

4 MARCH 2014

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in the Council Chamber, Town Hall, Lymington on Tuesday, 4 March 2014.

Councillors:

p A R Alvey
p Ms L C Ford
p D Harrison

Councillors:

p A N G Kilgour
p R A Wappet

Officers Attending:

Mrs E Beckett (New Forest NPA), Miss J Debnam, D Gruber (New Forest NPA) and Mrs A Wilson.

Also Attending:

Mrs Mapes – Objector
Mr Fugett – Objector

1. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Wappet be elected Chairman for the meeting.

2. MINUTES.

RESOLVED:

That the minutes and confidential minutes of the meeting held on 25 June 2013 be signed by the Chairman as a correct record.

3. DECLARATIONS OF INTEREST.

No Councillor present declared any interest in this matter.

4. TREE PRESERVATION ORDER NO. 34/13 (REPORT A).

Tree Preservation Order 34/13 protected one oak tree in the rear garden of 30 Samber Close, Lymington. The Hearing was preceded by a visit to the site during which Members inspected the tree from the gardens of the two objectors. The Panel had the opportunity to assess the general form of the tree and the degree to

which it could be perceived from local viewpoints. The presence of other trees in the vicinity was also noted.

Members were advised of the issues that should be taken into account in determining whether or not this Tree Preservation Order should be confirmed. Their attention was drawn to the relevant sections of the "Blue Book" guidance on Tree Preservation Orders, dealing with the tests of amenity value and expediency, and their attention was also drawn to the need to balance the benefits of the tree to the wider public against the rights of the objectors to the peaceful enjoyment of their possessions, and for respect for their private and family life.

Mrs Mapes advised the Panel that she objected to the protection of the oak tree, which she wished to see removed. The tree was very large and overshadowed a large part of her rear garden, while the overhanging branches and roots made it impossible to cultivate a quadrant of the rear garden. She feared that branches from the tree might fall on people using her garden, and her grandchild played on the trampoline that was directly underneath the branches. The leaves and acorns were a nuisance and she feared the acorns may be toxic to her dog. The tree was not the only one in the vicinity as there was small woodland just up the road. She felt that her right to enjoy her garden as she wished should outweigh the public benefit of the tree.

In answer to questions Mrs Mapes confirmed that, in her view, the level of pruning of the tree that would be given consent, should it be protected, would not be sufficient to address her concerns.

Mr Fugett advised the Panel that his objections arose from the amount of leaves that the tree shed into his garden each autumn, and because he was unable to cultivate the area underneath the spread of the tree's crown. He and his wife were also concerned that the tree could fall onto their bungalow should the severe adverse weather conditions continue. The tree had been significantly reduced in size twice before and had rapidly regained its previous dimensions. Those works to the tree had not reduced the problems that he experienced in his garden, apart from a slight reduction in the amount of leaves. This was the last of a line of 10 oak trees which had all been removed as they were incompatible with the surrounding residential development and he considered that this tree was also too large for the small gardens that surrounded it.

In answer to questions from the Panel Mr Fugett confirmed that he had lived at this property for some 30 years and the tree had been much smaller when he first moved there. He had lost the ability to cultivate the rear quadrant of his garden about 20 years previously. Mrs Mapes confirmed that she had moved in more recently and, from the outset, had not been able to cultivate a section of the rear of her garden.

Mrs Beckett, the Arboriculturist, advised the Panel that the tree had been inspected following the receipt of a request to establish whether the tree could be felled. The inspection had established that the tree was healthy and sound, offering a good level of visual amenity to the wider area. In view of the request to fell the tree, the test of expediency had been fulfilled, and the Order had consequently been made. Objections had been made to the imposition of the Order and subsequent negotiations had failed to resolve the objectors' concerns. They would not be satisfied with pruning the tree but wanted it removed.

There was evidence that the branches of the tree had been reduced by about 2 metres in the past, and the tree had tolerated such works very well. Consent was

very likely to be granted for that level of work in the future, which would represent a reduction in the spread of the crown of about 25%.

In answer to questions from the objectors Mrs Beckett confirmed removing 25% of the crown would reduce the amount of leaf fall and shading experienced by the surrounding properties. It would also reduce perceptions of danger from the tree should it fall. She emphasised however that the tree had no structural defects or infections that would increase the likelihood of it failing. Although a lot of healthy trees had been lost in the recent very wet and windy conditions, this was normally as a result of saturated ground meaning there was insufficient friction for the roots to hold and keep the tree stable. In the current case, the tree was in a well-drained situation on a raised bank. Liability for any damage caused by the tree remained with its owner, unless the damage was more than £500 in value and consequent upon the refusal of consent for works that would have prevented it, within a 12 month period preceding the damage, in which case liability could rest with the Council.

In answer to questions from the Panel Mrs Beckett confirmed that there was no evidence that the tree had been shedding significant quantities of dead wood. There were some small dead branches within the canopy but there were none large enough to warrant an arboriculturist climbing into the canopy to undertake remedial works. The tree had no diseases or defects that would indicate it was at increased risk of failing. There could never be any guarantees that, in extreme conditions, any tree would not fail. In this case there was nothing to suggest that this tree was at increased risk. The tree was strong and healthy. Although it was not in optimal growing conditions, its safe useful life was anticipated to be in excess of 50-100 years. It was currently in excess of 120 years old.

Crown reduction of up to 25% was acceptable as a tree could normally withstand that level of work. Any greater reduction was undesirable as it reduced the tree's ability to feed itself and also generated larger pruning scars that were more vulnerable to infection. The amenity value of the tree would also be significantly affected by works of more than 25%. This tree had been reduced by that amount in the past and tolerated it well. The previous works had not unbalanced the tree or made it vulnerable.

In summing up, Mrs Beckett emphasised the high amenity value that the tree presented to the wider surrounding area, softening the roofscapes with a green back drop, and that this amenity value, and indeed the tree's retention, would be compromised if the tree was not protected. The tree had been managed successfully in the past and there was no reason why such management should not continue to be used into the future.

In summing up, Mrs Mapes emphasised that previous pruning works had not improved the problems that she perceived with the tree and she wished to see it removed. Mr Fugett agreed with this viewpoint.

The Hearing was then closed.

While recognising that the 2 objectors perceived that the oak tree created a significant nuisance for them, the majority of the Panel concluded that this was a common problem associated with living in proximity to trees. Trees created visual amenity and supported significant levels of wildlife which was of wider benefit. The trees within urban areas generated a higher quality visual context, which was more appropriate for settlements adjacent to the New Forest. The Panel was satisfied that this tree was of a good size and shape, providing significant amenity value to

the wider area around Samber Close. The tree was also under threat of being felled. They therefore concluded that it was expedient in the interests of amenity to confirm the Tree Preservation Order. This was the last of an historic line of oak trees in the vicinity, which had already been lost, and therefore had additional significance.

The Panel considered the concerns raised by the objectors relating to the safety of the tree and the acorns that it shed, but concluded that such fears were unfounded.

RESOLVED:

That Tree Preservation Order 34/13 relating to land of 30 Samber Close, Lymington be confirmed without amendment.

CHAIRMAN

(AP040314)