23 OCTOBER 2003

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NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of Appeals Panel held at the Town Hall, Lymington on Thursday, 23 October 2003.

	Councillors:		**Councillors:**
p	Ms L C Ford	p	D N Scott
p	Mrs B M Maynard	p	M H Thierry
p	D J Russell		

In Attendance:

Cllr K F Ault

Officers Attending:

Miss J Debnam, J Hearne, M Hines and Miss J Mutlow.

Also Present:

Mrs S Peppin, Mrs M Rand, Mr T and Mrs D Stone, Mrs LeMetois, Mr M and Mrs M Brown.

15. ELECTION OF CHAIRMAN FOR MEETING.

RESOLVED:

That Cllr Ford be elected Chairman for the meeting.

16. DECLARATIONS OF INTEREST.

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

17. OBJECTIONS TO TREE PRESERVATION ORDER 72/03 – LAND OF 21 BELMORE ROAD, LYMINGTON (REPORT A).

The Panel considered objections to the inclusion of a sycamore (T1) within Tree Preservation Order 72/03. During the meeting one neighbour also objected to the inclusion of a willow tree (T2).

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 whether it was expedient to confirm the Order. Guidance was given on what should be taken into account in considering amenity value.

Mrs LeMetois considered that sycamore trees, as a species, had no value and were not attractive to look at. It was a Forest species which was out of place in an urban environment. She considered it spoilt the look of the area.

Mr Stone, an immediately adjoining neighbour, objected on the following grounds:

- Sycamores, through their prolific seed generation and spread, could be considered a pernicious weed;
- It was not an attractive tree and was isolated, which reduced its visual value;
- The people living immediately adjacent to the tree objected to its retention and this should not be outweighed by the wishes of people from the wider area;
- The Council had acted in a misleading manner by imposing the Tree Preservation Order when they had been approached by Mrs Rand, the tree's owner, for advice, following Mr Stone's requests to fell the tree. He had believed there would opportunity for negotiation before consideration was given to imposing a Tree Preservation Order. He felt the Officer's report was further misleading, in paragraph 1.5, in stating there was no scope for compromise, when he felt there was. He felt that the removal of the tree and its replacement was a compromise, and the correct way forward;
- The tree was 3m from his house, and 2m from the conservatory that he had erected in the last year. This was closer than the BSI standards for new buildings;
- The tree had been repeatedly pruned by a previous owner of this house, which had detracted from its aesthetic value;
- A fork in the trunk at 14ft might be a source of instability in the longer term, although neither of the local tree surgeons he had approached had been prepared to comment on this issue;
- Seeding, debris and honeydew from the tree were a significant nuisance;
- The tree caused significant shading of his garden in the afternoon;
- The roots of the tree had invaded drains, some 1/3rd of which had been replaced. The remaining drains were, he considered, vulnerable to future damage; and
- Liability issues should the Tree Preservation Order be confirmed and the tree cause damage to property.

Mr Brown objected on the grounds of the size and impact of the tree and its nuisance value from seeding. He felt the tree had little public amenity value. The tree was also closer to property than would be permitted for new buildings under BSI standards. He also objected to the inclusion of the weeping willow on the grounds it may damage the foundations of nearby houses. He did not feel that the willow tree provided any significant amenity value either.

Mrs Rand, the owner of the tree, was distressed at the proceedings. She was upset that she had been unaware of her neighbours' objections until the arrangements for this hearing had been confirmed. She had consequently had little opportunity to find out the terms of their objections and to develop her views. On balance, Mrs Rand felt that she must object to the inclusion of the sycamore tree (T1) because of her neighbour's views. She was happy for the hearing to proceed even though she felt she had had little opportunity to develop her views.

Mrs Rand, and her daughter Mrs Peppin, confirmed that the sycamore tree had originally been on a field boundary and had been present before the properties in Old Farm Walk had been built. It had not been pruned by previous owners, only by Mr Stone. The willow tree had been planted to alleviate flooding problems following the construction of the road at Old Farm Walk which had severed the movement of water away from her garden through the soil layers. The roots would not affect Mr Brown's property because of the intervening road and Mrs Rand's property had deep foundations that would not be damaged.

The Council's Arboriculturist advised members that the Tree Preservation Order had been made in 2003 after a request from Mrs Rand for advice on pruning or removing the sycamore tree as had been requested by her neighbour. The degree of pruning would have been significant. The Arboriculturist had considered that the tree provided a high public amenity value and should be protected. He emphasised that consideration of the amenity value of a tree was, in essence, a subjective opinion and members were invited to form their own views on the amenity value of this tree following the visit to the site and viewing the tree from various vantage points.

Sycamore trees were well known for their prolific seeding but this was no reason to condemn the species as a whole. They were valuable trees in the street scene of towns and provided significant amenity value.

In answer to a suggestion from Mr Stone that he had stated that the sycamore tree was not healthy, the Council's Arboriculturist referred to a letter that he had written to Mrs Rand on 17 June 2003 which stated that the tree appeared to be in a sound and healthy condition. He could not remember any circumstances in which he had stated a differing opinion.

With respect to the BSI standards, these were guidelines for new buildings and not relevant to established relationships between trees and buildings. There was no evidence that the sycamore had caused damage to the building over the last 40 years. There was no micro cracking around the windows or doors. In the longer term, should the tree be shown to be causing structural damage then its protection could be reviewed.

With respect to the fork in the tree, this could become problematical at some future date but was unlikely to do so for many years, particularly if the tree was kept at its present proportions.

With respect to damage to drains, the situation, as currently stated by Mr Stone, had not been apparent during the arboriculturist's site visit. It had appeared that the excavation of the patio had severed all the roots which were coming into Mr Stone's property and therefore it was unlikely that any additional damage would be caused to the drains for some significant time. This could not therefore be considered to be a problem.

The loss of the current tree would not be compensated for by planting a replacement, in the short to medium term. It would take a significant period of time for the replacement to achieve sufficient stature to have the equivalent amenity value of the sycamore tree (T1).

With respect to the willow tree, there was no evidence to suggest that it was causing any damage in the surrounding environment. Again this could be kept under review.

In answer to questions from the objectors, the Council's Arboriculturist advised:

- That he had not been shown pictures by Mr Stone which would support the case that the drains were being damaged by roots from the tree;
- The honeydew from the tree could be readily removed by washing two to three times yearly which had been the Arboriculturist's experience in London;
- The sycamore tree would shade Mr Stone's rear garden in the middle of the afternoon;
- The proximity of the willow tree to Mrs Rand's property was not a reason for excluding it from the Tree Preservation Order; and
- The Tree Preservation Order would allow the Council to control the management of the trees in future and, should circumstances change, their replacement.

In answer to questions from Panel members, the Council's Arboriculturist stated:

- The removal of the sycamore tree may create heaving in the soil as the underlining clay layers re-hydrated; and
- The sycamore was in balance with the current moisture levels of the soil.

In conclusion, the Council's Arboriculturist was satisfied that both the willow and sycamore trees provided significant amenity value to the wider local community. No species should be excluded from protection, as a matter of principle, and the amenity value provided by individual trees should be judged on their merits. Any potential problems from the trees could be addressed if there was proven to be a problem at a later date.

In summing up for the objectors, Mr Stone considered that this issue could have been resolved between neighbours if the Council had not intervened. Nobody had appeared to support the Tree Preservation Order. He considered that there was foreseeable damage from the retention of these trees and reiterated his views on the liability issues.

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

The Panel concluded that both the sycamore tree and the willow provided significant amenity value. The sycamore was the tallest tree in the vicinity and was a significant feature. There was no evidence that either tree was causing any structural damage to property.

RESOLVED:

That Tree Preservation Order 72/03 be confirmed without modification.

18. OPERATING PROCEDURES.

The Panel requested that the operating procedures for determining such appeals should be reviewed by the Appeals Committee.

Action: Jan Debnam

CHAIRMAN

(AP231003/TPO72/03)