

18 NOVEMBER 2014

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held at Hythe and Dibden Community Centre, Brinton Lane, Hythe on Tuesday 18 November 2014.

Councillors:

p A R Alvey
p D Harrison
p J Penwarden

Councillors:

p Mrs A M Rostand
p D B Tipp

Officers Attending:

Ms H Chalmers (New Forest National Park Authority), Ms L Clark,
Miss J Debnam and D Gruber (New Forest National Park Authority).

Also Attending:

Mrs A and Mr I Clitheroe
Ms G Cross and Mrs M Murphy (objectors)

16. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Alvey be elected Chairman for the meeting.

17. MINUTES

RESOLVED:

That the minutes of the meetings held on 23 October (including confidential minutes), 28 October and 30 October 2014 be signed by the Chairman as correct records.

18. DECLARATIONS OF INTEREST.

No Councillor present declared any interest in this matter.

19. TREE PRESERVATION ORDER NO. 11/14 (REPORT A).

The Hearing was preceded by a visit to the site during which the Panel viewed the trees protected by TPO 11/14 which were all situated within the Forest Front Recreation Ground, Hythe. They focussed on tree T2 within the Order, an oak tree to the rear of 77 Elm Crescent, Hythe, but also viewed tree T1, another oak tree,

and groups G1 and G2. Members noted the general condition of the trees and the degree to which they were visible from various public viewpoints, to assist in assessing the amenity value that they provided. They took note of the shape of tree T2 and the degree to which it overhung the rear gardens of the adjacent residential properties. They also viewed the tree from within the rear garden of 77 Elm Crescent.

Members were reminded of the tests of amenity value and expediency that must be applied in determining whether or not to confirm the Order.

Ms Cross read out a letter from her neighbour at No 79 Elm Crescent. That neighbour objected to the making of the Order on the grounds that tree T2 overshadowed her back garden. She felt strongly that the tree should be cut back. It caused her considerable nuisance, causing shade in the summer and autumn and shedding leaves and acorns, which she felt were hazardous to children and pets. Part of the tree was dead and had been dropping leaves prematurely throughout the summer. Ms Cross also read out a message from another neighbour, at No 71 Elm Crescent, who experienced problems with young people climbing up tree T2 and using catapults and air rifles, so that she feared injury to her children and pets using her garden.

On her own behalf, Ms Cross objected to the protection of Tree T2 within this Order. She had 2 children, both of whom were very vulnerable to things dropped in the rear garden. The tree shed a considerable amount of debris into the rear garden, which had to be cleared up several times a day if the children were to use that space, and droppings from birds roosting in the branches also posed a health risk to one of the children. The tree also significantly reduced the amount of light reaching this south facing garden. She and her mother, Mrs Murphy, who both lived at 77 Elm Crescent, had also suffered from young people climbing into the tree and throwing broken bottles into the garden. This type of issue was confirmed by Mrs Clitheroe who had experienced the same problems with young people climbing a tree at the rear of her garden, before it had been removed earlier this year, following its death.

In answer to questions from Ms Chalmers, the Tree Officer, Ms Cross told the Panel that she would like to see the dead branches removed from within the crown of the oak tree and for it to be trimmed back so that it did not overhang the garden so much. She would also like to see measures to prevent children from climbing into the tree.

In answer to questions from Members of the Panel Ms Cross confirmed that tree T2 was the problem. The trees in Group G1 were protected by metal fencing which prevented the neighbours adjacent to those trees from experiencing the same problem. The incidents with the broken glass and air rifles had been reported to the Police, who had visited, but as the young people had by then left there was little that they could do. While there were CCTV cameras covering the adjacent skateboard park, the young people were aware that tree T2 and the rear gardens of the properties in Elm Crescent were not covered. The significant amount of ivy growing on the tree made it much easier for the young people to climb it.

Mrs Murphy confirmed that, apart from a 2 year break, she had lived at 77 Elm Crescent since the 1950s, and it was also Ms Cross' family home. She believed the trees had been planted in 1959 and were not, as considered likely by the Tree Officer, part of an historic field boundary. This view was also supported by Mrs Clitheroe who stated that the tree that had failed behind her house (No 63 Elm Crescent), which would have been in Group G2, had been 34 years old.

Ms Chalmers, the Tree Officer, advised the Panel that the oak tree T2 was a significant specimen which was prominent from a number of public places, including the adjacent recreation ground and skateboard park. She was therefore satisfied that the tree offered sufficient public amenity to warrant protection. With respect to the test of expediency in making the Order, it had been made at the request of the Tree Officer working for Hythe and Dibden Parish Council who was concerned that a number of neighbours had requested that the trees should be pruned and he was concerned that they may take matters into their own hands, perhaps even felling tree T2. In addition, they could exercise their common law rights to prune the trees back to the boundary of their properties, which would unbalance the trees and harm their amenity value. Such works would also prejudice the trees' long term retention. The intention behind making the Order was that any works to the trees were brought under proper control, to ensure that the tree retained a good shape and stability. Consent would be granted for any reasonable works to the trees that would resolve the neighbours' concerns.

In answer to questions from Members of the Panel, Ms Chalmers advised that it was the responsibility of Hythe and Dibden Parish Council to determine what pruning works they would carry out to the trees and it was her understanding that their normal policy was only to undertake works where there were safety considerations or the tree might damage property. The land was owned by the Forestry Commission and leased to Hythe and Dibden Parish Council. She confirmed that the tree appeared, from visual inspection, to be in good health. However, it was covered by a significant amount of ivy which prevented a full visual inspection. Hythe and Dibden Parish Council employed a tree officer and the trees were inspected regularly.

The degree to which the trees had been inspected was questioned by the objectors, who had not seen any evidence of inspections taking place. Mrs Murphy advised the Panel that she had sought advice from a tree surgeon, who also undertook contract work for the Council, who had considered that tree T2 was showing signs of disease, with dead wood in the crown that should be removed. Ms Chalmers confirmed that she had not seen any written records of the inspections carried out on behalf of the Parish Council.

The Panel was reminded that the imposition of a Tree Preservation Order did not prevent works from being carried out to the protected tree, but merely required that consent was obtained first, to ensure that the works were reasonable and respected the amenity value of the tree and its long term retention. Conversely, the Order did not compel the owner of the tree to undertake any works. The objectors would need to reach agreement with the Parish Council over any works that they would like to be done to tree T2.

In answer to further questions from the Panel Ms Chalmers confirmed that the trees were under good Arboricultural management as they were subject to regular inspection. She accepted however that in the case of tree T2 visual inspection was hampered by the amount of ivy growing over that tree. She considered that, although it would not normally be considered expedient to make an Order in respect of a tree that was under good Arboricultural management, the issue here was potential unauthorised works by the neighbours, and the tree could therefore be under threat. She accepted that these neighbours had not taken any actions to suggest that they were contemplating unauthorised works, although she had experienced such problems in other places. With respect to liability for any damage caused when all or part of a tree failed, Ms Chalmers advised that Panel that where trees were subject to regular inspection the insurance companies would be likely to conclude that the failure could not have reasonably been foreseen. Responsibility would consequently rest with the insurers of the property that was damaged.

The Panel noted the letter of support for the Order that had been submitted on behalf of Hythe and Dibden Parish Council, as attached at Appendix 4 to Report A.

In summing up Ms Chalmers drew Members' attention to the high amenity value offered by tree T2 and the contribution that it made to the character of the area. The imposition of the Order would not prevent sound arboricultural management of the tree. Work to remove the ivy could be carried out without requiring any consent as it was not protected, while consent would be given for reasonable pruning works.

In summing up the objectors drew Members' attention to the points that they had made in the preceding debate and further questioned whether this one tree, T2, which was of much less beauty than nearby tree T1, or the specimens in the groups of trees, made a significant contribution to the perceptions of the character of the park. The problems created by the tree outweighed any benefits that it offered.

The Hearing was then closed.

Members discussed the amenity value provided by tree T2 and the degree to which it was under sound arboricultural management.

The Panel considered that there was conflicting evidence about the health of the tree, with reported premature leaf fall and tree surgeons commissioned by the neighbours having recommended the removal of dead branches from within the crown. The amount of ivy growing up the tree prevented a proper visual inspection and the Panel was not satisfied that it had been demonstrated that the ivy did not obscure a fault such as had caused the failure of the tree outside No 63 Elm Crescent, which had been of the same age group. A simple visual inspection from ground level was inadequate in this case. The Panel considered that this tree was not equivalent in shape and form to other trees covered by the Order, most notably tree T1. There was nothing to suggest that tree T2 was under any threat from the neighbours and it was within the control of a public body. The Panel was not therefore satisfied that the test of expediency in protecting this tree had been satisfied. On balance, bearing in mind the problems that the tree was causing to the neighbours, the Panel concluded that tree T2 should not be protected.

In reaching this view, the Panel expressed the hope that the Parish Council might consider undertaking some works to this tree to try to assist the neighbours, most notably by removing the ivy, to make it harder to climb the tree and to allow proper visual inspection; and also perhaps some pruning works to reduce the overhang of neighbouring gardens and the consequent falling of debris and other matter within those spaces.

Action: Jan Debnam

RESOLVED:

That Tree Preservation Order 11/14, relating to land at Forest Front Recreation Ground, Hythe be confirmed subject to amendment by the deletion of tree T2 from the trees to be protected.

Action: Hannah Chalmers and Ann Caldwell

CHAIRMAN

(AP281014)