

4 JUNE 2008

NEW FOREST DISTRICT COUNCIL



APPEALS PANEL

Minutes of a meeting of the Appeals Panel held at Town Hall, Lymington on Wednesday, 4 June 2008

Councillors:

p D Harrison
p E J Heron
p C Lagdon

Councillors:

p D J Russell
p C A Wise

Officers Attending:

Miss J Debnam, A Douglas, Mrs G Mercer, Miss G O'Rourke, Mrs R Rutins, N Williamson

Also Attending:

Mr K Verran – objector.

1. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Russell 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 (REPORT A)

RESOLVED:

That the minutes of the meeting held on 15 April 2008, having been circulated, be signed by the Chairman as a correct record.

4. TREE PRESERVATION ORDER 62/07 – LAND EAST OF 1 NEWBRIDGE DRIVE COTTAGES, EVERTON, LYMINGTON (REPORT B)

The Panel considered objections to the making of Tree Preservation Order 62/07 which protected a group of eight poplar trees on Land East of 1 Newbridge Drive Cottages, Everton, Lymington. The meeting had been preceded by a visit to the site. It was noted that although 13 poplar trees were growing along the field boundary, only 9 of them had been considered worthy of protection, and these had all been identified with individual tree tags. The 4 trees closest to 1 Newbridge Drive Cottages were all protected.

At the commencement of the hearing Mr Verran confirmed, in response to a direct question, that he was not recording the proceedings.

In response to a question from Mr Verran, the Head of Legal and Democratic Services confirmed that Mr and Mrs Hillyar of 2 Newbridge Drive Cottages had both been served with the Order.

Mr Verran did not consider the Council's procedures had been properly followed as there had been no proper consultations with the officers in an attempt to reach a compromise with him.

Mr Verran produced a report from a company of Arboriculturists called Enviroplant. The report was dated 29 April 2008. In response to questions about why the report had not been forwarded to the Council to allow its proper evaluation and consideration, Mr Verran stated that he had sent it to his Solicitors and did not know why the Council had not received it. He believed there might be problems with copyright. The Chairman allowed the report to be circulated at the meeting. Mr Verran insisted that the report could not be copied by the Council or retained for the records of the meeting. Mr Verran believed that the report demonstrated the following points:

- The trees were 21m high, not up to 17m as reported by the Council's Tree Officers. As the separation between his house and the closest tree was only 17m, this increased the risk of significant damage to his property should the trees fail.
- One of the trees was showing signs of bark delamination, which indicated that it was in poor health and therefore all the trees in that group were in failing health and were dangerous.

Mr Verran referred to the Tempo scoring sheet for the trees which was reproduced at Appendix 5 to Report B. He considered the scoring was inaccurate with respect to the age of the trees, which he considered were 60 years old and therefore at the average full life expectancy for the species. He also referred to a second, partially completed, undated, form on the TPO file which he said showed a different score. He also believed that the difference in scoring between different sections in the Tempo form showed that it had not been applied fairly and the Council's Tree Officers had an ulterior motive in applying the scoring. He believed that the TPO had been made unfairly in response to the felling of a juvenile oak tree in his garden which he had removed because there was an unstable branch union which made it dangerous.

Mr Verran referred to other poplar trees in the area that had been felled recently and which he felt demonstrated both that he was being treated unfairly and also that the trees under current consideration were dangerous.

Mr Verran circulated colour photographs to support his argument that branches from the trees were falling and damaging his property. Some of these had been reproduced, in black and white, in the papers circulated for the meeting.

Mr Verran stated that the roots of the trees spread for up to 2.5 times the height of the tree and the roots therefore represented a significant risk to his property. The roots were causing substantial damage to his drains and soak away system. The soak away that he had installed some 6 years previously was now unusable because of the poplar roots and a supplementary tank had been installed. He believed it would cost £10,000 to £12,000 every few years to remedy the damage caused by the trees. Mr Verran produced a report from a drainage company that he considered demonstrated the points he was making. In answer to questions about why this information had not previously been made available to the Council to allow proper evaluation and consideration, he stated that he had sent it to his solicitors and did not know why the Council had not received it. He requested that the information should be circulated to those present but insisted it must not be copied by the Council or retained in any form.

Mr Verran stated that his ability to present his case had been prejudiced as the Council had not allowed him adequate access to the files. Members were advised that Mr Verran had been allowed to inspect the files on 4 separate occasions and in addition he was legally represented. Mr Verran believed that this did not take sufficient account of the constraints imposed by his disability.

Mr Verran circulated a photograph that he believed showed that roots and suckers from the poplar trees were damaging his path. His conclusion was that they must therefore also be damaging the foundations of his house.

Mr Verran disputed the statement in Appendix 2 to Report B that there was no evidence that the trees were causing damage to his property. He stated that the geology of the area demonstrated that his property was built on shrinkable clay, not sand or gravel. Mr Verran produced and wished to circulate a report which he believed proved that his property was built on shrinkable clay and therefore was vulnerable to damage being caused by the poplar trees drawing significant amounts of moisture from the soil. In answer to questions from members about why this report had also not been made available to the Council in advance of the meeting, Mr Verran referred to a letter, that had been circulated, from his solicitors and attaching a single page report from Christchurch Surveyors Ltd, that also stated his property was built on shrinkable clay, and the poplars were undoubtedly causing damage to the property that could only be remedied by their removal, the construction of a root barrier or considerable size reduction of the trees. Mr Verran stated that if nothing was done about the trees in the near future his property would become uninsurable and he would have to leave his home. In the meantime over 1/8th of the garden was unsafe to use because of falling branches. He considered that it was unfair of the Council to impose this on him and that his Human Rights were being infringed as he could no longer enjoy the use of his property and possessions.

Mr Verran believed that his house's foundations had not been constructed to take account of the trees which were now growing close by and were therefore more vulnerable than if they had been specifically designed to resist damage from tree roots.

Mr Verran produced a letter from "HRA", previous owners of the site, which suggested that the poplar trees were due to be pollarded prior to the site being sold

to Otter Nurseries. Once again this information had not been sent to the Council prior to the meeting. Mr Verran claimed that this was because the information was highly confidential.

The Panel agreed that the late reports could be circulated at the meeting but that there should be a brief adjournment to allow the officers to assess their content. Mr Verran again insisted that none of the documents could be copied or retained.

Following the adjournment, the Head of Legal and Democratic Services advised members that:

- The Arboriculturist's report dated 29 April 2008 was specific that there had been a ground level visual inspection of the trees only. There had been no detailed evaluation such as climbing inspection or core samples to support the conclusions being put forward.
- The Geological report had been commissioned over the Internet, for a fee of £50 and had not entailed any inspection of the site or specific research on its characteristics.
- The report from Christchurch Surveyors Ltd was also specific that only a brief site visit had been held on 28 May 2008. There had been no detailed site investigations, or evidence put forward about the type of soil on the site or its physical characteristics. Surface water and foul drains had not been exposed for further examination and testing.

Members must therefore draw their own conclusions as to the weight that should be attached to this evidence.

The Council's Arboriculturist did not wish to raise any questions with Mr Verran at this stage, but expressed his disquiet at the production, at the meeting, of significant quantities of additional written information.

In answer to questions from Councillors, Mr Verran stated:

- He had not dug any exploratory trenches as that would create a hazard for him as he moved about his property in the dark and also a trench could be deemed to damage the roots of the trees and therefore make him vulnerable to prosecution.
- Otter Nurseries had offered to dig a trench to sever the roots, but he had stopped them from doing so because that could make Otter Nurseries liable for damaging the protected trees.
- A test pit had been dug, as suggested by the geological report, but he was not sure if the findings had been sent to the Council. The geological report was, he felt, accurate as it was backed up by Christchurch Surveyors Ltd and the tree expert's reports.

- He had notified his insurance company about potential problems with subsidence and they had installed a monitor in the form of a piece of glass stuck across a crack, to demonstrate whether there was seasonal soil shrinkage, as a result of the activities of the trees. Under the insurance company's protocol, it was too early to justify any further investigations or subsidence monitoring. In addition, Mr Verran believed that they would not pay for any further reports when Mr Verran had already had one done himself. Mr Verran could not see why he should spend further money on gathering evidence when he had already spent £5000 on remedying the problems caused.
- Mr Verran did not agree that cracks could have many causes, that subsidence was only one of the potential causes and could be safely monitored for a period of time; or that monitoring in itself was not an indication that the building was in immediate danger of collapse. He asserted that the reports he had presented proved that his property was in immediate danger.
- The soil type in the fields to the rear was not gravel, as appeared to Members from their observations on site. The gravel area was from a previous gravel hard standing or road that had been created by the previous owners of the site.

In commencing the Arboriculturists' case for preserving the trees, Mr Williamson advised Members that the Tempo scoring form was only worth examining in detail where the scoring indicated the trees were borderline in their merits, that is with a score of 10 or 11. In this case the score was 18, and even on the partially completed form referred to by Mr Verran was 15. The case was not marginal and the scoring form did not warrant further examination.

Mr Douglas advised Members that he had visited Mr Verran's property after the local planning authority had received a planning application for a detached bungalow in the rear garden of 1 Newbridge Drive Cottages. At that time there had been a semi-mature oak tree in the rear garden. He had discussed the various issues with Mr Verran, which included that the proposed bungalow would be less than the British Standard recommended separation from the trees. Mr Douglas had confirmed that none of the trees were then protected. The oak tree had been felled on the following day and this had prompted the making of the Tree Preservation Order so that the poplar trees were given due consideration in the subsequent planning process. The planning application had subsequently been refused, for a number of reasons, including the potential future impact on the poplar trees.

Mr Douglas did not believe that the evidence submitted proved either that there was structural damage to Mr Verran's property or that such damage, if present, was caused by the poplar trees. Insufficient investigation had taken place and no proper evidence had been put forward to the Council. If Mr Verran's insurance company believed that there was subsidence at the property and the trees may be implicated, a number of detailed tests would need to be undertaken, including root surveys and even DNA testing. No data had been submitted on the actual soil profiles present on the site or their shrinkage characteristics.

Mr Douglas estimated the trees to be 17m tall and to be about 40 years old. Mr Verran had submitted contrary opinion, but no evidence, that they were older. The trees had not shown any tendency to fail and there was no evidence that they would now start to do so, unless faced with extreme conditions, in which case any tree might fail.

The trees did not appear to have been subject to regular maintenance, including the removal of dead wood from the crown. If properly maintained the shedding of dead wood should be minimal and present no realistic danger to the property or its occupiers.

Mr Douglas had found it difficult to hold discussions with Mr Verran as Mr Verran had banned him from his property.

The case setting out the amenity value of the trees was set out in Appendix 2 to Report B. Mr Douglas did not re-iterate those points in his presentation.

In answer to questions from Mr Verran, Mr Douglas advised that:

- If one of the trees was shedding bark that would be indicative of poor health in that tree, but did not indicate ill health in any of the other trees.
- The felling of other poplar trees in the area was not relevant and the state of health of those trees did not provide any evidence about the health of the trees under discussion.
- NHBC guidelines for the separation between tree species and new dwellings were not relevant in the current situation where the house and the trees were both well established.

In answer to questions from Members of the Panel, Mr Douglas advised

- The Panel could choose to confirm, not to confirm, or to modify the Order before confirmation. If they chose, the Panel could exclude one or more trees from the Order on confirmation. Mr Douglas believed that the amenity value of the trees was enhanced by the entirety of the group and that, therefore, in his opinion, it would be better to either confirm the Order, or decide not to confirm.
- Should substantive evidence come forward that the trees were causing structural damage to Mr Verran's property, a Tree Works Application could be submitted. If the evidence proved that damage was being caused by the poplar trees, consent could be given to fell them, or to substantially reduce their size, which research suggested may have a short term effect in reducing their requirement for water.

The Head of Legal and Democratic Services confirmed that consent could be granted to fell any protected tree that was proved to be causing damage to property. The Authority could still however decide that the amenity value of the trees was so significant that other options, that may even incur expenditure on the part of the Council, should be pursued.

There were no supporters of the Order, local ward members or parish council representatives present at the meeting.

In summing up the case for protecting the trees, Mr Douglas reiterated the amenity value of the group of trees was enhanced by the entirety of the group, and advocated the confirmation of the Order without modification.

In summing up the case for objection Mr Verran reiterated the following points:

- A root barrier would provide insufficient protection for his property, as stated in the report by Christchurch Surveyors Ltd.
- If the Order was confirmed Mr Verran would instigate legal action against other parties to seek recompense
- The trees were in poor health and of an undesirable species, with the roots and suckers indicating that they were struggling.
- He did not intend to carry out further tests on the trees as he believed it was the responsibility of the Council to do tests to prove the trees were not causing damage to his property.
- Mr Verran would be seeking compensation from the Council if the Order was confirmed
- Mr Verran's property would not be able to be insured, as a result of the trees, in a couple of years time, which would also make it unsaleable.
- Two houses, his and his neighbours', would be destroyed by the trees if the Order was confirmed.

The Hearing was then formally closed to allow the Panel to debate the merits of confirming, not confirming, or modifying the Order. Members concluded that they needed to receive legal advice on the issues involved. As a consequence it was moved, seconded and

RESOLVED:

That, under Section 100 (A) (4) of the Local Government Act 1972, the public and the Press be excluded from the meeting to receive confidential legal advice on the grounds that such advice involved the likely disclosure of exempt information as defined in paragraph 5 of Part I of Schedule 12A of the Act and the public interest in maintaining the exception outweighed the public interest in disclosing it.

Having received confidential legal advice it was

RESOLVED:

That the public and the press be readmitted to the meeting.

Members considered that the trees had significant amenity value with a marked visual impact when viewed from both directions along the A337 road which passed the site, and also when viewed from within Otter Nurseries.

Members then went on to consider the expediency of confirming the Order. In particular they assessed the evidence which had been presented, both in advance and at the meeting, to support the contention that the trees were creating danger and causing damage through shedding dead wood, and also that the roots of the trees were causing structural damage. The content of the evidence, when subjected to scrutiny, did not substantiate the appellant's case.

Members were aware that, should such evidence become available in due course, further consideration could be given to the issues through a Tree Works Application.

Members noted that there was a suggestion that one of the trees was unhealthy, because of the shedding of bark. There was no evidence submitted, however, demonstrating that one of the protected trees was affected in this way and hence this was not proven.

Having considered all the evidence before them, Members unanimously

RESOLVED:

That Tree Preservation Order 62/07 be confirmed without modification.

CHAIRMAN

(APL040608)