

1 MARCH 2012

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in St Mary's Church Hall, Church Street, Fordingbridge on Thursday, 1 March 2012.

Councillors:

p A R Alvey
p Mrs S Bennison
p D B Tipp

Councillors:

p R A Wappet
p P R Woods

In Attendance:

Councillor Miss A Sevier

Officers Attending:

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

Also Attending:

Mr Shering, Mr and Mrs Davis, Mrs and Mrs Toulson – Objectors
Mr Gerrard

1. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Wappet 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. 33/11 (REPORT A).

Tree Preservation Order 33/11 protected 2 silver birch trees and one alder tree within Church Street, Fordingbridge. The Hearing was preceded by a site visit during which Members of the Panel had viewed the trees from various viewpoints within Church Street.

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.

Mr Shering, the owner of the land on which the trees were situated, advised the Panel that the Church Square was an historic part of Fordingbridge. Historically it had been used for entertainment and farming related activities, including the annual Patronal Festival Fair. St Mary's Church was one of the two significant historic structures in the Town, the other being the bridge. Both structures were important for the visitor and social economy. The Church was a regular subject for artists and it was important to maintain views of this historic structure from within Church Square.

When an environmental enhancement scheme had been carried out by the County Council in the 1990's it had been intended that the planting scheme should remain a subservient element and not conceal either the Church or the domestic buildings around the Square. None of the participants in implementing this scheme had intended the current situation with the trees. By February 2000 the alder tree had been causing excessive shade to occupiers of 63 Church Street and causing damage to the tarmac pavement surface. Consent had been granted to raise the canopy, thin the crown and sever the roots under the pavement. This work had been carried out in 2002. The tarmac surface had initially been flattened, allowing the soil to settle, but ultimately, in about 2007, it had been considered necessary to replace the surface, and this had been done.

It was 10 years after the initial works to the tree and Mr Shering considered that, not only were the residents back in exactly the same position, but it would be unreasonable to keep repeating the scale of works necessary to contain the tree within its environment. The alder species was disproportionate in scale and would become increasingly out of character in the street scene.

Mrs Toulson shared Mr Shering's views. She was also disappointed that the Council's notification on the request to fell the alder tree had made no mention of the offer to plant a replacement tree. She was also surprised that the birch trees, T1 and T3, had been included in the Order when the only tree for which any application had been made was the alder. The owners of the 4 flats in 63 Church Street had met as a management group and agreed that there were signs of damage in the property, such as lifting tiles in the entrance lobby and cracking of the render on the outside of the property. These were of recent origin, and had not been investigated, but the pattern and position of the damage suggested that it was a continuation of the damage caused to the pavement by the alder tree. Mrs Toulson believed that the maintenance of the trees had been neglected and questioned who was responsible for works to the trees, as the occupiers of 63 Church Street had paid last time but it was not their tree.

This view was shared by Mr Toulson, who also advised the Panel that he had been advised by a tree officer that tree T3 was not in sufficient condition to warrant retention. He believed that the local residents were the most affected by the tree and the least able to do anything about it. They did not wish to see the trees removed from Church Square, but believed the alder, which was not a rare species, was inappropriate in scale for this location and should be replaced with a more appropriate species. The height of the tree was not an issue. The problems arose from the density of the crown, which caused excessive shading in the summer, and from the damage caused by the roots. Mr Toulson quoted from the Fordingbridge Conservation Area Appraisal which stated that trees need to be managed to maintain open views, and growth needed to be controlled so as to not exceed the tree's planned size.

Mr and Mrs Davis concurred with these views and reiterated concerns about the damage being caused by the alder tree, and that the previous works had not prevented the current damage.

Mr Gerrard advised the Panel that he had no objection to the protection of the birch trees but was concerned about the suitability of the alder tree in this location. It had been pollarded in the past and was consequently an unattractive shape and bigger than the other trees in Church Square. Consequently, he felt that this tree would need to be replaced at some time.

Cllr Sevier advised the Panel that she did not support the confirmation of the Order. The alder tree was disproportionate in size and was changing the historic views of a street of modest domestic houses leading up to the church. The birch trees had not been subject to any threat and would continue to enjoy protection under the Conservation Area legislation. In any event, she considered that this was not a long lived species and had a tendency to fail. She advised the Panel that Fordingbridge Town Council shared this view and had asked her to convey their comments to the Panel.

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

- The trees had been planted about 20 years ago, and within 10 years the alder tree had been causing problems for local residents.
- The root damage was in a different area to that which had been replaced in 2007 following works to the roots. The repair to that area appeared to still be intact.
- It was understood that metal strips had been installed to prevent roots entering into the repaired area, but exact details were unknown.
- The damage to property had occurred recently, mostly in the last year, but certainly since Mr and Mrs Toulson had moved in 3 ½ years ago.

In answer to questions from Members of the Panel the objectors confirmed that:

- To the best of their knowledge all the work to the alder tree that had been given consent in 2001 had been carried out
- That work had been successful for a few years. The work could be repeated, but the neighbours considered that this was a disproportionate burden
- Reducing the crown of the tree would ultimately create an ugly specimen with a disproportionately large trunk. The tree would also continue to create too much shade in the summer. They considered it would be better to accept, now, that the wrong species had been planted and to replace it with a more suitable specimen.
- The damage to tiles that they had noted was in the entrance lobby to the building. The render on the building was also cracking. They had not formally investigated the cause of the damage, but its location, adjacent to the damage to the pavement, was strongly indicative that it had been caused by the roots of the alder tree.
- The tree's owner was Mr Shering and he was happy to confirm that the alder tree was not appropriate in this location and should not have been planted.
- It was confirmed that the tree was a common alder, which was a riverside species.

- The objectors would prefer to see a mountain ash tree, or box elder, as had been planted elsewhere in Church Square. These trees had maintained a modest scale and were not causing any problems.

Ms Beckett, the Council's arboriculturist advised the Panel that a s211 Notice had been received from Mr Shering notifying the Council of his intention to fell the tree, which was in a conservation area. The Council only had 2 possible responses available to it. The Council could express no comment, which meant that once the formal notice period had expired the tree could be felled. Alternatively, the Council could impose a tree preservation order, as had happened in this case. Ms Beckett had inspected the alder tree and concluded that it was a healthy specimen that offered good amenity value within the street scene and as such was worthy of protection. As one of the objections to the tree arose from its size, and the 2 birch trees either side were the same height, Ms Beckett also concluded that it would be expedient to protect those trees by including them in the Order. She was satisfied that each of the trees provided good amenity value and offered a safe life expectancy in excess of the 10 years suggested in the Guidance for making tree preservation orders.

Ms Beckett believed that the repairs that had been carried out to the pavement had been effective and the need for repairs was at a sustainable level. There was however no information about the type of root guard that had been installed so the longer term effectiveness was not certain.

Ms Beckett emphasised the amenity value provided by the trees, which softened the street scene and screened the on street parking areas. She did not consider that the trees prejudiced the views of the church but enhanced the look of the road and views of the church. The loss of the alder tree, in particular, would have a detrimental effect on the amenities of the area. Ms Beckett noted the offer to replace the tree with one of an alternative species, but advised the Panel that, without the controls available through a tree preservation order, there was no mechanism through which such replanting could be secured. She also reminded Members that the Order would not prevent future works to the tree, but would merely bring such works under the control of the Council's tree officers, to ensure the amenity value of the tree was protected.

Ms Clark, the Council's Solicitor, confirmed that the only responses available to the Council in response to the Notice seeking to fell a tree in a conservation area were to take no action, in which case the tree could be felled, or to impose a tree preservation order. The imposition of the Order was the only mechanism through which to control works to the trees, or to secure replacement planting if the tree was removed. If the Order was not confirmed, anyone wishing to do works to the two birch trees in the future would need to submit a s211 Notice. The Panel was also advised that, should they decide to confirm the Order, they could indicate whether they would favour consent to allow a level of works to the alder tree, or indeed whether they would favour its felling and replacement with an alternative species.

In answer to questions from Members of the Panel they were advised that:

- There was no evidence that the silver birch trees, T1 and T3, were causing any damage to property.
- Silver birch trees could be subject to crown lifting works, which may well be desirable in this instance to maintain access to the on street parking places. Silver birches did not however respond well to other types of work to the crown.

- The likely life expectancy of the silver birch trees was 20-30 years from present time and they would need replacing in due course.

In answer to questions from the objectors the Council's arboriculturists confirmed that:

- There was no financial liability on the Council arising from the decision to confirm a Tree Preservation Order. If however the Council refused a Tree Works Application and, as a consequence, the tree caused damage to property, the Council could be liable for any damage arising following that refusal of consent.
- In cases where it was claimed that a tree's root system was causing damage the forms that must be completed under the nationally operating 1 App scheme meant that certain levels of evidence must be provided. This process was normally carried out through the building insurers for the property.
- Works to the root system of a tree had to be carefully assessed to make sure the tree did not become unstable. In this instance the cumulative effect of previous root trimming and additional work to prevent further damage to the pavement was of less concern than if the same scale of work had been proposed as one task. It was important however to evaluate any proposals very carefully, particularly if it was intended to sever any roots over 2.5 cm in diameter. If works were needed to roots of a greater size, it would be necessary to assess whether this was indeed practical, and consideration may have to be given to allowing the tree to be felled.
- Although there was visible damage to the pavement, the scale of damage was not relatively that severe.
- It was common for the roots of trees to extend under the foundations of houses and it was uncommon for this to cause any damage. In this current instance the problem was being caused by surface roots, not deeper ones.

In summing up, Ms Beckett advised the Panel that the trees offered good amenity value to the area which would be compromised by the premature removal of the alder tree. Without the imposition of the Order there would be no mechanism through which to secure the replanting of trees that were removed.

In summing up, Mr Shering considered that there had been no need to impose a tree preservation order as the Tree Works Application had offered replacement planting for the alder tree, and the silver birch trees had not been subject to any threat. In the opinion of Mr Shering and the other neighbours the amenity value of the alder tree was outweighed by the problems that it caused. In addition the amenity value was subjective with such a substantial tree, as it was detrimental to the historic views of the Church Square, and the church beyond, as it was disproportionate in scale. The neighbours asked that the Order should not be confirmed.

The Hearing was then closed.

Members debated the evidence that had been placed before them. They considered that it was essential that the principle of trees in this location, to soften the landscape and enhance the street scene, was confirmed and noted that that the only mechanism through which this could be secured was through the confirmation of the Order. They were however aware of the practical problems presented by the alder tree and debated what advice should be given to the officers about the future of this tree. On balance, the Panel concluded that the preferred course of action would be for the tree to be managed to maintain it within its environment, while this

remained a practical option, recognising that, in due course, the scale of the tree would mean that it might need to be replaced with a tree of a species that was smaller in scale.

RESOLVED:

- (a) That Tree Preservation Order 33/11 relating to land of the verge outside 59-63 Church Street, Fordingbridge be confirmed without amendment; and
- (b) That the officers be advised that, although the Panel recognise the amenity value of the trees and the need to retain tree planting in this environment, the practical problems presented by the alder tree are also recognised and the Panel would consequently support, in principle, a Tree Works Application to allow management of the tree to contain it within its environment without causing damage and, should that prove impractical, the tree being removed and replaced with a specimen of a different species that will not present the same practical management problems.

CHAIRMAN

(AP010312)