

Minutes of a meeting of the **Appeals Panel** held at Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew on **Wednesday 24 July 2019** at **9:20am** when there were present:

Miss S Lawn– Chairman
Mr A Adams Dr K Lawrence

Also in attendance were:

- (1) Mr S Bennett – Vice-Chairman of Cantley Parish Council (for the Cantley Order)
- (2) Mr R Holmes – 4 Oak Tree Close, Cantley – Objecting (for the Cantley Order)
- (3) The Conservation Officer (Arboriculture and Landscape) – presenting the case (for the Cantley Order)
- (4) The Assistant Conservation Officer – presenting the case (for the Brundall Order)
- (5) The Committee Officer (DM) – advisor to the Panel

1 MINUTES

The Minutes of the meeting held on 21 November 2018 were confirmed as a correct record and signed by the Chairman.

2 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2019 (NO: 6) 33 CHURCH ROAD, CANTLEY, NORWICH NR13 3SN

The Panel had previously visited the site at 9:20am to inspect the trees included in the Area Provisional Tree Preservation Order shown as A1 on the map attached to the Tree Preservation Order (TPO). Following introductions, those present (as listed above) were invited to point out anything they wished the Panel to observe whilst on site but not to discuss the merits or otherwise of the making of the Order as this would take place at the hearing. The Conservation Officer (Arboriculture and Landscape) drew attention to the modified plan which had been prepared since the serving of the initial Area Order and following a further inspection of the site to identify those trees within the Area Order which should remain in the Order those which did not warrant protection and could be excluded from the Order.

Members viewed the trees from within the garden of 33 Church Road. They noted the location of all the individual trees identified on the modified plan and the location and appearance of the 5 Lime trees which were the subject of the objection. The site was generally overgrown and unmaintained. The objector

pointed out the location of debris and logs from a fallen tree on the site, the new gravel boards he had erected on the boundary of his property and the extent of rapid growth of vegetation along the boundary. Members then viewed the 5 Lime trees from within the objector's garden at 4 Oak Tree Close where the objector drew attention to the condition and form of some of the trees, the location of soakaways in his garden and the repaired fence along the boundary.

The Panel then convened at 10:45am at Broadland District Council offices to consider the objection to the TPO. Those listed above were present. The Chairman invited those present to introduce themselves, explained the purpose of the Hearing and outlined the procedure to be followed.

The Panel was aware that the Council had decided to make the Area TPO after the Council received planning application No 20190731 for nine self-build dwellings. The proposed site was heavily constrained by the existing trees and it was considered expedient to protect the group of mature mixed leaved trees located on the north, east, south and west boundaries to safeguard the significant visual amenity and biodiversity value offered by the trees to the immediate area and the wider environment.

One formal objection to the Order had been received from Mr R Holmes, of 4 Oak Tree Close whose property backed onto 33 Church Road.

The Panel then heard from Mr Holmes who handed round additional information following a meeting on 22 July 2019 (copy attached at Appendix 1 to the signed copy of these Minutes). Mr Holmes then went through the points raised in his additional information in detail and the Conservation Officer and the Chairman endeavoured to respond to the issues raised.

In summary, Mr Holmes raised the following matters which were responded to as detailed:

- The meeting on 22 July was organised without warning or notice and those attending did not have permission to enter the land. He was disappointed with the way the matter had been managed that day. Following clarification, it was noted that this meeting had been arranged by the Parish Council. He had had similar concerns about a visit by the Conservation Officer in the past and that, whilst the Conservation Officer had left messages for Mr Holmes saying he had tried to make contact with Mr Holmes to visit him, the Conservation Officer had still visited the site and had taken photographs which had led to Mr Holmes making a complaint.
- No formal survey had been carried out of the trees and a proper assessment had not been undertaken. A simple statement that the trees were not considered unsafe was not sufficient and there was no supporting evidence of this. It was a simple statement repeated in all cases of TPOs. The Conservation Officer explained that, in this case, an Area Order had been

made without a visual inspection in response to the potential threat to the trees. He had, however, had sight of the tree survey undertaken as part of the planning application to get a feel for the situation. He had then undertaken a further survey which included a visual assessment on site of individual trees and their form and condition in order to identify which trees were appropriate for inclusion in the modified Group Order. Any trees with issues were not included in the modified Order. There was no requirement as part of the Order making process to undertake any further detailed assessment of the trees. There had been nothing visible to suggest the trees were unsafe and no incidents had occurred since the assessment in 2012 other than a normal degree of dead wood. Mr Holmes felt 12 years was insufficient to judge the situation.

- The tree roots of tree L1 (Mr Holme's reference) had been cut and rendered the tree vulnerable and this had not been assessed. Mr Holmes did not agree with the view that, because the tree had not suffered a catastrophic failure in the last 12 years, it was not dangerous. He felt the tree was dangerous and could not therefore be the subject of a TPO. He felt this matter did not just go away after 12 years. The Conservation Officer commented that, as a living structure, the tree and its roots would have adapted to any root cutting by producing new root growth to compensate. This only tended to fail if the rate of decay / loss out-paced the rate of regrowth. Evidence of any damage would be visible and the trees had withstood a number of exceptional weather events over the last 12 years. An element of risk of failure and damage to people or property was attached to any tree but this was considered to be in the region of a 1 in 10 million chance. It was not proportional to remove trees all trees growing adjacent to areas of habitation on the basis of this level of risk.
- A health and safety report had indicated that tree L2 was of poor form and this tree had not been assessed fully because it had previously covered in Ivy.
- Tree L3 suffered a lot of dead wood falling and a soakaway existed 2.5m away which would have implications for the future management of the soakaway. Mr Holmes questioned how this could be managed. With regard to the dead wood, the Conservation Officer commented the dead wood was at a level expected for a tree of that age and could continue to be removed without requiring permission even if the Order was confirmed.
- Tree L4 was imbalanced, had poor form and was also close to a soakaway. With regard to the soakaway, the Conservation Officer commented that, when the soakaway was installed, precautions regarding the tree roots would have been required and should have been taken into account. Mr Holmes confirmed the soakaway was constructed of brick and rubble with pipes leading to it. The Conservation Officer stated this would therefore be porous and that the roots would not damage intact pipes. Any maintenance work necessary to the soakaway could include the trimming of roots if necessary.

An arboricultural method statement would be required to ensure any work was undertaken in sympathy with the trees. Mr Holmes commented that an officer of the Council had not been able to attend on site at the time of the installation of the soakaway and had told Mr Holmes to put the soakaway where building control had requested. The Conservation Officer commented that the soakaway had been installed over 12 years ago and the tree roots would have adapted to any interference. Mr Holmes commented that there was a cost implication in obtaining a method statement for maintenance of the soakaway if the trees were subject to a TPO.

- Tree L5 was close to L4, was of poor form and in the past was being killed by Ivy but this had now been resolved.
- Mr Holmes questioned the consistency of the Council's approach, as the findings of some reports had been considered relevant whereas others had not.
- Mr Holmes commented that there was no public support for the making of the Order, as claimed by the Parish Council. Their meetings were poorly attended and the public was not interested. His neighbours were not aware of the TPO and the notification of the TPO had been limited to the immediate neighbours. The Conservation Officer confirmed that the required notices about the making of the Order had been served on all interested parties as required by the legislation. Any views of the Parish Council would be given due weight by the Panel in considering its decision.
- Mr Holmes was very concerned that the trees had not been properly surveyed and the Council could not put a TPO on a dangerous tree or a tree with poor form. The Conservation Officer reiterated that, following his assessment, he believed the trees satisfied the criteria for making an Order and they formed an important backdrop to the development. Mr Holmes was advised that there was no obligation on the Council to undertake or provide a detailed survey of the condition of each tree. Should evidence be provided to them which demonstrated that there was a real concern about the condition and safety of a tree within the Order if confirmed, this would be taken into account in deciding how if the tree needed remedial work or removal. Mr Holmes stated he had not had time to approach the landowner to see if such a survey could be done and he asked the Panel to defer the meeting to give him time to do this. He felt it was important to get a second opinion. It was noted that the Order had been made in May and Members felt sufficient time had been available for such a survey to be undertaken. The Panel agreed to continue with the meeting to determine the matter. In response to a question, the Conservation Officer confirmed that, if any of the Lime trees were diseased there would be some form of evidence of this on visual inspection possibly in the form of dieback in the upper crown. There was some degree of minor dead wood in the trees but no evidence of anything else. The trees gave the appearance of being very healthy with vigorous growth.

The Panel then heard from the Vice-Chairman of the Parish Council who confirmed that the meeting held on 22 July had been instigated by the Parish Council. They could not contact the owner but wanted to view the site to form an opinion. He commented on the jungle like appearance of the area and the challenge of identifying the trees worth protecting. In his view, several of the species were multi stemmed and needed chopping down. The Parish Council had raised the matter initially having seen the proposed planning application which was void of any trees. They were concerned about this and so had raised the issue of a potential TPO. They were not aware of Mr Holmes' concerns at that stage. He welcomed that the Area Order was being modified to identify those trees worthy of protection. He felt it was unfortunate that the trees had not been better maintained by the owner. He confirmed that the Parish Council was supporting the inclusion of the 5 Lime trees along Mr Holmes' boundary in the Order.

A question was raised about the duty of care on owners of trees and the Conservation Officer commented that there was a duty of care on the owner of any tree to ensure it did not cause injury to people or damage to property with or without the presence of a TPO. A TPO did not provide for owners to be instructed to undertake works to their trees but the Miscellaneous Provisions Act did allow for intervention if a tree was imminently dangerous and an owner was unwilling to act. The existence of the TPO meant that any works proposed (other than the removal of dead wood) would require consent. The Conservation Officer commented that, having regard to the work previously carried out by Mr Holmes to maintain the trees overhanging his garden, he did not foresee any issue with consent being granted for works of a similar nature / standard.

The Panel then heard from the Conservation Officer who, mindful of the matters already discussed, added that there was no evidence at the present time that the trees in the Order were dangerous. The trees made a significant contribution to the local environment and had amenity value. The trees were at risk from the development of the site. There was no evidence the trees were dangerous and he felt they needed to be protected.

With the exception of the three Panel Members and the Committee Officer, all present then left the room whilst the Panel considered the objection and made its decision. They subsequently re-joined the meeting and were advised that, having listened carefully to all the evidence put before it and having regard to the criteria for making the Order, the Panel had decided that the Order should be confirmed with modifications as detailed on the modified plan which identified each of the trees to be protected in Group 1.

The reasons for the decision were that the criteria for making the Order had all been met. The trees were under threat, they made a significant contribution to the local and wider environment, there was no reason to believe they were dangerous, they had a life span in excess of 10 years, they did not present an unacceptable or impracticable nuisance and they contributed to the biodiversity of the immediate area and offered a wildlife habitat.

Accordingly, it was

RESOLVED:

to confirm the Broadland District Tree Preservation Order 2019 (No: 6) with modifications to include the trees specified on the modified plan.

All present were advised that if any person was aggrieved by a local authority's confirmation of a Tree Preservation Order, they may, within 6 weeks of that confirmation, apply to the high court under section 288 of the Town and Country Planning Act 1990, for an order quashing or (where applicable) suspending the order, either in whole or in part. The grounds upon which such an application may be made are that the order is not within the powers of that Act or that any relevant requirements have not been complied with in relation to that order.

**3 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2019 (NO: 1)
11 STATION NEW ROAD, BRUNDALL, NORWICH NR13 5PQ**

The Panel arrived on site at 10:05 am and remained until 10:25 am. No other interested parties were present at the site. Attempts were made to contact the objectors at the property and by telephone without success. Members were able to view the trees and noted their form and their location within the garden of the property and within the local setting.

The meeting to determine the objections to the making of the Brundall Order commenced at 10:45am. None of the interested parties were present. Attempts were again made to contact the objectors, the tree warden and the parish council with no success. The Committee Officer confirmed that notification of the date of the meeting had been circulated to all interested parties on two occasions. Members were concerned that they were unaware as to why no interested parties had attended and that they would adjourn the meeting to reconvene again to enable a further opportunity for the interested parties to attend. It was agreed that the meeting reconvene on Thursday 1 August 2019 at 10:00 am without the need for a second site visit. The matter of the objections to the making of the Order would be determined at that meeting based on written submissions even if any of the interested parties were not in attendance.

The meeting adjourned at 1:00pm

The meeting reconvened on Thursday 1 August 2019 at 10:00 am with the following present:

	Miss S Lawn– Chairman	
Mr A Adams		Dr K Lawrence

Also in attendance were:

- (1) Mr Clarke of 11 Station New Road – objector (for the Brundall Order)
- (2) Mr R Farley – Brundall Tree Warden (for the Brundall Order)
- (3) The Assistant Conservation Officer – presenting the case (for the Brundall Order)
- (4) The Senior Committee Officer (SU) – advisor to the Panel

The Chairman invited those present to introduce themselves, explained the purpose of the Hearing and outlined the procedure to be followed.

The Panel was aware that the Council had decided to make the provisional TPO to protect 11 Douglas Fir trees to the front of 11 Station New Road in Brundall following the refusal of outline planning permission for the erection of a self-build dwelling to the rear of the property (ref: 20181885). One of the main reasons for the refusal had been the potential impact on trees as well as concerns about backland development and the character of the area. The planning application had been submitted with an Arboricultural Impact Assessment which highlighted the tree constraints. It was noted that the applicant had lodged an appeal with the Planning Inspectorate against the refusal of planning permission (as yet undetermined).

One formal objection to the Order had been received from Mr & Mrs Clarke of 11 Station New Road, Brundall, the owner/occupiers of the site in question.

Mr Clarke presented his objections to the TPO, referring to his letter dated 4 March 2019. He referred to a further letter dated 9 June which he had submitted following the recent high winds which had caused some damage to the trees. The Assistant Conservation Officer responded that as this letter had been received after the period for objections had expired, it had not been included within the agenda papers. Mr Clarke was of the view that the TPO added no value as he currently cared for and nurtured the trees. None of the trees were grade A: just B or C. He emphasised that the trees were not under any danger or pressure of being removed. In submitting his planning application, he had followed the due processes 100% and provided the required Arboricultural reports etc. They had lived at the property for between 7 and 8 years and had cared for the trees all that time. The TPO was an unnecessary bureaucracy which went against what he was trying to achieve. None of his neighbours supported the TPO – they lived on a nice private road where everyone cared for their own trees. In his opinion, there were better specimens of tree at nos: 14, 16 and 18 but none of these were protected by a TPO.

The Chairman responded by advising Mr Clarke that it was an automatic process – as the Council felt the trees could be threatened through the planning application, the TPO had been served. The Panel had witnessed on site how well he had looked after the trees and felt there was no reason why this could not continue in the future.

Mr Clarke continued that he felt the bureaucracy was pointless as it was unlikely he would get planning permission. It was in his own interests as well to follow any Arboricultural advice as the trees were next to his own (original) property. The serving of the TPO implied that he would jeopardise the trees which he considered to be an insult to his integrity and the trees were not under any threat. He was concerned that he would now have to speak to Council officers before he could do anything to the trees.

Mr Clarke then referred to the damage which had been caused by recent high winds, providing the Panel with a copy of a photograph as evidence. He stated that a 10m branch weighing 250kg had fallen onto his drive in early June which was subsequently followed by a 12ft branch the day after. He had concerns that the trees were a risk, being 100ft in height and the branches could fall in any direction posing a health and safety risk. He added that the planning application was irrelevant to the TPO as even if the Inspector did allow the appeal, it was unlikely he would go ahead with it. The process of applying for the outline planning application had been a nightmare.

The Panel then heard from the Assistant Conservation Officer who advised that the TPO was as a result of the outline planning application for one dwelling in the rear garden at no: 11 with the Fir trees located on the proposed access drive which would have an impact on the roots of those trees. He had raised his concerns with the Planning Officer and requested revisions to the Arboricultural Impact Assessment. However, despite some revisions being made, his concerns remained and the officer recommendation was to refuse the planning permission, with the impact on the trees being one of the main reasons. The trees were a significant part of the landscape and the TPO had been served as a precautionary measure as it was considered the trees would be at risk. The trees could have been removed which would have completely changed the dynamics of the planning application. As part of the appeal, the Planning Inspector would look at the tree issue and give weight to the TPO.

The Assistant Conservation Officer reiterated that six of the trees would be impacted by the proposed access drive and the services to be provided around the root protection area of two of the trees would require excavation works. The trees were a feature as a group and therefore, the best approach had been to protect all of them and not just pick out individual trees.

In response to Mr Clarke's concerns about consent for tree works, the Assistant Conservation Officer advised that consent would not be required for clearing away branches which had fallen in the wind; the removal of dead wood or the removal of dangerous branches (eg cracked and hanging in the canopy). In the

latter instance, it was suggested that a photograph be emailed to the officer, just for information. Consent would be required for work on live branches but this did not attract a fee.

Mr Clarke responded to the officer's comments stating that he would not go through the roots – his solution was for a permeable surface on top of the root system which was something used for all old, traditional houses. Although it was an expensive system, he would look after the trees and repeated that he would not cut through the roots. In terms of the provision of services, these were on the East side and gas, water, electricity etc all currently ran down through that side now. The provision of new services required them to be 8m outside of the root protection area of the trees. In his opinion, the main reason for the refusal of planning permission had been an issue of backland development and the trees had only been raised at the eleventh hour by the Planning Officer. There had been misinterpretation about the surface – it would be a permeable membrane covered in gravel which would allow the trees to receive 100% of any nutrients, water etc. Regarding any tree works, a measure of communication would still be needed, even to undertake minor works. Mr Clarke concluded that he would 100% look after the trees and the TPO was against his philosophy and what local government was about.

In response to a question by a member of the Panel about the safety concerns raised by Mr Clarke, the Assistant Conservation Officer stated that there were no particular concerns. Some branches had fallen but any semi-mature / mature tree would drop branches in high winds. This was a natural process and not a reason not to protect trees. It would be permissible to reduce some of the branches which were near to the house – any application for works would be considered based on the proximity of the tree to the house.

In response for clarification on the membrane issue, the Assistant Conservation Officer advised that he had raised concerns as part of the planning application process as the membrane would cover the top of the root protection area of the Firs. The degree to which the root areas would be covered would be too much, with the guidelines and the British Standard stating no more than 20% should be covered. A number of assessments had needed to be made to be certain of the figure in this case and the conclusion was that over 20% of all six trees would be covered by hard surfacing. In addition, the area concerned was at a higher level by approximately 200mm which would increase the total height. Some contractors then had to dig in because the solution to place the membrane on top did not always work, which would result in damage to the tree roots.

When asked if the membrane was classified as a soft surface, the Assistant Conservation Officer responded that it was considered to be a hard surface. He reiterated that backland development had been one of the reasons for refusing planning permission but the trees had also been a key factor. As a precautionary measure the TPO had been served.

Mr Clarke responded that it was brave of the Assistant Conservation Officer not to be concerned about the health and safety risks. He considered that he had made a flippant statement, bearing in mind it was a busy road and there was a definite risk. The Assistant Conservation Officer responded that all trees posed a risk to some degree. Numerous pieces of research had shown that it was an extremely low risk (1 in 10 million) of a fatal incident involving a tree; 55 accidents to A&E compared to 200,000 accidents related to football. Good management helped alleviate any potential risk.

The Panel then heard from Mr Farley, the local Tree Warden. He considered the trees to be a lovely feature and well-presented. His concern was that the current owner / occupier could move on and any new occupier could take the trees down, if unprotected.

With the exception of the three Panel Members and the Senior Committee Officer, all present then left the room whilst the Panel considered the objection and made its decision. They subsequently re-joined the meeting and were advised that, having listened carefully to all the evidence put before it and having regard to the criteria for making the Order, the Panel had decided that the Order should be confirmed.

The reasons for the decision were: the trees added significantly to both the visual amenity and biodiversity of the local area; they were not considered to be in an unsafe condition at this time; it was not believed the trees would cause an increase in nuisance which would be considered unreasonable or impractical to manage in the future and the provisional TPO had been implemented and served in a just and appropriate manner.

Accordingly, it was

RESOLVED:

to confirm the Broadland District Tree Preservation Order 2019 (No: 1).

All present were advised that if any person was aggrieved by a local authority's confirmation of a Tree Preservation Order, they may, within 6 weeks of that confirmation, apply to the high court under section 288 of the Town and Country Planning Act 1990, for an order quashing or (where applicable) suspending the order, either in whole or in part. The grounds upon which such an application may be made are that the order is not within the powers of that Act or that any relevant requirements have not been complied with in relation to that order.

The meeting closed at 10:52am