

**20 APRIL 2016**

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held in the Council Chamber, Town Hall, Lymington on Wednesday, 20 April 2016

**Councillors:**

- \* A R Alvey
- \* W G Andrews
- \* Mrs A E McEvoy

\*Present

**Councillors:**

- \* D N Tungate
- C A Wise

**Also In Attendance**

Mr H Hutchinson - Objector

**Officers Attending:**

Ms H Chalmers, Ms L Clark and Miss J Debnam

**Apologies**

Apologies for absence were received from Cllr Wise.

**11 ELECTION OF CHAIRMAN**

**RESOLVED:**

That Cllr Alvey be elected Chairman of the meeting.

**12 MINUTES**

**RESOLVED:**

That the minutes of the meeting held on 21 December 2015 be signed by the Chairman as a correct record.

**13 DECLARATIONS OF INTEREST**

There were no declarations of interest made by any member in connection with an agenda item.

**14 TREE PRESERVATION ORDER NO 41/15**

The Hearing was preceded by a visit to the site to allow members to view the tree from surrounding public viewpoints to form a view about its visual significance within the surrounding area. There were no issues to be considered relating to the proximity of the tree to buildings or to the health of the tree. Tree Preservation Order 41/15 protected a large beech tree on the front boundary of 21 Solent Avenue, Lymington.

The Panel was reminded that they should consider the amenity value afforded by the tree and, if they were satisfied that it offered a significant level of public amenity, they should go on to consider the expediency of confirming the Order. The Panel's attention was drawn to the Government's guidance on these issues. The Panel was also reminded of the need to take account of the Human Rights of the tree's owners.

Mr Hutchinson, the owner of the tree, objected to the imposition of the Order on the grounds that a request by the previous owner of the property to have the tree protected had been refused, Mr Hutchinson had bought the property having established that the tree was not protected by an Order, and he had done nothing to suggest that the tree was under any threat. He considered that the imposition of the Order could not be justified. Although he had been very open about his intention to extend the property at some time in the future, such extension would be to the rear of the property and could not affect the beech tree. He had bought 21 Solent Avenue to be a family home and wished to remain there for some years. There was no potential for subdivision of the plot as all of the property owners along Solent Avenue had imposed a covenant on the title deeds of their properties to prevent this happening, in order to protect the special character of the area. Mr Hutchinson considered that the Order imposed an unnecessary bureaucratic burden on any future maintenance of the tree, and removed his rights to manage his property as he wanted.

In answer to questions from the Tree Officer, Mr Hutchinson advised the Panel that he understood that he would not be able to carry out simple maintenance to the tree, such as the removal of ivy. The Tree Officer advised the Panel that the Order did not require consent to be obtained for the removal of any plants that were attached to the tree, such as ivy, or the removal of any dead wood. Consent was only required for works to live wood that was part of the tree.

In answer to questions from the Panel Mr Hutchinson confirmed that he had not received a clear explanation of why the Order had been made. He had bought the property in the late summer of 2015, following the sale process which had started in the early spring. The Order had not been imposed until December 2015, so the change of ownership alone should not be the cause. The Tree Officer advised the Panel that the Order had been dealt with by a colleague just before she went on maternity leave. She was therefore unaware of the full background behind the making of this Order.

Ms Chalmers, the Tree Officer, advised the Panel that the tree was a prominent feature within the road and provided a significant level of visual amenity. Government guidance suggested that the change of ownership of a tree was sufficient to satisfy the test of expediency in making a Tree Preservation Order. The protection of this tree would not prevent Mr Hutchinson from extending his property. It would however allow conditions to be imposed on any planning consent

to secure the protection of the tree during construction. Without the Order, any protection afforded by conditions imposed under any planning consent to protect the tree was too limited to be effective. Consequently it was the District Council's policy that tree protection conditions were not imposed unless the tree was statutorily protected. The tree remained in Mr Hutchinson's ownership and he retained responsibility for its care and maintenance. The Order prevented mismanagement of the tree. For a tree of this scale it would be essential to employ a tree surgeon to carry out any works to it. The Tree Officers would give advice, free of charge, to make sure that the work carried out was appropriate for the tree. In addition, the Order protected the tree for the longer term, beyond Mr Hutchinson's ownership.

Ms Chalmers believed that the departure of her colleague on maternity leave had meant that there had not been the usual level of consultation, discussion and explanation in respect of the Order as would normally have taken place. It was therefore possible that Mr Hutchinson had developed an erroneous view about the role of the Order. The making of the Order certainly did not imply that Mr Hutchinson intended to harm the tree, or was misleading people about his intentions with respect to developing this property. Unfortunately the making of the Order was a formal legal process and treated everyone equally, irrespective of the background circumstances in which the Order was made.

In answer to questions from the Panel, Ms Chalmers advised that she did not know the reason why a Tree Preservation Order had not been made when requested by the previous owner. She suspected that the Tree Officer had concluded that the tree was not under any threat and was being managed sympathetically, and consequently it was not expedient to make the Order.

The Panel was advised that Cllr Penson, one of the local ward councillors, had submitted written comments as he was unable to attend the Hearing. Cllr Penson considered that the tree offered significant amenity value to the wider area. His only concern for the tree's future was that the objector had gone to the trouble and expense of objecting when he stated that he valued the tree and wished to retain it. He suggested that for someone who said that they liked the tree and wished to retain it there should be comfort in knowing that the tree would be protected for generations to come.

In summing up, Ms Chalmers reminded the Panel that it was not possible to predict the intentions of the owners of trees or potential future owners. While the tree was currently under no threat and was being managed sympathetically, the situation could change very quickly in future, not least should the property change hands again. This was a significant and beautiful tree that should be protected to retain it for the future.

In summing up, Mr Hutchinson advised the Panel that the previous request to make an Order had been refused as it had not been considered expedient to do so. The tree's position, on the front boundary of the site, meant that it would not prejudice any future extension to the rear of the property. He was not intending to harm or fell the tree and there had been no material change in circumstances since the decision not to make an Order. The only change had been in ownership and he had not caused any harm in the months between purchasing the property and the making of the Order. He felt that Order would impose a burden of bureaucracy that was unnecessary in the circumstances.

The Hearing was then closed.

The Panel was satisfied that the beech tree was a magnificent specimen of beautiful form that was clearly visible from public viewpoints around the surrounding area, contributing to the character of the area and offering significant amenity value.

The Panel went on to consider whether it was expedient to confirm the Order. The Panel was satisfied that the tree's current owners had no intention of harming the tree. The Order would however protect the tree for the longer term, to the benefit of future generations, and would allow the needs of the tree to be taken into account when considering proposals for any future development in the surrounding area. The Panel was therefore satisfied that it was expedient to confirm the Order.

**RESOLVED:**

That Tree Preservation Order 41/15 relating to land of 21 Solent Avenue, Lymington, be confirmed without amendment.

CHAIRMAN