

**9 OCTOBER 2018**

**NEW FOREST DISTRICT COUNCIL**

**APPEALS PANEL**

Minutes of a meeting of the Appeals Panel held in the Council Chamber, Town Hall, Avenue Road, Lymington on Tuesday, 9 October 2018

**Councillors:**

\* A R Alvey  
Mrs D E Andrews  
Ms L C Ford

**Councillors:**

\* A T Glass  
\* C A Wise

\*Present

**Also In Attendance**

Mr N Gruber and Mr J Palmer (Tree Officers, New Forest National Park Authority)  
Mr T Rothwell – Observer  
Mr J Spooner – on behalf of Wates Development Limited, Objector  
Mr B Spiller – on behalf of Wates Development Limited, Objector

**Officers Attending:**

P Mwedzi, Mrs K Wardle and Mrs A Wilson

**Apologies:**

Apologies for absence were received from Cllrs D Andrews and C Ford.

**27 ELECTION OF CHAIRMAN**

**RESOLVED:**

That Cllr Alvey be elected Chairman for the meeting.

**28 MINUTES**

**RESOLVED:**

That the minutes of the meeting held on 13 March 2018 be signed by the Chairman as a correct record.

**29 DECLARATIONS OF INTEREST**

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

**30 TREE PRESERVATION ORDER NO.17/18**

The hearing had been preceded by a visit to the site to allow members to view the trees identified in W1 of Tree Preservation Order 17/18 ('the Order'). The woodland was viewed from three places in Torreyana Gardens and from the public footpath to the north of Torreyana Gardens.

Mr Spooner advised the Panel that his client had owned the site for the last 40 years. He considered the public amenity value of the trees to be negligible. The tallest trees in the area identified in the Order were 7m high and approximately 20-25 cm in diameter. It was estimated that the trees were 40 years old and were therefore immature. Mr Spooner considered the trees as scrubland in nature, rather than woodland. A definition of scrubland was provided to the Panel. Mr Spooner also raised the issue of the expediency of the Order and referred the Panel to paragraph 5.3 of the report, which detailed the DCLG Guidance on expediency.

Mr Spiller reported that his client had a long term interest in the site. The owner had been a good custodian of the land, leaving the trees to grow.

The issue of future development of the site was raised and concern was expressed that the Order could make any development proposals unviable.

In answer to a question from the Tree Officer regarding the reason for the objection, Mr Spooner reported he did not agree with the description of the area being "woodland" in nature, nor was it expedient to make the order. If any trees were to be protected, protection should be afforded only the most valuable ones.

In answer to questions from members, Mr Spiller advised that the land subject to the Order was within the green belt and that the owner had promoted the land for development for a long period of time. The owner had also worked with the District Council on the development of the Local Plan, although it was noted that the land was no longer allocated for development in the Local Plan. However, discussions had been taking place with the Town Council in relation to whether the land would be suitable as an affordable housing exception site.

The site would continue to be promoted for development and it was hoped to bring forward planning proposals in the future. It was argued that there was no immediate or future risk to the trees, if development of the site was not approved. It was felt that the Order was an unnecessary and unreasonable burden.

Mr Palmer, the Tree Officer, advised the Panel that a Tree Preservation Order had been proposed a number of years ago in response to the Urban Design Officer at New Forest District Council having concerns about the site. A decision had been taken not to proceed with making an Order at that stage as it was believed not to be expedient at that time. Mr Palmer had been asked more recently by officers at New Forest District Council to consider whether a Tree Preservation Order was appropriate and it was confirmed that the site was being promoted for development.

The completion of the development of Torreyana Gardens had increased the amenity value of the trees. New trees had been planted as part of the development and were included in the Order. The trees in the Order would help to soften the appearance of the new houses and they would increase in amenity value over time. The trees also screened the new development from the public footpath.

The Panel were informed that the carrying out of work on trees subject to a Tree Preservation Order, insofar as such works were necessary to implement a full planning permission, would be permitted. A Tree Preservation Order did not necessarily prevent the grant of planning permission in the future.

In answer to a question from Mr Spooner, the objector, Mr Palmer advised the Panel that the Order had been considered expedient as the land was currently being promoted for development and, therefore, the trees were at risk. The objector reported that the land had been continually promoted since the 1990s.

Mr Palmer stated that, in his professional opinion, the area identified in the Order was woodland in nature and worthy of protection. He noted that Mr Spooner held a different view.

In summing up, Mr Palmer emphasised that the woodland was a significant asset to the area, particularly in the light of the construction of the new houses in Torreyana Gardens and the nearby school. The woodland was clearly visible from public access roads. There was a significant amenity value which would increase as the trees matured. The site was being promoted for development and, therefore, it was expedient to confirm the Order.

Mr Spooner stressed that the public amenity value of the trees was limited in places and defined the area as scrubland rather than woodland. He also felt that there was no expediency in confirming the Order.

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 private and family life.

The Hearing then closed.

The Panel was satisfied that the woodland provided a significant public amenity value and that the trees benefitted the local community. The trees provided screening along the public footpath of the Torreyana Gardens development and were an important feature of the landscape.

The majority of the Panel was satisfied that, in addition to meeting the test of being in the interests of amenity, it was also expedient to confirm the Order due to the risk of development on the site.

**RESOLVED:**

That Tree Preservation Order 17/18 be confirmed without amendment.

CHAIRMAN