

**20 NOVEMBER 2009**

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held in the Council Chamber, Town Hall, Avenue Road, Lymington on Friday, 20 November 2009.

**Councillors:**

p Ms L C Ford  
C Lagdon  
p Mrs A E McEvoy

**Councillors:**

p A E J Shotter  
p C A Wise

**In Attendance:**

**Councillor:**

Mrs M E Lewis

**Councillor:**

Mrs A M Rostand

**Officers Attending:**

Miss J Bateman, A Douglas and E Williams.

**Also Attending:**

Mr and Mrs Cox (Objectors)  
Mr Soderberg and Ms McInnes (Supporters)

**9. ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr Wise be elected Chairman for the meeting.

**10. MINUTES.**

**RESOLVED:**

That the minutes of the meeting held on 19 October 2009, having been circulated, be signed by the Chairman as a correct record.

**11. DECLARATIONS OF INTEREST.**

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

**12. TREE PRESERVATION ORDER NO. 24/09 (REPORT A).**

The Panel considered objections to the making of Tree Preservation Order 24/09 relating to land of 3, Court Close, Lymington. The Order protected trees T1 – T14 as shown in Appendix 3 to Report A to the Panel. 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. It was noted that since the original TPO was made on 1 June 2009, and following discussions with the objectors, a revised schedule was now proposed removing tree T14 (Beech).

Mr and Mrs Cox objected to the protection of trees T1 – T14. They felt that they had been unfairly targeted because of a planning application they had submitted to extend their property. They confirmed that they had not mentioned any trees on their planning application but said that they had never intended to cut them down. They said that the proposed TPO amounted to a loss of their freedom to do as they wished on their property. The TPO would create an 'oasis' of trees in their garden with none in surrounding gardens having the same protected status.

Mr and Mrs Cox said that they had obtained an independent individual assessment of each of the trees proposed for the Order. The Council had not done an individual assessment for each tree but had used a scoring system ('Tempo') to evaluate the trees as a group. On this basis they did not understand how each tree had been evaluated to warrant inclusion within the Order. Mr Cox pointed out that when a planning application to demolish and rebuild had been made by the previous owner no TPO had been proposed. He had now amended his own planning application to remove the conservatory which had been the main cause for concern for tree T1 in the rear garden. He did not feel there was a threat to any other trees as a result of his planning application. He said that all his trees were under good management and he continued to plant new trees on his property.

In answer to questions Mr and Mrs Cox confirmed that they had lived at the property for approximately two and a half years. Their planning application had been approved with a condition that a tree protection plan was put in place. They reiterated that a TPO would curtail their right to freedom and it would be tedious to have to obtain permission for any tree works.

Mr Soderberg and Ms Mcinnes spoke in support of the proposed TPO. They said that they had lived in the property next door to 3, Court Close, Lymington for 12 years. In that time there had been 3 owners of 3, Court Close, one of which had submitted a planning application for flats. Mr Soderberg said that in his view it was important that the trees were protected to maintain their amenity value for the neighbours in Court Close and the area in general in the future.

In answer to questions it was confirmed to the Panel that the previous submission of a planning application for the site had not prompted any TPOs.

Mr Douglas, the Council's Arboriculturist, advised the Panel that the TPO had been made following the submission of a planning application to build an extension to the existing property together with a large conservatory to the rear, a porch to the front and a car port. The conservatory was sited within the root protection area of the mature Beech Tree (T1), whilst other works required containment in order to prevent damage to other significant trees within the site. No trees had been mentioned on the planning application. It was therefore felt that the trees had not

been considered as a site constraint and as such were potentially under threat. Mr Douglas pointed out the TPO was not intended to stop any development on the site but to ensure that the trees were considered as a material constraint to the site. He acknowledged that nothing had been done so far in relation to the management of the trees that caused immediate concern.

The Panel noted that it was unclear why in the light of a previous planning application, previous tree officers had considered a TPO unnecessary. Mr Douglas explained the 'Tempo' system used to collectively assess the trees was in accordance with the Town and Country Planning Regulations 1999. He agreed that in ideal circumstances it would have been better to individually assess the trees. He confirmed that the 'Tempo' system would no longer be used and consideration was being given to a new assessment process.

Further consideration had been given to the condition of Tree T14, a beech tree on the western boundary of 3 Court Close. Upon reflection, it had been concluded that that tree did not warrant protection on the grounds that it was of a poor quality and form and would not add to the amenity landscape of the area in the longer term. On this basis it was proposed to amend the Order by the deletion of Tree T14.

The Panel noted that the current planning application had been agreed because elements of the scheme, in particular the conservatory, had been withdrawn. Whilst there was a planning condition in relation to the trees, that was felt to be unenforceable without a TPO. Mr Douglas pointed out that 80% of TPOs were made as a direct consequence of a planning application being submitted. Mr Douglas further suggested that Trees T4, T9 and T12 might also be considered for deletion from the Order.

Mr Soderberg questioned the possible deletion of T12 from the Order. Ms McInnes said that both T12 and T13 were of similar amenity value, both only being asymmetrical because of their woodland setting.

Mr Cox questioned the validity of assessing the trees on a collective basis and suggested that only individual assessments, such as the one that he had independently commissioned, could be accurate. He said that the planned conservatory had only affected Tree T1 and now that part of application had been withdrawn he did not agree that it was expedient for all the other trees on the site to be included in the TPO.

The Panel expressed concern that the trees had not been protected originally when there had been a threat of major development. They were also concerned that the Council's arboriculturalist was not confident in the current 'Tempo' system of assessment. They felt that Council policy was not being applied consistently and it would have been better if the trees had been assessed individually.

Members were reminded of the test of expediency and confirmed that in their view a TPO would alleviate the potential risk to the trees on the site.

In response to comments from Cllrs Mrs Rostand and Lewis, local ward councillors, the Panel noted that whilst there was sympathy for Mr and Mrs Cox's point of view, they agreed that the Council's tree officers should intervene at the earliest opportunity in any development proposal where they felt there might be a risk to trees.

In summing up, Mr Douglas said that the TPO had been made in response to a planning application and it had been expedient at the time to widen the TPO to encompass all trees on the site. He emphasised the amenity value of the trees when viewed from public vantage points. However, after discussion he now recommended that the TPO should be further modified to remove Trees T4, T9 and T12 as well as T14 and the Order then confirmed.

Mr Soderberg reiterated his support for the Order for Trees T1 – T13 which he felt was the most appropriate way forward to ensure the protection of the trees in question in the future.

Mr Cox reiterated his objections to the making of the Order. He did not agree that the trees cited met the criteria for a TPO or that they had the necessary amenity value. He reiterated that there was no immediate threat to the trees. He felt that people submitting planning applications were wrongly targeted and that this policy might encourage people to cut down trees in the future before they submitted a planning application.

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

In discussing the Order and the proposed modification, some members reiterated their concern at the inequity of the assessment process used and the difficulty that then caused in coming to a fair decision.

However, after considering all the facts the Panel were satisfied that the trees, with the exception of trees T4, T9, T12 and T 14, met the test of providing significant amenity value to the public and, that they were under a threat, which could prejudice their amenity value. On that basis they concluded that it was expedient to confirm the Order subject to it being amended to exclude Trees T4, T9, T12 and T14.

**RESOLVED:**

That Tree Preservation Order 24/09 relating to land of 3 Court Close, Lymington be confirmed, subject to amendment by the exclusion of trees T4, T9, T12 and T14 from the revised schedule and plan as attached as Appendix 5 to Report A to the Panel.

CHAIRMAN