

9 FEBRUARY 2023

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held on Thursday, 9 February 2023

Councillors:

- * Mark Clark
- * Keith Craze
- * David Hawkins

Councillors:

- * Alvin Reid
- * Derek Tipp

*Present

Also In attendance:

Councillors:

Jacqui England – Local Ward Member

Officers Attending:

Richard Davies, Barry Rivers and Andy Rogers

Members of the Public:

D Earl, G Engert, Mr Fox, M Newton, A Routledge, D Ryley, A Tattersall, P Thompson and V Thompson.

Apologies

13 ELECTION OF CHAIRMAN

RESOLVED:

That Cllr Derek Tipp be appointed Chairman of the Panel.

14 DECLARATIONS OF INTEREST

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

15 OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER TPO 0013/22 LAND OF 3-5 STANLEY ROAD, LYMINGTON, SO41 3SJ

The hearing had been preceded by a visit to the site to allow members to view the tree to the rear of 3 - 5 Stanley Road, Lyminster, the subject of Tree Preservation Order 0013/22 (the TPO).

The tree was viewed from various points either side of the frontage of the property, and from Brook Road.

The legal adviser summarised the tests that should be applied in considering whether or not to confirm the TPO (set out in the Town and Country Planning Act 1990, and the guidance issued by Ministry of Housing, Communities and Local Government), and explained that it was for the Panel to determine whether the tree had amenity value.

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. The test for 'Amenity' should include a reasonable degree of public benefit in terms of the visibility and impact of the trees. The future potential of the tree could be part of the consideration.

It was advised that if the Panel determined that the tree might merit protection on amenity grounds, it then needed to consider whether it would be expedient to make a TPO.

Members also noted that Ministry of Housing, Communities and Local Government Guidance stated it was unlikely to be necessary to make an Order in respect of trees which were under good arboricultural management.

The Panel was informed that it may be expedient to make an order if it was believed that trees were at risk of being felled, pruned or damaged in ways which would have significant impact on the amenity of the area, however the expediency test did not require that there was an immediate risk to the trees. The risk to trees as a result of development pressures may however make it expedient to make an order. Orders may therefore be made as a precaution.

The Panel was also advised of Articles 1 and 8 the Human Rights Convention in respect of the rights of interested parties.

It was noted that Mr Wild, the son of the occupant and owner of 3-5 Stanley Road, was unable to attend the meeting, but had submitted a letter which the Panel had read and considered fully as part of the public agenda pack. Mr Wild had also submitted a further additional statement dated 6 February, which the clerk read out at the meeting and was made available to those present.

In this additional statement, Mr Wild reiterated his view that there was no risk to the tree as long as the property continued to be held by his family. He also emphasised his family had cared for the tree for over half a century, and fully recognised its environmental value and suitability for local wildlife.

Mr Wild felt that the tree was not a prominent one, could only partially be seen from a few meters of public pavement, and was only visible from the upper windows of a very few surrounding properties. He was of the view that a TPO was unnecessary, as it added a complication and a burden for the ordinary management of the garden, which his elderly mother would find difficult to deal with.

Mr Wild also queried the amenity and expediency assessments in the TEMPO report. He contested the implied likelihood of the tree increasing its presence, due to the need to prune the tree regularly, given its proximity to the house. Mr Wild also challenged the perceived threat to the tree, and whilst previously acknowledging that the property was tentatively marketed in June 2022 as a speculative potential development plot, emphasised that the site was not currently being marketed.

With the agreement of the Chairman, the Panel heard a submission from Mr Hayes of 7 Stanley Road, in support of the TPO. Mr Hayes referred to the June 2022 marketing of the site as a 'potential development opportunity' with a possible further three houses being added to the site. He understood the property had been on the market for a number of months and at one stage was listed as 'sold subject to contract', which he believed showed the vendor's seriousness in selling the property.

Mr Hayes felt a development of three additional houses could only involve the loss of the tree. However, he hoped that any future development of the site could be undertaken with the tree being retained.

Mr Hayes explained in his statement that the back gardens of neighbouring properties contained very few mature trees and were a haven for 2,300 wildlife species.

A number of local residents briefly addressed the Panel in support of the TPO, on the positive amenity value of the tree, concerns for wildlife habitats, and querying the possible effect on the surrounding water table should the tree be removed.

The Council's Tree Officer, Mr Rivers, presented his case for preservation of the tree and amplified his report. He agreed that it was not a prominent tree in the streetscape, but was visible in part from the frontage, which met the government guidance stating that "The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath."

In summary, he felt the tree was partially visible from a public viewpoint and that it was expedient to make a TPO as he was aware the site had been advertised for development, which added specific weight to the expediency of a making a defensible TPO (as confirmed by the TEMPO assessment).

In answer to a question, Mr Rivers had seen the tree up close and reported the tree to be in good health with no obvious safety concerns.

Mr Rivers acknowledged that trees were a material consideration in planning terms, and that the Council's Tree Service would normally be consulted in the event of a planning application, giving an opportunity to make a TPO where necessary. The owner estimated the age of the subject tree to be approximately 100 years old, which Mr Rivers accepted could be the case. The tree had had a very significant crown reduction, but had the potential to grow to 25m in height. Mr Rivers confirmed that oak trees were the predominant species in the New Forest area.

In answer to a question, Mr Rivers acknowledged that trees could alleviate storm water run-off, though it was hard to quantify the amount taken up by individual trees.

Mr Rivers explained that within the context of planning and development, there was recognition of the importance of trees within the built environment, both for their visual appearance and ecosystem benefits they provided, to help mitigate the adverse impacts of a changing climate.

With these issues in mind, the Tree Officer felt that, although the current owners may have no intention of removing the tree, there was a concern that any future owners may not have the same regard to the tree's retention if the plot were intended to be developed.

The Panel then heard the local member, Cllr England, who stated that flooding problems in the area were perennial. She felt that there should be more trees protected with TPOs in the local area, given the benefits for wildlife.

In summing up, the Council's Tree Officer reiterated the requirements of relevant government regulations and guidance, the amenity value of the tree, and its place in the green landscape.

Having heard evidence from all interested parties, the Chairman then closed the meeting, stating that no further evidence would be sought. Members of the public remained in the meeting while the Panel considered its decision.

The Chairman reminded Panel members of the requirement to establish the amenity value of the tree, and whether it was expedient to confirm the Tree Preservation Order, given the written and verbal evidence it had received.

One member queried the extent of the amenity value of the tree, as he felt that it was of more visual benefit to residents from their private properties but was not highly visible from a public viewpoint.

Other members agreed the tree had some amenity value, and although not under current threat, could be in the future, and therefore felt it was necessary to protect the tree in view of the potential for sale of the site. The Panel accepted the value of what was a mature tree, from an environmental point of view, specifically in terms of it being a wildlife habitat, as acknowledged by the owner.

On a vote, a majority of the 5 Panel members felt that the case had been made for confirmation of the Tree Preservation Order. (Cllr Reid abstained). The Panel was satisfied with the amenity value of the tree, and was persuaded that the marketing of the site for development in 2022 posed a future threat to the tree. It was also felt that a TPO would ensure that future work on the tree was carried out to the required standard in the best interests of the health of the tree.

RESOLVED:

That Tree Preservation Order TPO/0013/22 relating to land of 3-5 Stanley Road, Lymington, SO41 3SJ be confirmed.

CHAIRMAN