

22 NOVEMBER 2005

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of Appeals Panel held at the Town Hall, Lymington on Tuesday, 22 November 2005.

Councillors:

p K F Ault
p Ms L C Ford
p Mrs B M Maynard

Councillors:

p D J Russell
p Mrs S I Snowden
p C R Treleaven

Officers Attending:

Ms J Bateman, Mrs M Dunsmore, J Hearne and Miss J Mutlow.

Also Attending:

Mr & Mrs Ansell (Objectors)

5. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Ms L C Ford be elected Chairman of the meeting.

6. DECLARATIONS OF INTEREST.

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

7. MINUTES (REPORT A).

RESOLVED:

That the minutes of the meeting held on 2 June 2005, having been circulated, be signed by the Chairman as a correct record.

8. TREE PRESERVATION ORDER 37/05 – LAND OF AND ADJACENT TO HARTLANDS, SILVER STREET, SWAY (REPORT B).

The Panel considered an objection to the inclusion of one Oak tree, designated T1, and 14 Oak trees, designated G1 within Tree Preservation Order 37/05. The meeting had been preceded by a visit to the site, to allow members to inspect all 15 of the trees that were proposed to be protected by this Order, to establish their geographical context and to form an opinion of their health and amenity value.

Mr & Mrs Ansell advised the panel that they did not understand why it was considered necessary at that particular point in time to make a preservation order on the trees in question. The trees were mature oaks, had been there a long time and were not under threat. Mr & Mrs Ansell had lived at the property for 18 years and, even though they were not the owners of the trees, they had ensured that the trees were under good arboricultural management, as they wanted to retain them.

For information, Mr & Mrs Ansell confirmed that a planning application they had submitted for a new garage had been refused in April 2005. There had been no concerns expressed by the Council's Arboriculturist to that planning application. A second planning application, on which the Council's Arboriculturist did express concerns, was also refused. However, the first application was later allowed on appeal, with the addition of a 'Working Methods Statement' relating to foundations to protect tree roots.

Mr & Mrs Ansell said that there were many mature trees along the length of Silver Street that created an avenue effect and they questioned why they were not all being protected. They expressed concern at what they considered a heavy-handed approach in their individual case.

In particular they said that even if the Order was confirmed, they felt that the tree in G1 adjacent to the road frontage, and described in the Tree Officer's report as 'exhibiting symptoms of low vigour' should be excluded. They also saw no specific reason for the inclusion of the tree T1 in the Order.

In response to a question as to why Mr and Mrs Ansell were maintaining their objection even though they had subsequently won their planning appeal, they said that they continued to object in principle to the proposed Order, as the trees were not under threat. They repeated that they valued the trees and had maintained them over a period of 18 years. They said that a TPO would add unnecessary bureaucracy to the management of the trees.

In answer to a question as to whether consistency along the length of Silver Street was relevant, Mr Hearne, the Council's Arboriculturist, said that it was impossible to look at all trees. Often an issue only came to the Council's attention at the time of a planning application.

In presenting the Council's case, Mr Hearne said that the amenity value of the trees was not disputed by either party. The issue was down to one of expediency. Whilst 'expediency' was not defined within the Town and Country Planning Act, the guidance suggested that it could be expedient to make a precautionary Order if the local authority considered there was a general risk from development pressures or if the future of trees could be in doubt following changes in property ownership.

Mr Hearne confirmed that the Council no longer had concerns over the roots of some of the trees as a result of the proposed garage development on the site. The planning application, when granted on appeal, had a 'Working Methods Statement' attached, that set out detailed arrangements for foundations for the building work to ensure protection of the trees.

Mr Hearne did not agree that a TPO would create unnecessary bureaucracy. He pointed out that work carried out on a tree that was dead, dying or dangerous did not need consent. He confirmed that it was current practice to routinely cover all trees in an area of concern, as it was administratively unwieldy to have a number of individual Orders in one area. He remained of the view that even though there was a 'Working Methods Statement' in place to protect the trees from the proposed development, it would be expedient to confirm the proposed TPO.

In answer to a question from Mr and Mrs Ansell relating to the definition of dead, dying or dangerous, Mr Hearne confirmed that the onus of proof was on the owner. However, the Council's Arboriculturists were always happy to give advice. An 'exceptions certificate' could also be issued immediately.

The Panel noted that the Council did not have the resources available to make blanket TPO's over large areas such as the entire length of Silver Street. Time and budgetary constraints meant that proactive surveys for precautionary TPO were not possible.

It was confirmed that the Council's Arboriculturist did express concern at the time of Mr and Mrs Ansell's first planning application, but did not serve an order until the second planning application.

In summing up Mr Hearne said that the amenity value of the trees was not in dispute, it was an issue of expediency for the members to take a view on.

Mr and Mrs Ansell in summing up said that they did not want to lose the trees. They were under good arboricultural management and they had maintained them appropriately for 18 years. There was no evidence of risk. They did not need the protection of a TPO and they had only been brought to the attention of the Council because of the planning application. These particular trees should not be treated in isolation. If a TPO was considered necessary for them, then all the trees in Silver Street should be protected, or indeed the whole of the New Forest. Provision had been made to ensure that the roots of trees were not affected by the proposed new garage.

The Chairman then closed the hearing.

The Panel debated the merits of protecting the trees and considered the amenity value of the trees and the expediency of making the order.

Some Members, whilst accepting that Mr and Mrs Ansell had maintained all the trees to a good standard, expressed concern for the long term future i.e. if the property changed hands or the adjoining owner, on whose land the trees stood, chose to remove them. A TPO would offer protection in those circumstances.

Other members did not support the confirmation of the TPO for all the trees, as they did not agree that they provided any greater amenity value than others in Silver Street. They felt that the Council had not been consistent, as they had not raised any formal concerns on Mr and Mrs Ansell's first planning application.

RESOLVED:

That Tree Preservation Order 37/05, Land of and adjacent to Hartlands, Silver Street, Sway, be confirmed.

CHAIRMAN

(AP221105)