

9 JUNE 2014

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in at the Town Hall, Lymington on Monday, 9 June 2014.

Councillors:

p A R Alvey
p Ms L C Ford
p A T Glass

Councillors:

p Mrs A M Rostand
ap P R Woods

Officers Attending:

Miss J Debnam, J Hearne (New Forest National Park Authority), Mrs A Wilson

Also Attending:

Mr Dear and Mr King - Objectors

1. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Glass be elected Chairman for the meeting.

2. MINUTES.

RESOLVED:

That the minutes of the meeting held on 4 March 2014 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. 46/13 (REPORT A).

The Hearing was preceded by a visit to the site during which the Panel viewed the tree to assess its condition, the amenity it provided to the wider area, and its context within the rear gardens of the properties in Ellery Grove. TPO 46/13 protected 1 oak tree on a bank to the rear of 18 Ellery Grove, Lymington. It was noted that the tree had recently been lopped to a very significant extent, and Members were advised that a 5 metre crown reduction had been approved and carried out.

Members were reminded of the tests of amenity value and expediency that must be applied in determining whether or not to confirm the Order. They were also reminded that the objectors' Human Rights under Articles 1 and 8 of the European Convention must be taken into account. These were qualified rights that may be overcome by a greater public benefit.

Mr Dear, the tree's owner, advised the Panel that the tree had been protected following his seeking advice from a tree surgeon about having it felled. The tree had been extremely large, completely dominating 3 gardens in Ellery Grove, and removing sufficient light that it was impossible to cultivate the rear sections of those gardens. The tree was on a bank and leaned towards the houses. There had been significant concerns over the recent winter that the tree would become unstable and fall onto the houses. They were also concerned that the bank would become unstable as a result of the tree. After the tree had been protected, the Council's Arboriculturist had accepted that the tree was overly large within the small rear gardens in Ellery Grove and had given consent for the tree to be pruned very significantly. This had been carried out, and had cost £1,200. The process had caused practical problems, working in one of the neighbour's gardens, to lower and take away the large sections of tree limbs that were removed. Three neighbours had to agree and co-operate in order for the tree to be managed effectively. In addition, few tree surgeons were insured and technically competent to work on a tree of this scale on a bank. Since the tree had been reduced it had made a very significant difference to the light to the rear of the gardens and houses. The bank at the bottom of the gardens was now lush with vegetation, whereas it had previously been impossible to cultivate it and the soil had been waterlogged and covered in moss. Other large trees along the bank to the rear of Ellery Grove had been removed over the years because they were overly large within the small rear gardens. Mr Dear considered that this tree, if was maintained at a size that was commensurate with the small rear gardens, did not provide a significant degree of amenity to the wider area as it could only be glimpsed between the houses as people went along Ellery Grove. There had been no letters of support for the protection of the tree.

Mr King, who also objected to the Order, lived at 20 Ellery Grove and his garden had been significantly overshadowed by the tree prior to its recent pruning. He did not consider that the tree fulfilled the requirement that it should provide a significant degree of value to the wider area. As the tree prevented other things from growing and had been overly dominant its overall value was, at best, neutral. Ellery Grove was a cul-de-sac, with little through traffic. The tree was not therefore visible to many people. While the tree had been reduced twice, in the past, by previous owners, Mr King felt that he had little control over a factor that had a very significant effect on his enjoyment of his property. There was currently a consensus with Mr Dear about the management of the tree and he would prefer that they could continue to remain in control of decisions about the tree.

In answer to questions from the Panel Mr Dear confirmed that he had lived at this property for 6 years, and Mr King for 17 years. Other similar trees had been removed over the years, most recently in August 2013. Most of the other large trees along the bank had been removed more than 15 years previously. During that time the tree at 18 Ellery Grove had grown very significantly. Two other significant trees remained along the bank, with the only other oak being at the bottom of a much longer rear garden, consequently affecting the property to a much lesser degree.

Mr Hearne, the Council's Arboriculturist, advised the Panel that, as the tree had recently been subject to very significant pruning, it did not currently look good, but it was capable of growing back to be an attractive specimen that provided a significant degree of visual amenity to the wider area. The tree was visible from public vantage points along Ellery Grove and therefore provided a degree of visual amenity to the wider area. The tree was significant in the landscape and warranted protection through a Tree Preservation Order. The tree was in good condition and there was no indication that there was movement in the roof plate, or that the bank was unstable. The tree had successfully withstood the severe storms over the recent winter and since that time had been significantly reduced in size, which reduced the forces acting on the tree and consequently the likelihood of it failing. There were, therefore, no safety concerns about the tree. Should evidence come to light that the tree or the bank were becoming unstable, the tree would be exempt from protection, under the provisions of the Order.

Following the imposition of the Order it had been accepted that the tree did unreasonably dominate the rear gardens and consent had been granted for it to be lopped, and to a degree that was greater than normally allowed under accepted good practice. The tree would however regrow, and there were cost implications for its future maintenance. Mr Hearne considered that, at its reduced size, the tree provided a good degree of amenity to the wider area and had an acceptable impact on the surrounding gardens and should, on balance, therefore be protected.

In answer to questions from the objectors Mr Hearne confirmed that there was no absolute guarantee that any tree would not fail but there were no specific concerns about the long term safety of this tree, particularly since it had been significantly reduced in size. He believed that it would take in the region of 15 years to regain its previous stature.

In answer to questions from the Panel Mr Hearne advised that the tree would be taking up a significant amount of water and, should it be removed, other significant amounts of vegetation would need to be planted on the bank to maintain its stability, and avoid run-off and erosion. Should the tree be felled, he did not believe that the timing within the year need be constrained by ecological factors. Mr Hearne also confirmed that the tree would require regular pruning in order to constrain it to a size that was compatible with the rear gardens of these properties. It would be a number of years before it once again became over-dominant.

Cllr Swain, the local ward Councillor, drew Members' attention to the Lymington Local Distinctiveness document that referred specifically to the character of 5 properties along Ellery Grove, of which 18 and 20 were part. The character of the area included the presence of hedgerows associated with historic field boundaries with large forest species of trees that were generally important throughout the area. Since the plans had been produced the number of significant trees in this area had been reduced from 12 or 13 to just 3, of which this tree was one. Cllr Swain considered that, ultimately, the decision rested on whether someone liked oak trees or not.

In summing up the Council's Arboriculturist advised the Panel that the tree was a significant feature in the local landscape and provided a good level of amenity to the wider area. The tree could be managed successfully to maintain it at a reasonable size for the gardens in which it lived. On balance, the tree warranted protection and retention.

Mr Dear considered that this was an extremely large tree that overwhelmed 3 gardens and there would be significant practical problems associated with maintaining it at a reasonable size. The harm that the tree caused was not outweighed by the public benefit that it provided.

This view was supported by Mr King who did not consider that it had been demonstrated that the tree provided significant value to the wider area. There was no public support for its retention. He wanted to use his garden in a way which was impossible with the tree as it had been previously.

The Hearing was then closed.

Members considered that, while the tree did provide a degree of public benefit, it was too large for the gardens in which it lived. The degree to which the tree leaned was also of concern. They concluded that the public benefit of the tree was limited and was outweighed by the practicalities of managing it and the dis-benefits to the tree's owners associated with its management. Should the tree be felled, Members asked that consideration be given to minimising the impact on wildlife, particularly nesting birds.

On balance it was:

RESOLVED:

That Tree Preservation Order 46/13 relating to land of Ellery Grove, Lymington be not confirmed.

Action: John Hearne and Ann Caldwell.

CHAIRMAN

(AP090614)