dominated by the remains of shrubs and ground cover vegetation. I consider that the dwelling itself would be sufficiently far from the mature trees within the site so as not to seriously damage their root systems.
39. However, I have some concerns about several other aspects of the likely relationship of the appeal proposal with existing nearby trees which could affect their health and long-

tern retention, to the detriment of the appearance of the Conservation Area. First, the dwelling and its associated works would be close to 3 small ash and sycamore trees on the north side of the dwelling footprint which could affect their future canopy growth potential. Second, I have some reservations about the impact on trees of the driveway extension to serve the proposed dwelling. This would pass between 2 mature trees, within 1 – 2m of their trunks, into the proposed parking area which would also be partly under the tree canopy. The appellant proposes the use of a ‘no-dig’ method of construction for the driveway, but no expert evidence has been submitted about the condition of the trees and their ability to withstand even such a sympathetic change to their root environment. They appear very mature and there is evidence of fairly recent ground works undertaken nearby to form a ramp into the site, together with the siting of a structure off the existing driveway, which may have already had some adverse effect on ground conditions for the widespread shallow rooting system which trees rely on. The combined effects of all the foregoing factors could result in damage to the health of the trees adjacent to the driveway. Third, there are several tall mature trees within 10 – 15m of the proposed dwelling which might also cause concern to future occupiers about their stability and possible ‘windblow’ in the event of storm conditions.

40. It is my overall conclusion that the proposal would not preserve or enhance the character and appearance of the Conservation Area and I shall recommend that the appeal is dismissed.
41. With regard to the conditions which were discussed at the hearing, I have set out as Appendix A to this report a list along the lines of those discussed which would be appropriate for any permission which may be given if my recommendation is not accepted. Condition 1 is the standard time limit. Conditions 2 – 5 would provide necessary control over the details of the dwelling and permitted development rights to safeguard the character and appearance of the Conservation Area in respect of those matters. Conditions 6 – 8 would be necessary in the interests of protecting trees and visual amenity.

RECOMMENDATIONS.

42. I recommend that:

Appeal A (PINS ref: T/04/514582)

The appeal is allowed and the Tree Retention Notice is quashed.

Appeal B (PINS ref: A/04/1153792)

The appeal is dismissed.

Inspector

APPENDIX A

- (1) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
- (2) Notwithstanding the details shown on the application plans, the pair of small gables shown over the first floor front elevation shall be omitted; and chimneys shall be placed at either end of the ridge of the dwelling; and details of the type and design of the chimneys and of the windows for the dwelling, including cills and arches, shall be submitted to and approved in writing by the local planning authority before works commence. The development shall be carried out in accordance with the details so approved.
- (3) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), Schedule 2, Part 1, Classes A, B, C, D and E and Part 2, Class A, no extensions or additions to the dwelling shall be constructed or any wall, fence or other means of enclosure erected, without the prior permission in writing of the local planning authority.
- (4) Details of the colour and finish of the roof slates, ridge tiles, external render, doors and fenestration joinery, rainwater goods, and the balcony and garden store materials shall be submitted for the written approval of the local planning authority before works commence. Works shall be carried out to implement the details so approved before the dwelling is occupied.
- (5) The details of the height, materials and finish of all walls, fences and other means of enclosure shall be submitted for the written approval of the local planning authority. The means of enclosure so approved shall be provided before the dwelling is occupied and thereafter retained.
- (6) Details of a permeable 'no-dig' method for surfacing the extended driveway to serve the new dwelling without disturbing existing ground levels shall be submitted for the written approval of the local planning authority before works commence. The dwelling shall not be occupied until the scheme of details so approved has been completed.
- (7) Prior to the commencement of any works on site, including any burning, plant storage or deposit of materials, fencing shall be erected around all trees which are the subject of Area A3 of Tree Preservation Order 102 under the outer limit of the canopies or any other position which has first been approved in writing by the local planning authority. The fencing shall comprise a vertical and horizontal framework of scaffolding, supporting a minimum of 20mm exterior grade plywood or other robust man-made boards which have been agreed. The fencing shall be at least 2.4m high, constructed and erected in accordance with British Standard 5837:1991, and be retained for the duration of the construction works. There shall be no placing or storage of structures,

plant, equipment or materials; ground compaction, disturbance, excavation or fill; mixing of materials; passage or parking of vehicles; or any other activity, within the fenced areas.

- (8) Before development commences details and plans of a landscaping scheme shall be submitted for the approval in writing of the local planning authority. The scheme shall include the retention of all trees within the site which are growing within Area A3 of Tree Preservation Order 102; the details of the species, planting size and position of all new trees, hedges and shrubs; and details of any ground excavation works, retaining works and ground cover vegetation or hard surface materials. All the approved planting and other landscaping shall be carried out in the first planting season following occupation or completion of the dwelling whichever is the sooner. Any trees or other plants which within a period of 5 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same size and species or any variation which has first been approved in writing by the local planning authority.

APPEARANCES

For the Appellant

Mr B Sumner BA(Hons) MRTPI Planning Consultant.
Mr G D Phelps Appellant.
Mr J Phelps Appellant's son.

For the Local Planning Authority

Mr P Thomas BSc(Hons) DipTP MRTPI Principal Planning Officer.
Miss C Bosley BA(Hons) DipLA MLI Landscape Officer.
Mr E Holland BA(Hons) IHBC Conservation Officer
Mr G Weston NDF Tree Officer.

DOCUMENTS

Doc 1 Attendance list.
Doc 2A Copy of Tree Preservation Order 102 submitted at Hearing
Doc 2B Copy of signed, dated and sealed TPO102 sent in with LPA letter dated 4.10.04.
Doc 3 Bundle of procedural documents relating to TPO 102.
Doc 4 Letter of 14 March 2000 from C Sheppard applying to thin trees.
Doc 5 LPA response to Doc 4 dated 21 March 2000 granting consent.
Doc 6 Letter of 1 November 2000 from LPA to Appellant.
Doc 7 Letter of 8 November 2000 from LPA to Appellant.
Doc 8 Application to fell 3 pine trees dated 15 November 2000.
Doc 9 LPA consent to fell 3 pine trees dated 30 November 2000.
Doc 10 Letters of 2 and 3 May 2001 from LPA to Appellant.
Doc 11 Letter of 25 October 2001 from LPA to Appellant.
Doc 12 Letter of 4 September 2002 from LPA to Appellant re diseased sycamore.
Doc 13 Letter of 23 December 2002 from LPA to Mr J Phelps.

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- Doc 14 Tree Retention Notice (with plan) dated 18 May 2004.
- Doc 15 Letter of 25 May 2004 from Mr B Sumner to LPA.
- Doc 16 Letter of 26 May 2004 from LPA to Mr B Sumner.
- Doc 17 Planning refusal decision A39096 dated 18 October 1996 (3 dwellings).
- Doc 18 Planning refusal decision M/55 dated 18 October 1996 (2 dwellings).
- Doc 19 Planning refusal decision M/1654 dated 11 June 1998 (2 dwellings).
- Doc 20 Planning refusal decision M/2930 dated 23 November 1998 (1 dwelling).
- Doc 21 Planning appeal dismissal decision A/98/512705/T dated 5 May 1999.
- Doc 22 Planning refusal decision M/7416 dated 28 August 2002 (2 dwellings).
- Doc 23 Planning refusal decision M/7770 dated 6 January 2003 (2 dwellings revised).
- Doc 24 Monmouthshire Landscape Study: 18 Chepstow.
- Doc 25 Council Design Guideline 4: Respecting Historic Landscapes.
- Doc 26 Council Design guideline 11: Housing & Mixed Use Developments.

PLANS

- Plan A Chepstow Conservation Area boundary.
- Plan B TPO 102 plan.
- Plan C 1:1250 location plan showing TPO Area A3 and surroundings.
- Plan D TRN plan.
- Plan E Appendix 4 of Mr Sumner showing TPO Area A3 and TRN planting area.
- Plan F Appendix of Mr Weston showing TPO Area A3 and alleged cleared area.
- Plan G Survey showing trees dated December 1995 submitted with application 39096.
- Plan H Survey showing trees dated June 1997 submitted with application M/1654.
- Plan I Location plan of TRN land and surroundings.
- Plan J Application M/9646 plans (J/1 – J/5) subject of s.78 appeal.
- Plan K OS Plans showing historical changes 1882 – 2004.

PHOTOGRAPHS

Photo 1 View from Bulwark Road.

Photo 2 View towards Ashfield House.

Photo 3 View from Garden City Way.

Photo 4 Zoom view from Garden City Way.

Photo 5 Long distance view towards Hardwick ridgeline from Tutshill