

Present: Councillor Gary Hewson, Councillor Bill Bilton, Councillor Jackie Kirk, Councillor Helena Mair, Councillor Alan Briggs, Councillor Bob Bushell and Councillor Ronald Hills

Apologies for Absence: Councillor Jane Loffhagen and Councillor Edmund Strengiel

26. Minutes of the previous meeting held on 24 July 2019

RESOLVED that the minutes of the meeting held on 24 July 2019 be approved.

27. Declarations of Interest

No declarations were made.

28. Call In of Decision - Shearwater Trees

The Chair reported that a request for Call In of an Executive Portfolio Holder decision made on 23 October 2019 had been received.

The decision followed the consideration of options to determine an appropriate course of action in response to complaints from a resident relating to trees damaging his garden wall between their property on Shearwater Close and Hartsholme Country Park. The decision taken by Councillor Bob Bushell, Portfolio Holder for Remarkable Place, was to retain the trees and repair the wall, reshaping it marginally into the neighbour's garden so as to safeguard the trees and provide a reasonable solution.

The Chair invited Councillor Ron Hills as lead signatory to the Call In to address the Committee and explain the reasons for the Call In. Referring to the Call In request form, as appended to the report, Councillor Hills made the following points in explaining his reasons for Call In:

- this matter represented a long standing complaint for nearly twenty years between the resident and the Council;
- the health of the trees had never been in question, however, the damage caused to the resident's wall was the grounds for asking for work to be done;
- a very large pine tree was in physical contact with the resident's wall and had been for a considerable period. It was this tree which appeared to be the cause of the majority of damage to the wall, causing a number of cracks and bricks to fall off. This tree was also leaning inwards towards the property and it was feasible that the wall itself was holding up or supporting the tree from falling. A second large tree was also in contact with the wall, albeit not as significantly as the above tree and a third tree was located in a junction between the resident's wall and his neighbour's wall which was now touching both walls;
- originally complaints were made by the resident and his neighbour and as a result the neighbour's wall had been rebuilt away from the trees;
- previous work had been carried out by the Council to the wall because of its accepted responsibility, which included:

- cosmetic repairs in 2000;
- insertion of heli-fix bars to bond the walls, repointing and installation of lintels to protect roots in 2011;
- removal of pillars due to further fracturing and risk of falling, together with temporary replacement with wooden panels pending a permanent solution agreeable to both parties.
- throughout the above works the trees and wall had been and continued to be monitored regularly by the Council's Arboriculture Officer and other structural specialists;
- several meetings had taken place between Council officers and the resident which culminated in a technical specification report for brickwork wall remedial works at Hartsholme Country Park and properties on Shearwater Close being produced. A copy of this document was appended to the report. The work identified in the technical specification report included the felling of three trees currently in contact with the resident's wall and the rebuilding of the wall as good;
- the wall had been built on the foundations of the original park wall and when the wall was constructed the trees were not as mature and located further away;
- the solution of leaving the trees in place and rebuilding the wall within the resident's land was, in Councillor Hills' opinion, not agreeable to the resident.

The Chair invited Councillor Alan Briggs as signatory to the Call In to address the Committee and explain the reasons for the Call In. Councillor Briggs, having visited the site on a number of occasions, was of the opinion that if the wall was moved the closest of the large pine trees would fall down. High winds could result in the tree falling and, given its significant size, in such circumstances the tree would fall directly onto the resident's conservatory. Councillor Briggs had been informed via the resident that their insurance company would not accept any liability should this occur, which could therefore lead to a claim against the Council for any damage caused.

The Chair clarified the reasons for Call In, as set out on the Call In request form and noted the suggested outcome as follows:

"That the decision be reversed with all trees in contact with the resident's wall removed and the wall sufficiently repaired."

The Chair invited members of the Committee to ask any questions relating to the reasons for the Call In.

Question

Councillor Jackie Kirk asked how long Councillor Hills had been a Hartsholme Ward Councillor for.

Response

Councillor Hills confirmed that he had been an elected member in Hartsholme Ward for 21 years, adding that any elected member in and around that area would be aware of this particular case.

Question

Further to Councillor Hills' observation and view that the first tree he referred to was already in the process of falling, Councillor Helena Mair asked whether the other two trees he had referred to were also of the same condition.

Response

Councillor Hills was of the opinion that the second tree was leaning towards the public footpath and the other tree was upright and less likely to fall. He added that the first tree referred to was a very large specimen which was causing 99% of the damage to the wall, with cracks in mortar and fractured bricks now evident.

Question

Councillor Gary Hewson asked whether the resident was content with the suggestions outlined in the technical report.

Response

Councillor Hills reported that he had not been present at the meeting between Council officers and the resident when the content of the report was discussed.

The Assistant Director of Communities and Street Scene added some clarity and confirmed that discussions had been ongoing with the resident over a many years. Officers had developed a range of options for the Council to consider in order to resolve this matter and one of those options required an engineering solution. Due to the technical nature of the engineering solution, a technical specification report had been commissioned. This represented one of the options that had been developed in order to properly inform members and the Portfolio Holder ahead of the decision to be taken.

The Chair invited Councillor Bob Bushell, Portfolio Holder for Remarkable Place, to respond to the Call In request.

Councillor Bushell made the following points in response to the Call In:

- as per the Call In request form, the grounds for the Call In stated that the decision had not taken historical facts about the resident's complaints and previous works into account. This was untrue as he had been fully appraised upon his appointment as Portfolio Holder in respect of the history of this particular case prior to reaching a decision on the matter;
- the resident appeared to be adamant about the removal of the trees. These were healthy, mature specimens which pre-dated the building of the wall so there were no grounds to remove the trees on the basis of being unsafe with there being no evidence to substantiate risk of the trees falling based upon their current condition. The trees twisted and appeared to lean as part of their natural development and shape in seeking sunshine. Lots of other examples of these trees were evident throughout the park;
- the Council had regularly monitored the damage caused to the wall and the health of the trees, recognising the maturity and importance of the trees in question. The Council had always mitigated any damage caused to the wall without prejudice;
- the decision represented an alternative engineering solution to repair the wall and protect the trees, which would require flexibility from both the Council and the resident;
- the wall in question had been built in 1990 and would have been extremely close to the trees at that time without any due consideration being given to their potential future growth;
- the first complaint received by the Council from the resident regarding the trees was in 1996, six years after the wall had been built;
- in February 2000, 5,000 people signed a petition in support of the trees and the Council at that time committed to protect them as far as legally possible;

- in 2011 an engineering solution was offered and implemented to the resident's neighbour's wall, moving the wall further away from the trees to prevent any future damage being caused and allow for future growth of the trees. A different arrangement was agreed with the resident in respect of his wall which included the insertion of heli-fix bars to bond the walls, repointing and the installation of lintels to protect the roots of the trees;
- the technical specification report, as appended to the report, had been written solely on the premise that the Council was planning to remove the trees, which was an incorrect assumption to have made and represented one of a number of options available;
- the felling of these trees would require the submission of a formal planning application and very little weight would normally be given from a planning perspective to such an application on the basis of the trees damaging a boundary wall;
- in seeking further advice this matter was taken to the Council's informal Strategic Review Group consisting of the Executive and members of the Council's Corporate Management Team. In explaining the full history and circumstances of the case, the Strategic Review Group unanimously agreed that the solution, as reflected in the decision, offered a reasonable outcome requiring flexibility from both the Council and resident;
- an engineering solution had been successfully implemented on the mature tree in the Cornhill in Lincoln and was a good example of how such solutions could offer protection to mature trees;
- the felling of such healthy and mature trees in a Green Flag country park could not be supported alongside the Council's recent declaration of a climate and environmental emergency, the potential upcoming commitment to the Woodland Charter and a commitment to increase the number of trees in the city as part of Vision 2025, especially since this was the request of only one person.

The Chair invited members of the Committee to ask any questions of the Portfolio Holder relating to the decision.

Question

Councillor Helena Mair asked whether the Council would be responsible for any injury to a member of the public as a result of damage caused to the wall by trees.

Response

The Council had a responsibility to anyone using the park. Officers regularly monitored the wall to ensure that it was not dangerous and would take remedial action where necessary.

In response to the comment made earlier in the meeting regarding the potential of one of the trees falling on the resident's conservatory, Councillor Bushell was of the opinion that this was an exaggerated risk but added that as a living organism any tree in the park or elsewhere in the city could fall down for any number of reasons, so an element of risk had to be accepted if the Council wished to keep trees in the city.

Question

Councillor Helena Mair asked whether the existing wall had been built on the foundations of the original wall of the park.

Response

It was understood that the existing wall had been built on the foundations of the original wall of the park and, as a result, there were questions as to whether it had been built on inferior footings.

Question

Councillor Gary Hewson sought clarity as to how the Council could enforce this decision in terms of reshaping the wall marginally into the resident's garden.

Response

The Council would not be able to enforce this decision, it would require flexibility from the resident. He was concerned about the condition of the wall and this decision represented an attempt by the Council to be flexible in reaching a satisfactory outcome both in terms of the future condition of the wall whilst maintaining the health of the trees. If the resident did not agree with the decision it would not be able to be implemented.

Question

Councillor Gary Hewson asked whether the resident had been informed of the decision and, if so, whether he had provided any response.

Response

The resident had been informed of the decision and, to date, no response had been received.

The Chair asked the Committee to consider whether the request for Call In should be approved or refused.

It was unanimously RESOLVED that no further action be taken and the request for Call In be refused for the following reasons:

- that having regard to the nature of the decision, and the circumstances in which it was made, the decision had been taken on the basis of appropriate or sufficient consultation;
- that the decision maker had given adequate reasons for the decision;
- that the decision maker had taken relevant considerations into account and had come to a decision which a reasonable decision maker, taking everything properly into account, would have come to;
- that the decision was not contrary to the policy framework;
- that the decision was not contrary to, and was wholly in accordance with, the budget;
- that the decision could be justified and was not open to challenge on the basis of the evidence considered;
- that a viable alternative was considered.