

4 NOVEMBER 2004

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of Appeals Panel held at the Public Offices, Ringwood on Thursday, 4 November 2004.

**Councillors:**

p J M Hoy  
p Sqn Ldr B M F Pemberton  
p D J Russell

**Councillors:**

p Mrs S I Snowden  
p A Weeks

**Officers Attending:**

M Appleton, Miss J Debnam, Miss J Mutlow, B Wilson.

**19. ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr Hoy be elected Chairman of the meeting.

**20. MINUTES (REPORTS A B AND C).**

**RESOLVED:**

That the minutes of the meetings held on 6 October and 15 October 2004 (two meetings), be signed by the Chairman as correct records.

**21. DECLARATIONS OF INTEREST.**

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

**22. TREE PRESERVATION ORDER 66/04 – LAND ON EAST SIDE OF LAUREL COTTAGE DERRITT LANE BRANSGORE (REPORT D).**

The Panel considered an objection to the making of this Tree Preservation Order. The original objection had been lodged by Mr Hosie, the occupier of Laurel Cottage, on the basis of a report submitted by OCA Uk Limited alleging that tree roots were the cause of subsidence to his property. Mr Hosie had subsequently withdrawn his objection, by a telephone conversation on 21 October, on the basis that OCA had not provided any evidence to substantiate their claim that the damage was being caused by tree roots. OCA had however maintained their objection.

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. The protected trees were a group of three oaks which were on the east side of a track running alongside Laurel Cottage. The area of vegetation also included some scrub holly and a further small oak tree, none of which had been considered worthy of protection. The Panel had viewed the trees from public viewpoints along the track and from Derritt Lane and West Road.

The Panel was reminded that their remit in considering the objection to the Order was narrow. They must only consider the amenity value of the trees and the expediency of confirming the Order. The Panel noted that the objectors, OCA had not chosen to attend either the site visit or the hearing in order to make their case. In order to evaluate properly the case put forward by OCA, the Panel examined their letters, in particular the letter dated 20 August 2004, which defined the terms of their objection. It was noted that their first objection related to the need to take a view of the wider site circumstances before deciding whether to serve the Order. The Panel was advised that the Council's procedures required the visiting Tree Officer to complete a check list to ensure that issues such as the amenity value of the tree, the expediency of making the Order, the effect of felling the tree and the wider context of the tree were considered when taking the decision. With respect to the claim that the tree was causing a nuisance, the Panel was advised that it was necessary to demonstrate the presence of an actionable nuisance, substantiated by factual evidence. The report submitted by OCA did not provide the necessary level of proof and was characterised by phrases such as "thought to be" and "suggest that", without substantiating actual cause and effects. In answer to questions, members were advised that this evidence had been specifically requested from OCA but had not been supplied. With respect to the objection in respect of Human Rights, the Panel was reminded that this issue was considered in every case and, indeed was specifically highlighted within the report which was before them for consideration.

Members also examined correspondence between Mr Hosie, Ms Buckingham and Cunningham Lindsey who were acting for the Insurance Company. This reiterated the same points, but again without the necessary evidence.

Members recalled a previous incidence in which trees were alleged to be causing subsidence, where the width of the crack in the property was regularly monitored. There was no suggestion that such work had been carried out at these premises.

Mr Wilson, the Council's Arboriculturist advised the Panel that the trees in question were very typical of trees along the roadside within Bransgore and members had had the opportunity to form their own opinion on their amenity value. There was no doubt as to the expediency of making the Order as an application had been received to fell the trees. Mr Wilson felt that the trees were readily visible from wider view points and, with suitable management, should enjoy a safe lifespan, providing significant amenity value, for hundreds of years. Members explored, with Mr Wilson, the need to protect all three of the oak trees designated within this group and concluded that the loss of any of them would create an unsightly gap and reduce the overall value provided to the area.

The Chairman then closed the hearing.

The Panel was quite satisfied as to the amenity value provided by this group of oak trees. They noted that, although there had been repeated requests to supply evidence to substantiate the case that the trees were causing damage, nothing had been supplied. On this basis it was

**RESOLVED:**

- (a) That Tree Preservation Order 66/04 be confirmed without amendment; and
- (b) That the Planning Development Control Committee be requested to review the powers delegated to the Officers, to allow them to determine whether objections in respect of subsidence are supported by adequate evidence, and to determine objections on that basis.

CHAIRMAN

(AP041104)