



Grounds and Environmental Services Committee

Date: 10th June 2019

Title: Tree Management Policy Review

Purpose of the Report: To review the previously endorsed Tree Management Policy to ensure it is fit for propose.

Contact Officer: Ian Haynes, Head of Grounds and Environmental Services

Corporate Objective/s	None	
Implications:		
Financial	√	Within existing budget
Human Resources		
Operational/Service delivery		
Procedural/Legal	√	Updated due to High Court and Court of Appeal judgements.
Risk/Health and Safety		

1. RECOMMENDATIONS

Should members be minded, the proposals are:

- 1.1 To note the report.
- 1.2 To Consider and Recommend to Policy and Finance Committee to endorse the revised Tree Management Policy for 2019 - 2022.

2. BACKGROUND

- 2.1 At its meeting held on 4th June 2018, the Grounds and Environmental Services Committee approved and adopted the current Tree Management Policy. The policy identified the Town Council's approach to the management of trees on land owned by Leighton-Linslade Town Council and intended to act as a point of reference for the public, Councillors and Council employees to ensure a

clear, consistent and structured approach to the management of our trees.

- 2.2 Due to a recent High Court and Court of Appeal judgements the Council's current tree management service procedures has been reviewed and it is believed that it requires an amendment.

3. CONSIDERATIONS

- 3.1 The parish trees are of immense environmental and aesthetical value to the Town and its residents. They brighten up our parks and open spaces, provide a habitat for wildlife, act as the Town lungs and even help to reduce the rising temperatures caused by climate change. Leighton-Linslade Town Council recognises these benefits, seeking to preserve healthy trees and encourage the planting of new trees where possible.
- 3.2 Whilst the majority live and grow without incident, a number of trees located in densely populated areas pose challenges and risks that need to be managed. This policy outlines how we intend to increase the number of trees across the parish, how we intend to manage the tree stock effectively, and how we reduce the risk that certain trees pose to the public.
- 3.3 The Town Council is only responsible for trees positioned on land owned by the Town Council.
- 3.4 This tree policy does not cover trees in private ownership which are outside Leighton-Linslade Town Council's control. Trees in private ownership are the responsibility of the private landowner. The policy also does not cover Tree Preservation Orders, Conservation Areas or high hedge legislation which is administered by the Central Bedfordshire Council's Planning Department.
- 3.5 The overall aim of the tree policy is to ensure that our tree stock is retained, enhanced and increased in the most proactive manner whilst ensuring the health, safety and well-being of the public and property.

4. CAVANAGH V WITLEY PARISH COUNCIL & D KEVIN SHEPARD (2017)

- 4.1 On 3 January 2012, Mr Cavanagh (The Claimant) was driving public bus along the A283 Petworth Road in Witley, Surrey, when a mature lime tree fell across the road hitting the vehicle and causing him severe injuries. The responsibility for the tree rested with Witley Parish Council (The First Defendant) who operated a three-yearly inspection regime leading up to the incident. The Second Defendant was a tree and forestry contractor, Mr Shepherd, who inspected the tree about three years before the failure.
- 4.2 The experts agreed that the tree failed due to severe and extensive decay in the root system, with high winds being a contributory factor. At the time of failure, the tree had a significant fungal bracket of the genus Ganoderma at its base, but on the side furthest from the road.

- 4.3 The case was heard in the High Court in December 2016 and the judgment handed down in February 2017 (Case No: HQ14 P05328) in favour of the Claimant. The judge found that a three-year inspection regime was inadequate and that a reasonable inspection frequency should have been every two years.
- 4.4 Witley Parish Council appealed. The appeal decision. Rejecting the appeal, the Court of Appeal took the opportunity to reiterate the relevant legal principles as to a landowner's duty in respect of trees. By reference to the judgment in *Stagecoach South Western Trains v Hind* [2014] they are (in summary):
- to act as a reasonable and prudent landowner;
 - to act where there is a danger apparent to him/her (although that should not amount to an unreasonable burden or force the landowner to act as the insurer of nature);
 - to carry out inspections on a regular basis;
 - in certain circumstances (including where there is some form of trigger) to arrange for fuller inspections by an arboriculturist;
 - the resources available to the householder may have relevance as to the way that the duty is discharged.
- 4.5 Given that Witley Parish Council was refused permission to appeal on the basis that the judge had failed to apply these principles correctly, the appeal was directed only with the judge's findings of fact and evaluation of the evidence. The focus of the appeal was accordingly the way in which the judge had approached the arboricultural expert evidence; that was rejected on appeal, LJ Flaux concluding that the findings that had been made were those the judge was entitled to make in considering the evidence before him. Further, criticism of the extent to which the judge relied on the FC Guide (as opposed to HSE SIM guidance) was rejected. Indeed, the appeal court added to the reliance on that as evidence, making particular reference to the FC Guide so far as it relates the zoning of trees in certain locations as needing more frequent inspections including the strip along the public road. Similarly, argument that the leaning of the tree was not a relevant factor was dismissed; this was seen as a matter where the judge was able to exercise his own common sense.

5. RECOMMENDATIONS

- 5.1 Members are minded to Consider and Recommend to Policy and Finance Committee to re-endorse the Tree Management Policy with the new two year rolling inspection programme. In doing so it is believed that the Town Council will continue to have a clear, professional and transparent method for managing the Town Council's tree stock.

6. CONCLUSIONS

- 6.1 It is clear that the tree management policy is still fit for purpose. However, the Town Council has the flexibility and in-house expertise to consider and change our tree inspection regime.

- 6.2 At the time of the Cavanagh incident (2012), tree risk management was in a state of uncertainty because of confused and dated technical tree guidance. Arboricultural thinking and experience is rapidly progressing, and it is likely that future cases will be viewed in the light of more modern and better-informed technical publications. As our understanding of those technical issues improves, e.g. the rigour of an inspection regime can be improved by more detailed inspections as an alternative to an increased inspection frequency, then some of the issues raised in the Cavanagh judgments may be extinguished by future cases.
- 6.3 However, in practical terms, until those cases are heard in the context of a more modern interpretation of appropriate tree risk management, duty holders would be wise to make provision to check trees like the Witley lime at least every two years.