



18 NOVEMBER 2008

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in the Council Chamber, Town Hall, Lymington on Tuesday, 18 November 2008.

Councillors:

p Mrs A E McEvoy
p Mrs A M Rostand
p D J Russell

Councillors:

p Lt Col M J Shand
p F P Vickers

In Attendance:

Councillor:

P R Woods

Officers Attending:

Miss J Debnam, A Douglas, A Luddington and E Williams.

Also Attending:

Mr and Mrs Woodley

13. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Russell be elected Chairman for the meeting.

14. DECLARATIONS OF INTEREST.

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

15. MINUTES (REPORT A).

RESOLVED:

That the minutes of the meeting held on 4 September 2008, having been circulated, be signed by the Chairman as a correct record.

16. TREE PRESERVATION ORDER NO. 17/08 - LAND OF 19 CHESTNUT AVENUE, BARTON-ON-SEA, NEW MILTON (REPORT B).

The Panel considered an objection to the making of Tree Preservation Order 17/08 relating to land of 19 Chestnut Avenue, Barton-on-Sea, New Milton.

The meeting had been preceded by a visit to the site. This had allowed Members to assess the health and amenity value of the tree and its physical relationship to the house, other trees within the street scene and various tarmaced and paved areas.

Mr and Mrs Woodley objected to the protection of the tree on the grounds that roots were causing damage to their driveway; in recent high winds a big branch had fallen out of the tree, which they considered represented a danger to them and members of the public; and also birds, particularly rooks, nesting in the tree left significant amounts of droppings and were also very noisy. In addition, they considered that the scale of the tree was too great for the plot. Its proximity to the house meant that one of the bedrooms was completely overshadowed and artificial light had to be used at all times of day.

In answer to questions from the Arboriculturist, Mr Woodley confirmed that he and his family were not currently living at the address but had been resident when the Tree Preservation Order had been imposed.

In answer to questions from members of the Panel, Mr Woodley advised that the neighbour at No 17 Chestnut Avenue had also experienced problems with droppings from the rooks and various debris dropping onto his driveway. He also felt that the size of the tree could be an issue, as it could cause catastrophic damage should the tree fail.

In support of the case for confirming the Tree Preservation Order, Mr Douglas advised the Panel that the original Tree Preservation Order had been made following the submission of a planning application for extensions to the property, which took no account of the potential damage to the tree. The officers had visited the site and had concluded that the tree had significant amenity value, as it was visually very prominent within the street scene, viewed from both directions on the road; and also they were satisfied that the test of expediency was met in that the tree was threatened by a planning proposal.

Members were advised that the root protection zone for the tree was a 10 metre diameter from the trunk.

In response to points raised earlier in the proceedings, Mr Douglas advised that the protected Holm Oak was not adversely affecting the Chestnut trees that lay within its crown spread. These were highway trees that were pollarded for their management. There was no doubt that the Oak tree's roots were causing a crack in the driveway paving slabs. This could, however, be remedied, and the situation would change when a new driveway was constructed pursuant to current planning proposals. In any event, cracking to the driveway was not a sufficient reason not to confirm the Tree Preservation Order.

Mr Douglas advised the Panel that Holm Oak trees were extremely strong. The likelihood of this tree falling over was remotely small. In addition, any tree in a residential setting should be properly maintained. This included crown cleaning. If this had been done, there would have been no branch shedding in the recent high

winds. Proper maintenance was encouraged under the terms of the Tree Preservation Order and would prevent future problems. The Panel was reminded that a Tree Preservation Order did not prevent works being carried out to a protected tree. Consent must be sought through a Tree Works Application, which was free of charge, but consent was always granted to allow reasonable works.

Members were reminded that trees attracted birds. It had been noted during the site visit that rooks were nesting in the tree. It was understood that rooks stayed with the nest for a limited time within the year and therefore the nuisance that they caused was not continuous. In any event, bird droppings under trees were a routine problem which should be addressed through cleaning. Again, the nuisance caused by bird droppings was not sufficient to justify the loss of this tree.

Members were advised that the property owner had now obtained planning consent for extensions to the house, but there was an extant planning application for the construction of a garage, which was as yet undetermined. The proposals had, however, now addressed the needs of the tree and, subject to the imposition of conditions to control the surfacing of the driveway and the construction method, there was no reason why the tree should impose any undue constraints on the property owner's aspirations for the site. Members were reminded that without the Tree Preservation Order, it would be impossible to adequately enforce conditions for the tree's protection.

Mr Douglas pointed out that no other objections had been received to the making of this Tree Preservation Order.

Mr Douglas re-emphasised that the protected Holm Oak was a significant tree within the road, it was visible from both directions and, if it was removed, it would significantly reduce the attractiveness of the area. The issue under consideration was the wider amenity value of the tree. In answer to questions from Mr and Mrs Woodley, Mr Douglas advised that the bedroom which was affected by the tree was a secondary room and therefore, within planning terms, loss of light was not judged to be of significant concern. Indeed, a planning application for a new build in such a situation would not be adversely constrained.

Roots from the Holm Oak would already be going under the house and were not causing any damage to the property. The extensions to the house, as now proposed, would not cause damage to the tree. It was, however, important to ensure that the new driveway was constructed with a no dig, no compaction method and that an appropriate methodology was also used for the new footings.

Mr Douglas did not agree with Mr and Mrs Woodley's belief that the rooks were causing a significant noise nuisance all year round.

In answer to a question, Mr Woodley confirmed that he and his family had moved into the property 3 years previously and the tree had already been well established at that time.

In answer to questions from members of the Panel, Mr Douglas advised that the potential effects of the protected tree on the people living close to it were considered in the decision whether or not to protect a tree. This had to be balanced against the amenity value of the tree in the wider area; and also the expediency of making the Order.

Mr Douglas confirmed that bird mess under trees was a nuisance, but was associated with any tree. Nothing could be done to prevent that.

The protected Holm Oak was more than 80 years old, in good healthy condition, and likely already to be at its maximum size, as it was constrained by the characteristics of its growing environment. The further, healthy, life of this tree was likely to be over 40 years.

The extent of pruning that might be allowed to the tree must be reasonable in order to maintain its amenity value. In addition, it could be counter-productive to prune a tree significantly as it would promote prolific re-growth around the cut site so that, in time, it could be more vulnerable to failure. Where loss of light to rooms was an issue, it was more helpful to thin the crown to allow greater light infiltration.

Mr Douglas confirmed that the tree's roots were inevitably growing underneath the house, but the soil type meant that this would not cause any damage. There were no subsidence claims against the Council in the Barton-on-Sea area.

In answer to questions about the degree to which the making of the Tree Preservation Order was advertised in the local community, the Panel was advised that the tree's owner and the immediately adjoining neighbours were served with notice of the Order. Wider notification did not, however, take place.

Cllr Woods addressed the Panel in his capacity as the Ward Councillor for both the District and Town Councils. He strongly advocated the protection and retention of the tree, which had significant public benefit. He considered the tree was magnificent and visible throughout the length of the road, making a significant contribution to the local landscape.

In summing up, Mr Douglas advised the Panel that the protected Oak was a good specimen, which made a significant contribution to the local landscape. Planning issues could be addressed through conditions and the tree could be reasonably maintained and retained into the future.

In summing up, Mr and Mrs Woodley emphasised that the tree was ruining their driveway and the mess created by the birds was a significant problem for them. They did not consider that it was right that they and their neighbours should be disadvantaged to retain a tree just for its looks for the benefit of other people. They pointed out that there were already Chestnut trees in the road which provided amenity value and the loss of the Holm Oak would therefore not be significant. They considered that the Tree Preservation Order would impose too great a restriction on what could be done to the tree in future.

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

Some Members considered that the needs of the highway Chestnut trees, which were part of an avenue of similar specimens, should be paramount and that the Holm Oak was adversely affecting the two Chestnuts under its crown. The loss of the Holm Oak would have less visual impact because of the presence of the Chestnuts. They also considered that, although the tree had been of significant stature when the objectors had bought the property, they probably did not realise the full implications of living in such close proximity to a tree of this size. They considered that the effects on their quality of life were so significant that the Order should not be confirmed.

The majority of Members, however, considered that, while they had some sympathy with the residents because of the collateral nuisance caused by birds roosting, there was no doubt that this Holm Oak was a very significant feature in the local landscape. They did not consider the Holm Oak was adversely affecting the Chestnut trees. This tree, and other large specimen trees dotted around the area, made a significant contribution to its character. They considered that the tree had been of equivalent stature when the property had been bought 3 years previously and the decision to purchase would have been adequately informed. It was also most likely that the Surveyor's report would have explored the physical effects of the tree's presence. The objectors could both manage the tree in future and meet their aspirations to develop the property. The presence of bird droppings was not sufficient reason to justify the tree's removal and nor was the cracking of the driveway.

Having considered the evidence before them it was:

RESOLVED:

That Tree Preservation Order 17/08 relating to land of 19 Chestnut Avenue, Barton-on-Sea, New Milton be confirmed without modification.

CHAIRMAN

(AP181108)