

19 AUGUST 2011

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in Committee Room 1, Appletree Court, Lyndhurst on Friday, 19 August 2011.

Councillors:

p Ms L C Ford
p A T Glass
p Mrs A M Rostand

Councillors:

p C A Wise
p P R Woods

In Attendance

Cllr Miss A Hickman

Officers Attending:

Ms E Beckett, Miss J Debnam, A Douglas and Ms T Putnam.

Also Attending:

Mr and Mrs Dudley – Objectors
Mr and Mrs Waygood – Objectors
Miss Bufton – Supporter
Mr Dovey – Supporter
Mr Ruffey - Supporter

1. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Woods be elected Chairman for the meeting.

2. DECLARATIONS OF INTEREST.

None of the Councillors present at the meeting declared any interest in this matter.

3. TREE PRESERVATION ORDER NO. 07/11 (REPORT A).

The Hearing was preceded by a visit to the site during which Members of the Panel had viewed the health of the trees, the amenity value that they provided within the neighbourhood and the relationship between the trees and the dwellings. The trees that were protected were three oaks within the back garden of 5 West Road, Bransgore.

The Panel was reminded of the tests which should be applied when deciding whether or not to confirm the Order. The tests related to the amenity value of the trees and the expediency of making the Order. Members' attention was drawn to the Guidance on applying these tests.

Mr Dudley referred to two errors in the report. Firstly, in his own submission, he had quoted a previous Order that had been revoked. This had been in 2000, not 2010 as stated. In addition, the Tree Preservation Order plan was incorrect in the depiction of the boundary between 5 West Road and his property, 1 Brookside Close. His garden included an area of land that was shown as being the end of the back garden of 5 West Road. The boundary ran north-west, just to the east of tree T3. Mr Dudley considered that, as he had never sought to have the protected trees removed, and he had only in the past sought the removal of branches, to which the trees' owner had consented, there was no threat to the trees and the test of expediency had not therefore been met. He could not see any benefit in imposing a layer of bureaucracy between his neighbour, Miss Bufton, and himself. The Order would inhibit his ability to carry out works to the trees. Earlier this year a further large oak tree had been removed from his garden. This tree had been of the same scale as the trees that were now protected, and had been only about 7 feet away from tree T3. The tree that had been removed had inhibited growth on that side of tree T3 which meant that, currently, there was very little overshadowing of his garden. He wanted to be able to remove any side shoots that might sprout on that side of the tree, before they became substantial in scale, in order to prevent future overshadowing of his garden. Mr Dudley also felt that the TPO plan was misleading in that the crowns of the protected trees were not shown to scale. This could give the impression that considerably less of each garden was subject to overhanging branches than was in fact the case.

Mr Dudley also disputed the level of amenity provided by the trees. He considered that while they could be seen over the roof tops of the surrounding dwellings, they were not visually significant, and therefore the amenity value that they offered was limited.

In answer to questions from Members of the Panel, Mr Dudley confirmed that he had never sought to have tree T3 felled. He also confirmed that, as the protected trees were to the west of his garden, he lost about 50% of the sunlight to the garden from about 2.00 p.m. onwards.

Mrs Waygood, of 2 Brookside Close raised concerns about the procedures followed in that the original letter that had triggered the imposition of the Order had not been produced in the bundle of papers for consideration by the Panel, but the correspondence submitted by the objectors had all been reproduced.

Mrs Waygood emphasised that she had never sought the removal of the trees, which were not under threat, and she was distressed at sections of the report that suggested that the neighbours were exerting pressure to have them removed. She and her husband valued the trees and wanted them to be retained. She was however upset by the bureaucracy that would arise through the Tree Works consent requirements imposed by the Order.

Members were advised that the original letter from Miss Bufton, requesting the imposition of the Order, had not been reproduced as the process only effectively started with the Council Arboriculturist's decision to make the Order. There was however no objection to the objectors knowing the content of the letter, which was consequently read out to the meeting.

Mrs Waygood believed that if all the neighbours had met the Council's Tree Officer together, there would have been better discussion of the issues and it was likely that their concerns would have been addressed sufficiently to allow the objections to be withdrawn.

Mr Waygood also wished to see the trees retained and didn't believe that he had applied any pressure to have them removed. He was however concerned at the level of bureaucracy imposed by the Order and believed that it could worsen the management of the trees, although some of his concerns had been allayed following further discussions with Mr Douglas. He disputed the assertion that the Order would not impose additional costs for the management of the trees. Instead of being able to do some pruning works himself he would, in future, have to go to the expense of using a tree surgeon to carry out any works to the trees.

In answer to questions from the Panel Mr Waygood confirmed that the Order was unlikely to affect the way in which he investigated whether the trees were the cause of cracking that had developed within his property in recent years.

Miss Bufton, the owner of the trees, advised that Mr and Mrs Waygood had not exerted any pressure on her to have the trees removed and she had not intended to imply that they had. Her concerns had arisen following the removal of the substantial oak tree in Mr and Mrs Dudley's garden. She had been advised by Mr and Mrs Dudley that they were going to be doing some pruning works to their tree, and since the quote from their contractors had been modest, they wondered if Miss Bufton wanted any works doing to her trees while they were on site. She had declined to use their contractor as she already used someone that she trusted to do works to the trees on her property. She had been very shocked when, instead of being pruned, Mr and Mrs Dudley's tree had been felled. Mrs Dudley had come round to her the following day with paperwork to demonstrate that they had every right to fell the tree on their land, which Miss Bufton did not dispute. That did however demonstrate the lack of protection for her trees in future. There was a lot of building work in the area and large numbers of trees were being felled within back gardens, changing the character of the area and reducing ecosystems. Should her property be sold it was possible the trees would be removed to create a building plot. Following careful thought she had therefore requested that a Tree Preservation Order should be imposed to protect the trees on her land. In addition, the trees were now substantial in scale and she considered that it was important that there were controls over the quality of the work that was carried out on them. She was aware that, in the past, she had commissioned work that was not ideal for the proper management of the trees.

She had not been aware that there was a need to carry out any maintenance to the crowns of the trees. Now her attention had been drawn to the need to remove dead wood and snags from the crown she would explore that further.

Mrs Dudley advised that it had been intended to take the top off the tree in their garden but when the contractors had arrived they had said that, because there was a significant lean on the tree, it was a bigger task than anticipated. Consequently they had decided to have the tree removed.

Mr Douglas advised the Panel that he had visited the site following the receipt of a letter from Miss Bufton requesting the imposition of a Tree Preservation Order. He had assessed the trees and was satisfied that they offered high amenity value within surrounding area and, from a visual inspection, were healthy and would enjoy

a life span considerably in excess of the 10 years minimum suggested in the Guidance for the imposition of an Order. In the light of the information received from Miss Bufton he had concluded that the trees were under some threat, not necessarily from being felled, but from works that could significantly prejudice their amenity value. The test of expediency had therefore been met and the Order had been made. He had subsequently met with all 3 of the neighbouring objectors. He agreed with Mrs Waygood that it would have been better if all the neighbours could have met together, but this had not been possible, and separate visits had been arranged. All the neighbours involved had been visited.

The Council used Ordnance Survey base maps for the preparation of the TPO plan and were dependent on the accuracy of the Ordnance Survey information. Each tree was represented by a standard 4m equivalent diameter circle irrespective of its crown spread. Provided that the circle fell with the canopy spread the tree was shown sufficiently accurately for identification purposes. The Panel had observed the degree of canopy spread during the site visit.

Mr Douglas was satisfied that tree T3 offered equal amenity value to the other 2 trees, even though its growth had been partially suppressed by the tree that had now been removed and also by ivy, which had now been severed, that had been growing up the trunk. It was possible that the tree would start to develop additional side growth now the suppression had been removed, but that could be dealt with through a Tree Works Application should the need arise. There was no charge to make a Tree Works application. This process did give some advantage to the applicant, who then had access to free professional advice from the Council's tree officer, who would look at options to achieve the best outcome for the tree, and also for the applicant.

Mr Douglas advised the Panel that the Tree Works Application process controlled the amount of work that could be done and required that it should be carried out to the necessary standard, normally defined through the British Standard. There was no mechanism, however, to require that the work was done by an arboriculturist. It was still open to the applicant to carry out the works themselves. The Council always strongly advocated the use of a properly qualified tree surgeon for the safety of all concerned, including the person carrying out the work.

With respect to the concern that the trees were causing cracking within No 2 Brookside Close, it was emphasised that no evidence had been submitted to support the view that the damage was being caused by trees, and specifically the protected trees. In order to support an application that trees were causing damage there was specified information that must be provided, including crack monitoring and borehole tests. This issue was usually pursued through the building's insurance, to commission the necessary specialist reports. Should it be demonstrated that the trees were causing structural damage, the best way to mitigate the damage would be considered through the Tree Works Application process.

The trees had not been maintained for some time and consequently there was a quantity of dead wood and snags in the crown. This could easily be remedied by proper management under a Tree Works Application. In the meantime this was not detrimental to the health of the trees or the amenity value that they offered.

The trees were not too close together to prejudice their wellbeing or the amenity value that they provided. There was also no evidence to support the assertion that the trees were unstable.

In answer to questions from the objectors Mr Douglas advised that he was satisfied that trees in rear gardens offered good amenity value to the wider landscape and were worthy of inclusion in a Tree Preservation Order. He disagreed, in principle, with the decision of a previous Tree Officer, when undertaking the review of an Area Order covering this neighbourhood, to protect only frontage trees. In addition, since the amenity value of these trees had been considered 11 years ago the situation would have changed as the trees had grown and become more significant in scale. In answer to Mr Dudley's concern that this difference in professional view between tree officers demonstrated that the process was entirely subjective and consequently there was no justification for the Order, the Panel was advised that it was the role of the Panel to apply the subjective tests that were required by the legislation to form a view on whether or not the TPO should be confirmed.

In answer to further questions the following additional points were made:

- If consent was refused following a tree works application the applicant had the right of appeal to the Secretary of State who would assess the application, independently, afresh.
- There was no charge for the submission of an appeal and most applicants presented their own case without incurring the cost of professional fees.
- The proximity of roots to the dwelling was not relevant to the tests that should be applied in deciding whether or not to confirm the Order.
- The Order did not include any mechanism to require the proper maintenance of the trees.
- If there was no Order in place the trees could be subject to any degree of pruning or even felling. The neighbours would not require any consent, including from the trees' owner, to prune back branches that over hung their properties to the boundary line.

Cllr Hickman, speaking as a local Member, and on behalf of the Parish Council, expressed support for the confirmation of the Order. These were significant trees, which offered high amenity value to a wide area within the village. The loss of trees within gardens was of growing concern throughout Bransgore and the parish council regretted the consequent loss to the character and appearance of the area.

In summing up Mr Douglas emphasised the health and amenity value of the trees, the concerns about pressure to do works to the trees and the consequent need to protect them.

Mr Waygood felt that the expediency test had not been satisfied as the trees were not under threat from the neighbours. He felt that the Order would potentially worsen the management of the trees. Mr Dudley considered that, under the criteria being applied, few trees would not be protected by a Tree Preservation Order.

The Hearing was then closed.

Members of the Panel were mindful that the imposition of a Tree Preservation Order did interfere with the rights of the property owners in the enjoyment of their property. While one Member did not feel the Order could be justified, the majority of the Panel concluded that the trees offered significant amenity value to the wider area and were in danger of inappropriate pruning, perhaps in the longer term. On this basis the test of expediency was also met. Accordingly the Order should be confirmed.

RESOLVED:

That TPO 07/11 be confirmed without amendment.

Action: Ann Caldwell

CHAIRMAN

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