

Minutes of a meeting of the **Appeals Panel** held at Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew on **Wednesday 19 September 2018** at **10:15am** when there were present:

	Miss S Lawn– Chairman	
Mrs C Bannock		Mr J Emsell

Also in attendance were:

- (1) Mr and Mrs Kavanagh-Reed – 16 Keys Drive, Wroxham, Norfolk, NR12 8SS – objecting
- (2) Mr C Hall – Wroxham Parish Council
- (3) The Tree Officer – presenting the case for the Order
- (4) The Committee Officer (DM) – advisor to the Panel

1 MINUTES

The Minutes of the meeting held on 5 April 2018 were confirmed as a correct record and signed by the Chairman.

2 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2018 (NO: 4) 16 KEYS DRIVE, WROXHAM, NR12 8SS

The Panel had previously visited the site at 9:30am to inspect the Oak tree shown as T1 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.

Members viewed the tree from within the garden of 16 Keys Drive. They noted the location of the tree on the boundary and its distance from the house. They viewed the boundary along the rear of the property and along the adjoining properties. It was not clear where the exact boundary was. Members' attention was drawn to the pile of dead sticks collected in recent days which had fallen from the tree, the roots pushing out of the ground, the cavity in the tree and the areas of alleged damage rising up the trunk of the tree. They were also asked to note the height of the tree's canopy and the degree of light entering the garden. They noted a similar aged tree in the adjacent garden which also shed debris and were asked to note the scope for boundary treatment works. Members' attention was also drawn to the existing patio area of the garden which it was claimed was the only area to receive sunlight throughout the day; the rest of the garden was in shade for most of the day. Members then left the garden and viewed the tree from along Keys Drive and from along Salhouse Road.

The Panel then convened at 10.15am to consider the objection to the TPO. Those listed above were present. The Chairman invited those present to introduce themselves and then outlined the procedure to be followed.

The Committee Officer invited all present to confirm they had received all the documents in relation to the hearing and they confirmed they had. She referred to an email received outside of the consultation period which would be read out to the Panel later in the meeting and appropriate weight given to it by the Panel. The Committee Officer then advised all present of the 3 measurements missing from the Tree Officer's report as he had not been able to access the property to take the measurements at the time of preparing the report. These were as follows:

Page 16 – Xcm should read 1.27m which equated to an approximate age of around 200 years.

Page 18 – 4th paragraph – the first Xm should read 15m and the second Xm should read 8m.

The Committee Officer also reported a request from the representative of Wroxham Parish Council to present his views early in the hearing as he needed to leave early for another appointment. Those present agreed to this.

The Panel were aware that the Council had made the decision to safeguard the tree following receipt of a planning application proposing a single storey extension to 16 Keys Drive and showing that the tree was to be removed. The Council felt the tree was an important mature Oak which formed part of an old field boundary to the south of Keys Drive and as such had significant amenity value. The Council decided to make the TPO to safeguard the significant visual amenity and biodiversity value of the tree to the immediate area and the wider environment.

One objection to the Order had been received from Mr and Mrs R Kavanagh-Read of 16 Keys Drive, Wroxham.

The Panel then heard from Mr and Mrs Kavanagh-Read. Mrs Kavanagh-Read stated that they had commissioned a tree condition report by Target Trees to provide independent advice on the condition of the tree and to confirm if their concerns had any validity before they appealed against the TPO. They had chosen Target Trees as they had undertaken work for the Council as well as others and hoped their report would be taken into account. Mrs Kavanagh-Read then outlined the history of their purchase of the property and the making of the TPO. She had contacted the Council prior to the purchase of the property and again after purchase and had been advised that there was no TPO on the tree. She felt the guidance for the making of a TPO had not been complied with as a visual assessment of the tree had been undertaken from Salhouse Road only and not from within the property to fully assess the merits of the tree. However,

at the hearing today, a full assessment from within the garden had taken place.

With regard to the financial implications of managing the tree, Mrs Kavanagh-Read said she felt they had been misled as the tree had been a major factor in deciding whether to purchase the property. They had not budgeted for having to undertake ongoing work to the tree. They had carried out research before proceeding with the purchase and had been advised there was no TPO on the tree. On that basis, they had proceeded to purchase the house. They had not been informed of what might happen if they wanted to remove the tree and now felt trapped in a property that they could not make safe. This had had a significant impact on her mental health. Mrs Kavanagh-Read stated she had been advised at a later date by Mr Lowe that the Council only served a TPO when there was a threat to a tree. She had not been advised of this when contacting the Council and felt she should have been made aware of this.

With regard to the visual amenity of the tree, Mrs Kavanagh-Read stated the tree could not be seen without difficulty from Keys Drive, Salhouse Road and the Avenues. There was potential for development on the land at the rear of Keys Drive which would further obscure the view of the tree. References to the limited degrees of visibility had been detailed in the tree condition report.

With regard to the condition of the tree, Mrs Kavanagh-Read stated the tree was in poor condition; it was leaning into the field, had a sparse canopy, had been heavily pruned and had areas of little growth. There was also an increased chance of crown failure and decline. The tree roots could not expand into the field because of cultivation of the field.

With regard to safety, Mrs Kavanagh-Read expressed concerns about the difficulties of making her property safe. A fencing company had raised concerns about the installation of fencing, particularly because of the mound around the tree. It was difficult to secure the fence around the tree and the fence would be more vulnerable to damage from wind. She was also concerned about falling debris from the tree and that it was not safe for children to play in the garden.

With regard to the proposed extension to their property, Mrs Kavanagh-Read stated that the roots of the tree would cause ongoing problems for the extension. If they could not remove the tree, they would not be able to proceed with the extension, as the tree would shade the whole of the remaining garden. If they had known they could not go ahead with the extension, they would not have purchased the property. Mrs Kavanagh-Read stated that she had been suffering with her mental health since this matter had arisen. She was taking medication from the doctor for anxiety caused by the way in which this matter had been handled. She felt unsafe and trapped in her home and would not be able to maintain or update her property or make it safe. If they had been properly informed, she would not have brought the property. They had offered to plant a tree in an alternative location.

With regard to the objector's comments in the report that "confirming the order would be taken as confirmation that the district council accepted financial responsibility for the tree, provide compensation for loss of land and accept the risk of legal action", the Chairman commented that this was not the case.

The Panel then heard from Mr C Hall of Wroxham Parish Council. He stated that three representatives of the Parish Council had looked at the tree including the tree warden. Their observations were that the tree played an important role in the landscape. It screened the houses on Keys Drive and their appearance would be more stark without it. He noted the conflict between the tree condition survey assessment commissioned by the objectors and the assessment of the District Council's Tree Officer with regard to the potential for failure of the tree. He raised the question, would the tree be missed if removed – probably not. Was the serving of the TPO a good decision – yes in terms of the conservation value. He said there was some sympathy with the objectors but it was difficult to argue against the case put forward by the Tree Officer in support of the Order. Did the independent report outweigh the views of the Tree Officer – probably not. He concluded, however, that safety should be paramount. When asked by the objectors to expand on this comment, Mr Hall stated that safety considerations should come before anything else – he was aware of trees falling and that some trees in the local wood were being removed. An Oak tree had fallen in the area 2 months ago.

The Committee Officer then read out an email which had been received after the end of the consultation period, as follows, to which members would give due weight:

"I am writing concerning an appeal against an oak tree in the rear garden of 16 Keys Drive Wroxham. I live at number 20 and I would object to this tree being removed as we have already lost a lot of mature trees in this area. The oak is one of the most important trees in our country and supports an enormous amount of native species from the smallest insects to bats and owls etc. This property has recently changed owners. I don't want to cause trouble but if a tree preservation order can be broken it would set a precedent obviously if the tree is diseased then that is another matter. I don't even know if it is in order for me to object."

The Tree Officer then presented the case for making the Order and explained the procedure followed. In accordance with normal practice, the Tree Officer had been consulted by planning officers in response to receipt of proposal for an extension to the property which indicated the removal of trees. A range of desk top research had been undertaken to assess the value of the tree, including historical maps / google maps and 1st edition 1880 O.S. maps. Records confirmed that a number of other trees in the area had been protected. A site visit had then taken place from Salhouse Road, Keys Drive and the adjoining field and the tree was wholly and partially visible from these locations. Access to the rear garden of no:16 had not been possible and a close inspection had not been undertaken at this time. It had been decided, having regard to the age,

historical and amenity value of the tree and the fact that the extension could proceed without removal of the tree, that the Order should be made. With regard to the amenity value of the tree, amenity value covered a wide range of criteria including visibility, size and form, future potential as an amenity, rarity, cultural or historical value and contribution to the landscape. Not all of the criteria needed to be met to justify the decision to make an Order. The Oak tree had met a number if not all of the criteria. The tree was visible, it was over 200 years old so it had historical value and it was of a significant size and age. It was in place before the development and had been retained as part of the development and now formed a historical link to the previous agricultural landscape.

The Tree Officer confirmed that the information given at the time of the initial enquiry about whether a TPO existed on the tree had been correct. With regard to Government guidelines for the making of an Order, these advised that a site visit was desirable but acknowledged this might not always be possible. Indeed some orders were made using desk-based resources if the circumstances warranted it.

[Mr Hall left the meeting at this point.]

Mrs Kavanagh-Read asked the Tree Officer why she had not been advised of what might happen when she had first contacted the Council and that they would not have brought the house if they had known that a TPO might be served. The Tree Officer stated that it was difficult to assess a case on the telephone and determine whether an Order might be made or if a tree was under threat. Mrs Kavanagh-Read responded that she had told the Council she wanted to remove the tree and nothing had been done from January to March during which time she had purchased the house.

Mr Kavanagh-Read questioned the statement that a number of trees in the area had been protected by TPOs when only one Order was included in the agenda papers. It was noted that the one Order included a number of trees. Mrs Kavanagh-Read questioned how the Oak tree could be described as having rarity value as per the amenity value test and the Tree Officer commented that it was not essential for all elements of the amenity criteria to be met before an Order could be made and that the tree did meet the historical value criteria.

In response to Members' questions, the Tree Officer confirmed that it would be possible to erect some form of boundary treatment with the tree in place. He also confirmed that it was not clear why the earlier TPO for a number of trees in the vicinity had not included this Oak tree. With regard to concerns that the initial contact with Mrs Kavanagh-Read had not generated the making of the TPO, the Tree Officer commented that a number of calls were made to the office almost daily enquiring about the status of trees. TPOs were not served without due consideration and it was not always possible to assess immediately, without further investigation, which calls might result in the need to serve a TPO. Members questioned if more information should be taken at the time of the call to gain a better understanding of the situation.

A question was raised as to whether regular maintenance of the tree would help prevent falling debris and the Tree Officer confirmed that Oaks were prone to shedding dead wood but regular maintenance would help to alleviate this. Mrs Kavanagh-Read commented that this was however unlikely to completely remove the risk of dead wood falling. The Tree Officer also confirmed that the majority of the roots for this tree were likely to be in the direction of the house but it was not possible to tell this for certain without a proper assessment.

Mr Kavanagh-Read commented that he could not see how it would be possible to erect fencing around the tree in such a way as to secure it on the existing mounding and any such fencing would be weakened. He did not want to erect a hedge. The Tree Officer commented that this could be achieved by the use of close boarded fencing where posts could be erected at intervals to work round existing roots. Mr Kavanagh-Read said he felt it was very unfair that, should the tree fall, despite all their concerns, their efforts to do the right thing and any attempts to maintain the tree, they would be liable for any damage with no financial liability on the Council who made the Order.

The Tree Officer then made reference to the Tree Condition Survey commissioned by Mr and Mrs Kavanagh-Read. The report highlighted the characteristics of the tree including decay pockets and root damage which he believed were all characteristics of a tree of this age and were not significant issues which warranted the removal of the tree. The key issue in regard to the identified cavity was the residual wall thickness of the affected branch and this could not be ascertained without more detailed investigation. The report did not appear to arrive at a clear conclusion about the tree instead referring to its increased potential for significant crown failure or decline dependent on other factors. The Tree Officer commented that 1 in 10 million trees caused a fatal incident and, in this context, a statement about an increased potential for failure was particularly vague.

The Tree Officer, together with Mr and Mrs Kavanagh-Read, then left the room whilst the Panel considered the objections 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 agreed that the Order should not be confirmed.

The reasons for the decision were that the tree did not make a significant enough contribution to the local environment to warrant its protection and the degree of nuisance caused by the tree was unacceptable and impractical. Accordingly, it was

RESOLVED:

to not confirm the Broadland District Tree Preservation Order 2018 (No: 4).

The meeting closed at 11:50am