

**2 NOVEMBER 2010**

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held in the Council Chamber, Town Hall, Lymington on Tuesday, 2 November 2010.

**Councillors:**

p D Harrison  
p J A G Hutchins  
p Mrs A E McEvoy

**Councillors:**

p C A Wise  
p P R Woods

**Officers Attending:**

Miss J Debnam, A Douglas and Ms T Putnam.

**Also Attending:**

Mr Sherring – Objector.

**13. ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr D Harrison be elected Chairman for the meeting.

**14. MINUTES (REPORT A).**

**RESOLVED:**

That the minutes of the meeting held on 2 September 2010 be signed by the Chairman as a correct record.

**15. DECLARATIONS OF INTEREST.**

There were no declarations of interest made by any Member of the Panel.

**16. TREE PRESERVATION ORDER NO. 13/10 (REPORT B).**

The meeting had been preceded by a visit to the site to allow Members of the Panel to assess the health of the trees, their relationship to other geographical features and the amenity value that they provided when viewed from nearby public viewpoints. The Tree Preservation Order protected 2 ash trees within the rear garden of 42 Western Road, Lymington.

Mr Sheering, the neighbour who objected, referred Members of the Panel to his letter, as reproduced at Appendix 3 to Report B. He emphasised that he had no objection to the retention of the trees. He objected to losing the right to prune and maintain the branches of tree T2, which overhung his garden, in particular the poly tunnel and washing line. Up until now, he and his neighbour, who owned No 42 Western Road, had amicably agreed what work needed to be done to the tree and had carried it out, often in co-operation with each other. The imposition of the Order would make such pruning works against the law. The 2 ash trees, together with the substantial oak tree at the bottom of his garden, had effectively removed his ability to grow vegetables in his rear garden. Everything now had to be grown in containers.

In answer to questions from Members of the Panel, Mr Sheering advised them that he did not feel that there had been any meaningful negotiations with him or explanations of the practical effects of the Order being made. He had received brief contact, very recently, when he had been asked if he wished to withdraw his objection, to save resources.

Mr Douglas advised the Panel that this Order had originally been made by one of his colleagues, who had subsequently left the Council. Unfortunately the process of making and monitoring the Order had been disrupted by that colleague leaving and the failure to resolve Mr Sheering's objection had only come to light very recently. He had indeed contacted Mr Sheering, at that stage, to discuss whether he wished to continue with his objection or not. He had tried to cover Mr Sheering's concerns about maintenance of the trees, but evidently had not been able to reassure him.

Mr Douglas advised the Panel that the 2 trees did not currently appear to their best advantage as the seasonal leaf fall had already significantly reduced the appearance of their canopies. The trees provided good amenity value when viewed from public viewpoints, such as Queen Elizabeth Avenue, where Members had walked. The trees were in good condition and healthy. The Order had been made in response to a planning application by the neighbour at No 44 Western Road who wished to build a garage immediately adjacent to the boundary with No 42. The tree team had been consulted on the application. No method statement had been submitted with the application and the normal method of constructing the foundations, by digging a trench, would have severed more than half of the trees roots. The trees had therefore been assessed to see if they were worthy of protection and retention. It had been concluded that they did have sufficient merit and the Order had been made, allowing the imposition of a condition on the planning consent that had been issued to control the construction of the foundations so that the method did not damage the trees. Mr Douglas reminded the Panel that the Tree Preservation Order did not prevent the trees being maintained and pruned. It merely meant that consent had to be sought in advance, to ensure that the work was reasonable, and would not detract from the amenity value of the tree. In the current instance, although unusual, it may be possible to agree to a rolling consent, covering a period of several years, to allow agreed works within that time period, rather than requiring individual application on every occasion that Mr Sheering wanted to do works to the tree.

Mr Douglas considered that the ash trees were of equal importance to the oak tree, not covered by the Order, that Panel members had admired on the site. He had noted Member's concerns that the trees, particularly tree T2, were visually less significant than the oak tree, which reduced the amenity value that they provided. He advised Members that, while the oak tree was very significant in views of the site from Queen Elizabeth Avenue, the oak was much less significant when viewed from Highfield Road, and the ash trees played a much greater role in the visual amenities of the area when viewed from there. The trees collectively provided a visual screen to the properties at the rear.

In answer to questions from Members of the Panel, Mr Douglas confirmed the following points:

- The Order would not prevent the trees from being pruned and shaped, and indeed, in the case of Tree T2, which was closest to Mr Sheering's property, that may well be advantageous, in the longer term, regardless of whether the tree was protected or not. The pruning works must remain reasonable and protect the visual amenity of the trees. Pruning that merely sliced off one side of the tree would not be permitted.
- The growth of the ash trees would be restricted by the presence of the oak tree, which was the dominant specimen, and also by the garage should that be built in due course.
- The canopies of the ash and oak trees were already intermingling, and this would happen irrespective of whether the ash trees were protected. This was not, in any event, an issue, as tree canopies commonly interleaved. As the ash trees grew this may add to their overall value as they formed a visual group with the oak. The trees could coexist quite happily.
- The oak tree had not been protected by this Order as it was not threatened by the proposed development. It was not therefore expedient to protect it through a Tree Preservation Order.

Members were reminded of the need to apply the sequential test that, firstly the trees provided sufficient amenity value that they were worthy of protection. If they were considered to provide sufficient amenity value, then Members should consider whether it was expedient to make the Order. The criteria that should be taken into account were set out in Report B.

In summing up, Mr Douglas confirmed that, in his view, both ash trees provided sufficient amenity value to warrant protection through a Tree Preservation Order and that the submission of the planning application had put the trees under threat, making it expedient to make the Order.

In summing up, Mr Sheering confirmed that his substantive objection was about the restrictions that would affect any works to the protected trees.

The Hearing was then closed.

Members were satisfied that Tree T1 offered good amenity value and its longer term retention had been prejudiced by the proposal to construct a garage. There was a division of views on the amenity value offered by tree T2, because of its proximity to the much larger oak tree. This tree could also be concluded to be subject to less threat. On balance however, members concluded that both trees were worthy of protection through this Tree Preservation Order.

**RESOLVED:**

That tree preservation order number 13/10 relating to land of 42 Western Road, Lymington be confirmed without amendment.

CHAIRMAN

(AP021110.doc)