



10 SEPTEMBER 2004

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of Appeals Panel held at Appletree Court, Lyndhurst on Friday, 10 September 2004.

**Councillors:**

p K F Ault  
p Mrs B M Maynard  
p J Penwarden

**Councillors:**

p D J Russell  
p A Weeks

**In Attendance:**

**Councillor:**

Sqn Ldr B M F Pemberton

**Officers Attending:**

Miss J Debnam, J Hearne and Miss J Mutlow.

**Also Attending:**

Mr Blyton and Mr Cowles – supporters of the Tree Preservation Order.

**5. ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr Ault be elected Chairman for the meeting.

**6. MINUTES (REPORT A).**

**RESOLVED:**

That the minutes of the meeting held on 7 July 2004, having been circulated, be signed by the Chairman as a correct record.

**7. DECLARATIONS OF INTEREST.**

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

**8. OBJECTION TO TREE PRESERVATION ORDER 23/04 – LAND OF HILLYFIELD REST HOME BARNES LANE MILFORD-ON-SEA (REPORT B).**

The Panel considered an objection to the protection of two oak trees designated as T1 and T5 within Tree Preservation Order 23/04.

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 of their health and amenity value. They had also been requested to view the proximity of the protected tree, and a further tree on the property which was not protected by the Order, to the Hillyfield Rest Home. They had also viewed the extent of the damage to the annex to the Rest Home, which it was alleged was being caused by subsidence created by soil desiccation as a result of the activity of the trees.

The objector had attended the site visit but did not attend the full hearing and he was not represented by an agent.

Members had before them the evidence which had been submitted by OCA, consulting Arboriculturists, who had been commissioned by the objector's insurance company. The Panel reviewed the evidence to evaluate the case which was being put forward that trees T1 and T5 were causing desiccation to the clay soil, which was in turn leading to subsidence and consequently cracking in the internal walls of the nursing home. It was noted that this evidence was based on soil samples which confirmed that a clay soil was present, which was vulnerable to desiccation. The soil sample did not however establish that any desiccation was taking place. In addition, a trial trench had been dug close to the annex. This had contained tree roots, which had been identified to come from an oak tree. No evidence had however been submitted to identify which trees the roots came from (it was possible to establish this by a dendrological survey, which had been requested but not supplied by the company) and in addition the trench had not been dug to sufficient depth to establish that tree roots were present underneath the foundations where they would be in a position to cause the alleged damage.

It was noted from the objector's submission that there was no dispute about the amenity value of trees T1 and T5. The issue was simply one of whether the trees were causing damage.

Mr Hearne the Council's Arboriculturist was asked to make the case for preserving the trees. He drew members' attention to the report prepared by the Council's consultant, Dr Biddle, who had analysed the evidence submitted by OCA Consulting Arboriculturists. A copy of Dr Biddle's analysis was attached to the report as Appendix 5. He had concluded that there was no evidence to support a case that the trees, T1 and T5, were causing soil desiccation. There was no evidence that there were tree roots present below the foundations, as the sample trench had not been dug to sufficient depth. There was no information provided about the extent of the damage, its history, or significance. There was no evidence submitted to prove that the degree of cracking was cyclical in nature, to reflect the activity level of the tree at its different stages between full leaf and dormancy. Nor was there any evidence at all to support an objection to the protection of T1 which was to the front of the site and at a considerable distance from the affected part of the building. In summary, Dr Biddle concluded that the evidence submitted was woefully inadequate.

In examining the evidence, the members of the Panel noted that sensors had been placed on either side of one of the major cracks on the inside wall of the annex, which would provide accurate and detailed information on the width of the crack over time. It was therefore possible to establish whether the width of the crack was changing on a cyclical basis, which would be expected if the problem was being caused by the trees. Although such information had been requested from OCA it had not been forthcoming.

Mr Blyton and Mr Cowles, as representatives of local residents, both highlighted the amenity value of trees T1 and T5. They were satisfied that a significant number of local residents would feel that the amenity value of the area was significantly reduced if the two trees were lost. They also expressed their doubts that the evidence submitted had established that the trees were the cause of the subsidence to the Hillyfield Nursing Home.

Cllr Pemberton, as one of the local ward members, advised the Panel that he considered that the trees should be retained on the basis that there was no evidence to suggest that they were causing problems. The trees had a good expectation of life, probably in excess of 300-400 years.

In summing up, Mr Hearne the Council's Arboriculturist emphasised the amenity value of the tree and reiterated that there was no evidence to support the claim that they were causing damage to the Hillyfield Nursing Home.

The Council's Solicitor confirmed that she was satisfied that all the relevant evidence had been reviewed, in detail, and given proper consideration.

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

The Panel was satisfied that the trees provided significant amenity value in the locality. Since a request had been received to fell the trees they were satisfied that they had been under threat and it had been expedient to make the Order. They had reviewed in detail the evidence which had been submitted to support the claim that trees T1 and T5 were the cause of subsidence and consequent damage to the Hillyfield Nursing Home. They found that the evidence did not support such a case. On this basis it was

**RESOLVED:**

That Tree Preservation Order 23/04 be confirmed without amendment.

Action: John Hearne/Ann Caldwell

CHAIRMAN