

22 AUGUST 2017

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in the The Bradbury Room,
Appletree Court, Lyndhurst on Tuesday, 22 August 2017

Councillors:

- * A R Alvey
- * A T Glass
- * N S Penman

Councillors:

- * D B Tipp
- * D N Tungate

*Present

Also In Attendance

Mrs H Chalmers – New Forest National Park Authority
Mr and Mrs Farminer – Objectors
Mrs Robertson – Supporter of the Objectors
Mr Puttick – Supporter of the Order

Officers Attending:

Miss J Debnam and Mrs K Green

Apologies

None were received

1 ELECTION OF CHAIRMAN

RESOLVED:

That Cllr Alvey be elected Chairman for the meeting.

2 MINUTES

RESOLVED:

That the minutes of the meeting held on 20 April 2016 be signed by the Chairman as a correct record.

3 DECLARATIONS OF INTEREST

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

4 TREE PRESERVATION ORDER NO. 21/17 - LAND OF 36 ALDER HILL DRIVE, TOTTON

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 health of the tree. Tree Preservation Order 21/17 protected an oak tree in the rear garden of 36 Alder Hill Drive, Totton.

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 was also reminded of the need to take account of the Human Rights of the tree's owners.

Mrs Farminer questioned why this particular tree had been protected when others in the vicinity, whose removal would have a much greater impact on the visual amenities of the area, were not. Mr and Mrs Farminer had checked with the National Park Authority, on two occasions, before purchasing the property and had been advised that the tree was not covered by a Tree Preservation Order. They had subsequently moved into the property in December 2016. The neighbour at No 37 had removed the large oak tree in their garden in April 2017. Mr and Mrs Farminer had sought a quote from a tree surgeon to have the tree in their garden removed in January 2017 but had not proceeded at that stage, when they would have been legally entitled to remove the tree. They felt aggrieved that the Order had been imposed before they had the opportunity to do so. They could see no basis for protecting the tree, which they considered did not have significant amenity value from public viewpoints. Mr and Mrs Farminer had canvassed a wide section of nearby residents, who had not been served with the Order, who had indicated their support for the removal of the tree which they considered to be too large for its location in dense urban development, offering limited amenity value to the area. Mrs Farminer questioned why a wider range of residents had not been given the opportunity to comment of the Order, if it was judged that they would be affected by the loss of the tree. Two neighbours had objected to the Order, as set out in the report to the meeting. Mrs Farminer considered that although it was disappointing that they had not pursued their objections, they had nonetheless objected. The Panel had viewed the tree from 2 view points in the vicinity, and she had identified a third. However, if the crown of the tree was reduced by 3 metres, as would be permitted by the Tree Officer, this would significantly decrease the degree to which it was visible in the surrounding area. The cost of the works to the tree was significant and would have to be repeated every few years. This was not something that they felt they could afford to do. In addition, the tree made it essential to have the windows and conservatory cleaned and gutters cleared at regular intervals, which imposed an additional expense. The tree shed a variety of debris which hurt her children's feet when they were running about in the garden in socks or bare feet; and birds roosting in the tree were defaecating on all the toys and equipment, which had to be cleaned before it could be used.

When the tree officer had visited the site she had advised Mrs Farminer that the sole ground for making the Order was that, essentially, it was a pretty tree but there were no environmental considerations. The representations of the supporter of the Order focussed on the environmental issues. Mrs Farminer did not consider that this tree, in its location, was sufficiently beautiful to warrant protection. Mrs Farminer also considered the tree was damaging the rear fence.

Mrs Chalmers, the Tree Officer, advised the Panel that the criteria for deciding whether a tree was worthy of protection were defined in the legislation and related to the amenity value offered by the tree and the expediency of making the order. The environmental benefits had not been taken into account. The Order had been made following contact from a member of the public who had been concerned the tree may be felled. She had assessed the likely value of the tree from aerial photographs and a subsequent visit to view the tree from surrounding public viewpoints and had concluded that it was worthy of protection, and, as there was a threat of felling, the test of expediency had also been met. The tree was one of a series along an historic field boundary, which was still largely intact, and it was important this feature was retained. Mrs Chalmers had subsequently met Mrs Farminer on site to explain the situation further. During that visit she had confirmed that the tree was in good health. There was no evidence that the tree, which was somewhat separated from the rear fence, was causing any damage. To try to meet some of Mrs Farminer's concerns she had agreed that the crown of the tree could be reduced by up to 3 metres, but this was not essential for the future management of the tree and, although such works would reduce the amenity value of the tree in the short term, the tree would regrow. The tree did not require expensive pruning as it was a healthy specimen. This financial commitment was therefore optional. The tree was a young mature specimen, perhaps 100 years old, with no signs of ill health to indicate that it may fail. Mrs Chalmers recognised that other unprotected trees were in the area, and that some had been felled. It was however impossible to protect all the trees, and if the tree was not protected there was nothing to prevent the owner from felling it. An Order was often made in response to changed circumstances, such as a change of ownership, or a known intention to fell the tree.

The degree to which local people were advised of the Order was defined in the legislation and was restricted to those households that were directly affected and could wish to do works to the tree.

In answer to questions from Mrs Farminer, Mrs Chalmers advised that:

- The tree was somewhere between 60 and 100 years old and was of mature form, with an open canopy.
- If left unpruned the tree would grow, but more slowly. It was likely that the tree would start to overhang the conservatory in about 50 years' time.
- Pruning and thinning works already carried out would encourage epicormic growth in the crown which would eventually increase the density of the growth.
- Tree roots could damage property, but there was no evidence that this tree was doing so. In particular, damage to drains normally occurred with older clay drains which had a crack that was invaded by roots attracted to the moisture.
- Any extension constructed close to the tree would need specialist pile and beam foundations, which were more expensive than trench foundations, but the extension would be immune from any root damage. In addition, properties meeting modern building regulation standards would have sufficiently deep foundations that they would be unaffected by nearby trees.

In theory, any tree could cause damage, but there was no evidence that this tree was causing any damage.

- Signs of ill health in the tree would include die back of the crown, from the tips. There was however no evidence of any ill health in this tree. The failure of a young mature tree, in good health, was rare.
- Nobody could predict the life of a tree as it could become diseased at some point. A life expectancy of 300 years for this tree was not however unreasonable.

In answer to questions from the Panel, Mrs Chalmers advised that:

- Oak trees required a lot of water, being a high demand species. The lawn at this property was boggy, but the tree would be doing its job in absorbing water, or indeed it would have died.
- It was possible, although rare, for a property to suffer from heave following the removal of a tree and the subsequent swelling of the soil with water.
- An Order was not made if the tree was considered to present a statutory nuisance or be in very close proximity to a dwelling.
- It was confirmed that the Order was served on 11 April 2017 following concerns being raised by a member of the public.
- A crown reduction of 3 metres would reduce the amenity value of the tree, but was a compromise against its complete removal. It would regrow.

Mr Puttick, a supporter of the Order, had raised the initial concerns about the potential felling of the tree after the loss of the neighbouring tree, knowing this property had recently changed hands. He considered the tree was beautiful, provided valuable wildlife habitat, and was part of an important historic landscape feature that should be retained. Oak trees would become increasingly important as Ash Die Back disease depleted populations of ash trees.

In summing up, Mrs Chalmers considered that the tree offered high amenity value to the surrounding area and was in good health and condition. She appreciated the tree owner's concerns however.

In summing up Mrs Farminer disputed the value of the tree and considered that the needs of the people directly affected by the tree should outweigh the amenity value.

The Hearing was then closed.

Members considered all the evidence before them. Members considered that, on balance, while the tree had some value, it was not an outstanding specimen and its relationship with the host property was not ideal. The tree had not been considered worthy of protection when nearby trees had been made subject to an Order and since that time the tree had become larger in scale, worsening its relationship with the dwelling. On balance, therefore, the Panel

RESOLVED:

That Tree Preservation Order 21/167 relating to land of 36 Alder Hill Drive, Totton be not confirmed.

CHAIRMAN