

## APPEALS PANEL

Minutes of a meeting of the Appeals Panel of Broadland District Council, held on Wednesday 16 March 2022 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:** Cllr Clancy – local member – representing the objectors Mr and Mrs Ross

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

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

No declarations were made.

### 14 APOLOGIES FOR ABSENCE

No apologies were received.

### 15 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2021 (No 10) LAND WEST OF BRECK FARM LANE, TAVERHAM

The Chairman welcomed everyone to the meeting. Prior to the meeting, the Panel had taken the opportunity to visit the site and view the tree and its location. Mrs Ross and Cllr Clancy were in attendance at the site meeting. Mrs Ross had not appreciated she could attend the formal meeting and was now unable to attend. Cllr Clancy agreed to attend the meeting to represent her.

The Chairman invited Cllr Clancy to make the case for the objectors. Cllr Clancy spoke on behalf of Mrs Ross stating that, essentially there had been a misunderstanding in relation to this case. Mrs Ross was aware the tree was not on land she owned and she did not want to remove it. He suggested the wording she had used was not reflective of her intentions as she did not want to “cut it down”. She did however wish to see the tree pruned to reduce its impact on her garden and to rebalance the tree which had only been pruned

on one side by Norfolk County Council highway authority. Cllr Clancy appealed to the Panel to be pragmatic and take a common sense approach to assisting Mrs Ross to achieve the pruning of the tree. Their objection to the order and the Appeal process would be negated, if an agreed amount of pruning could be done.

In response to questions from members, Cllr Clancy stated he was aware that the TPO did not prevent works being carried out and that a tree works order to carry out works to a tree the subject of a TPO could be made by any party not just the tree owner.

Cllr Clancy reiterated that he was looking for some assurance that agreement could be given to pruning works to the tree to reduce its impact and improve its shape, subject to following due process.

In response, the Conservation and Tree Officer reiterated that the presence of an order on a tree did not prevent work being carried out. The order provided for a process by which any proposed work could be assessed to determine if it was necessary and appropriate in accordance with British Standards. It was essential to know the extent of the work envisaged and why it was needed before consideration could be given to any work being undertaken. The correspondence relating to this tree indicated that the Highway Authority did not see the need for any work to this tree. Cllr Clancy queried if the Highway Authority had undertaken an assessment as he could find no evidence of this taking place.

In response to a question regarding the cost of tree works, the Conservation and Tree Officer confirmed that the party making the tree works application would be responsible for the costs of the works but it would be open to applicants to come to arrangements with other interested parties if they wished. He added that the County Council had robust tree management policies in place and that the expectations of Mrs Ross as to the work needed to the tree may not align with those of the County Council.

The Conservation and Tree Officer sought clarification as to whether the objection to the order was being withdrawn and Cllr Clancy stated there would be no objection to the order if there was a willingness to agree to some appropriate pruning works. If this could not be achieved however the objection to the order still stood.

In presenting his case, the Conservation and Tree Officer referred members to the background to the making of the Order as set out in the report. The Order had been made at the time as the tree was considered to be at risk. He understood that the serving of a TPO was often perceived by residents to be very formal but the Council was required to follow the necessary process for making an order. He emphasised that the TPO provided protection to the tree into the future and provided an opportunity to ensure any pruning works were necessary and appropriate. The objectors' main issues with the tree appeared to be loss of light, leaf debris and discolouration of the lawn. He suggested

that the condition of the lawn was more likely caused by moss in the grass and not the lack of water in the area around the tree. The seasonal nuisance of leaf debris was a common feature of all trees and not sufficient justification to not protect the tree. He made reference to another tree in the garden which had been subjected to pruning works which would not fit the framework of the British Standard. He stated he would be happy to discuss any remedial works with Mr and Mrs Ross in the future, but he invited the Panel to confirm the order.

In response to questions, the Conservation and Tree Officer confirmed that common law rights existed which allowed for the trimming of overhanging branches up to a property boundary if a tree was not protected but the same rights were not applicable to a protected tree. He also confirmed that, whilst the tree was positioned on highway land, the district council was the local planning authority with the power to make TPOs not the County Council. He confirmed that highway contractors were familiar with the process of seeking permission for works to protected trees and would usually involve a specialist tree officer in addition to the usual highway engineer.

The Conservation and Tree Officer confirmed that he had not received any information from the County Council about their comments on the tree not needing any remedial pruning. He also confirmed that, in carrying out any highway tree works, the engineers would consider the whole shape of the tree and, whilst their priority would be to carry out works necessary for the safety of the highway and clearance, they would have regard to the need to retain the balance and integrity of the tree and any work undertaken would reflect this. With regard to telephone wires, he added that work would be undertaken if it was necessary to provide clearance around service cables to avoid rubbing. This work could be done without the need for a tree works application as it was exempt. The difficulty was identifying the responsible person/body to undertake this work, often leaving residents to remedy problems themselves.

Cllr Clancy suggested that previous work to this tree had been undertaken without regard to the overall balance of the tree and had focussed on pruning branches on one side of the tree adjacent to the highway.

The Panel then heard representations from Cllr C Karimi Ghovanlou. Cllr Karimi-Ghovanlou was unable to attend the meeting, but she had circulated her written submission to members of the Panel and it was read out at the meeting as follows:

*I was first contacted by Mrs Caroline Ross on 19 September 2021, with regards to a large oak tree situated on Breck Farm Lane in Taverham, some of whose branches overhung her back garden. She was enquiring if I knew who owned the tree (see Appendix 1), as she had been unsuccessful in establishing this herself. Mrs Ross stated she was "fed up clearing leaves and*

acorns from her garden and was concerned that branches are over hanging a telephone line.” I replied to Mrs Ross, asking her to be patient, whilst I researched who is responsible for the upkeep of the tree, as I was slightly concerned regarding a comment she made in her original email asking if she was within her rights to cut the tree down. If any work was done to the tree, I wanted to make sure it was completed professionally, as the group of trees to which this one belongs are extremely mature Oak trees which have been there many decades, possibly over a hundred years old. I asked for a TPO to be placed on the tree to protect it. Broadland’s tree officer, Mark Symonds, advised that the oak was not the responsibility of the District Council, but advised that Mrs Ross does have the right to cut overhanging branches back to her boundary under the “Common Law Right”, but she has no right to remove the tree as she is not the owner of the land, and it would be considered criminal damage. This information I passed on to Mrs Ross on the 27 September 2021 and cc’d in Cllr. Stuart Clancy as the County Councillor for Taverham. Mrs Ross replied questioning why the tree had not been maintained over the years and was unhappy to employ an arboriculturist as it would cost ‘hundreds of pounds.’ The next day I received an email from Ryan Groom (Highway Boundaries Team on 28 September 2021) who informed me that the “tree is within highway, meaning it is for the highway authority to maintain” (see Appendix 2). I therefore sent in a request to Highways to survey the tree and to do any remedial works necessary for Mrs Ross: **Ref No. ENQ900193874** – Unfortunately, the reply from Highways was that they had assessed the job and they decided that no action needs to be taken at this time, which was disappointing, but in some part reassuring in that they presumed there was no danger of any of the branches falling and damaging the telephone line. In conclusion, the reason I asked for a TPO to be placed on the tree was that I was concerned for the protection of the tree, and any work that might have been done on it. This is one of three extremely mature oak trees on Breck Farm Lane. They have been growing there way before the houses were built and I was worried that any work the resident wanted to do on this particular tree, would maybe damage the tree in some way. I thought I was doing the right thing protecting this tree and helping the resident to get the tree trimmed professionally. We should be protecting our natural asserts as best we can, as they are getting fewer as housing growth expands.

Appendix 1 stated

“I live at Broom Close and back onto Breck Farm Lane, the dead end road leading down to the farm. The reason I am contacting you is because we have a very large oak tree growing behind our house which is not within our garden boundary but just behind the wall of our garden. The oak tree is becoming overgrown and is very tall and now overhangs the telephone line into our garden as well as next doors. There is no preservation order on the tree and when I’ve contacted the District Council and Norfolk County Council I am told that nobody owns it and nobody seems interested in maintaining it. Do you know if anyone should be maintaining this tree please, and if nobody is, are we within our rights to cut it down please? I’m fed up with clearing up

*leaves and acorns in the garden and not being able to use the corner of the garden in fear of being hurt by dropping branches and acorns. I love gardening, wildlife and nature but the tree is becoming a really nuisance”.*

*Appendix 2 stated:*

*“I’ve had a look this afternoon and it looks as though this tree is within highway, meaning it is for the highway authority to maintain, not the adjacent landowner. I have attached a plan showing the extent of the public highway at this location. It shows that the highway boundary feature is the garden fence/wall of the properties, and anything between this fence and the wall is within public highway.*

*As my colleague Luke mentioned, it’s important to note that while this area has highway rights over it, the land is not owned by Norfolk County Council. Unless land is owned by ourselves, we don’t have a record of who ownership lies with. Hopefully this helps, but if there’s anything else you need, please let us know.”*

In summing up, Cllr Clancy reiterated his desire to see a common sense resolution to this matter with all interested parties working together to achieve a sensible outcome.

The Panel noted that, should the order be confirmed and a tree works application be made, a dialogue would likely take place between interested parties to ensure that works were appropriate and necessary. An appeal process was also available against any refusal to grant works applied for.

In response to a question, the Democratic Services Officer confirmed that the Panel was required to consider whether or not to confirm the order, it was not within the gift of the Panel to propose any other course of action or conditions.

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 the Chairman announced the Panel’s decision.

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 Panel was satisfied that the provisional TPO had been implemented and served in a just and appropriate manner and was expedient in the interests of amenity to make provision for the preservation of the tree. The Panel was also satisfied that the Council’s criteria for making the Order had been met: the tree made a significant contribution to the local environment, there was no reason to believe it was dangerous, it had a life span in excess of 10 years, it did not present an unacceptable or impracticable nuisance and contributed to the biodiversity of the immediate area.

In arriving at this decision the Panel expressed its wish to see all interested parties working together in respect of any tree works application.

It was, accordingly,

**RESOLVED** to confirm the Broadland District Tree Preservation Order 2021 (No 10) Land West of Breck Farm lane, Taverham.

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 11.30am)

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Chairman