

21 NOVEMBER 2003

## NEW FOREST DISTRICT COUNCIL

### APPEALS PANEL

Minutes of a meeting of Appeals Panel held in the Council Chamber, Town Hall, Fordingbridge on Friday, 21 November 2003.

#### Councillors:

p K F Ault  
p F R Harrison

#### Councillors:

p Mrs S I Snowden  
p Mrs B Vincent

#### Officers Attending:

Miss J Debnam, M Hines, Miss J Mutlow and B Wilson.

#### Also Present:

Town Councillor M Westlake (Fordingbridge Town Council)  
Mr Dixon (Objector)  
Mr Banham (Supporter of the Objector)

#### 26. ELECTION OF CHAIRMAN.

##### RESOLVED:

That Cllr Ault be elected Chairman for the meeting.

#### 27. DECLARATIONS OF INTEREST.

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

#### 28. OBJECTIONS TO TREE PRESERVATION ORDER 3/03 – LAND OF LYSTER ROAD, FORDINGBRIDGE (REPORT A).

The Panel considered objections to the inclusion of a Monterey pine (tree T7) within Tree Preservation Order 3/03.

The meeting had been preceded by a site visit to allow members of the Panel to establish the geographical context of the protected tree and to form an opinion about its 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 Dixon advised members of the Panel that he was speaking as an immediate neighbour and also on behalf of the local Residents' Association. Part of their concerns related to the fact that they did not feel that there had been sufficient consultation with local residents prior to the making of the Tree Preservation Order and they did not feel that there was adequate explanation for the inclusion of this particular tree, a Monterey pine. The tree in question was probably less than 20 years old and was believed to have been planted in 1985. It was only 10ft away from the back of Mr Dixon's garage and 5ft away from the main drain which served the Lyster Road estate. There were therefore concerns about the shadowing effect of the tree, when mature, on Mr Dixon's property and also about its potential to damage both the garage and the drain. He enquired about the liability on the Council should the tree be confirmed within the Tree Preservation Order and it subsequently cause damage to property. Mr Dixon went on to state that, as the tree had not been under immediate threat, he could not understand why it had been considered expedient to make the Order. He considered that the tree and its protection did interfere with the right to enjoy his own property.

The Council's Solicitor advised those present that the making of the Tree Preservation Order did not impose liability on the Council for any damage that might occur as a result of the tree. If the Order was confirmed and a subsequent application was made to do works to the tree, and this was 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.

In answer to the questions raised by Mr Dixon, Mr Wilson the Council's Arboriculturist explained that the Tree Preservation Order had been made following the review of an older Area Tree Preservation Order. Reviewing old Area Orders and their replacement with new Orders which specified groups or individual trees was in accordance with best practice, advised by Government. None of the trees included within the Order had been under immediate threat, the Council was merely regulating and updating an existing process. A proper tree survey had been undertaken to ensure that only trees which were worthy of protection had been included. All those households that were affected had been written to prior to the review being carried out, so that they were aware of the process. Mr Wilson was satisfied that this was a significant tree and rightfully included in the review process. Mr Dixon had been sent specific responses regarding his concerns regarding light to his own property. The issue of light to the property was the subject of the objection. Issues relating to potential damage had not previously been raised.

Members of the Panel had no questions for Mr Dixon.

Mr Banham spoke as a fellow member of the Lyster Road Residents' Association and reported that the protection of this tree had been discussed at a meeting held the previous evening. A number of local residents had concerns regarding the proximity of the tree to the main drain and potential damage to it from the roots.

The Chairman reminded Members that the question of damage from the tree was outside the remit of the Panel.

Members of the Panel had no questions for Mr Banham.

In making the case for the retention of the tree, the Council's Arboriculturist emphasised that the issue of the future potential effect of the tree on the main sewer could be addressed through tree work applications in due course. The present question was whether the tree had sufficient amenity value to warrant protection by a Tree Preservation Order. There was nothing to suggest that, at this stage, the tree was causing a nuisance or was a source of danger. The original terms of the objection had related to loss of light to Mr Dixon's property. The tree was currently at its maximum rate of growth and there was no doubt that over coming years it would get much bigger. There would however be scope to remove lower branches to allow light penetration below the crown. This did not mitigate against the protection and retention of the tree.

The Council's Arboriculturist emphasised that the tree could be seen from a number of public places and was a significant feature within the landscape.

In answer to questions from Members of the Panel, the Council's Arboriculturist confirmed that the tree had significant height potential, as did those in the adjacent tree belt along the by-pass. It was confirmed that the trees along the by-pass were Scots pines which would be taller but less substantial in form.

On behalf of Fordingbridge Town Council, Cllr Westlake advised the Panel that the Forestry Commission were keen to get rid of non-indigenous tree species in the environment. The Monterey pine was not native and there were indigenous trees surrounding it. He believed that, in the longer term, this tree would cause a problem and it would therefore be wrong to protect it with a Tree Preservation Order.

In summing up, the Council's Arboriculturist emphasised the amenity value of the tree. In undertaking the review of the Area Order the Tree Officers had taken care to meet the requirements of the Town and Country Planning Act 1990 that the tree should have amenity value and that it was expedient to make the Order. There should be no consideration of the species or size of tree involved. Here the tree was readily visible from public view points and thus, by definition, had some amenity value. It was a young vigorous tree which could be pruned as necessary to control any problems with shading. It was not unreasonable to assume that it could be maintained in a safe condition in its current environment for the next 15 to 20 years. If any problems arose from its effect on the adjacent drain this could be taken into account through a tree work application in due course.

In summing up Mr Dixon reiterated his concerns about potential damage from the roots.

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

The Panel was satisfied that the tree had significant amenity value and was worthy of retention.

**RESOLVED:**

That Tree Preservation Order 3/03 be confirmed without amendment.

CHAIRMAN