
BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 25 February 2009 at 10.00 am in
Norfolk Room, The Conference Suite, Elizabeth House, Dereham**

PRESENT

| | |
|----------------------------|-------------------|
| Mr P.S. Francis (Chairman) | Mr M. Fanthorpe |
| Mrs J. Ball | Mrs L.H. Monument |
| Mr R.W. Duffield | |

In Attendance

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| Tiffany Bentley | - Technical Officer - Licensing |
| Sheila Cresswell | - Member Services Officer |
| Josie Haven | - Licensing Support Officer |
| Michael Horn | - Head of Legal Services |
| Mr Philip Mason | - Solicitor |
| Patrick O'Brien | - Technical Officer - Licensing |
| Mark Symonds | - Tree Preservation Order Review Officer |

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1/09 MINUTES (AGENDA ITEM 1)

The Minutes of the meeting held on 3 December 2008 were confirmed as a correct record and signed by the Chairman.

2/09 APOLOGIES (AGENDA ITEM 2)

Apologies for absence were received from Mr I Sherwood.

3/09 DECLARATION OF INTEREST (AGENDA ITEM 4)

Mr Fanthorpe and Mrs Monument both declared a personal interest in Agenda items 7 and 8, as they were members of Dereham Town Council.

**4/09 OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER
2008 - NO. 89 TOFTWOOD, DEREHAM (AGENDA ITEM 7)**

The hearing was held in the absence of any objectors.

The Tree Preservation Order Review Officer (Mark Symonds) presented the case, explaining that the two Oak trees concerned (T1 and T2) had originally been covered by TPO 1990 No. 6. The ongoing TPO review had identified them as being of high amenity value and therefore TPO 2008 No. 89 had been served on Mr Diffey of 18 Hillfields and Mr Rollo of 20 Hillfields, Toftwood, Dereham in November 2008. However, it transpired that this order had been incorrectly served, so it had been re-made to take into account the correct owner, Dereham Town Council.

The trees were confirmed to be mature, with a considerable life expectancy and to be in a generally satisfactory condition. They formed

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part of the remnants of an old hedgerow and were considered to be a feature of the local landscape on the edge of developed land in Dereham.

Mr Symonds said that some remedial work had been done on T2 to lift the crown which should help to reduce concern about the impact of leaf fall and overshadowing of the immediate properties. Photographic evidence was provided showing the trees in full, as well as bare, leaf. He confirmed that he had received no evidence concerning damage to property or drainage systems. Both trees met the criteria of the Council's adopted TPO scoring system (details of which were attached to the Agenda documents) and had been found to fall within the suitability range.

He stated that he was fully qualified to assess the health of the trees with respect to any insurance queries. (He holds the LANTRA Awards Professional Tree Inspection qualification.) He then confirmed that there was minor evidence of the presence of a fungi in T1, adding that the tree posed no imminent threat and was unlikely to fail in a storm. There was good, sound, annual growth, which easily countered the amount of damaged wood at this stage.

There was some general discussion about whether or not root damage could, of itself, affect the issue of a TPO, and it was confirmed that if a tree's root system was proven to produce major structural damage or subsidence to a property, then a TPO was less likely to be awarded since there would be concern about future liability.

In the case, as with T1 and T2, where trees were in place before any housing development, then the property developers would have been aware of them and should have taken into account the species and future size of each tree at an early stage in the process. Owners of the land which trees stand on remain responsible for ensuring that the trees are safe and will not cause damage to any property.

Trees T1 and T2 were considered to be about 60 years' old.

In the absence of the two objectors, the Committee considered the objections as contained in the letters from Mr Rollo and Mr Diffey dated 10th and 19th November respectively, as well as a joint letter dated 16th December 2008 (copies of which were attached to the Agenda). It was accepted that trees T1 and T2 would produce some restriction in light to the two properties concerned. There was discussion about the safety of oaks in general. Mr Symonds stated that oaks were considered to be quite resilient to decay and unlikely to shed large branches since their wood tended to crumble away in smaller pieces, rather than get to the point of suddenly losing whole limbs. When asked if the lifting of the crown might have affected the tree's structure, bearing in mind the presence of the fungal infection, Mr Symonds stressed that this was only a minor infection, with small areas of decay. The smaller the area of actual damage, then the quicker new cells would cover the wound. He therefore confirmed that the tree surgery would not have increased the risk of damage to the tree, or its stability.

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In summary, it was concluded that:-

- there was no immediate danger from the trees, which were considered to be sound; and
- there was no evidence that they were causing subsidence.

Accordingly, it was

RESOLVED that

- 1) Tree Preservation Order 2008 No. 89 be confirmed in respect of the two oak trees; and
- 2) Dereham Town Council be held liable if the continued maintenance of the two oak trees (as requested) was not carried out.

5/09 OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 2008 - NO. 99 CARBROOKE/GRISTON (AGENDA ITEM 8)

The hearing was held in the absence of the objectors.

The Tree Preservation Order Review Officer (Mark Symonds) presented the case, explaining that this was part of the ongoing TPO Review. The trees concerned had been covered by TPO 1987 No. 2 when the land had been sold by the Ministry of Defence to the developers, Wallsend Estates. At that point, all trees on site had been covered by the TPO. However, the recent re-survey of this area had identified specific trees or groups of trees - perceived as the best ones for the current site - to be of significant amenity value. These were the ones now covered by TPO 2008 No. 99.

TPO 2008 No. 99 had been served upon 15 owners. Mr and Mrs Blatcher of Hendon House had objected to the making of this Order, specifically with respect to two individual trees in their front garden. T10 was a Silver Birch and T11 was a Whitebeam.

Photographic and map evidence was shown to the Committee. Mr Symonds confirmed that the Silver Birch (T10) was a particularly dominant tree at the entrance to the estate. It was reasonably close to the property but the main stem had had a branch raised at an early stage of growth. The crown was well above the footpath and house entrance.

The Whitebeam (T11) was nearer the roadside. It had more naturally spreading growth and a multi-stemmed crown. It was considered to be an attractive tree, valuable to birdlife as it produced berries.

Referring to the letter of objection received from Mr and Mrs Blatcher (dated 22 December 2008), Mr Symonds pointed out that it seemed that they were unaware of the original TPO which had indeed included trees T10 and T11. The existence of this TPO should have been apparent during the Conveyancing process to the current owners.

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Both trees had been assessed using the Council's adopted TPO scoring system (details of which were attached to the Agenda documents) and had been found to fall within the suitability range.

No evidence of actual damage had been submitted. Also, the Silver Birch was noted for its dappled, rather than heavy, shade. However, he felt that reasonable requests for help with remedial tree surgery should be considered favourably by the Council in the future, if it were felt that the trees were endangering buildings, the footpath, or the road itself.

There was some general discussion about the wider area covered by TPO 2008 No. 99. Mr Symonds explained that while the original TPO had covered all trees, the recent review had considered it more practical to break them down into groups or individuals across the area. This was partly for ease of reference and partly to allow for future thinning etc. Both the Silver Birch and Whitebeam were native species which were widely considered to be suitable for urban locations as they have relatively minimal negative impact in terms of maintenance/deep shade or root invasion.

The Silver Birch was estimated to be approximately 20-25 years old, with an estimated lifespan of 60 years. It was acknowledged that its close proximity to the side of the property would mean that some form of tree surgery would be needed in the future.

As to the Whitebeam (T11), the photograph clearly showed that there was some encroachment over the road which would possibly cause problems with high-sided vehicles in the future. However, it was felt that this could be resolved with selective pruning which would not have any impact on the lifespan of the tree. This should be the responsibility of the owners of the property, unless rope/harness work was going to be involved (which usually applied to larger trees). Mr Symonds confirmed that he would be happy to speak to the owners to advise them about this work if they wanted.

**Mark
Symonds**

RESOLVED that Tree Preservation Order No. 99 with respect to T10 and T11 be confirmed.

For the record, Mr Fanthorpe wanted it noted that he agreed with the TPO concerning T10, but not that for T11.

6/09 EXCLUSION OF THE PRESS AND PUBLIC (AGENDA ITEM 9)

RESOLVED that under Section 100(a)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they are likely to involve the disclosure of exempt information as defined in paragraph 7 of Part 1 of Schedule 12A to the Act.

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7/09 APPLICATION FOR THE GRANT OF REMAINDER OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE (AGENDA ITEM 10)

The application was considered in the absence of the applicant. Mr Phil Mason (solicitor) was also in attendance, representing the Council.

Members were asked to consider an application for the grant of the remainder of a Hackney Carriage/Private Hire driver's licence.

Following the presentation of the report by the Licensing Technician, the Committee heard the appeal in accordance with the Council's agreed procedure.

The application was made as a result of a decision made at an earlier hearing held on 17th September 2008. This had resolved that the applicant be granted his licence for a six month probationary period, at the end of which he would need to re-apply. If he chose to do so, his employer (who had attended the original meeting) was formally requested to either attend the new hearing personally, or to send a written statement in support of the application.

The Chairmen drew Members' attention to a letter from the applicant's employer, dated 4th February 2009, in which he confirmed that the applicant was no longer employed by the company and that, as the former employer, he was no longer prepared to give a personal reference in support of any extension to the Hackney Carriage/Private Hire driver's licence.

Notwithstanding the fact that the applicant was currently on police bail, the Chairman confirmed that the hearing would take place strictly based on the case and evidence as they stood on the day of the hearing.

Full consideration to this case was given by the Committee. However as the applicant was no longer employed by the company, the Committee

RESOLVED, on the evidence available on that day, to suspend the Hackney Carriage/Private Hire Drivers Licence because there was reasonable cause to do so in accordance with Section 61(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976.

8/09 APPLICATION TO SUSPEND/REVOKE A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE (AGENDA ITEM 11)

The application was considered in the presence of the appellant and his employer. Mr Phil Mason (solicitor) was also in attendance, representing the Council.

Members were asked to consider an application for the Suspension/Revocation of a Hackney Carriage/Private Hire driver's licence.

Following the presentation of the report by the Licensing Technician, the

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Committee heard the appeal in accordance with the Council's agreed procedure.

The hearing was in respect of Condition 10 on page 12 of the Licence Conditions booklet, namely:

"The driver shall notify Breckland Council in writing of any conviction, caution or driving offence imposed on him/her during the period of the licence within 7 days of the conviction."

The appellant had not complied with this condition on two separate occasions, thereby breaching his licence conditions.

The appellant said that with regard to the first offence, he had posted a letter to the Council informing them of this and had assumed that it had been received. With regard to the more recent (speeding) offence, he confirmed that he had been doing 46 mph in a 30 mph zone, but that this was not while he was on duty. He admitted that he had failed to produce the required paperwork on this occasion.

The employer spoke in the appellant's defence, commenting that he felt that revocation would be a harsh decision in this instance, not least given the current economic climate and the fact that the appellant was a young father. The employer spoke highly of the appellant as a good worker, and added that there had been no complaints from any customers since he had commenced work the previous year. He was considered to be an asset to the company.

The employer then explained that, with reference to the first incident, the driving conviction was possibly more a case of bad luck rather than inappropriate driving. The company had a delivery contract with Boots and consequently drivers needed to park outside 4-5 times per day in order to load/unload. On this occasion, the appellant had been unable to park properly in the loading bay immediately opposite the entrance. Given the load involved, and the need to be as physically close to the doorway as possible, he had therefore ended up parking with two wheels within the confines of a zebra crossing.

The employer confirmed that he had witnessed the necessary paperwork about this conviction being completed by the appellant, so it was unfortunate that it had apparently failed to reach the Council.

The Committee then retired to discuss the case and then, having heard all the evidence before them,

RESOLVED that the appellant be required to take a Driving Standards Agency test as a condition of continuing to hold a Hackney Carriage/Private Hire driver's licence under Section 51, sub-section 2 of the Local Government (Miscellaneous Provisions) Act 1976. The test was to be taken within three months of this hearing, at the appellant's expense, and the certificate was to be forwarded to Breckland District Council.

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Given the nature of the goods being handled at Boots, the Committee registered concern about the current ad hoc delivery arrangements, not least from a safety perspective. They therefore recommended that these were reconsidered and tightened-up by the taxi company.

9/09 APPLICATION TO SUSPEND/REVOKE A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE (AGENDA ITEM 12)

The application was considered in the absence of the appellant. Mr Phil Mason (solicitor) was also in attendance, representing the Council.

Members were asked to consider an application for the suspension/revocation of a Hackney Carriage/Private Hire driver's licence.

Following the presentation of the report by the Licensing Technical Officer, the Committee heard the appeal in accordance with the Council's agreed procedure.

The application was made as a result of the failure of the driver to produce the necessary medical certificate which had been requested at the time of his renewal application (and also by verbal reminder). In spite of several attempts having been made to contact the driver, no response had been received. A letter had therefore been sent on 6 January 2009 advising that, in the event of no medical certificate being produced, the matter would be brought before this Committee with the charge of 'non-compliance with licence conditions'.

The Licensing Technical Officer confirmed that since the Agenda for the meeting had issued, the driver had contacted the Council to say that he now resided in Devon. This in itself was a breach of the basic terms and conditions of the licence as he had failed to notify the Council of his move. He was advised that he should either return his badge or else formally confirm in writing that he no longer wished to drive licensed vehicles.

No such confirmation had been received, so the Licensing Technical Officer asked the Committee to change the recommendation under consideration from 'Suspension' to 'Revocation', since this was more appropriate under the new circumstances.

There followed some general discussion about medical certificates and how the timing of their receipt fitted with the renewal paperwork for such licenses. Also, there was some concern as to why this particular case had apparently taken so long to resolve: if the driver had remained a local resident, then presumably he could have continued taking customers under his current licence without having produced full paperwork to the Council.

In response, the Licensing Technical Officer accepted that there had been an error here: the computer system had not worked effectively to draw officers' attention to anomalies. However she assured the Committee that steps had been taken to ensure this would not happen again. Members remained concerned at the delay and felt that

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applications for renewal of a licence should not be granted without full documentation having been produced. However, the Licensing Technical Officer pointed out that, practically speaking, this was not always possible. Criminal Record checks, for example, could take up to two months. Given that any applications for renewal had legally to be lodged before the expiry date of the licence, there were inevitably occasions when timings did not all coincide.

The Licensing Technical Officer explained that the Council's policy was that from the age of 65, medical certificates had to be sent in on the anniversary of the driver's birth, irrespective of when their licence was up for renewal. Thus if a 64 year old applied for a three year badge he would need to produce a medical certificate at the time of application. However, from his 65th birthday onwards he would be required to produce an annual medical certificate for the remainder of the duration of his licence. It was acknowledged that there could be drivers who did not meet the full criteria at any stage during their term of licence. However, the Committee were reminded that it was a condition of the licence that any change of medical (or other – e.g. criminal record, change of address) circumstances should be immediately notified to the Council.

RESOLVED that on hearing the evidence, and hearing that the appellant no longer resided or was capable of working in the district of Breckland, the Hackney Carriage/Private Hire driver's licence be revoked with immediate effect in accordance with Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting closed at 11.45 am

CHAIRMAN