

## APPEALS PANEL

Minutes of a meeting of the Appeals Panel of Broadland District Council, held on Wednesday 10 November at 10.30am at Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich.

**Committee Members Present:** Councillors: N J Brennan (Chairman), K Lawrence and S Prutton

**Speakers present:** Darren Wood - objecting  
Amanda Bean – objecting  
Mrs Doughty – objecting  
Mr S Vincent – supporting

**Officers in Attendance:** The Conservation and Tree Officer (MS) – presenting the case for the Order and the Democratic Services Officer (DM)

### 5 DECLARATIONS OF INTEREST UNDER PROCEDURAL RULE NO 8

All members present declared that they knew Mr Vincent was a fellow district councillor. They confirmed that they had not discussed the trees with Mr Vincent at any time.

### 6 APOLOGIES FOR ABSENCE

No apologies were received.

### 7 MINUTES

The minutes of the meeting held on 21 September 2021 were confirmed as a correct record and signed by the Chairman.

### 4 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2021 (No 4) LAND AT 19 SYDNEY ROAD SPIXWORTH NR10 3PG

The Chairman welcomed everyone to the meeting and explained the procedure. Prior to the meeting, the Panel had taken the opportunity to visit the site and view the trees and their location. Their viewing of the trees took place from within the gardens of numbers 15 and 19 Sydney Road, Spixworth

and numbers 2, 4 and 6 St Peter's Way. Mr Wood and Ms Bean had been in attendance at all sites and Mrs Bush, Mr Harman and Mrs Doughty had been in attendance at parts of the site meeting.

The Chairman commented that the purpose of the site meeting was to view the trees only and not at that time to listen to any representations made to the Panel. Those present were reminded of this during the site visits.

The Chairman then invited Mr Wood to make his case. Mr Wood stated that he was speaking on behalf of himself and Ms Bean. He had lived at his current address for 16 years. In his work capacity he had much experience of investigative work and the importance of ensuring investigations were detailed, balanced, factual, bespoke and informative, ensuring transparency and openness. This approach was reflected in the guidance associated with the making of Tree Preservation Orders. He then detailed why he felt the process being undertaken in relation to this Order did not meet those guidelines and objectives. The papers had only been received on 2 November and appeared to be generic and not bespoke, evidenced by reference to a previous site location in the report, and lacked care and attention. They were also incomplete in that they did not include all the information made in the residents' representations and some important information had been omitted. Mr Wood stated that, because of the short timescales, several objectors had not been able to make arrangements to attend the meeting and this was no grounds to dilute their evidence. He had been given permission from Mr Bush and Mr Harman to make representations on their behalf and he read out their written representations in full for the Panel. In summary, these representations included reference to the fact that the trees had doubled in size since the owner had first moved to the property, they were top heavy and dangerous. They caused stress and added to ill health. A tree of the same species nearby, with a similar form to tree T2, had dropped a significant branch which had caused damage to the fence and a trampoline in a neighbouring garden and the tree had been removed. There had been no objection to this tree being removed. The neighbours were frightened of the trees and their potential impact. There was a lot of overhanging dead branches, some of a significant size, and there was concern about these falling. Trees T1 and T2 needed to be removed and replaced with a more suitable species.

Mr Wood went on to state that he had purchased land containing the trees from Mrs Bush in 2019 in an attempt to help find a resolution to the worries about the trees for all concerned. His garden in particular, being closest to the trees, suffered from falling branches, cones and needles. He had replaced felt and guttering on this property. He felt the Tree Officer (*Conservation and Tree Officer*) had not taken into account the poor state of the trees.

Mr Wood then went on to make further reference to particular paragraphs of the government guidance and good practice and stated that the local authority could not confirm an order unless it had fully considered all the representations. It was necessary for a site meeting to take place to assess the amenity value of the trees and the trees needed to be assessed by a

qualified arboriculturalist; a full dialogue was encouraged to clarify any issues and full consideration should be given to all the representations made. Mr Wood suggested these procedures had not been followed by the Council and that the report favoured the applicant and the council.

Mr Wood stated that the order had been made in June 2021 and interested parties given 28 days to reply. Four months had since then passed with no contact until 26 October when a site meeting had been arranged by the council with the then landowner. Mr Wood had not been given the opportunity to attend. The final papers had only been sent out on 2 November and had asked for interested parties to confirm if they wished to attend by 5 November. There had been no time for residents to plan or prepare for the meeting and arrange time off or carers. He felt the meeting needed to be adjourned.

Mr Wood then went on to refer to the summarised objections in the report and the Tree Officer's response to the main points of objection. He stated again that these were incomplete. He went on to make references from his submission sent to the officer in July. He drew attention to the fact that there had originally been four scots pine trees in the location. A significant branch from one of the trees had fallen in his garden smashing his fence and trampoline. He stated that if a child had been playing on the equipment, they would have been killed. One of the trees in the order had similar characteristics to that tree. Mr Wood had discussed the matter with the tree owner and had subsequently helped to arrange for two of the four trees to be removed. The residents could not afford to remove the remaining two trees at that time. These trees had remained a cause of stress and anxiety since then and all the neighbours felt they were unsafe and could cause injury or death of a child. This evidence had been omitted from the council report to dilute the case against the order. The report stated that there was no evidence that the trees were dangerous but Mr Wood stated that the evidence of the history of the other tree had been omitted and that the factual knowledge of the other tree could not be ignored. He reemphasised that T2 had the same characteristics as the tree that had shed a large branch.

Mr Wood commented that all the objectors and supporters had lived in the area for some time and that there had been no objections raised at the time the original two trees had been felled. He could not understand why there was now concern about the trees and why the order had been made. He questioned who had applied for the order and suggested that the issue may have arisen out of spite because of a dispute over fencing and boundaries.

With regard to reference in the report to a letter of opinion from a local tree surgeon being withdrawn, Mr Wood stated that the tree surgeon had not asked for his representation to be withdrawn.

With regard to the recommendations contained in the Tree Officer's report, Mr Wood made reference to other options available in addition to those referenced including his offer to plant replacement trees but this had not been offered as an option and the recommendations did not therefore present a balanced picture.

With regard to reference in the report to the visibility of the trees, Mr Wood questioned the accuracy of the claims regarding visibility. He stated the trees could only be seen from limited places between the gaps in houses and the trees sat in a natural dip in the landscape so visibility was limited and the report was skewed. He offered to circulate photographs taken of a panoramic view of other trees on the skyline but the Chairman stated that this was not necessary as the Panel had visited the site and seen all they needed to. With regard to the visual amenity of the trees, Mr Wood questioned their visual amenity and suggested that a proper evaluation, such as the matrix scoring method used in the Torbay test case, could have been referenced.

Having regard to the fact that his property sat at lower level than the base of the tree and some of the surrounding properties, Mr Wood stated the tree was even more daunting. He suffered from a lack of light in his garden and he had a video evidencing that at 16.38pm on 13 June his whole garden was in shade. He had been told he could not share this with the Panel. The Tree Officer had made reference in his report to overshadowing but had stated that this was not unreasonable as it was limited to late afternoon. Mr Woods commented that the officer did not have to live with this and that it could not be ignored.

The chairman thanked Mr Woods for his representation. He apologised for the typographical error in the report which referenced Wood Green and not the current order but this had been nothing more than human error. The timeframes for publishing council papers was prescribed at law and had been complied with. With regard to the publication of full representations in the papers, the council was mindful of the requirements of GDPR and, whilst the representations in the report were summarised, those making representations had been given the opportunity to attend the meeting to present their views or submit written statements to be read out at the meeting if unable to attend. The Tree Officer added that many of the paragraphs in the report were taken from guidance and were common to the determination of all tree preservation orders and appeared in all reports.

Mr Wood then answered questions from members and the Tree Officer. He was asked if he had sought the opinion of an arboriculturalist rather than relying on the historical evidence of events relating to another similar tree. He confirmed that the tree surgeon consulted at the time about the cost of removing the trees had expressed his opinion and that he still stood by this and had not withdrawn his view as had been suggested.

The Tree Officer commented that his conversation with the tree surgeon conflicted with the view expressed by Mr Woods. He also commented that the process for determining whether to confirm an order was not a criminal investigation but instead one which was governed by local authority process. With regard to timescales referred to, the Tree Officer commented that the interested parties had been advised of the date of the hearing some weeks

before the papers were published. With regard to the claim that there had been no inspection of the trees by an arboriculturalist, the Tree Officer stated that he had inspected the trees and was a fully qualified arboriculturalist and had been for 37 years. He asked Mr Wood if he had sought a factual report from a suitably qualified tree expert to which Mr Woods stated he understood the Council was required within the guidance to do this. The Tree Officer reiterated that, as a qualified expert, he had undertaken such an inspection but this was not independent and it would be for other parties to seek such an independent opinion if required. He added that if he had been of the view that the trees were unsound or dangerous he would have referenced this in the report. The trees did include a lot of dead wood but this could be resolved with management to remove dead wood. There was no sign of decay, bark necrosis or cavities on the trees. The contorted form of the trees was common for the species and did not warrant the trees being condemned as this would be disproportionate to the risk posed by the trees.

The Panel then heard from Ms Bean. She stated that they had not taken this matter lightly and were willing to plant anything else the Council required in place of the two trees. She was not against trees and had a beautiful copper beach tree in the front garden that they would not dream of removing. The Scots Pine trees were a real hindrance and had an impact on them and she was very worried about her children in the garden. She believed the issue of the Order had been raised because of a dispute with a neighbour and had been done out of nastiness.

In response to questions, Ms Bean and Mr Wood confirmed that they had lived in their house since 2006 and the tree branch had fallen approximately 4 years later – approximately 10 years ago.

The Panel then heard from Mrs Doughty who explained that her husband had made their submission but was unable to attend the hearing so she wanted to make representations on his behalf. She read out the full submission made by Mr Doughty in response to the serving of the Order. In summary the submission referred to the fact that the opinions expressed therein were his own based on his opinion of the trees and he had not been influenced by anyone else. The visual appearance of the trees from their garden was very poor, mainly old damaged wood with no foliage on one side and much of the tree missing. This was different to the view from Crostwick Lane. The sun was lost from their garden from 5pm onwards which was time when the family could enjoy the garden. They were concerned about limbs breaking off the trees and the trees falling. The trees were exposed and at risk of wind damage. They suffered with much debris from the trees in the garden and regularly had to clean the garden, guttering and down pipes. They did not believe the trees had any real value for wildlife – only pigeons whose droppings caused damage to parked cars. There was a belief that the Order had arisen because of a vendetta from residents on Crostwick Road. Having

witnessed the damage caused by the falling branch, they were concerned about the safety of their children playing in their garden and their neighbours' garden. The tree was not a suitable type to be in a garden and was more suited to a forest. The village was not short of trees and there was local access to woodlands – making the trees safe should be the priority.

In answer to questions, Mrs Doughty confirmed that she lost light in her garden in the early evening and members noted the orientation of the sun in relation to the property. Mrs Doughty was asked if her property was 2 dwellings along from the trees and if there was another pine tree much closer to her property which might be causing her loss of light. She responded that she was 2 dwellings away and that the nearest pine tree did not contribute to the loss of sun in her garden nor did the other trees (laurel and magnolia) in her garden which had a lot of foliage. They were well maintained and she did not lose light because of them.

*The meeting then adjourned for a short comfort break.*

The Panel then heard from the Conservation and Tree Officer. He reported that, following receipt of a request for the two trees to be protected by a Tree Preservation Order, he had followed the required procedure and assessed if the trees met the five criteria used by the Council. The Council had been using the five criteria as a basis of assessment for a number of years and did not use other systems adopted by some other councils such as TEMPO which was a numeric based assessment. In his opinion the two trees met the five criteria. They offered a visual amenity from a number of locations between properties including from public highways/footpaths and there was no requirement for them to be in full view. The majority of their canopy was visible. With regard to the form of the trees and concerns about the safety, the Tree Officer acknowledged that the trees contained a lot of dead wood which could easily be removed without the need for any application for tree works to be made. The removal of this dead wood would, in his opinion, remove the risk of branches falling but it could not be said for sure that a branch would never fail. Whilst this was always a possibility, it was disproportionate to remove any tree in a domestic garden in case a branch failed. The Tree Officer stated that, mindful of their biodiversity value and their positive contribution to climate change, the retention of the trees was important notwithstanding their visual amenity. The height of the trees had been calculated and, being situated roughly half way between neighbouring properties, the trees were not within falling distance of the dwellings and it was unlikely any falling branches would impact on the properties. The species of tree had a long life expectancy and, barring unforeseen circumstances, could live in excess of 300 years. The trees were capable of growing in a variety of habitats, from wetlands to sandy heathlands, and the morphology of their root systems adapted accordingly. He believed the roots of the trees in their current position had been able to exploit a rooting good depth.

With regard to the nuisance caused by the trees, the issue of falling dead wood could be addressed. With regard to overshadowing, this was localised and limited and was not unreasonable when compared to the benefits of the trees. The needle fall was a seasonal nuisance and was not sufficient justification to warrant removal of the trees. With regard to references to pigeon droppings causing nuisance/damage to parked cars, the location of the trees was such that it was not possible to park cars near the trees and if the trees were removed, the pigeons were likely to remain using nearby roof ridges instead of the trees.

With regard to the wildlife habitat, the tree offered a habitat to a wide range of insects and this species was a feature in many domestic locations as well as forests.

In summary, the Tree Officer stated there was no evidence the trees were dangerous or compromised and they had met the five criteria and he recommended that the order be confirmed.

In response to questions, the Tree Officer explained the method/equipment used to calculate the height of the trees and that they had been measured from within the garden in which they were located. He explained why tree T2 had likely grown in its current form with a “U” shaped branch union and this was not uncommon. Removal of the main “contorted” branch would be inadvisable. Trees with a “V” shaped branch union were more likely to fail as the structural integrity of the “V” was compromised due to bark to bark contact and was known as a tight compression fork whereas a more “U” shaped branch union as was the case with T2 did not have such a compression fork to form a weakness. He was satisfied that there was good strength in the branches of tree T2 barring any unforeseen future decay. With regard to the falling distances of the trees, the Tree Officer confirmed that he had estimated the trees to be 10m and 12m in height and the distance to the nearest properties was 14m and 17m. He also confirmed that, given the current soil conditions, the trees would have a good tap root system.

In answer to questions from Mr Wood, the Tree Officer confirmed that the five criteria used to determine the making of an order had been set out in the agenda papers for the meeting and circulated to all interested parties 5 days before the meeting. The options open to the members of the Panel to either confirm the order, not confirm, or confirm with modifications were in accordance with the legislation; the Panel did not have the option to consider other proposals including replacement trees. With regard to the suggestion that other councils offered this facility, the Tree Officer commented that it was possible once an order had been confirmed for a tree works application to be made which culminated in replacement trees being planted depending on the circumstances. He also made reference to the Appeal process in relation to

appeals lodged against an authority in respect of a tree works application and that these were determined by an independent planning inspector. Mr Wood stated that he was willing to comply with any requirement to plant replacement trees. The Tree Officer commented that the presence of the TPO on a tree would protect the tree, or any replacement tree, in the event of a change of ownership as it related to the property and not the owner/occupier. If an order was confirmed and a tree works application was submitted, this would be carefully considered and if the proposals were necessary and conformed to the required British standards, and would not be detrimental to the tree, they could be authorised. If works were not deemed suitable or acceptable and the application was refused, there was a right of appeal as mentioned before and an option for this to be considered by written representations.

Ms Bean asked about the possibility of removing the low branch from T2 and raised concerns about the safety and integrity of tree T2 with its “u” shaped branch and her worry about its potential to injure or kill a child playing in the garden; she was not concerned about the buildings being damaged as these could be replaced, a child could not. She referred to a nearby Scots Pine tree which had been cut back significantly and was still growing strong. The Tree Officer stated that the species was very resilient and despite poor management would respond and continue to grow. However, the deliberate opening of a large wound such as that which would occur if one of the main scaffold branches was removed would provide an entry point for decay and disease pathogens and possibly increase the risk of failure; it was not best practice. He confirmed that the removal of dead wood from the tree would not help solve concerns about the lower branch failing but it would limit other debris falling and causing damage. He suggested a climbing inspection of the tree might be helpful to assess it more fully and to look at options for shortening the longer lateral branches. He added that tree T2 would not automatically follow the pattern of the tree that had lost a branch referred to by residents; the particular circumstances of that tree were unknown and there could have been many variables at play. Based on known facts, the risk of T2 failing was very low; the risk from trees only registered very low on the Health and Safety Executive tolerability of risk scale and was about 1 in 10million. Cases of tree failure causing injury were tragic but had to be judged in context with the huge benefits offered by trees. If a defect was identified that increased the risk to the point that it was unacceptable, consideration could be given to undertaking remedial/removal works.

In answer to further questions from Mr Wood, the Tree Officer explained how he had calculated the height of the tree and its distance from the neighbouring property and that these measurements were not affected by the change in ground level at Mr Wood’s property. Mr Wood commented that he had a planning application in process to replace his conservatory with a garden room which would be bigger than the current building and therefore nearer to the tree. He only had a small garden area and this was used for children to



play. The proximity of the tree was overbearing on the garden. Ms Bean commented that the overhanging branch of T2 was leaning excessively and questioned if it could impact on the house. The Tree Officer stated he did not believe this branch was leaning excessively and was a natural growth pattern for the species. He added that he had not raised any concerns regarding Mr Wood's proposed extension to the property to provide a garden room when consulted as part of the planning application process as he was satisfied the building works would not impact on the root network of the tree. He added that should evidence be provided to indicate that the tree was compromised or diseased or had an increased risk of potential to fail, the situation could be reviewed.

The Panel then heard from Mr Vincent in support of the order. He stated that he understood the emotions associated with this situation and fully appreciated the concerns raised about the impact of the trees on the use of residents' homes. However these fears were all emotionally based and not based on evidence or fact. The trees had been assessed by an expert whose opinion was they were not diseased and were healthy. They were superb specimens which had not been well maintained and one had been badly cut. He referred to a situation in his own garden concerning 2 poplar trees which were considered by a neighbour to be dangerous and needed removing, however, following an inspection by an expert, they had been found to be sound. He questioned reference to a previous tree surgeon's concerned about the trees. He stated that there had in the past been a huge number of trees in this area and now very few were left. These trees had been deliberately retained as part of the development and had been in place for a considerable number of years with new occupants being aware of them when they purchased their properties. The trees were good examples of the species and offered important biodiversity value. With regard to references made to the small garden area available, Mr Vincent said the garden area had been reduced as a result of a number of extensions to the property and an additional planned extension, and this was a personal choice. The allotment referred to some representations had only been in place over recent years. He understood that the local member for the area was in support of the making of the order on the basis that mature trees not damaged should be preserved to protect the environment and not detract from it. Mr Vincent then went on to make reference to the Spixworth Neighbourhood Plan which, despite being delayed in its adoption because of the pandemic, had received the support of 88% of residents in the recent referendum. A key objective of the plan was to protect and enrich the local landscape, support biodiversity and retain the existing tree canopy where possible. The protection and retention of these trees supported the aims of the Plan. He stated that the criteria set out in the report to assess the making of the tree had all been met and that the order should be confirmed.

In response to a question from the Panel as to his motivation for supporting the making of the order, Mr Vincent responded that he lived in the local area and had a view of the trees. He was a lover of trees and, mindful of climate change, would seek to ensure they were protected where it was warranted; the removal of trees should only be undertaken when it was essential.

In response to a question about other supporters of the order, Mr Vincent stated he believed there was an additional neighbour who supported the making of the order but was unable to attend the hearing. He also understood the parish council were in support of the order.

Mr Wood and Ms Bean questioned the motives for the request for the trees to be protected stating that they had only spoken to one neighbour about their intentions regarding the trees. They believed the motives were vindictive and misguided and in response to a neighbour dispute. They loved living in their street and got on well with their neighbourhood. They had been willing to plant replacement trees and were puzzled as to why the Order had only now come about when the trees had been in place for many years and could have been protected in the past. Mr Vincent responded that the order had come about because there was a perception that the trees were now at risk – there had been no awareness that the trees were at risk in the past. He was then asked why other trees in the area had not been subject to an order and he commented that he believed these had been damaged and therefore had been removed. It was put to Mr Vincent that the trees the subject of the order were, in part, dead and damaged. Mr Vincent commented that they might contain dead wood and have a high canopy with little growth lower down but this was a typical feature of this species of tree.

In response to a question from the chairman, officers confirmed that Mr Vincent had requested the making of the order. There were a number of ways by which the council could be asked to consider making a tree preservation order (public/parish council/tree surgeon/neighbour/landowner) all of which would be considered in accordance with the processes in place.

The Chairman then invited all present to make their closing statements.

The Tree Officer stated that the trees met the Council's five criteria for the making of an Order. There was no evidence available at the current time that the trees were dangerous. There was a degree of overshadowing limited to late afternoon/evening which he considered was not unreasonable. In the event of things changing in the future and evidence being available that the trees were dangerous, the situation could be reviewed. The making of the order had followed the correct process. Changes had been made to the way in which representations were shared with the Panel in the light of General Data Protection Regulations and every effort had been made to present the important facts fairly. Some elements had been excluded due to the sensitivity of the information and or they were not relevant to the making of the order.

The information had not been summarised with any intention of bias but with a view to ensuring the Panel was aware of all the main relevant elements of concern about the trees. The Tree Officer stated his recollection of a conversation held on site with Mr Harman was that the safety or structure of the trees had not been discussed in any detail and he had not included details of the site meeting in the papers as he did not feel it was necessary on this occasion.

He invited the Panel to confirm the order.

In summing up Mr Wood stated that the timescales involved in the decision making process were unfair and that the objections raised had been filtered out. The process was heavily weighted towards the applicant's case and was not a two way process and was not transparent. There was information missing in the report and corroborated facts from Mr Bush and Mr Harmon not presented. The supporter had made reference to his love of trees but he did not have children playing in his garden with the knowledge of evidence of previous falling of branches. Information not contained in the report would not have been presented to the Panel unless residents were able to attend the hearing. He was taken back by the lack of care and attention to the process. There was no evidence the trees were safe and previous history should carry weight. He referred to the Torbay method of assessing the making of orders and referred to the issue of information not being available to the Panel until 5 days before the hearing. He asked that the TPO be dismissed as the trees were unsafe, they were unsightly, they had lots of dead areas, they had no canopy in parts, they were too large and had limited amenity value. The order had come about through spite and there had been no previous action to protect the tree until now. He was willing to plant replacements and he hoped the Panel appreciated the importance of this matter.

With the exception of the Democratic Services Officer, all present then left the meeting whilst the Panel deliberated its decision. They were subsequently readmitted to the meeting and Chairman announced the Panel's decision.

The Panel was satisfied that all interested parties had been given the opportunity to have their views represented at the Hearing and that these had been carefully considered. They were satisfied that the provisional TPO had been implemented and served in a just and appropriate manner.

Having regard to all the information before them, both written and oral, and having regard to the criteria used to make the Order, the Panel decided (unanimously) to confirm the Order. The reasons for the decision to confirm the Order were that the criteria for making the Order had all been met: the trees made a significant contribution to the local 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 contributed to the biodiversity of the immediate area.

It was, accordingly,

**RESOLVED** to confirm the Broadland District Tree Preservation Order 2021 (No 4) Land at 19 Sydney Road Spixworth.

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 concluded at 2.30 pm)

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Chairman