

13 MARCH 2018

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held in Room C, Hythe and Dibden Community Centre, Brinton Lane, Hythe on Tuesday, 13 March 2018

Councillors:

- * A R Alvey
- * Mrs D E Andrews
- * A T Glass

Councillors:

- * N S Penman
- * C A Wise

*Present

Also In Attendance

Hannah Chalmers (New Forest National Park Authority) and James Palmer (New Forest National Park Authority)
Mr and Mrs Van Hal – Objectors
Mr and Mrs Morrison – Supporters of the Objectors

Officers Attending:

Miss J Debnam and Mrs A Wilson

Apologies:

None were received.

23 ELECTION OF CHAIRMAN

RESOLVED:

That Cllr Alvey be elected Chairman for the meeting.

24 MINUTES

RESOLVED:

That the minutes of the meeting held on 6 March 2018, including confidential minutes, be signed by the Chairman as a correct record.

25 DECLARATIONS OF INTEREST

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

26 TREE PRESERVATION ORDER NO. 52/17

The Hearing had been preceded by a visit to the site to allow members to view the trees in Group G4 of Tree Preservation Order 52/17, in particular the 2 oak trees to the rear of No 9 Highlands Close, the property of the objectors. The trees were viewed from within the rear garden of 9 Highlands Close and from surrounding roads in order to evaluate the public amenity offered by these trees, within Group G4. This was a significant group of trees that ran along a raised bank to the rear of properties in Highlands Close and Belvedere Road.

Mr Van Hal advised the Panel that the trees covered by the tree preservation order had not been adequately maintained throughout the 35 years that he had lived at 9 Highlands Close, and as a consequence they were in a poor condition. He was concerned that the Order would further prevent maintenance work to the trees. Whenever he and his wife had requested that work should be done there had been a long delay in any response and they were routinely told that very little work could be done to the trees as they were protected. The trees were in the grounds of Hythe hospital and therefore the responsibility of the National Health Service.

Mr Van Hal was also concerned that the roots of the trees could damage his property and the Order would prevent work to stop this happening.

Mr Van Hal had been advised by the Tree Officer that consent would be granted to remove a smaller oak tree at the rear of his property that was lower on the bank and overshadowed by its large neighbour, consequently making a limited contribution to the amenity value offered by the group of trees. In addition, the larger tree could be subject to a crown reduction of up to 3 metres, but the NHS' tree contractors had said that nothing like this level of work could be carried out.

Mr Van Hal's main objection related to the large oak tree that was the first in the row of trees along the bank behind these properties. This was by far the largest tree in the group. His objection was on the grounds that the tree was not maintained.

Mr Van Hal was advised that the Council had no authority to require a landowner to carry out maintenance to a tree unless it was dangerous. He considered however that the Council could write a letter to the NHS to point out the need for maintenance. He had merely been advised that no work could be done as the trees were protected, even though that had not been the case. Mrs Van Hal supported this objection. Mrs Chalmers, the Tree Officer, advised the Panel that a group of trees at the front of the site had been the subject of a Tree Preservation Order for a number of years; however the trees to the rear had only been protected recently by this current Order. It was likely however that the NHS' tree contractor, which was not local, had been confused about the extent of coverage by the old Order.

In answer to questions from members of the Panel Mr Van Hal confirmed that he had lived in the current property for 35 years and in that time maintenance had been carried out on the trees 3 or 4 times. He had not however ever seen a proper arboriculturist's report. He would be happy with the situation if the trees were properly maintained and the suggested crown reduction of 3m would resolve his concerns.

Mr and Mrs Morrison, as supports of the objectors and neighbours, reiterated the concerns raised by Mr and Mrs Van Hal and confirmed that this reflected their own experience. In their case, they had been advised that the tree at the rear of their garden, which leaned towards their house, should not be pruned as it would unbalance it and make it more unstable. This tree was also very substantial.

Mrs Chalmers, the Tree Officer, advised the Panel that the Order had been made in response to a planning application to redevelop the site. The development proposals were extensive, involving the demolition of the current hospital; the construction of a new hospital and housing. There would be a significant amount of ground raising towards the rear of the site, adjacent to the objectors, and it was therefore essential, in order for the needs of the trees to be respected through the planning process, to protect them with a Tree Preservation Order. Without such protection it was not possible to impose enforceable planning conditions with respect to the trees. This satisfied the test of expediency in making an Order, which could be done on a precautionary basis in response to proposed development.

The oak trees in Group G4 were particularly important in the local landscape and the objection related to just one of them. This was the largest of the trees, at the start of a significant row of trees, and therefore the most important. If it was removed it would have potentially detrimental consequential effects on the rest of the group as, for example, other trees became more exposed to the wind.

The row of trees currently played an essential role in maintaining the stability of the steep bank at the rear of these properties, which had no other protection to prevent erosion and slippage. The trees provided a significant benefit to local people and to users of the hospital. It was increasingly recognised that green spaces and trees were important in maintaining a sense of wellbeing and reducing the stress experienced by visitors to the hospital. The hospital had acknowledged the importance of the trees and, in addition to seeking to retain them, would increase the shrub planting along this boundary. This would safeguard the privacy of existing residents and visitors to the hospital. As a consequence of the scale of development, all trees within the site would be removed, increasing the significance and value of the trees around the boundaries.

It was the landowner's responsibility to maintain the trees so that they did not present any danger. It was understood, from tree works requests that had been received from time to time, that the NHS fulfilled its legal responsibilities by commissioning regular surveys of the trees to ensure that they were not dangerous. There was no legal requirement to do any works in excess of that necessary to ensure safety and, with the pressures on NHS budgets, it was unlikely that they would undertake any works above the legal requirements.

There was no arboricultural need to prune the tree to the rear of 9 Highlands Close. The issue was the inconvenience it caused to the neighbours, not a question of safety.

With respect to Mr Van Hal's concerns about tree roots damaging his property, the roots of a tree often extended well beyond the canopy, but rarely caused any problems for structures unless they were on a shrinkable soil and had shallow foundations. In the current instance, the tree's roots were most likely to be confined to the bank. It was possible to install a root barrier if that remained a concern. This would be a 2 m deep trench lined with, for example, a barrier plastic.

Mrs Chalmers considered that the protected trees were an important and significant feature in the landscape that provided significant amenity value to the area. The objections being raised by Mr Van Hal were not ones that could be addressed through the Tree Preservation Order process.

In answer to questions from the objector and their supporters, Mrs Chalmers advised the Panel that liability for any damage caused by the trees remained with the landowner after the imposition of the Order, which made no difference to this situation. The only exception was that if the Authority refused consent for works to a tree where there was a foreseeable risk of future damage, the risk would then fall on the Authority that refused consent. The site's owners had a recently commissioned tree survey that would establish the current safety of the trees. If the neighbours had concerns about the threat presented by a particular tree they should put those concerns to the tree's owners, in writing, and retain a copy in order to protect their position.

In answer to a question from Mr and Mrs Morrison, Mrs Chalmers advised the Panel that a tree that leaned could be pruned by a competent tree contractor without prejudicing its stability, and indeed decreasing the size of a tree reduced its sail effect, and therefore reduced its vulnerability.

In answer to questions from the Panel they were reminded that the Tree Preservation Order did not prevent management works to the trees, but merely brought those works under control. Crown thinning was a legitimate management practice and the tree officer did not oppose such works in principle. Indeed, such pruning could enhance the longevity of the tree as it stimulated new growth in the crown. This would however mean that the management works would need to be repeated every few years. The trees were currently around 200 years old and had achieved the majority of their height, although they would continue to spread. They could easily live for a further 300 years.

Mr Van Hal could apply for works to the larger oak tree and to remove the smaller tree in its shadow and such consent, if granted, applied to the trees, irrespective of ownership. It was however very unlikely that the NHS would be prepared to do the work, as the trees' owners, as there was no legal requirement on them to do so. If they gave consent to the works, as the landowner, it would have to be carried out at the neighbour's expense.

There was no reason to conclude that the trees, growing on a bank, were less stable than trees growing on a level site. The trees had grown in situ and their roots would have grown to respond to the forces acting on the trees. The situation would only change if the bank was eroded or roots severed by contractors on the site. The Order was therefore important to ensure the protection of the trees during construction. The new car parking area adjacent to group G4 would be on a raised level, but this would be outside the root protection areas of the protected trees. The development would not affect the rainfall onto the bank, or the run off towards the neighbouring properties.

While the roots of the smaller tree, that could be removed, would be intermingled with the roots of the larger trees that would be retained, this would not cause any problems for the stability of those trees. The contractor was likely to leave a significant stump to the tree, and would not use a stump grinder that would affect the root systems of neighbouring trees.

In summing up, Mrs Chalmers emphasised the importance of Group G4, the belt of trees to the rear of the hospital site, in particular the leading, significantly sized oak tree that was the subject of objection. These trees were a significant feature in the landscape offering a high level of amenity to the local community. It was essential that the needs of the trees were protected during the development process to ensure their long term retention. The Order would not prevent future maintenance works to the trees, but was not a tool through which such works could be required.

Mr Van Hal reiterated that his concern was founded on the lack of maintenance of the trees.

The Hearing was then closed.

Members were reminded of the tests that should be applied in considering whether or not to confirm the Order, as set out in the report to the Panel. The Panel was advised that it might confirm the Order when it considered that it was expedient and in the interests of amenity to do so. The Panel was also reminded of the implications of the Human Rights Act 1998 and in particular the right to the peaceful enjoyment of possessions and the right to respect for family life.

The Panel noted that the objections related not to the protection of the trees, but to the lack of maintenance to date which meant that the trees, which were of very significant scale, were the cause of unnecessary nuisance and concern to neighbours, which could be alleviated through more rigorous management than the bare statutory minimum, for safety, that had been carried out. The Panel hoped that, in future, the site's owners would be more helpful in managing the trees to respect the needs of their neighbours.

The Panel was satisfied that the trees were a significant feature in the landscape and offered a wide range of benefits to the wider community. It was essential that their needs were respected in the forthcoming development process, which would not be possible without statutory protection. The Panel was therefore satisfied that, in addition to meeting the test of being in the interests of amenity, it was also expedient to confirm the Order.

RESOLVED:

That Tree Preservation Order 52/17 be confirmed without modification.

CHAIRMAN