

9 DECEMBER 2021

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held on Thursday, 9 December 2021

Councillors:

- * Alan Alvey
- * Philip Dowd
- * Barry Dunning

Councillors:

- * Neville Penman
- * Derek Tipp

*Present

Also In Attendance:

Mr M Curtis, Mr Curtis, Mr Whitehorn, Mr and Mrs Prout and Mr Grapes

Officers Attending:

Hannah Chalmers, Richard Davies and Andy Rogers

Apologies

There were no apologies.

4 ELECTION OF CHAIRMAN

RESOLVED:

That Cllr Alvey be elected Chairman of the Panel.

5 DECLARATIONS OF INTEREST

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

6 TREE PRESERVATION ORDER NO. 0009/21 - LAND OF 47 SYLVIA CRESCENT, TOTTON SO40 3LP

The hearing had been preceded by a visit to the site to allow members to view the tree at 47 Sylvia Crescent, Totton, SO403LP of Tree Preservation Order 0009/21 (the TPO).

The tree was viewed from various standpoints, including the road and the garden in which it stood.

Members were reminded of the tests that should be applied in considering whether or not to confirm the TPO, as set out in the report to the Panel.

The Appeals Panel was advised that it might confirm the TPO if it considered that it was expedient and in the interests of amenity to do so.

Mr Curtis, the main objector as owner of the tree, explained that he had bought the property at 47 Sylvia Crescent in August 2021. He had checked whether there was

a TPO on the tree and as there was not, assumed he could do as he wished with the tree. He had sought the opinions of three tree surgeons and had been told there was a lot of dead wood in the tree.

Mr Curtis expressed concerns about potential damage to property from falling branches, and the related safety hazard for his family and neighbours.

He referred to the inconvenience experienced by him and his neighbours with the volume of falling leaves, and the shade that the tree cast. He felt the tree was too big for a residential crescent. He also expressed concerns about potential damage to drainage pipes caused by tree roots.

Mr Curtis referred to the various objections to the TPO submitted by his neighbours and felt that the 'amenity' of the tree had only been assumed by the Tree Officer. He claimed most of his neighbours did not view the tree as an amenity. Mr Curtis also explained that he intended to plant other trees in its place.

Mr and Mrs Prout of 13 Sylvia Crescent addressed the Panel and explained the reasons for their objections to the TPO, which included shading, falling leaves and potential damage to property. They would be in favour of removal of the tree.

Mr Whitehorn of 7 Sylvia Crescent addressed the Panel. His main concern about the tree was the loss of sunlight in his garden.

The Tree Officer pointed out that the tree was visible from the road and could be seen by people using the nearby school. The tree was estimated to be 70-100 years old and was physically sound. She asserted that the amenity of the tree was proven including by those neighbours who had supported the TPO and its prominence to the general public. The expediency had been proven by the owner's stated wish to remove the tree. The Tree Officer also disputed the size of the projected spread of the tree illustrated at page 21 of Mr Curtis' objection. It was also pointed out that wildlife needed mature trees and that a planted tree would not provide the same support to wildlife if a mature tree was removed. There was no sign of major branch failure. The Tree Officer explained that a 2m crown could normally be authorised in tree works, but in this case, it would not be sufficient to address the owner's concerns, and any more than that would result in significantly reduced visibility and would nullify the amenity to the community.

Mr Grapes addressed the Panel in support of the TPO. He explained that he had bought his current house 38 years ago, partly because of the trees and wildlife in the vicinity.

A statement from Mr Dunn, one of the objectors, was read out in his absence. Mr Dunn did not agree with the interpretation of the Human Rights Act in Appendix 1 of the Council's report. He also felt that the TEMPO tree evaluation scoring system in Appendix 4 was biased towards issuing a TPO. The owner of the tree also disputed the TEMPO scores.

The Council's solicitor explained that the relevant Human Rights legislation provided for a balance to be struck between an individual's rights and those of the wider community; in doing that the Panel needed to achieve a fair outcome.

The Tree Officer explained that the TEMPO tree evaluation system was just one tool that informed decision making in making TPO's.

After all parties had given evidence and everyone had had the opportunity to ask and answer questions, the hearing was closed, and the Panel began its deliberations.

Members felt they had seen and heard evidence from a minority of residents that there was amenity value in the tree, and it had been expedient to make the TPO. However, the Panel felt that tree was completely oversized for its location in a relatively small garden and noted the majority of the residents who had come forward to provide opinions disputed the amenity value of the tree, due to the nuisance caused by falling leaves, branches and shade.

It was noted that the tree did not appear to have been maintained for a very long time. The Panel accepted that a considerable amount of tree work would be needed to address the owner's concerns, and assuming consent was given for this, such works would result in the significant reduction in the visibility and amenity of the tree.

After careful consideration of the evidence, the Panel unanimously agreed not to confirm the TPO.

RESOLVED:

That Tree Preservation Order TPO/0009/21 relating to land of 47 Sylvia Crescent, Totton be not confirmed.

CHAIRMAN