



21 AUGUST 2008

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held at Town Hall, Ashley Road, New Milton on Thursday, 21 August 2008

**Councillors:**

p Mrs A E McEvoy  
p D J Russell  
p Mrs S I Snowden

**Councillors:**

p F P Vickers  
p A Weeks

**In Attendance:**

**Councillor:**

Mrs K Lord

**Councillor:**

P Woods

**Officers Attending:**

Miss J Debnam, A Douglas, G Gosheron, Mrs N Heaselden and E Williams

**Also Attending:**

Mr R Wade – Objector's Solicitor  
Mrs T Elliott – New Milton Town Council

**5 ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr Vickers be elected Chairman for 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 4 June 2008, having been circulated, be signed by the Chairman as a correct record.

**8. TREE PRESERVATION ORDER 07/08 – LAND OF PEPPERCORN COTTAGE, 44 BARTON COMMON LANE, BARTON ON SEA, NEW MILTON (REPORT A).**

The Panel considered an objection to the making of Tree Preservation Order 07/08 relating to one oak tree on land of Peppercorn Cottage, 44 Barton Common Lane, Barton on Sea, New Milton. The meeting had been preceded by a visit to the site. This had allowed members to assess the health of the tree and its physical context.

Mr Wade, on behalf of the objector, advised the Panel that the family of the current owners had occupied Peppercorn Cottage for more than 60 years. The imposition of the Tree Preservation Order had been promoted by the submission of a planning application to replace an out-of-date extension. That planning application had subsequently been formally withdrawn but the Tree Preservation Order remained in place. It was recognised however that a further planning application would be submitted in due course.

Mr Wade addressed the issues of amenity value and expediency of making the Order which were the tests for justifying the making of a Tree Preservation Order. It was generally recognised that the oak tree was mature and fundamentally healthy. Mr Wade questioned, however, whether the tree was of outstanding visual beauty in its own right and also suggested that views of the tree from public view points were very limited. A footpath ran just behind Peppercorn Cottage, immediately adjacent to the tree. The path was very muddy and partially obstructed further towards Barton Common and he therefore doubted whether it was in frequent use. The tree was adjacent to an area of woodland and Mr Wade believed that the visual impact of removing the tree would be very limited.

With the withdrawal of the previous planning application, Mr Wade considered that the test of expediency in making the Order was no longer satisfied. The family had no intention of removing the tree.

In response to questions from the Council's Tree Officer, Mr Wade confirmed that the footpath appeared to be subject to some use but he did not consider that it was well used.

In answer to questions from Members of the Panel Mr Wade accepted that the footpath to the rear of Peppercorn Cottage was a formal right of way shown on the Ordnance Survey map.

Mr Douglas, the Council's Tree Officer advised Members that the protected tree was an English oak, in good health with a useful, safe, life expectancy in excess of 50 years. He confirmed that in 2006 the objectors had made contact with the Council to ask if the trees on the site were subject to any protection. As the property did not lie within a conservation area and none of the trees on site were subject to Tree Preservation Orders, the objector had been advised that no such protection was in place. It was emphasised that this approach had been made in connection with potential minor works to the oak tree and not in connection with the submission of a planning application. The subsequent planning application for an extension had not taken any account of the tree constraints on the site. The proposed extension would have come within the tree root protection zone as calculated in accordance with BS8357. The officers had subsequently visited the site to assess the amenity value of the tree. The value of the tree was increased as it was adjacent to a Site of Interest for Nature Conservation (SINC) and adjacent to a designated ancient woodland habitat. It was immediately adjacent to a public footpath which meant that the tree provided significant visual amenity to users of the footpath. Mr Douglas

considered that the path was clear of vegetation which suggested that it was in regular use by local people.

The Tree Preservation Order had been imposed in response to the submission of the planning application. The tree had been considered to be under threat which meant that the test of expediency in making the Order had been met. The subsequent withdrawal of that planning application did not alter the situation. The imposition of the Tree Preservation Order meant that, in future, the tree constraints of the site would be properly taken into account. In addition any future planning consent could be made subject to conditions, that could then be enforced, to protect the tree. Without the imposition of the Tree Preservation Order, no planning conditions to protect the trees could realistically be enforced.

In addition to the potential threat to the retention of the tree by damage to its roots, the proximity of the proposed extension would have been incompatible with the tree and led to pressures for its removal, or significant pruning in the future.

In answer to questions from Mr Wade, Mr Douglas confirmed that the tree was likely to be in Category B as assessed by BS8357 which guided construction in proximity to trees. Most trees that were protected fell within Category B. Category A trees were of outstanding physical form and beauty and were relatively rare. Mr Douglas also confirmed the basis for calculating the tree root protection zone which was based on the diameter of the tree at 1.5 metres above the ground. The diameter was conservatively estimated to be 750mm, which was, in broad terms, multiplied by 12 to give a tree root protection zone of 9 metres. In addition, there should be further clearance of 2 metres between the tree root protection zone and any structure to allow for the erection of scaffolding and access to the scaffolding without creating compaction that would damage the roots. A further complicating feature was the presence of the footpath which compacted soil to the other side of the tree. This was likely to have promoted a greater dependence on and spread of roots within the garden of Peppercorn Cottage. He confirmed that there were construction methods which could overcome the constraints imposed by the tree but these should be considered as part of the planning application process.

In answer to further questions from Mr Wade, Mr Douglas could not specify the number of individual tree preservation orders which were in place in the immediate vicinity but confirmed that there were a number of significant woodland tree preservation orders protecting trees within the immediate area.

In answers to questions from the Panel Mr Douglas confirmed that the Council commonly imposed Tree Preservation Orders in response to planning applications in order to protect important trees. The number of trees within the District was so great that it was impractical to inspect and protect all trees which were worthy of retention and it was estimated that less than 1% of trees with significant amenity value were currently subject to tree preservation orders. When the trees were not under threat there was no reason to protect them and the Council did not have sufficient resource to undertake routine inspections. In the case of the current tree it was possible that it may have been protected in 2006 in response to the request for information about whether it was permissible to do tree works. That may have depended upon the scale of works proposed. He also confirmed that, with modern construction methods, the proposed extension was unlikely to be subject to damage from the oak's roots. Building Regulations controlled foundation depths to ensure the construction was sound and, in addition, it was unlikely that the property was situated on shrinkable clay which was the only soil type which was vulnerable to tree activity.

In response to further questions, Mr Douglas confirmed that the footpath was formally part of the footpath network and was subject to regular use. He felt that the loss of the tree would have a significant visual impact when viewed from the footpath and the tree, although not of outstanding visual form, was nonetheless attractive and provided sufficient amenity value to be worthy of retention.

Mr Douglas also advised members that the yew and ash trees on the site had been considered for protection but were both getting towards the end of their lifespan and were therefore not suitable for inclusion within a Tree Preservation Order.

Cllr Woods, as one of the local ward members, confirmed that he lived within five minutes walk of the site and was a regular user of the footpath. The footpath provided a safe access for pedestrians to Barton Common, avoiding Milford Road which was busy and had no pavement. Although the path degenerated further past Peppercorn Cottage and was not used much when it was wet, it was nonetheless in regular use. There were a large number of trees of this type in Becton Ward which formed part of the normal landscape. This one added to the landscape value of the area and he felt that it was worthy of retention.

The Town Council's representative had no additional comments to those made by the local ward member.

In summing up, Mr Douglas advised the Panel that the oak tree was a fine specimen which should have a safe long, lifespan. It was adjacent to a SINC and ancient woodland. It had been threatened by a planning application which had been subsequently withdrawn but the Tree Preservation Order would allow the tree's needs to be taken into account in any future development of the site.

In summing up, Mr Wade reiterated his concern that the extent of usage of the footpath meant that the tree did not provide significant public amenity value. In addition the tree was not in itself of outstanding merit and its loss would not have any significant visual impact within the local landscape.

The Hearing was then formally closed to allow the Panel to debate the merits of confirming, not confirming or modifying the order.

One member had concerns about the amenity value of the tree and whether it was sufficient to justify the confirmation of the Tree Preservation Order. The other members of the Panel concluded that the tree did have sufficient impact such that its loss would create a significant change, and loss of amenity when viewed from the public footpath. The proximity of the SINC and designated ancient woodland were also significant factors to be taken into account. It was noted that the confirmation of the Tree Preservation Order would not prevent the future construction of an extension to Peppercorn Cottage but merely required that the tree constraints were taken into account. On this basis the interference with the rights of the owners and occupiers of Peppercorn Cottage to enjoy their property was proportionate.

**RESOLVED:**

That Tree Preservation Order 07/08 be confirmed without modification.

CHAIRMAN