

24 OCTOBER 2003

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held at the Town Hall, High Street, Fordingbridge on Friday, 24 October 2003.

Councillors:

p K F Ault
p Ms L C Ford
p Mrs B M Maynard

Councillors:

p M H Thierry
p Dr M N Whitehead

In Attendance:

Cllr M J Shand.

Officers Attending:

Miss J Debnam, J Hearne and Miss J Mutlow.

Also Present:

Mr and Mrs O'Neill (Objectors), Mr and Mrs Whatley and Mr and Mrs Edwards (Supporters of the Objectors).

19. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Ault be elected Chairman for the meeting.

20. DECLARATIONS OF INTEREST.

There were no declarations of interest made by any member in connection with an agenda item.

21. OBJECTIONS TO TREE PRESERVATION ORDER 17/03 – LAND OF FALCONWOOD CLOSE, FORDINGBRIDGE (REPORT A).

The Panel considered objections to the inclusion of two pine trees within Tree Preservation Order 17/03.

The meeting had been preceded by a site visit to allow members of the Panel to establish the geographical context of the protected trees, and to form an opinion about their health and amenity value.

The Council's Solicitor explained the role of the Panel in considering whether a tree should be subject to a Tree Preservation Order. The issues that might be taken into account were strictly limited by statute and related to the amenity value of the tree and the expediency of confirming the Order. Guidance was given on what should be taken into account in considering amenity value.

Mr O'Neill advised the Panel that he and his wife objected to the protection of two pine trees which grew in their rear garden. This was on the grounds of the danger which he and his neighbours perceived that these trees represented. The trees had originally formed part of a line of pines and other species which had been well established prior to the construction of the new estate. Part of the row of trees had been removed to allow construction, others had fallen in gales and a pine, of the same species in the adjacent garden, had fallen over more recently. This left the two pine trees in his garden (shown as group G1 on Appendix 1 to Report A) very exposed and unprotected from high winds. The trees moved to a significantly greater extent than other pines of the same species which were in a nearby line of trees. This caused Mr O'Neill and his neighbours significant concerns. This fear was compounded as they could not be certain about the state of the roots of the trees. It was possible that they had been damaged during the construction of the estate or indeed during the construction of a soak away in the adjacent garden. He felt the trees had limited amenity value as they were separated from the other groups and lines of trees in the vicinity. They were very tall and appeared isolated in the landscape.

Mr O'Neill referred to the responses which had been received to letters sent to 60 properties in the vicinity to ask their views for or against inclusion of these two trees in the Tree Preservation Order. Of the twelve responses received, eight had objected. Of the four which wished to see the trees retained, their arguments centred on the value of the trees as wildlife habitats and roosting places. Mr O'Neill considered that there were sufficient alternatives in other trees very close by.

Mr O'Neill stated his intention to replace the trees with others of equivalent amenity value, but more to the rear of the garden.

In answer to questions from members of the Panel, Mr O'Neill advised members that his surveyor had not raised any concerns about the trees when he had purchased the property. He also confirmed that there was no evidence of any movement within the ground when the upper levels of the trees were flexing in high winds. Mr O'Neill accepted that the trees were designed to flex in high winds but reiterated his concern that these trees were moving considerably more than others of the same species that were nearby but in a more sheltered position. In addition, the pine tree in the adjacent garden had fallen without giving any previous indication that there was a problem with its stability.

Mr Edwards emphasised that all of the adjoining properties shared Mr O'Neill's concerns about the safety of these trees. They were tall and could cause considerable damage to property, and endanger life, should they fall.

In answer to questions, the Council's Solicitor advised that the making of the Tree Preservation Order did not automatically impose liability on the Council for any damage that might occur as a result of the trees. If the Order was confirmed and a subsequent application be made to do works to the trees, and this be refused by the Council, following which damage resulted which could have been reasonably foreseen, there may be a case that the Council had some liability. She emphasised that the management of the trees remained the responsibility of their owner.

Mr Whatley also reiterated the concerns that the neighbours felt about the safety of the two trees.

The Council's Arboriculturist advised members that Tree Preservation Order 17/03 had been made as a result of the routine review of an Area Order (No. 16/89) which had provided blanket protection for all trees on this site. These trees had been surveyed to establish that they had significant amenity value and also that they were in a sound and healthy condition. The two pine trees, which were the subject of objection, were tall and were a significant feature in the street scene. They could be seen from a wide area. Other trees, of less stature and consequently less amenity value, had not been included in the new Order. With respect to safety, these trees were no more vulnerable to lightning strike than any other tall structure in the vicinity. They were tall trees for a small garden, which increased their impact. There were however no grounds to suggest that the trees were unstable in any way. Perceptions of stability tended to rely on the relative girth with respect to the height of the structure. There was no doubt that these trees were very tall and slim. As a species however they were adapted to light soils and windy conditions. They were deeply rooted. They should therefore be stable and there was no indication from the surrounding soils that the roots system was compromised, or weakened, and there was no shifting of the soil as a result of flexion of the upper parts of the tree. The flexibility of the trees was the mechanism through which they coped with high winds.

In addition, there was no reason to suppose that the roots of the trees had been damaged during the construction of the estate, nor of the adjoining soak away. Appropriate tree protection measures would have been in place in accordance with British Standard guidelines.

In answer to questions from the objector and his supporters, the Council's Arboriculturist confirmed:

- There had been no significant storms since the two pine trees had become more exposed. It was not therefore possible to extrapolate their stability in the more extreme wind conditions which had been previously experienced
- The Council's Arboriculturist was unable to comment on why other trees in the vicinity had been removed. The Council's Solicitor confirmed that removal of other trees in the area was not relevant to the current proceedings.

In answer to questions from members, the Council's Arboriculturist advised them that:

- The trees were probably in excess of 60 years old. The lifespan of the species was not known in this country as this was a timber species which would normally be felled at this age as it represented the maximum economic growth. It was likely however that the same species in an arboretum setting would live in excess of 100 years;
- The maximum height of this tree species was 50m in the correct conditions. It was unlikely however that the trees would achieve this stature in this climate;
- The trees were likely to increase girth, rather than gain additional height, as they matured;
- In response to further questions from members to the objectors, it was established that a number of trees of this species had been blown over in storms while one had fallen spontaneously, with no high winds present.

Cllr Shand, as one of the local ward members, advised the Panel that he had worked hard to retain mature trees on this site in order to provide amenity and soften the development. He was aware that any tall tree could be a cause for concern in high winds. He did not wish to see the precedent set that any tree which had the potential, through its height alone, to fall on a building, should be removed. Nonetheless he did feel that the two trees in question were extremely tall and very close to surrounding properties.

In summary, the Council's Arboriculturist considered that the trees had significant visual amenity value and could be seen from a wide area. The threat that the trees represented was not believed to be significant on current evidence. This species had no pre-disposition to fall over. The trees had been protected during the development of the estate and there was no reason to suppose that their root systems had been weakened, prejudicing their long term stability and survival.

In conclusion, Mr O'Neill reiterated his concerns regarding the safety of the trees which was compounded by the knowledge that they may increase significantly in height. He wished to remove the trees and replace them with alternative species which would, within a relatively short time, provide equivalent amenity value.

The Chairman then closed the hearing. All those present were invited to remain while the Panel determined the objections.

The meeting was adjourned for 5 minutes to allow members to deliberate, individually, on the evidence that they heard.

The Panel was satisfied that the trees had significant amenity value, even though there was little overt support from the local community. There was no doubt that they were a significant landscape feature. This had to be balanced however against the potential for these trees to be a danger. On the current evidence, there was nothing to suggest that the trees were in danger of falling and represented a danger to property or human safety. The lack of such evidence the amenity value of the trees should be retained. On this basis is was

RESOLVED:

That Tree Preservation Order 17/03 be confirmed without amendment.

CHAIRMAN

(AP241003)