

**28 FEBRUARY 2012**

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held in The Council Chamber, Public Offices, Ringwood on Tuesday, 28 February 2012.

**Councillors:**

p A R Alvey  
p Mrs S Bennison  
p Mrs C Ward

**Councillors:**

p C A Wise  
p P R Woods

**In Attendance:**

Councillor Miss A Hickman

**Officers Attending:**

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

**Also Attending:**

Mrs Challen, Mr and Mrs Hood, Mrs Koefman, Mrs Lightwood, Mr Stride and Mrs White - Objectors

**1. ELECTION OF CHAIRMAN.**

**RESOLVED:**

That Cllr Wise 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. 22/11 (REPORT A).**

Tree Preservation Order 22/11 protected 1 oak tree in the rear garden of Grayanval, Ringwood Road, Bransgore. The Hearing was preceded by a site visit during which Members of the Panel had viewed the tree from within the gardens of Grayanval, Ringwood Road, and of 12 Halton Close, Bransgore. The tree had also been viewed from various vantage points along Ringwood Road, Burley Road and from within Halton Close.

The Panel was reminded of the tests that should be applied in deciding whether or not to confirm the Order and their attention was drawn to the guidance set out in the "Blue Book" – "Tree Preservation Orders A Guide to the Law and Good Practice". In addition, under the Human rights legislation, the benefits of the tree to the wider community must be balanced against the rights of the objectors to the peaceful enjoyment of their possessions, and for respect for their private lives and homes.

Mrs Lightwood, the resident of 12 Halton Close, advised the Panel that the rear of her house and her garden were in the shade for all but approximately one hour a day. She accepted that a significant proportion of that shade came from a large oak tree, adjacent to 11 Halton Close, which was protected by Tree Preservation Order 61/99. That tree blocked sunlight throughout the morning, until about 2.30 p.m. After that there was about 1 hour before the sun was obscured by the oak tree that was the subject of the current appeal. As a result of the cumulative effect the house was cold and dark and Mrs Lightwood considered that her quality of life and ability to enjoy her home were prejudiced. The tree had been thinned out at her request in 2009, but the effect had lasted for only about a year, as the tree had regrown vigorously. She had subsequently asked the tree's owner, Mr Stride, if she could have the tree removed. He had agreed and she had commissioned a tree surgeon to carry out the work. The Tree Preservation Order had been made in response to the proposed removal of the tree. A subsequent Tree Works Application to have the tree removed had been refused and was now the subject of an appeal. The entire process had taken about 6 months which had caused her considerable distress. Mrs Lightfoot did not consider that the tree offered significant amenity value to the village as it was not very visible within the backdrop of other trees in the area.

In answer to questions from Members of the Panel, Mrs Lightwood, and the other objectors advised that:

- The tree had been thinned in 2009, at a cost of approx £400. It had been subject to more extensive work in approx 2005, when there had been crown thinning and reduction. That work had cost in the region of £600
- The tree that was subject to this appeal blocked the light from the rear of 12 Halton Close from about 3.30 p.m. With the shading effect of the larger, neighbouring tree, there was a period of about 1 hour in which there was unimpeded sunlight. The effect was worse in No. 11 Halton Close, where the shading was almost continuous throughout the day.
- Mrs Lightwood was considering removing the pine tree that also shaded the rear of her garden, but would not proceed with this work in isolation as the crown of the oak tree, when in leaf, was so dense that the pine tree had little effect on the shade she experienced.
- There were many protected trees around Halton Close. This tree had not been protected by earlier Tree Preservation Orders, and other trees along the same boundary had been removed in the past, which suggested that it had previously been concluded that trees along this boundary were not worthy of protection. The neighbours considered that the effect of the protected trees, in addition to the tree under current consideration, was oppressive.

Pictures of the tree, in full leaf, were circulated at the meeting.

Mr Stride, the owner of the tree, advised the Panel that the tree had no effect on his enjoyment of his property. He had consented to the removal of the tree as he understood that it was causing his neighbours some distress. He could appreciate that the gardens in Halton Close were in almost continuous shade. Although the tree was healthy, he agreed with Mrs Lightfoot that it provided little amenity value within the village as he considered that the tree was not very visible within the context of the other trees that surrounded it. On this basis he felt that the quality of life of the neighbours outweighed the limited amenity value provided by the tree.

In the ensuing questions, the objectors concurred with the view that significant works to the tree would create short term improvements in the amount of light that was available in the rear gardens of 11 and 12 Halton Close, but to maintain this effect the tree would need significant works, probably every year, which would have significant cost implications. There was no local support for the retention of the tree, while some 60 people had signed the petition opposing the Order and a number of objectors had attended the meeting to reinforce their objection.

Mr Douglas, the Council's arboriculturist, advised the Panel that the Order had been made following an approach by the contractor that had been commissioned to fell the oak tree. Mr Douglas had visited the site. He had established that the tree was young and healthy, offering safe useful longevity well in excess of the 10 years suggested in the Guidance for the protection of the tree. He had viewed the tree from the surrounding area and had concluded that it was very visible from viewpoints within Ringwood Road and Halton Close, where it could be clearly seen above the roof line. He had concluded that the tree offered significant amenity within the local area. As there had been a request to fell the tree, there was a need to impose an Order to secure its retention, and the test of expediency in making the Order had consequently been met. Mr Douglas sympathised with the occupiers of 11 and 12 Halton Close that their gardens were subject to considerable shading, but considered that the majority of this effect was caused by the neighbouring tree, protected under TPO 61/99, and not this tree, which only caused shade in the later afternoon.

There had been a subsequent Tree Works Application to fell the tree, notwithstanding the provisional Order. Ms Beckett, the Council's other tree officer, had visited the site to give an independent viewpoint. She had concluded that the application should be refused. This application was now the subject of an Appeal which was currently being held in abeyance by the Planning Inspectorate, pending the outcome of the Council's decision on whether or not to confirm the Order. Should the Order be confirmed the Planning Inspectorate would consider whether, in the light of the extant order, consent should be given to fell the tree. Should consent to fell be refused by the Planning Inspectorate, the applicant could put forward fresh proposals to reduce the size of the tree. A proposal to reduce the tree to the size it was in 2005 would be hard to resist.

In answer to questions from the Objectors, Mr Douglas advised that:

- He did not agree with the suggestion that protected trees reduced the value of homes, as research suggested the opposite. In particular instances, where there was a very poor relationship between a large tree and a property, the value of that individual property could be reduced. There was such a problem elsewhere in Halton Close, where consent had been granted to do works to a protected tree. This was however a completely separate issue to the consideration of the issues within this current appeal.
- Oak trees did not create sticky drizzle, but aphids feeding on the tree would excrete honey dew which would affect surfaces beneath the tree.

- The pre-existence of a tree in close proximity was something that should be taken into account by purchasers of a house. Trees had greater longevity than the occupation of individual people and were obvious when people chose to buy.
- The trees around Halton Close had been protected by a previous Order. The trees in the area had already been of significant size when the housing development had been built in 1974.

In answer to questions from members of the Panel, Mr Douglas advised that, should the Order be confirmed, but the Planning Inspectorate grant consent to fell the tree, it was likely that there would be conditions that required a replacement tree to be provided that would provide the same level of visual amenity as the tree to be removed. The tree could be subject to lesser works to address the concerns being raised by the neighbours. The tree could be reduced to the size it had been in 2005, but it was unlikely consent would be granted for more significant works, as these would prejudice the amenity value provided by the tree.

Mrs Clarke, the legal adviser, advised the Panel that the appeal to the Planning Inspectorate was against the Council's refusal of consent to fell the tree, through a Tree Works Application. The Inspectorate would not review whether or not it had been correct to confirm the Order.

Cllr Hickman, as one of the local ward councillors, and as Chairman of the Parish Council, advised the Panel that while both she individually, and the Parish Council, normally sought the protection and retention of trees in the parish, in this particular instance they did not support the confirmation of the Order and considered that consent should be granted to fell the tree. They considered that there was a Human Rights issue in this case, with numbers 11 and 12 Halton Close suffering such a significant level of shading that it prejudiced the occupiers' ability to enjoy their properties.

In summing up, Mr Douglas re-iterated his view that the tree was a healthy specimen that offered significant amenity value within the wider area, and was worthy of protection through a Tree Preservation Order. The aspirations of the neighbours could be met more satisfactorily through agreed works to both this tree and the neighbouring, more significant tree. Mr Douglas advocated the confirmation of the Order.

Mrs Lightwood and the other objectors did not wish to add any further points to their case.

The Hearing was then closed.

While one Member of the Panel considered that the Order should be confirmed, on the basis that this was a significant tree that offered a good level of amenity, and whose loss would leave a significant gap in the skyline, the majority of members did not concur. Members considered that the tree was healthy and provided amenity value to the wider area. They considered however that this value was limited in the particular context of the tree and this level of amenity had to be balanced against the rights accorded to the residents, under Articles 1 and 8 of the Human Rights legislation. In this instance, they considered that those rights outweighed the wider public benefit that would be achieved through the retention of the tree. They also took account of the views expressed by the Parish Council and the local ward Member. Accordingly, the confirmation of the Order could not be justified.

**RESOLVED:**

That Tree Preservation Order 22/11 relating to land of Grayanval, Ringwood Road, Bransgore be not confirmed.

(AP280212)

CHAIRMAN