

APPEALS COMMITTEE - 8 DECEMBER 2003.

OPERATING PROCEDURES

1.0 INTRODUCTION

- 1.1 At a meeting of an Appeals Panel held on 23 October 2003 (minute 18 refers), Members requested that the Committee's operating procedures should be reviewed, with particular reference to the hearing of Appeals against the making of a Tree Preservation Order. These form the majority of the Committee's workload.
- 1.2 At the meeting of the Council held on 27 October 2003, the Membership of the Committee was increased from 10 Member to 20 Members in recognition of the difficulties which were being experienced in finding 5 Members to sit on each Appeal Panel.

2.0 BACKGROUND

- 2.1 The Council makes Tree Preservation Orders under the terms of the Town and Country Planning Act 1990, but the procedures that must be followed are set out in the Town and Country Planning (Trees) Regulations 1999. The Regulations are supported by guidance issued by the Office of the Deputy Prime Minister (referred to as "the Guidance")
- 2.2 The Regulations state that the Council must consider any objections and other representations which are properly made, in writing, to them within the statutory consultation period of 28 days. The process for considering the objections and representations is not prescribed, but paragraph 3.33 of the Guidance states that "The decision whether to confirm a TPO which raises objections is usually taken by Members". This is the process followed by this Council.
- 2.3 The Council has the final determination as to whether a Tree Preservation Order is imposed or not, and this may have significant implications for property values, and the way in which people perceive and use their property. These types of concern are recognised within the Human Rights legislation and the Council must find a mechanism through which to balance all the relevant issues. The issue is further complicated in that the Appeal is being determined by the same body that made the Order in the first place. The process must, as far as possible, seek to be open, fair, and justified. Historically, this Council has always treated these Appeals very much like any other of the quasi-judicial appeals that it holds, for example with respect to licensing applications. There is a formal hearing, within the community that is affected. In Licensing appeals, the Panel is

always asked if they wish to visit the site, and invariably adjourn the meeting to do so. With respect to Tree Preservation Order Appeals, since Members are judging the amenity value of the tree, a site visit has always been held prior to the formal hearing.

2.4 The Guidance addresses these issues in paragraph 3.38, and describes the procedures through which the process of confirming an Order can be seen to be open and even handed. This includes “The LPA [Local Planning Authority] could arrange for members of the committee to visit the site of the trees before making their decision. The visit could be followed by a hearing or inquiry back at the Council offices, where people affected by the TPO and the LPA officer are given a final opportunity to state their case.”

2.5 The questions that were being asked by the Appeal Panel were:

Does the Panel need to visit the site or can they form an adequate view about the amenity value of the trees by using photographs?

Does the hearing need to be held in the community affected, and on a date that is agreed with the objector(s), or can such appeals be held on assigned dates at the Council’s main office centres?

3.0 JUDGING THE AMENITY VALUE OF THE TREE OR TREES

3.1 The amenity value provided by a tree is a subjective judgement that will take account of a number of complex factors relating to the shape and form of the tree itself, its relationship with other trees and with buildings, and its visibility from wider public viewpoints.

3.2 The Guidance issued by the Office of the Deputy Prime Minister is quite clear that a site visit would normally be considered to be good practice to allow Members to form a proper view of the issues involved.

3.3 To assist members to decide whether this can be done adequately by photographs, photographs have been taken of the trees which were subject to objection at the last 6 Appeals. Members who sat on those Panels will be able to relate their experiences on the site visits with what they can conclude from the photographs.

3.4 Members are invited to discuss how effective they feel the photographs to be.

4.0 PLACE AND TIME OF APPEAL HEARINGS.

4.1 The Regulations require that the Council should have a mechanism through which to consider objections to the making of the Order but do not specify the form in which this consideration should take place.

- 4.2 The Guidance does however suggest that objections and other representations should be heard by Members and that every opportunity should be taken to ensure an open and even handed process in which the objectors have the opportunity to participate. The feedback from objectors at Appeal hearings is that they very much value the opportunity to be heard, and feel that the Council's way of dealing with these appeals treats their views seriously. Even if they do not like the ultimate decision, they do not feel excluded from the process.
- 4.2 The majority of objectors attend the appeals site visit and hearing and there is often a degree of interest from the local community. Supporters of the objectors are common, and supporters of the making of the Order also attend.
- 4.3 Members are invited to consider whether the same objective will be met if the hearing dates are assigned, without consultation with the objectors, and at a more remote location. While the Guidance states that holding the hearing in the Council's offices is good practice, this is a geographically large District and with poor public transport links. This may prejudice people's ability to take part.
- 4.4 Once the current review of Area Tree Preservation Orders has been completed, it is not clear how many appeals will need to be held each year, but it will certainly be fewer than at present. The potential to hold more than one hearing at a time may therefore be limited, in practice, as each Tree Preservation Order is time limited and must be confirmed within 6 months of being made.

5.0 FINANCIAL IMPLICATIONS

- 5.1 There would be inevitable savings in holding fewer Panel dates, and at the Council's own office centres, without the need to hire other venues.

6.0 ENVIRONMENTAL IMPLICATIONS

- 6.1 Members are being asked to consider whether the outcome in protecting trees with amenity value in the environment would be equivalent if the procedures are amended.

7.0 CRIME AND DISORDER IMPLICATIONS

- 7.1 None

8.0 RECOMMENDED

- 8.1 That members consider the operating procedures for the holding of appeals into objections to the making of Tree Preservation Orders.

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Background Papers.

Published documents