

5 NOVEMBER 2004

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of Appeals Panel held at the Town Hall, High Street, Fordingbridge on Friday, 5 November 2004.

**Councillors:**

p K F Ault  
p C Baker  
p F R Harrison

**Councillors:**

p J Penwarden  
p L R Puttock

**Officers Attending:**

M Appleton, Miss J Debnam, B Wilson.

**Also Attending:**

Mrs M & Mr C Hancock – Objectors

**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 any member in connection with an agenda item.

**28. OBJECTION TO TREE PRESERVATION ORDER 43/04 – HILLTOP, APPLESLADE AND CROSSROADS, SANDLEHEATH (REPORT A).**

The Panel considered objections from Mr and Mrs Hancock to the protection of trees within Tree Preservation Order 43/04 which related to land of Hilltop, Appleslade and Crossroads at Sandleheath.

The meeting had been preceded by a visit to the site 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 Panel was reminded that their remit in considering the objection to the Order was narrow. They must only consider the amenity value of the protected trees and the expediency of confirming the Order. They were reminded that any development control issues were totally irrelevant to the current process. They were further advised that, in response to the points raised by the objectors during the site visit, it was not considered good practice to impose Tree Preservation Orders on publicly owned land.

The Panel was advised that when this Order was made, it had covered four individual trees (T1 to T4) together with a group comprising one hawthorn and one yew tree (G1). In the subsequent negotiations between the Tree Officer and Mr and Mrs Hancock, it had been agreed that the hawthorn was not worthy of protection. The Tree Officer had, however, changed his mind in that he had originally concluded that the yew tree in this group did not warrant protection as an individual tree, on its own intrinsic merits. He now concluded that, as this was a yew tree, its retention was justified, for the future benefit that may accrue. Accordingly it was proposed to amend the Order by deleting G1 and, in its place, designating the yew tree along the road frontage as tree T5.

Mrs Hancock advised the Panel that Hilltop had, until Spring of this year, been owned by her mother. Subsequent to her death Mrs Hancock and her brother had explored the option of redeveloping the site to allow two homes, one for each of them, to be built. Informal plans had therefore been submitted to the Development Control Officers, purely to form the basis for discussions and negotiations. The proposals were not even as definitive as an outline application. This informal discussion stage had however triggered the imposition of the Tree Preservation Order and Mrs Hancock considered that this had been premature as there had been no suggestion that any of the trees were under threat.

Mrs Hancock objected to any additional bureaucracy which may arise as a result of the imposition of the Order but would not wish to object to the principle of protecting the red oak tree (T1), which was situated towards the front of the cottage. This tree had very great sentimental value and there was every intention of retaining it in its current form. Mrs Hancock had concerns about the protection of tree T3, an ordinary oak, because of its proximity to the property known as Crossroads. This was not however on her property and she therefore concluded she had little practical reason to object. With respect to trees T2 and T4, tree T4 was not on her property which limited her locus to object, but both trees were towards the rear of the gardens and could only be briefly glimpsed from the road, in passing. She therefore questioned whether these trees met the test of providing public amenity value. Both were magnificent trees, and there was no intention of doing works to them, but the objection was one of principle as to whether they were sufficiently visible from public view points to provide enough public amenity value to warrant protection.

With respect to group G1, these trees were self set and of poor quality. The group of trees obscured sight lines for persons wishing to leave the property by car and, as a consequence, the yew had been rather roughly hacked back. It was understood that the Highway Authority would wish to see the growth of the yew, across the sight line, curtailed. Mrs Hancock doubted that the yew tree, on its own, had sufficient quality to warrant protection, and indeed this was the initial conclusion of the Council's Tree Officer.

In summary Mrs Hancock questioned whether the test of expediency in making the Order had been satisfied in that there had been no threat to the trees, merely informal discussions about the future of the site. She also objected to the protection of the yew tree (proposed T5) and to trees T3, T2 and T4.

Mr Hancock questioned whether sufficient work had been done on the immediately surrounding areas to justify that these trees should be subject to a Tree Preservation Order when others which were arguably of greater landscape quality, were not. He referred to guidance issued by the Office of the Deputy Prime Minister which suggested that these trees should reflect the wider impact of trees in Sandleheath. As far as he was aware such an exercise had not been carried out. Mr Hancock also felt that the reported views of Sandleheath Parish Council were misleading as he had given them additional information but they had not yet had the opportunity to express a formal view in the light of this additional evidence.

Mr Hancock supported the objection to the walnut tree which was not visible from the road and the yew tree which was not worthy of protection through its intrinsic qualities. Mr Hancock had anxieties about the other oak trees but was not prepared to pursue these as formal objections.

In answer to questions from the members of the Panel, they were advised that the task before them was to look at the amenity value of the trees within this Order within their wider context. It was not the intention of the guidance to suggest that, if there were better trees within the vicinity, these trees should not be protected. Their context was however of relevance.

The Panel was further advised that highway safety issues would take precedence over the protection of the trees in the case of any conflict. Therefore the Highway Authority was entitled to do works to the trees, or require works to be done to maintain adequate sight lines and maintain highway safety.

Mr Wilson, the Council's Arboriculturist, reminded members that the judgement on amenity value was a subjective one which would be very individual to the observer. He also reminded the Panel that the future amenity value of the trees could legitimately be taken into account. The degree to which the trees were seen from public viewpoints could easily change if there was any redevelopment of the site. He was therefore satisfied that the walnut and oak trees, towards the rear of the site, met the test for providing public amenity value.

There was no doubt that the red oak (tree T1) was a very prominent and significant tree within the landscape. Tree T3 was also extremely visible from the road and the property owner had not objected to its protection on the grounds of its proximity to the dwelling.

The Council's Tree Officer had changed his view about the value of the group of trees on the frontage but Mr Wilson concurred with the view that the individual yew tree warranted protection. This species was extremely long lived and was routinely heavily pruned in order to produce the desired shape. The current condition of the tree was therefore not strictly relevant but its potential to provide future amenity value was of greater importance. The proportionate effect of pruning to maintain sight lines would become less as the tree grew and proper pruning and management would easily develop a pleasing shape to the tree. There would be benefits in removing surrounding vegetation in order to let this tree develop.

Mr Wilson advised members that he was not aware of any defects or health problems with any of the trees.

In answer to questions from Mr Hancock, Mr Wilson confirmed that it was not the Council's practice to make general surveys of the trees within an area when it was considering making a Tree Preservation Order. It was the usual practice for Orders to be imposed on a reactive basis when it was known or suspected that development might take place. The resources were not available to make wider comparisons and no effort was made to equate the relative merits of trees that it was proposed to protect with those of others in the surrounding area.

In answer to questions, members were advised that there was a statutory time limit of 8 weeks for the Council to respond to a tree work application. The Council normally managed to respond in a considerably shorter period however. There was no cost associated with making the application. In the case of works which were needed on the grounds of safety, it was possible to respond immediately and it was not uncommon for consent to be given during the site visit.

In conclusion, Mr Wilson reiterated the amenity value of all the trees on the site, including the future amenity value of the yew tree, proposed to be T5.

Mrs Hancock reiterated her reservations about the quality of the yew tree and the desirability of maintaining a specimen that had already been adversely affected by poor pruning. Trees T4 and T2 were barely visible from public view points and provided little amenity value.

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

The Panel concluded that there was sufficient views of trees T2 and T4, from persons using the road outside the property, to conclude that the trees did provide public amenity value and were worthy of protection. They were in no doubt as to the significance and amenity value of trees T1 and T3. With respect to the yew tree, which it was proposed to designate as individual tree T5, there were some mixed views but, on balance, it was concluded that the future potential of the tree was such that it could justify protection in the longer term.

**RESOLVED:**

That Tree Preservation Order 43/04 be confirmed subject to amendment by the deletion of group G1 and the inclusion of the individual yew tree on the frontage as tree T5.

CHAIRMAN

(AP051104(TPO43))