

15 APRIL 2008

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held at Gang Warily Recreation Centre, Fawley on Tuesday 15 April 2008

**Councillors:**

p C Lagdon  
p D J Russell  
p Lt Col M J Shand

**Councillors:**

p C A Wise  
p P R Woods

**In Attendance:**

Cllr L T Dunsdon

**Officers Attending:**

Miss J Debnam, A Douglas and Mrs N Heaselden.

**Also Attending:**

Mr Appleton, Mr Pratt and Mr Weatherdon – objectors.  
S Price (work experience).

Parish Councillors: Fidler and Holtham – Fawley Parish Council

**1. ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr Woods be elected Chairman for the meeting.

**2. DECLARATIONS OF INTEREST.**

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

**3. MINUTES**

**RESOLVED:**

That the minutes and the confidential minutes of the meeting held on 20 July 2007, having been circulated, be signed by the Chairman as a correct record.

**4. TREE PRESERVATION ORDER 54/07 – LAND OF 34 STUDLEY AVENUE, HOLBURY (REPORT A).**

The Panel considered objections to the making of Tree Preservation Order 54/07 which protected a red oak tree in the front garden of 34 Studley Avenue, Holbury. The meeting had been preceded by a visit to the site to allow members to inspect the tree to establish its geographical context and to form an opinion on its health and amenity value.

The principal objector, Miss Bellisario, had been unable to attend the hearing and had submitted an additional statement which had been circulated prior to the meeting. Members took account of the points that she raised during the hearing and in the subsequent debate.

Mr Weatherdon, who lived opposite to the tree, was concerned that climate change was bringing increasing spells of strong winds from the South West. He was concerned that, should the tree become unstable, it could fall on his property. He considered that, unlike the arboriculturist's evaluation, the tree was likely to continue to grow at a fast pace and reach a more significant stature than at present. He felt that the tree would need to be cut back considerably in order to remain compatible with its domestic environment. He was concerned that the tree would cause damage, for which he might become liable. He advised the Panel that he had lived in his current home since before the tree was planted in 1971. An identical tree had been planted in the next door garden, and had been cut down a year ago.

Mr Appleton, who lived next door but one to the tree, was concerned about potential damage from the roots. The road and drains were not adopted so any damaged caused by the tree and its roots would incur liability for the neighbours. In response to a question he confirmed that there was no evidence of any damage arising from the tree at this stage.

Mr Pratt who lived immediately adjoining was concerned about loss of light in the bedrooms and lounges to front of the properties and was also concerned about the leaves which had blocked the soakaway to his property from the time when he moved in two years ago. He also considered that the tree created a nuisance, not only from the leaves, but from the droppings from animals who roosted in it and made it impossible for him to park on his driveway. In response to a question Mr Pratt also confirmed that while there was no evidence to suggest that the tree was causing cracking to the driveway, which could be caused by normal wear and tear to a driveway of that age, he believed that the tree was implicated.

Mr Douglas advised the Panel that the Tree Preservation Order had been made following an anonymous tip to the Council that it was likely to be felled. The tree was therefore considered to be under threat. The site had been visited and the arboriculturist had concluded that this was a significant tree providing high amenity value throughout the immediate neighbourhood. The tree was in good health with no signs of structural weakness. The arboriculturist considered that, although this species was known to grow at a faster rate than English oak trees, this particular specimen was unlikely to get significantly larger than its current form. The maximum height recorded for the species related to unconstrained conditions within the North American climate. Not only was the climate different, in respect of this tree, but it was surrounded by significant areas of tarmac and also foundations to houses. This would constrain the roots and consequently the ultimate growth of the tree. The tree had not been subject to any maintenance since the current occupier of 34 Studley Avenue had taken up residence ten years previously. Some dead

wood had therefore accumulated within the crown and this was the cause of some shedding which Mr Pratt had reported to cause damage to one of his vehicles. With proper crown cleaning and maintenance work however such problems would be prevented in future. The tree was in good health and with proper maintenance, could realistically be expected to have a life span in excess of 50 years. There was no evidence to suggest that this tree would be vulnerable to wind damage or to toppling. Cases of other trees in the vicinity which had fallen could not be taken as valid precedents as they were of unknown species, age and health.

There was no evidence that the tree was causing any subsidence. For subsidence to occur the soil structure must be of a particular clay type, the foundations of the dwelling must be less than optimal and the tree must be taking significant amounts of liquid from the ground. Such conditions were rare within the New Forest and certainly were not known to occur in the Holbury area. Indeed there was no physical evidence, such as cracking to the outside of buildings, to suggest that this tree was causing any subsidence. The cracking to driveways was more consistent with the pattern of damage seen with normal wear and tear in driveways of that age. With respect to damage to drains caused by the tree roots, in developments of this age root incursions were normally where the joints of the drains were already failing and the tree roots were subsequently attracted to the moisture which was released. In these cases the damage could easily be remedied by inserting a plastic sleeve within the drain or resealing it following the removal of the roots.

With respect to loss of light, the rooms that were affected were secondary rooms and therefore, in planning terms, of less importance. There was no doubt that there was some loss of light to the front of these properties. This could be mitigated by allowing some crown thinning, which would be permissible within the terms of the Tree Preservation Order. Crown thinning would also further reduce the tree's vulnerability, if any, to wind damage.

Ultimately, the arboriculturist considered that the amenity value of the tree as enjoyed by the wider community outweighed the disbenefits to the immediate neighbours and owner of the tree.

Cllr Dunsdon as local ward members advised the Panel that Holbury had very few mature trees, particularly of this stature. This increased the value of this red oak tree. There had been drainage problems on the surrounding estate, but these had not been due to trees. He supported the confirmation of the Tree Preservation Order.

The representatives of the Parish Council also considered that drainage problems in the area had been unrelated to the activities of trees. Trees could lose branches at any time and this was not sufficient reason, or justification, to remove the tree. Loss of light was less of an issue in these properties than may have been thought at first sight, as the sun had gone from the front of the properties by midday with most of their light coming from the rear. The Parish Council representatives noted that most of the drives within that area were also cracked, as a result of wear and tear, not from tree root activity. They would support some sympathetic pruning and management of the tree but, overall, considered that it should be retained because of the high public amenity value that it provided.

In summing up, the Council's Arboriculturist re-emphasised the amenity value of the tree, and that there was no evidence that it was causing structural damage or other harm within its environment. He would be happy to advise the neighbours on works that could be carried out to the tree, for its proper maintenance, should the Tree Preservation Order be confirmed.

The Chairman then closed the hearing.

The Panel debated the merits of protecting the tree.

While there was some concern that the right of the occupier at 34 Studley Avenue to enjoy their property was compromised by the presence of this tree, the Panel noted that, with the exception of one of the neighbouring objectors, the owner and other neighbours had chosen to buy properties where the red oak was already present and of significant size. There was no evidence that the tree was causing any structural damage. Other problems such as leaf fall and shedding of branches were common to any tree. The shading caused by and any significant increase in the stature of the tree could be mitigated by proper maintenance without affecting the amenity value of the tree. The Panel therefore considered that the tree had significant amenity value and it was expedient to confirm the Order.

**RESOLVED:**

That Tree Preservation Order 54/07 relating to land of 34 Studley Avenue, Holbury be confirmed without amendment.

CHAIRMAN

(AP150408)