

APPEALS PANEL NO 3

WEDNESDAY 27 FEBRUARY 2019 AT 10.00 AM

PRESENT: Councillors Collier, Mallinson (J) and Mrs Warwick (as substitute for Councillor Mrs Ellis-Williams)

OFFICERS: Health and Wellbeing Project Manager
Green Spaces Officer
Assistant Solicitor
Legal Executive

ALSO

PRESENT: Complainants x 3

AP3.01/19 APPOINTMENT OF CHAIRMAN

It was moved and seconded that Councillor Collier be appointed as Chairman of Appeals Panel 3 for the 2018/19 municipal year.

RESOLVED – That Councillor Collier be appointed as Chairman of Appeals Panel 3 for the 2018/19 municipal year

Councillor Collier thereupon took the Chair.

AP3.02/19 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillor Mrs Ellis-Williams.

AP3.03/19 DECLARATIONS OF INTEREST

Councillor J Mallinson declared an interest in relation to item B.1 on the agenda. The interest related to the Complainant's being known to him.

AP3.04/19 PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

AP3.05/19 CORPORATE COMPLAINT – GREEN SPACES (Public and Press excluded by virtue of paragraph 1)

The Chairman introduced the Panel and invited the Complainants to summarise their complaint.

The complaint pertained to the siting of trees adjacent to the Complainant's property, which they considered to be inappropriate and had the potential to cause damage to the property. The Complainant's had first contacted the Council to raise the matter in 2016. In 2018, Officers had advised that the Council had not planted the trees and stated that they were spontaneous growth, which the Complainant's did not accept.

The Complainant's contended that insurance companies, for safety purposes, required trees to be sited five metres from a property, plus the height of the tree, referring to the pictures of the

tress reproduced on page 28 of the document pack, one of the Complainant's stated that the tress were less than one metre from the that marked the boundary of their property.

One of the Complainants read an extract from an article they had found on the internet which reported the falling on a tree on a domestic property during Storm Eric.

In response to questions from the Panel, the Complainants confirmed:

- They had moved into the property for 3 years and that the trees were present at that time;
- They understood from other residents in the area that the trees had been planted after the properties had been built;
- The trees were planted on an area of open space land which the Council had adopted after the completion of the development of which their property was part;
- There was no evidence of damage caused by the roots of the trees within the boundary;
- Leaf litter from the trees did collect in their garden during the autumn months, which was a separate issue and could not be avoided;
- The trees were situated to the west of their property.

The Chairman summed up the complaint as follows:

The trees planted were inappropriately close to their property and may cause damage to the property, and they ought to be removed.

The Complainants agreed the summary.

The Chairman sought clarification as to what outcome the Complainant wished to achieve.

The Complainants stated that they wanted all the trees planted adjacent to their property to be removed.

A Member asked whether it was feasible for Panel to carry out a site visit.

The Assistant Solicitor advised that should Members feel it necessary to undertake a site visit, it was permissible for them to do so.

The Chairman thanked the Complainant for their input and advised that they would be informed by letter within 20 working days of the Panel's decision. In the event that the Panel decided to undertake a site visit, the meeting would be adjourned and reconvened accordingly.

The Complainants would be advised whether a site visit was to take place.

The Complainants left the hearing at 10:32am.

The Health and Wellbeing Project Manager and the Green Spaces Officer were invited to attend the meeting. The Chairman outlined the complaint and invited the Officers to respond.

The Health and Wellbeing Project Manager advised that following receipt of the complaint Officers had undertaken a site visit after which work to prune back the trees so that the branches were not overhanging the Complainant's property had been commissioned and paid for by the Council.

In November 2018 the Health and Wellbeing Manager had visited the open space site as well as the Complainant's property, during which he had discussed the matter with one of the Complainant's who had highlighted the following issues relating to the trees: Leaf litter; the potential for the roots to cause damage to their property; the loss of light into their garden.

The Health and Wellbeing Project Manager had responded to those issues in his letter of 18 December 2018, he further noted that the site visit he had carried out occurred after storms which had hit the district in September 2018, the trees showed no damage as a result of the storm and were therefore considered “wind firm”.

The Council had a regular programme of assessing trees which comprised a general inspection, with a more in-depth survey being carried out every 5 years. Officers acknowledged that in the future the tree roots had the potential to cause damage Complainant’s property. However, there was no evidence to indicate that any such damage had occurred at the property and it was not the Council’s policy to remove healthy trees. Overall the Officers considered that the risk presented by the trees to the Complainant’s property was very low. Given the trees’ young age and health, Officers had not felt it necessary to fell the trees and that decision was in accordance with Council policy.

In response to questions from the Panel, the Officers confirmed:

- That the ownership of the land was not known but that the Council acted as owner and carried out maintenance rights;
- The form of the trees indicated that they were planted as part of formal scheme, but it was not known whether it had been stipulated as part of a Planning Consent;
- The trees were aged between 30 – 40 years old and were not yet fully grown;
- The extent of the spread of a tree’s roots was generally accorded to the size of the canopy;

The Panel requested that the Legal Executive investigate the matter of landownership and report her findings.

A Member commented that the trees having withstood a storm in September did not mean that they were in sufficient health to do so in the future. The Member further considered that it would have been better for the trees to have been planted farther from the Complainant’s property.

The Health and Wellbeing Project Manager agreed that the location of the trees was unlikely to be the same if they were planted today.

Turning to the issue of the copper nails which had been hammered into the trees, Members asked what, if any, remedial action the Council had taken.

The Green Spaces Officer advised that no action had been taken to date as attempting to remove the nails may cause damage to the trees, which were not currently displaying any signs of ill health as a result of them being present.

A Member stated that he was interested in the Complainant’s offer to pay for the trees to be felled with replacements being planted in a different area.

The Health and Wellbeing Project Manager advised that the work would likely be cost prohibitive and had the potential to cause damage to the Complainant’s fence. He further considered that whilst the offer appeared reasonable, he was concerned that accepting it may set a precedent. In the event that Members decided the removal of tree(s) were necessary, the Council would pay for the works which would be carried out by an approved contractor.

The Green Space Officer added it was probable, due to the bird nesting season, that any felling of tree(s) would take place in the autumn months.

The Panel agreed to undertake a site visit.

The Panel adjourned at 11:10am.

The Panel reconvened at 10:00am on 7 March 2019.

PRESENT: Councillors Collier, Mallinson (J) and Mrs Warwick (as substitute for Councillor Mrs Ellis-Williams)

OFFICERS: Green Spaces Officer

AP3.06/19 CORPORATE COMPLAINT – GREEN SPACES

The Panel undertook a site visit on the land adjacent to the Complainant's dwelling whereupon the trees were located.

In response to questions from Members, the Green Spaces Officer confirmed that species of trees at the site, and that the trees into which copper nails had been hammered were showing no signs of ill health.

The Panel adjourned at 10:07am.

The Panel reconvened at 10:30am on 7 March 2019.

PRESENT: Councillors Collier, Mallinson (J) and Mrs Warwick (as substitute for Councillor Mrs Ellis-Williams)

OFFICERS: Assistant Solicitor

AP3.07/19 CORPORATE COMPLAINT – GREEN SPACES

The Assistant Solicitor provided feedback on the investigation into the matter of land ownership. The Complainant's property was part of a housing development that had an associated legal agreement which stipulated that the developer was required to transfer ownership within three months of receipt of such a request from the Council. There was no documentation to suggest that the transfer had taken place, given the length of time which had passed, and the maintenance works undertaken by the Council during that time, it was reasonable for the Council to act as land owner.

The Assistant Solicitor summarised the representations the Panel had received thus far in its consideration of the complaint. She advised that were Members concerned that the trees posed a danger to the Complainant's house, an independent arborculturalist be commissioned to produce a report on the matter for the Panel to consider. The Panel was reminded that were it to decide on the removal of tree(s) the cost of those works would be carried out by the Council.

The Panel then considered all the evidence presented to them prior to and during the hearing and:

RESOLVED

That the Panel in part dismissed and in part upheld the complaint on the basis that:

1) That Officers had addressed the complaint in accordance with the Council's policy and practice. Nevertheless, the Panel considered that the trees planted closest to the Complainant's property constituted a potential danger in terms of: future root damage and, the likely scale of damage in the event of tree(s) falling during a storm.

2) That the trees closest to the Complainant's property (as indicated in the plan sent to the Complainants and Officers) be felled and replacement trees be planted, where appropriate in the vicinity.

[The meeting ended at 10:58am]