

26 AUGUST 2009
NEW FOREST DISTRICT COUNCIL
APPEALS PANEL



Minutes of a meeting of the Appeals Panel held in the Meeting Room, Town Hall, Spencer Road, New Milton on Wednesday, 26 August 2009.

Councillors:

p D Harrison
p J A G Hutchins
p Mrs A M Rostand

Councillors:

p F P Vickers
p C A Wise

In Attendance:

Councillor:

Mrs S I Snowden

Councillor:

P R Woods

Officers Attending:

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

Also Attending:

Mr Fisher, Mr Tyler, Mrs Tyler and Mr Elliott – objectors.

1. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Vickers be elected Chairman for the meeting.

2. MINUTES (REPORT A).

RESOLVED:

That the minutes of the meeting held on 9 April 2009, having been circulated, be signed by the Chairman as a correct record.

3. DECLARATIONS OF INTEREST.

It was noted that both Cllrs Hutchins and Woods were Members of New Milton Town Council who had asked Cllr Woods to express a view on this issue, at the Hearing. Cllr Hutchins had not taken part in any discussions on this matter by the Town Council.

4. TREE PRESERVATION ORDER NO. 09/09 (REPORT B).

The Panel considered objections to the making of Tree Preservation Order 09/09 relating to land of 18 and 20 Milton Grove, New Milton. The Order protected a Monterey Cypress on the boundary of 18 Milton Grove (tree T1) and an Ash tree within the rear garden of 20 Milton Grove (tree T2). Prior to the hearing, Members of the Panel had visited the site to evaluate the health and condition of the trees, their relationship to features within the landscape and also the amenity value that they provided. With respect to the Monterey Cypress, it was noted that the tree had a subsidiary trunk but it was not intended to include this within the Order.

Mrs Fisher objected to the protection of Tree T1. The tree had shed branches, proving that it was unsafe and causing damage to fences and a shed. The removal of the other trees along the original hedgerow line meant that this residual one was now more exposed and therefore more likely to be vulnerable to wind damage. The tree was ugly and top-heavy, contributing nothing to the visual amenities of the area. The tree also caused significant shading which affected her ability to use her garden.

Mr Tyler objected to the protection of the Ash tree T2 which was now a very significant feature within his rear garden. The tree was some 50 foot high with a crown spread of 50 foot or more. It was continuing to grow and now occupied some 5000 sq feet of the garden, overhanging the sheds and greenhouse. Branches were being shed, causing damage, and the roots were spread over a large area. Mr Tyler wished to be able to maintain the tree, and curtail its size, without undue restriction. In addition, Mr Tyler pointed out that the Ash tree had 3 stems, not 4 as stated in the Order.

In answer to questions Mr Tyler confirmed that he had lived at the property for 55 years and the tree had always been there. The greenhouse had been in its current position for the last 40 years. If the tree was not protected, it would not be removed as Mr Tyler liked it. He did however want to be able to maintain and restrict it.

Mr Elliott objected to the protection of both trees, and in particular the Monterey Cypress tree which was along the boundary of his garden. The Ash tree produced copious quantities of Ash seedlings which had to be removed from his garden each year. The Cypress caused significant shading and was really too big for its position. It was more properly a park or forest tree and was too large for a suburban setting. If the tree fell it was likely to cause significant damage to his house. It was not beautiful and he did not think it was likely that maintenance of the tree would improve its appearance.

The Members noted that the owner of Tree T1 had not objected to the imposition of the Order. Mr Elliott had referred to damage to the corner of the house on that site, which may have been caused by the tree. However the site owner had not raised that issue nor had he submitted any evidence to suggest that the tree was causing structural damage to the property. It was noted that the current owner was a builder who was in the process of selling the site. The imposition of the Order had not prejudiced the sale of the property. Although the views of the eventual owner were not known, the prospective purchaser would have become aware of the existence of the Order through the Local Land Charges search.

Mr Douglas the Council's Tree Officer advised the Panel that the Order had been made in response to a planning application for the site of No 18 Milton Grove when it became obvious that the needs of this significant tree were not being regarded in the development proposals. During the site visit the significant Ash tree at the neighbouring property, which slightly overhung No 18, had been noted as it had been decided to include that tree on a precautionary basis.

Mr Douglas referred to the possible damage to the house on No 18 Milton Grove and advised members that, under the new statutory requirements imposed through the 1 APP process, any suggestion that one of the protected trees was the cause of such damage would need to be supported by firm evidence including a structural engineer's report and crack monitoring data. There would also need to be proof of which particular tree's roots were the cause.

The Order did not prevent the proper maintenance of the protected trees. The only requirement was that a tree works application, which was free of charge, was submitted to make sure that the proposed works were reasonable and would not damage the amenity value of the tree. This process did, as an advantage to the tree owners, mean that a source of professional advice, from the Council's officers, was available, free of charge. In addition, the objectors' fears that only authorised contractors could be used were not well founded. The tree owner could carry out the works themselves, if they so wished and were capable.

The Monterey Cypress tree was in need of maintenance. The crown was shedding debris as it was in need of attention, but such works would resolve the problem. In addition, the tree was covered in ivy. The ivy could be removed without submitting a tree works application as it was not part of the tree. The ivy was the source of a significant proportion of the shading caused by the tree and certainly did not enhance its appearance. Unfortunately, however, responsibility for the maintenance of the tree remained with its owner, and the Council could not require them to do any works. The previous, and current, owners of the tree had not undertaken any maintenance over a significant period of time. This tree was not the major source of shading to Mrs Fisher's garden, as had been established during a visit to the site during the afternoon on a day in the summer. The source of the shading was a maple tree which was not protected. Mr Douglas did not agree that the tree was ugly or of an unsuitable species for the environment. A number of other Monterey Cypress trees could be seen in the neighbourhood. This tree was a significant feature when viewed from surrounding roads and contributed to the pleasant character of the area.

The Ash tree, T2, had been protected as it was adjacent to a development site with its roots projecting into the area being developed. It was a significant tree and its needs should be respected in any development proposals. Ash saplings in the vicinity were a nuisance, but could be removed easily. This did not make the Ash an unacceptable species in a domestic environment. The tree itself was of significant size and obvious beauty. Mr Douglas suggested that its scale meant that the time was now probably opportune to remove the green house from under its shading.

In answer to questions from the objectors Mr Douglas confirmed that there had been no letters of support for the Order received from anybody. He also confirmed that the trees' owners could undertake works, with consent, themselves without the need to employ an approved contractor, and also that the imposition of the Order did not reduce the value of the properties adjacent to the protected trees. In the present case, the Order was not prejudicing the sale of the property at 18 Milton Grove.

It was also confirmed that it was routinely the case that trees that were protected by an Order were in private ownership and the rights of the owners were balanced against benefits the trees afforded to the wider community, who were not directly affected, but who enjoyed the amenity value of the tree.

Mr Elliott suggested that the relationship between other Monterey cypress trees and houses in the vicinity was different in that they were at the bottom of long gardens. The amenity of those most affected by the trees must also be regarded.

Mr Williams, the Legal Advisor, reminded Members of the tests of amenity value and expediency which should be applied and of the Guidance which had been published on these matters. The test of expediency should take account of whether the threat to the trees, that had originally arisen, was still extant, bearing in mind progress with the development of the site.

In answer to questions from Members of the Panel, Mr Douglas advised that the previous removal of other trees along the original hedgerow line did not now make T1 more vulnerable to wind effects. Removing ivy from the tree and tipping back branches would both reduce the sail effect of the tree. There was no evidence to suggest that the tree was likely to fall and protection could not be based on the possible outcome of exceptional winds such as those experienced in the 1987 hurricane. There was no liability upon the Council arising from confirming the Order should it subsequently fall, unless, in some circumstances, a Tree Works application had also been subsequently refused. There were however many safeguards and provisos in place to protect the Council. Both trees were now at or close to their maximum size within a constrained site such as this.

The Panel was advised to consider the merits of protecting each of the trees separately.

Cllr Woods was a ward councillor for New Milton and also a Member of New Milton Town Council. Cllr Woods concurred with the need for the trees, and particularly the Monterey Cypress, to receive some maintenance but the issue ultimately was the removal of the trees. There was widespread concern over the cumulative effects of trees being cut down throughout the town. The trees were an important part of the landscape and added to the quality of the character of the area. The trees that were subject to the current Order were clearly visible from roads around the area and provided significant amenity value. The development proposals on this site and all around satisfied the test of expediency in confirming the Order. Cllr Woods urged the confirmation of the Order, without amendment.

In summing up Mr Douglas re-iterated that the trees provided significant amenity value within the wider landscape and had been considered to be under threat. They were justified for inclusion in the Order.

Mrs Fisher remained of the view that tree T1 was ugly with little potential for improvement. The trees were not noticed by casual passersby and their wider value therefore must be questioned.

Mr Tyler stated that the Monterey Cypress tree had only been retained to provide privacy for No 18. It was not beautiful and its longer term value had to be doubted.

Mr Elliot also believed that the trees were little noticed outside their immediate environs and therefore their effects on the immediate neighbours should be given more weight and the Order not confirmed.

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

With respect to tree T1, some members felt that this was an ugly tree of limited value that was left over from an original hedge line. It was not in an inappropriate position in the town centre and the effects on the neighbours should be given greater weight than the wider amenity value. On balance, however, the majority of Members considered that the tree formed part of the character of the landscape of New Milton, which was steadily being eroded by the cumulative loss of individual trees. The tree was in need of essential maintenance, which would greatly improve the situation of the immediate neighbours, but there was no mechanism available, even through the Order, to ensure that this was done. This tree had been threatened by development proposals and the lack of certainty over the long term ownership of the property meant that it could not be concluded that such threat had now receded. On balance therefore, tree T1 should be confirmed within the Order.

With respect to tree T2, Members considered that this had been included almost by accident and there was no real evidence that the tree was under threat. While the tree was more aesthetically appealing than T1, they did not consider that the test of expediency had been met and the tree should therefore be excluded from the Order.

RESOLVED:

That Tree Preservation Order 09/09 relating to land of 18 and 20 Milton Grove, New Milton be confirmed subject to amendment by the exclusion of the ash tree T2 from the Order.

CHAIRMAN

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