

20 FEBRUARY 2012

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in The Council Chamber, Town Hall, Lymington on Monday, 20 February 2012.

Councillors:

p Mrs S Bennison
p Ms L C Ford
p A T Glass

Councillors:

p C A Wise
p P R Woods

Officers Attending:

Ms E Beckett, Mrs L Clark, Miss J Debnam and A Douglas

Also Attending:

Mr and Mrs Grimwood – Objectors to the making of the Order
Mr and Mrs Moring and Mr Bishop - Supporters of making the Order

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. 28/11 (REPORT A).

Tree Preservation Order 28/11 protected one walnut tree in the rear garden of 98 Everton Road, Hordle. This tree overhung the gardens of 96 Everton Road, whose occupiers raised no objection; and also Cherry Tree Cottage, Heather Close, whose owners did object to the Order. The Hearing had been preceded by a site visit during which Members of the Panel had viewed the health of the tree, its physical relationship to features mentioned in the objection to the making of the Order, and the amenity value of the tree when viewed from Everton Road, Hordle and the rear gardens surrounding the tree. The tree was viewed from within the gardens of 98 Everton Road, and Cherry Tree Cottage, Heather Close, Hordle.

Mr Grimwood advised the Panel that he and his wife did not consider that there was a need to impose a Tree Preservation Order in this instance, where they considered that the sole justification was a neighbour dispute about works to the tree. They considered that the tree was not very visible from surrounding public viewpoints and therefore provided little benefit to the wider public. The tree dropped nuts, which could cause allergy problems. They had 3 children of their own and a number of children visited the property, not least as Mrs Grimwood was a registered child minder. They were concerned that visiting children could be allergic to the nuts. One client of the child minding business was allergic to eggs, and Mrs Grimwood was concerned that their range of allergic reactions could, in time, extend to nuts, and in addition, a child with a known nut allergy had had to be turned away because of the risk that the nuts may present to them. In addition to potential allergic reactions, Mr Grimwood suggested that the nuts, in their husks presented a physical danger to anyone in the vicinity when they fell from the tree. He was also concerned that falling nuts would damage the glass in the greenhouse.

Mrs Grimwood emphasised that she and her husband did not object to the retention of the tree but wanted to be able to cut the tree back as they wished. They considered that the tree presented a potential danger to the child in their care with an egg allergy as they thought there was danger that the child would be pre-disposed to a nut allergy. They therefore wished to reduce the number of nuts coming into their garden. Mrs Grimwood stated that the position of the trampoline was not critical, as it could be moved within the garden. When they had moved to the property 6 ½ years ago the previous garden planting had been removed and it had been planted afresh bearing in mind the needs of the children. This was a completely child orientated space, so the trampoline could be relocated within it. Her issue was with the number of nuts in her garden. She stated that she and her husband had to pick up more than 50 nuts a day in the season, as well as tree debris.

In answer to questions from Ms Beckett, the Council's Arboriculturist, Mr and Mrs Grimwood gave the following information:

- Mrs Grimwood confirmed that, in her view they were picking up in excess of 50 nuts per day, in the season, and even in November, when the press photographer had visited, they had found more than a dozen nuts underneath the tree.
- They accepted that trimming the tree back as they wished would not prevent nuts coming into their garden, but would reduce the incidences.
- The greenhouse had not suffered any actual damage as a result of the nuts falling. Their concern was about the potential for damage in the future.
- There had been no damage to the trampoline in the garden.
- They found numerous nuts spread throughout their garden, including in the vegetable patch, and in pots on the decking. The wildlife using the garden, including squirrels, spread them throughout.
- There were no children living or visiting the premises that were known to have a nut allergy, although one potential client had been turned away because of the potential exposure to the walnuts.
- Mrs Grimwood believed that there was no way of predicting whether a child in her care had developed a nut allergy and therefore a precautionary approach should be adopted and exposure of all the children to nuts should be minimised.

- Mrs Grimwood had undertaken a risk assessment on the hazards that she perceived that the tree presented and had concluded that the only way forward was to seek to cut the branches that currently overhung her garden right back to the boundary. This would be supplemented by cleaning up nuts and debris from the tree on a daily basis.

In answer to questions from Members of the Panel Mr and Mrs Grimwood advised that:

- They did not know if the greenhouse was constructed with toughened glass as it had been inherited with the property when they bought it.
- Their objection did not arise solely from the effect that they perceived the tree may have on their business, but also from concerns about the safety of visiting children.
- They did not consider that the tree offered any significant amenity value to the wider community.
- Mrs Grimwood had run a child minding business at previous residences and had transferred her business to these premises 6 ½ years ago.
- They had not considered fencing around the tree as an alternative means of managing the potential problems as it was not something that they wished to do and it would be imposed as a result of something arising outside their garden. They wished to minimise the risk by cutting the tree back to the boundary, but this was more than the neighbour found acceptable.
- They considered that the imposition of the Order would impose additional expense upon them from the need to seek consent to carry out works to the tree, and to employ a tree surgeon to carry out any works, instead of being able to do it themselves. They also considered it was likely that the neighbour would resist the level of works that they proposed on every occasion.
- Their garden had been designed with children in mind and contained no potentially hazardous species. Although they had some trees in their garden the amount of tree debris that they had to clear up would be reduced by cutting the walnut tree back.
- They reiterated that the tree had produced prolific fruit each year.
- They did not agree that the amount of pruning that they had proposed represented a 40% reduction in the crown of the tree.

Ms Beckett, the Council's Arboriculturist, advised the Panel that the Order had been made in response to a request for assistance from Mr Moring, the tree's owner, following the request from Mr and Mrs Grimwood to cut the tree back to the boundary fence. Mr Moring had considered that the extent of the works would be deleterious to the tree and prejudice both its beauty and also its health. Ms Beckett had undertaken a site visit and had been satisfied that the tree was a good specimen. At about 25 years old and in the early stages of maturity, the tree offered a significant level of amenity when viewed from adjoining rear gardens and from various viewpoints within Everton Road. The tree should enjoy a minimum of a further 100 years of safe useful life. The tree would gradually increase in size by about 1m in height and 2m on the radius of the crown spread, but was approaching full size. Ms Beckett had evaluated the effect of the work that Mr Moring reported that the Mr and Mrs Grimwood had requested. She estimated that this would result in the removal of some 40% of the crown spread. As a result of such works the tree would no longer be attractive and could become unbalanced. She considered that the proposed works were sufficiently extensive that they represented a threat to the tree and the test of expediency in making the Order had therefore been satisfied.

Ms Beckett advised the Panel that instead of engaging in informal discussions with the Council, following the service of the Order, as was the normal practice, Mr and Mrs Grimwood had gone directly to the press to pursue their objection. This had inhibited any discussions that might have achieved a compromise to meet most of their aspirations without prejudicing the tree.

Mr Douglas, the Council's Senior Arboriculturist supported the advice given by Ms Beckett and reminded the Panel that no child with a known nut allergy was living at the premises and the objection had been based on the premise that the visiting child with an egg allergy may widen their range of susceptibilities. Mr Douglas reported that it would be very unusual for the Walnut tree to be as prolific a fruiter as reported. He also advised the Panel that the Forest, including the local area, had large numbers of trees that bore nuts, such as oaks, chestnuts and beech trees. It was understood that Mr and Mrs Grimwood had a duty of care to the children in their charge, but other means, such as temporarily fencing around the tree in the nut season, and education of the children at the premises, were also options that should be under consideration. In addition, the children present through the childminding business inevitably moved on after a period of time.

Mr Douglas reminded the Panel that Tree Works Applications were free of charge and that there was no obligation to employ a tree surgeon to carry out the approved works. The only requirement was that the works should conform with the consent granted.

In answer to questions from Mr and Mrs Grimwood, the Council's Arboriculturists advised that:

- The imposition of the Order would not prevent all works to the tree in future, but would mean that the scale of works would be controlled so as not to harm the tree's health or the amenity value it provided. Works like lateral branch reduction may achieve many of Mr and Mrs Grimwood's aspirations.
- It was their opinion that the works sought by Mr and Mrs Grimwood would remove 40% of the crown spread on one side of the tree. This would reduce the tree's ability to feed and unbalance the weight of the crown on the stem.

In answer to questions from the Panel, the Council's arboriculturists advised that:

- The main season for nuts to drop was in August and September. All of the nuts would have dropped by October.
- There were no photographs available of the tree in leaf to give an indication of its crown density and amenity value while in full leaf.
- If the Order was confirmed and an application made for works to the tree, the schedule of works that were proposed would be assessed by the Council's arboriculturist following a site visit. Routine visits were also made to check that any works carried out complied with the consent granted.
- If advice was sought prior to the submission of a Tree Works Application, the Arboriculturist would prepare a tree works specification to form the basis of the subsequent application.
- In response to a Tree Works Application the Council could refuse the application, grant it in full, or grant consent for lesser works than applied for.
- The Walnut was a native British species and could be found throughout the New Forest area.

As a supporter of the Order, Mr Moring confirmed that the Order had been made in response to his neighbour's request to undertake very significant cutting back on the crown of the tree. When Mr Moring had originally agreed to discuss trimming back the tree he had envisaged work of much smaller scale than had been proposed by Mr and Mrs Grimwood. He had been concerned about the potential effect on the tree and had consequently sought the advice of the Council.

In response to questions asked by Mr Bishop, a supporter of the Order, the following additional points were made:

- The proposed works would create an unbalanced crown on the tree. This would make the tree less stable in the prevailing wind conditions on the site; and the different forces applying to the stem could affect the stability of the tree. There would therefore be a greater chance of the tree failing.
- The tree did not currently overhang the vegetable patch and other parts of the garden in which the walnuts were found. The activities of wildlife could not be prevented and the distribution of nuts around Mr and Mrs Grimwood's garden would not therefore cease, even if the tree was cut back to the boundary.
- Mrs Grimwood's child minding business had received a favourable Ofsted report 2 years previously, and no mention had been made, in the assessment, that the walnut tree presented any hazard. In the intervening period the branches would have grown less than 12 inches further over Mr and Mrs Grimwood's garden.

It was reported that Cllr Tinsley, one of the local ward Councillors who had attended the site visit, but was not present at the Hearing, had asked that the Panel be advised that he supported the confirmation of the Order.

In summing up, Ms Beckett advised the Panel that the tree offered significant amenity value when viewed from surrounding gardens and from public viewpoints. The tree had been under threat from unsympathetic works. It had therefore been expedient, and in the interests of amenity to make the Order. It was hoped that the confirmation of the Order would provide a mechanism through which the tree could be subject to amicable, sympathetic management in the future.

Mr Grimwood reiterated his objection to the confirmation of the Order on the grounds that the works proposed would not decimate the tree and he considered the tree could be barely seen from public viewpoints and consequently offered limited amenity value.

The Chairman then closed the Hearing.

The Panel considered the evidence that had been put forward in the Hearing and also took into account the information gathered during the site visit.

The Panel was satisfied that the walnut tree was a healthy specimen, approaching young maturity that offered significant amenity value when viewed from surrounding rear gardens and also from public view points. The tree's stature and importance would increase slightly as it entered maturity and it would play an increasing role in the skyline created by the trees in this area. The tree could be expected to have significant longevity. While the Panel was sympathetic to the objector's aspiration to protect the wellbeing of children under their care, they concluded that confirmation of the Order would provide a mechanism through which the tree could be subject to sympathetic management in the future, that would not prejudice either its amenity value, or its long term retention. Other measures could be used to mitigate any possible hazards presented by falling nuts during the limited season when this occurred, should this prove necessary.

RESOLVED:

That Tree Preservation Order 28/11 relating to land of 98 Everton Road, Hordle be confirmed without amendment.

(AP200212)

CHAIRMAN