

The Root of the Problem

A Perrin and W Ramage v Northampton Borough Council and F and S Shephard [26 September 2006] High Court

The Message:

Even if a tree is protected by a preservation order, it can be lopped or felled if necessary to prevent a nuisance.

The Case:

Perrin and Ramage owned a house in Northamptonshire, which was damaged by the encroachment of roots from an oak tree in the garden of their neighbours, Mr and Mrs Shephard. The tree was protected by a tree preservation order or TPO.

The maintenance of existing trees and the planting of new saplings is an important feature of urban planning in the UK. As well as providing pleasure, protection and shade, they help to soften the harsher man-made environment of brick, glass and steel. However, the presence of trees in towns is not entirely benign and the encroachment of tree roots can cause significant damage to the foundations of buildings.

A balancing act is required between encouraging the preservation of trees and ensuring that trees do not constitute a danger to people or buildings. Statute seeks to achieve this by preventing the lopping or felling of trees protected by a TPO, but in certain circumstances allowing such trees to be lopped or felled without needing prior permission.

Even though the tree at issue in this case was protected by a TPO, Perrin and Ramage applied for permission from Northampton Borough Council to fell the tree. Their application was rejected, the tree "meriting outstanding status" and having a high amenity value. Perrin and Ramage sought a declaration from the Court that they could fell the tree.

The Council argued that it was not necessary to fell the tree to prevent the nuisance from its roots, because other engineering works (such as the underpinning of Perrin's house) could be carried out at the expense of Perrin and Ramage curing the problem and preserving the tree. This argument was one put forward in dealing with hundreds of TPOs in the UK, but was it legitimate? In deciding whether the cutting down of a tree was necessary to prevent a nuisance, was it irrelevant that there were other possible works that could prevent the nuisance?

The Court decided that the mere fact that there were alternative engineering solutions available was irrelevant to whether it was necessary to cut down the tree. The question of whether the lopping or felling of a tree is necessary to prevent or abate a nuisance is one of fact to be decided on the everyday sensible approach of a prudent citizen looking at the tree and deciding in his own mind whether he can properly say that the lopping or felling is necessary to prevent the nuisance.

For completeness, separately from the court proceedings, an agreement was reached between the Shephards and Perrin and Ramage by which the Shephards will have the offending tree

removed as soon as they are permitted by the Council and the costs will be reimbursed by Perrin and Ramage's insurers.