

4 SEPTEMBER 2008

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held at The Public Hall, West Road, Hythe on Thursday, 4 September 2008.

Councillors:

p J A G Hutchins
p Mrs S I Snowden

Councillors:

p A Weeks
p P R Woods

Officers Attending:

Miss J Debnam, A Douglas and E Williams.

Also Attending:

Mr P Bedwell, Mrs G and Mr J Godfrey, Mr T Snook, Mrs C and Mr G Whettingsteel, Mr M F and Mrs G E Williams.

9. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Woods be elected Chairman for the meeting.

10. DECLARATIONS OF INTEREST.

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

11. MINUTES (REPORT A).

RESOLVED:

That the minutes of the meeting held on 21 August 2008, having been circulated, be signed by the Chairman as a correct record.

12. TREE PRESERVATION ORDER 14/08 – LAND OF BRAMBLES, WEST GABLE AND HASQUENCORT, ROMAN ROAD, DIBDEN PURLIEU (REPORT B)

The Panel considered a number of objections to the making of Tree Preservation Order 14/08 relating to land of Brambles, West Gable and Hasquencort, Roman Road, Dibden Purlieu. The meeting had been preceded by a visit to the site. This had allowed members to assess the health and amenity value of the various trees that were proposed to be protected by the Tree Preservation Order. The opportunity was also taken to view the physical context of these trees.

Members noted that although the TPO had been served as an Area Order, it was proposed to amend the Order on confirmation to refer to 28 individual, specified, trees. The trees had all now been individually tagged. The proposed revised schedule and map for the Order were set out at Appendix 2 to Report B.

Mr Williams objected to the making of the Order on the principle that it would interfere with his common rights of property and set his rights as a landowner at less than the rights of "others". He did not feel that the Order was justified as neither he nor any of his neighbours had any intention of developing the site. Should the question of development arise in future the protection of the trees could be addressed at that stage. It was proposed to protect 14 trees within his garden and he did not consider that all of these were of sufficient quality to warrant protection. He felt that this was an excessive number in principle, and that it would impose on him a considerable waste of time to seek permission to do routine maintenance works on the trees.

Mrs Williams advised the Panel that the Order had been made on a mistaken premise. One tree had been felled, by the owners of Hasquencort, at the request of a neighbour in Roman Way. She could not understand why other property owners had subsequently been deemed to be threatening the trees on their land when they were not doing anything or proposing to do so. She and her husband had lived at their house for 21 years without any problems. The entire area was covered in trees and it seemed very unfair to pick on just three properties and impose a TPO. This was particularly unfair when the highway belt of trees in front of her property had been seriously damaged by the installation of a telecommunications mast. That loss, in full public view, was apparently acceptable, while the management of trees in her own back garden, which is much less obvious, was not.

Mr Whettingsteel also felt victimised by the imposition of the Order and advised the Panel that the Council's actions had encouraged others within the area to fell trees as fast as possible so that they could do so before the trees became protected. Mr Whettingsteel enjoyed the amenity provided by the trees and had no intention of taking them down. He had lived at his current property for 25 years and had no interest in removing the trees. He did nonetheless object to the inconvenience that would be caused to him by the need to apply for consent to manage the trees. He felt that this was disproportionate and unnecessary.

Mrs Whettingsteel also felt victimised as the protection extended to just three properties and these three properties had been the most affected by the loss of trees caused by installation of a telecommunications mast. That tree loss had affected their sound boundary which had had a significant effect. The trees within the gardens were mainly silver birch and fir trees. The land owners kept them beautiful but they were not, in her opinion, truly representative trees of England.

Mrs Godfrey circulated an aerial photograph of the site which showed that it lay within a backdrop of trees which reduced the value of the trees within her garden and the garden of her neighbours.

Mr Godfrey sought reassurances that the trees were safe as they were now of sufficient size that they could fall on one of the neighbouring houses.

Mr Bedwell also considered that the imposition of the Tree Preservation Order looked like victimisation of the three property owners in its current form. He considered that perhaps it should be extended over a wider area as there was significant tree loss more widely within Dibden Purlieu, which was reducing the

privacy of properties in the area. He agreed with his neighbours that the loss of trees to accommodate the telecommunications mast has caused significant harm to the amenities of the area already. He supported the protection of trees in the neighbourhood.

In answer to questions from members of the panel the neighbours confirmed that;

- they objected to the principle of imposing the order;
- they objected to the inconvenience that would be caused by the need to apply for consent to do any works to the trees; and
- they had lived at the properties for a considerable time without any problems and resented the implication that they could no longer be trusted to care for the trees.

Mr Douglas, the Council's Arboriculturist, advised the Panel that the TPO had been made in response to the premature felling of a pine tree on the boundary between Hasquencort and 7 Roman Way. Following an initial site visit, when it had not been possible to gain access to the rear gardens, and also in the light of a GIS plan of the area, it had been decided to serve an Area Order, protecting all trees of whatever species on the rear gardens of Brambles, West Gables and Hasquencort. This was partly in the light of the planning history of 17 Nash Road, where a number of planning applications had been refused; and also in recognition of the large plot sizes of these properties which created the potential of residential development, taking access from Nash Road. The TPO had therefore been made on a precautionary basis.

The site had now been inspected by three different arboriculturists who were satisfied by the amenity value of the 28 individual trees which it was now proposed to protect. They were also satisfied that the trees were perfectly safe and healthy. The fears of the tree owners were largely groundless as the TPO exempted notification for works to rectify dead, dying or dangerous trees, which included affected branches on otherwise healthy trees. The Council would merely ask for five days notification of proposed works of this nature.

Mr Douglas emphasised that the Council was not suggesting that trees had not been looked after carefully. However, there had been pressure from the neighbour in 7 Roman Way to have trees removed. Mr Douglas felt that it was unfortunate that that neighbour was not present at the hearing.

Mr Douglas felt unable to comment on trees that had been lost elsewhere in the vicinity over recent months. He reminded members however, that it was not feasible for the Council to impose TPOs on all trees in the District which were of high amenity value. A number of TPOs were however already in place in the vicinity but these also tended to have been imposed on a reactive basis.

Mr Douglas concurred with the neighbours' concerns about the effect of the telecommunications mast but reminded everyone that the land belonged to the County Council and they had not been in a position to protect the trees or to influence what had happened.

Mr Douglas emphasised the amenity value of the trees which it was proposed to protect from views within the wider area. They had significant amenity value when viewed from surrounding roads.

Mr Douglas agreed that the neighbours did not appear to have any immediate intention to fell the trees but emphasised that the TPO had been instigated by the premature felling of a tree. The Order did not prevent works being carried out to the trees in future but merely required the submission of a tree works application. This had the advantage to the tree owners of providing a source of independent arboricultural advice. Consent was always granted when the proposed works were reasonable.

Mr Douglas did not agree with the view point of the neighbours that pine and birch trees were not worthy of protection. They were indicative species within the Forest and the combination of tree species within an area created a variety of tree cover which was of value in itself. All the trees should be protected.

In response to Mr Godfrey's concerns about safety, Mr Douglas advised that the management of the trees remained the responsibility of the tree owners. The trees had been assessed and there was no reason to suggest that they should fail and cause any danger to adjacent properties. There could however be no guarantees of their safety.

In answer to questions raised by Mr Snook, Mr Douglas emphasised that questions relating to the planning history of his site and comments made by Hythe and Dibden Parish Council were a separate issue between him and that Council. The issues were not relevant to the current consideration of whether or not to confirm the Order.

Mr Whettingsteel asked why, if the intention of the order had been to prevent development on the gardens, just selected trees had not been protected, which would have had the same effect. Mr Douglas advised the panel that the order had not been served to prevent development but to ensure that the trees were a material consideration and the constraints that the trees imposed were taken into account should proposals to develop the site proceed in the future. He re-emphasised that not all trees of high amenity value in the District were protected. In addition, all the TPOs that were in place were kept under review and up to date. In answer to further questions Mr Douglas advised that the high hedges legislation controlled semi evergreen or evergreen trees within a hedge but that legislation was not relevant in the current situation where individual trees within gardens were under consideration. There was no legal right to light at any property.

A letter from Mr and Mrs Wride, the owners of Hasquencort, was submitted to the meeting. They had unfortunately been unable to attend. Mr and Mrs Wride felt that paragraph 4.6 of Appendix 3 to Report B, misrepresented the reason why they had given consent for the pine tree to be felled on their boundary. In addition to preventing grass from growing, the pine tree was extensively shielding the neighbour's garden from light and this together with the continual falling of pine needles had caused the neighbour considerable inconvenience. Although as far as Mr and Mrs Wride were concerned this was a neighbourly act, they had refused permission for more trees along the boundary to be felled, and certainly had no intention of allowing further felling in the future.

In answer to questions from members of the Panel, Mr Douglas advised members that it was not unusual for residential back gardens to contain a large number of protected trees, whether individually specified or in groups. He also confirmed that the trees were protected for life and the ownership of the trees was irrelevant. The ownership of these properties may change hands in the future which would change the level of risk that they were under. The test remained the amenity value of the trees.

In summing up, Mr Douglas reiterated that the Order had been imposed following notification by a neighbour that a tree had been felled on the site and bearing in mind the history of development in the area and the plot sizes of the current properties it was considered expedient to protect the trees with a Tree Preservation Order. The trees on Brambles, West Gable and Hasquencort all offered significant amenity value to the wider area. In addition there may be further pressure from the neighbour who had requested the first pine tree to be felled. The Tree Preservation Order would help to resist such pressures. The Order should be confirmed, subject to modification to specify the individual trees to be protected.

In summing up the objectors raised the following points;

- 14 protected trees within one domestic property was excessive and could prejudice the owner's ability to sell the property in future; and
- the trees were set against a backdrop of other significant quantities of trees in the area and therefore they had limited amenity value and were certainly not rare. Their removal would have very limited impact on the character of the area.

Mrs Williams raised concerns that the Council's policy on publishing letters of objection on the website had not been made clear when the Order had first been served and objections invited. Mrs Williams received an apology that she had been made to feel uncomfortable by the Council's practices. It was explained that the Council's procedures were long established but had evolved before issues of security on personal information became so sensitive. All correspondence was now vetted to ensure that no signatures, telephone numbers or email addresses were published on the website. In addition the documentation which went out with Tree Preservation Orders had now been updated to make it explicit that letters of objection would appear on the website.

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

One member was concerned that the Tree Preservation Order was excessive in the circumstances and too many trees were being protected, imposing an unnecessary burden on the owners of those properties.

Members were advised that they had the option to consider the amenity of each of the trees that it was proposed to protect and the expediency of protecting that tree. It was not necessary to confirm the Order with all 28 specified trees included.

The majority of members concluded however, that the number of trees proposed to be protected was correct as there was a cumulative value from protecting a significant number of large, healthy specimen trees. Members were satisfied that the trees provided significant amenity value within the wider area. There was a pattern of development within this neighbourhood and a precautionary approach should therefore be considered. The protection to the trees was not limited to the current owners of the three properties that were covered. While the current owners had no proposals to develop the site the trees may be under threat in the longer term. Routine maintenance of the trees was not prevented by the TPO. On this basis the Panel was also satisfied that the test of expediency had been met.

RESOLVED:

That Tree Preservation Order 14/08 be confirmed subject to modification by the substitution of the revised Schedule 1 and Tree Preservation Order plan as set out in Appendix 2 to Report B.

CHAIRMAN

(APL040908)