

19 OCTOBER 2009

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in the Main Hall, Town Hall, Fordingbridge on Monday, 19 October 2009.

Councillors:

p Mrs L C Ford
p J A G Hutchins
p C Lagdon

Councillors:

p A Weeks
p P R Woods

In Attendance:

Councillor:

Dr M N Whitehead

Officers Attending:

Miss J Debnam, A Douglas and E Williams.

Also Attending:

Mrs Douglas, Ms Dymond and Mrs Ruffen - Objectors

5. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Woods be elected Chairman for the meeting.

6. MINUTES (REPORT A).

RESOLVED:

That the minutes of the meeting held on 26 August 2009, having been circulated, be signed by the Chairman as a correct record.

7. DECLARATIONS OF INTEREST.

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

8. TREE PRESERVATION ORDER NO. 17/09 (REPORT B).

The Panel considered objections to the making of Tree Preservation Order 17/09 which related to a yew tree on land of 12 Park Road, Fordingbridge. The hearing had been preceded by a visit to the site which had viewed the tree from within the owners' garden and also each of the objectors' gardens. The Panel had noted key relationships between the tree and other features in the landscape, had noted its appearance and general condition, and also formed a view on the amenity value of the tree when viewed from public viewpoints in the vicinity.

Mrs Douglas of 9 Alexandra Road, Fordingbridge, lived immediately to the rear of the site and spoke on behalf of her and her husband. She objected to the making of this TPO as she felt that the tree failed to provide significant amenity value in the wider community and also the test of expediency had not been met. The tree was very large, and she considered disproportionately large, creating a miserable environment in her garden. The tree created debris, in the past had damaged fencing and created problems with maintaining the lawn. As a result she had approached her neighbours and negotiated for what she believed was a consensus view among the neighbours for the tree to be pruned to secure a significant reduction in its size and impact. She wanted the tree reduced in height by 15 feet (5 metres) and the crown spread reduced proportionately. As a consequence the tree's owners had approached a number of tree surgeons to gain their advice. A Tree Surgeon had been selected on the basis that their attitude was sympathetic to the welfare of the tree and they were unwilling to commit to a reduction of the scale proposed in advance of examining the crown of the tree and establishing what could be done without prejudicing the tree's welfare. There were no development proposals for the site and it was not in a development area. Since it had never been the intention to fell the tree and a responsible approach had been taken to selecting a tree surgeon, Mrs Douglas did not consider that the tree could be deemed to be under any threat and consequently the test of expediency had not been met. The consent process that must be followed if the TPO was confirmed was unnecessary and bureaucratic. The neighbours should be left to manage the tree in a responsible way, as they had already agreed. Mrs Douglas was clear that her objective was for the tree to be reduced to the minimum size compatible with safeguarding its health.

With respect to visual amenity, Mrs Douglas felt that the tree was only fully visible to the immediate neighbours who either objected to the protection of the tree, or had not supported its protection. She did not feel that any of the local residents could gain any pleasure from it. The tree could only be glimpsed by people outside the immediately neighbouring properties and therefore could not be said to provide amenity value within the landscape.

Mrs Douglas felt that the summary of her objection included in Appendix 2 of Report B misrepresented her case and asked that Members have regard to her direct written representation as set out in Appendix 3 to Report B. She also objected to the inclusion, within Appendix 2, of information gathered at a site meeting which she had been advised was not formal in nature. Mrs Douglas also felt that the Order had been imposed wrongly after she had been advised that the high hedges legislation did not apply and the tree's owners could not be compelled to prune the tree.

In answer to a question from the Council's Arboriculturist, Mrs Douglas confirmed that during the site visit she had indicated that she wanted to reduce the height of the tree by 15 foot and round the canopy off in proportion.

In answer to questions from Members of the Panel, Mrs Douglas confirmed that she had lived at her current address for just over 5 years. She believed that, while she had not consciously noted year on year growth by the tree, over the last 12 months it had increased in height by about 1 foot. It was also established that Ms Dymond (adjacent neighbour) had lived there for 12 years, while Mrs Ruffen had lived in her property for over 3 years.

Ms Dymond of 7 Alexandra Road concurred with Mrs Douglas and expressed her disappointment that the tree had not been maintained over the years. It was disappointing that now a schedule of pruning had been agreed and the cost division settled it had not been possible to proceed. She did not accept that the proposed works would damage the tree.

Mrs Ruffen, of 10 Park Road, agreed and also asked about the expected mature height of the tree. She was advised that, in this location, the tree was approaching its final mature height.

Mr Douglas, the Council's Arboriculturist, advised the Panel that he had made the Tree Preservation Order after he had been consulted by the tree's owners, Mr and Mrs Young, about the scale of the proposed pruning works and the potential effect on the tree. He had visited the property and established through measurement that the proposal was to reduce the height of the tree from about 45 foot to 30 foot, resulting in a 30% reduction in the size of the tree. He had considered that the scale of the proposed works was detrimental to its long term welfare and, as it was a large tree providing a significant feature within the landscape, he had concluded that it should be protected. The tree was healthy, in good condition, with no visible defects. Although its crown was asymmetrical, this was a result of the previous lack of maintenance, and could be remedied. It was accepted that there had been no intention to fell the tree, but the scale of works proposed was so significant that he was satisfied that the test of expediency was met, in that the welfare of the tree could be prejudiced, and the amenity value it provided significantly diminished. The tree was clearly visible from viewpoints within the roads within the vicinity. Some of these views were only glimpses, but the tree was extremely prominent when viewed from the junction of Park Road and Salisbury Road. Fears raised by the neighbours that the tree was poisonous were unfounded. The instances of human poisoning from yew trees were rare and generally mild, and were always caused by the seeds. The tree at 12 Park Road was a male that would not produce seeds and was not therefore poisonous. All trees created debris, had the potential to interfere with fencing and created maintenance requirements.

Members were reminded that the test of expediency suggested that the threat to the tree should be genuine and not based on some theoretical scenario in the future. Clarification was sought that the scale of the works proposed was expected to result in a significant reduction in the amenity value provided by the tree at present. It was confirmed that there was some discrepancy in accounts of the scale of the works that was proposed and it was therefore impossible to say that the proposed pruning amounted to the good arboricultural management that the Guidance on TPOs suggested would make a TPO unnecessary.

In answer to questions from Mrs Douglas about the grounds on which the Council's arboriculturist concluded that the tree had significant amenity value, she was advised that it could be clearly seen, and not just glimpsed, from public viewpoints around the site. The yew was a focal tree, of significant size and its stature was rare in the surrounding area. Trees such as this provided amenity, within the general landscape, for the immediately surrounding houses and also people

passing the site. The tree was particularly prominent when viewed from the junction of Park Road with Salisbury Road. Mrs Douglas disputed the grounds for evaluating the amenity value of the tree and was reminded by the Chairman that this judgement was part of the purpose for which this Members Panel had been constituted.

In answer to questions from Members of the Panel, Mr Douglas confirmed that, if the tree was not protected, the neighbours were entitled to chop off any over hanging boughs at the fence line, provided they were returned to the tree's owners. They were advised that anyone could apply for consent under a Tree Works Application, although the trees' owners were still responsible for the tree and could refuse their consent for any works falling within their property. In addition, while the TPO and Tree Works Application process controlled works that could be done to the tree, it could not be used to compel works by the owner, unless the tree was in a dangerous condition. He also confirmed that the Order had been made after advice had been sought on the management of the tree. He advised Members that the tree's owners had doubts about the scale of the pruning being suggested and had consequently called him in for his opinion. The tree's owners did not object to the imposition of the Order. There was no charge for Tree Works Application and the process was not designed to prevent all works to the tree. The objective was to ensure that maintenance and pruning was in the best interests of the tree and protected its health and amenity value. The yew was a slow growing species, with significant longevity. The current specimen was likely to be 100 years or more old and yew trees were known to live for many centuries.

In answer to questions from Cllr Whitehead, the local ward councillor, Mr Douglas confirmed that no qualifications were required before someone could call themselves a Tree Surgeon, so that in future, if the tree was not protected, inappropriate work could be commissioned and carried out. An arboriculturist was professionally qualified and experienced, and in his case acted as a consultant to the Council in this process. Cllr Whitehead had not received any representations on this issue from local people or the Town Council. In her view the tree was attractive and although it was in need of some maintenance work by a properly qualified tree surgeon, she was not upset by the imposition of the TPO.

In summing up, Mr Douglas emphasised the amenity value of the tree when viewed from general viewpoints. The TPO was necessary to give clarity to the level of work that could be done to the tree.

Mrs Douglas reiterated her objections to the making of the Order. She considered that the tree's owners supported the level of works proposed to the tree and had only involved the Council's arboriculturist as they felt they needed advice once the issue of legal compulsion through the High Hedges legislation had been raised. She considered that the need to submit a Tree Works Application did entail cost as the tree surgeon would need to prepare a report on the works that were proposed to support the application. Indeed it was impossible to prepare a proper proposal as their tree surgeon had stated he could not commit to a level of work until he viewed the crown in more detail. She did not consider that the yew tree had any greater amenity value than other trees in the vicinity and it was arbitrary to protect this one. The neighbours did not need supervision by the Council but could be left to manage their own gardens.

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

Members had noted that the tree was of significant size and very prominent when viewed particularly from the Junction with Salisbury Road. Indeed one Councillor had used the tree to find the site. This tree was one of very few trees of significant scale within the landscape and made a significant contribution to the character of the area. They were satisfied that the tree met the test of providing significant amenity value to the public. They also noted that the tree could be subject, at some time in the future, to inappropriate levels of pruning, which would prejudice that amenity value, if it was not protected by the Order. On that basis they concluded that it was expedient to confirm the Order.

RESOLVED:

That Tree Preservation Order 17/09 relating to land of 12 Park Road, Fordingbridge be confirmed without modification.

CHAIRMAN

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