

**MINUTES OF THE EXTRAORDINARY GROWTH, ENVIRONMENT AND RESOURCES
SCRUTINY COMMITTEE MEETING
HELD AT 7PM, ON
TUESDAY 15 FEBRUARY 2022
ENGINE SHED, SAND MARTIN HOUSE**

Committee Members Present: Councillors M Farooq (Chair), C. Burbage (Vice Chair), R Brown, G. Casey, N. Day, Judy Fox,, A Joseph, L. Sharp, H Skibsted, N Moyo, C. Wiggin
Co-opted Member: Parish Councillor Michael Samways

Officers Present in Adrian Chapman, Executive Director Place and Economy
Fiona McMillan, Director, Law and Governance
Richard Kay, Head of Sustainable Growth Strategy
Darren Sharpe, Natural & Historic Environment Manager
Sue Addison, Insurance Manager
Paul Harris, Chartered Engineer who attended via Teams

Also Present: Cllr N Sandford, Group Leader for Liberal Democrats
Cllr John Fox, Group Leader for Peterborough First
Speakers:
Mr Hopkins
Mr Richard Elmer
Mr Jonathan Harpham
Lady Collette Francis
Mr and Mrs Benton

42. APOLOGIES FOR ABSENCE

No apologies for absence were received.

43. DECLARATIONS OF INTEREST AND WHIPPING DECLARATIONS

There were no declarations of interest or whipping declarations.

44. EXCLUSION OF THE PRESS AND PUBLIC

The Chair advised the Committee on the grounds as to why Appendix A of the report would need to be treated as an exempt item and that the committee would need to go into Exempt Session if the information within Appendix A was to be discussed. The Chair asked Members of the Committee if they were in agreement to this. Some Members felt that Public Interest outweighed the request to exclude the Press and Public whilst others agreed to the exclusion of the press and public.

The Director, Law and Governance advised Members that confirmation had come from the Information Commissioner's Office (ICO) earlier that day which confirmed that it was right to withhold the item and go into exempt session when discussing the item.

It was therefore agreed that there was a need to retain the information as exempt and if discussed the press and public would be excluded from the meeting.

45. 'SAVE BRETTON OAK TREE' PETITION – ACTION TO BE TAKEN

The Chair welcomed the following members of the public who had registered to speak: Mr Richard Elmer, Mr Hopkins, Mr Jonathan Harpham, Lady Collette Francis, and Mr and Mrs Benton.

Members of the Public in support of the petition spoke first.

Mr Elmer spoke on behalf of Mr Hopkins in support of the petition. Key points raised were as follows:

- Council Officers had concluded that it was subsidence that was the issue however, heave had been identified in an independent report as the cause of the problem instead of subsidence and that removal of the tree could make the problem worse.
- Five trees had been lost over the last decade in Blind Lane. Other reports had indicated that it was heave that had caused the issues and not subsidence.
- The council wanted to remove the tree to negate their liability, however in the case of heave being the issue, the council would not be liable.
- The tree had been seen as an asset in the past. The councils latest report stated that the tree could affect buildings for up to 30 metres from it. The original planning permission stated that the tree should be no closer than 14 metres.
- Will the house require underpinning regardless of the outcome, if yes then why should the tree be lost. If anything, it was a mistake by the Planning Department to allow buildings to be erected so close to the tree.
- All efforts should be made to save this veteran tree. People making the decision did not live in the area and would therefore not be affected by its loss.
- The tree was granted a Tree Protection Order for good reason and those reasons still existed. The trees belong to the people of Peterborough. The council should be seeking ways to preserve this valuable tree.

Jonathan Harpham spoke in support of the petition. Key points raised were as follows:

- Advised that trees were his job and had 20 years' experience in working with them.
- The original 2019 engineer's report had not confirmed that moisture related clay shrinkage had occurred.
- In Mr Harpham's opinion there were a few inaccuracies and omissions in the report (one example being on page 47 of the current report concerning the drainage system).
- He provided a further overview of other issues, including the area of movement between the conservatory and property and the foundation depth, variations in height due to soil expansion and contraction, as well as the need for scrutiny of the depth of the foundations of the property. If miscalculations had been made on the depth of the foundations the original developer would be liable. No heave precaution had been recorded on any of the soil investigation work,
- No updated engineers report had been provided to the council.

Lady Collette Francis spoke in support of the petition. Key points raised were as follows:

- The original planning application details only referred to T1 within the property grounds of the address and no other grounds past the boundary.
- The ownership of the tree should have been established before the decision had been made.
- Moisture demand and zone of influence were left out of the insurance report.

- There was other nearby vegetation to the property and therefore it may be that it was not only the tree that had caused the problems.
- Additional pages had been added to the documents of the application which had not been previously available to the public.
- Issues caused indicated heave and not subsidence.
- Conservatories have a limited lifespan and therefore it was not surprising that with the age of the conservatory it was starting to come away from the house.
- The defects were only noticed by the homeowner in 2018 during an unusually hot summer. She questioned the need to remove the tree and further pointed to the benefits of trees to local residents, particularly in terms of the supply of oxygen.
- Underpinning had taken place on other houses in the area due to the soil type.
- Disputed the comment that decisions such as this did not need to be debated at committee.

Kevin Benton spoke against the petition. Key points raised were as follows:

- Bought the house in good faith in 2014 and only noticed the cracks appearing in the summer of 2018. The conservatory was not the main issue as cracks had appeared in the centre of the house, the cracks has continued to worsen over the years.
- The insurance company was approached nearly four years ago to investigate the issue and had followed the due process thoroughly, looking at different options for mediation.
- He advised that he was not happy that the tree had been identified as the issue. He acknowledged that the tree had had some issues when a large branch had fallen into the garden last November, just missing the shed in his garden.
- The Council had been asked to review the Tree Protection Order (TPO) but it had been a lengthy process over 18 months. He added that a tree that had affected the conservatory had already been taken down.
- He affirmed that he was following experts' advice and just wanted the house stabilised and insured and protected for the long term.

The Head of Sustainable Growth introduced the report accompanied by the Natural & Historic Environment Manager, and the Councils Insurance Manager. Also in attendance was Paul Harris, Chartered Engineer who attended via Teams.

Members were reminded that the meeting was not about making a decision but about making a recommendation to Cabinet for consideration at their meeting on 21 February 2022.

The Head of Sustainable Growth suggested the Committee review the summary in paragraph 4.6.4 of the report. The issue was whether the Council could afford to pay the substantial costs to save the tree and whether it would be value for money to do so. He confirmed that the purpose of this report was to determine whether or not the Committee wished to express any recommendations to Cabinet regarding whether it should agree to implement the felling consent for an oak tree in Bretton.

For the avoidance of doubt, the consent to fell the tree already lawfully existed, and Cabinet would not be asked to re-determine such consent. Cabinet would simply be asked whether to implement the consent; or, if it determined not to implement the consent, determine what alternative form of action would be considered the most appropriate.

The Growth, Environment and Resources Scrutiny Committee debated the report and in summary, key points raised and responses to questions included:

- Members queried correspondence between tree officers and insurance officers as stated in the report, as well as clarification as to the ownership of the tree. The Officer

- clarified that ownership was covered in paragraph 4.3 of the covering report and the implications. It was the officers' view that the Council had the responsibility for the tree.
- Members asked about various solutions, such as the construction of root barriers. Paul Harris, Chartered Engineer who was an expert in tree related subsidence advised that there had been two separate opinions put forward. One of which was the insurers engineers and his own view which was that the damage was the product of tree related subsidence. Mr Harpham who had spoken earlier had an alternative view which suggested that the damage was a result of heave.
 - Members commented that at the time that the house was built it appeared that NHBC Standards had not been complied with.
 - Members referred to various solutions and associated costs. The cost of root barriers had been costed at £30K to £40K. Had this been properly costed and looked into. Officers responded that no formal quote had been obtained for root barriers and that they were a relatively new concept for dealing with trees and had not been done before in the Peterborough area. He advised it would be difficult to estimate the cost and would go across private land, meaning that compensation would also have to be agreed. A key factor was the usage of root barriers not being proven to work, so would be a financial risk if unsuccessful. Paul Harris, Chartered Engineer added that root barriers were, in his opinion, risky and unproven and could impact the saleability of the house. Members recommended that the root barrier option be explored thoroughly.
 - Members questioned costs, referring to Appendix Two, regarding the proposal for tree works and the costs varying from £28,000 if the tree was felled to £75,000 if the tree was maintained. The Officer was unsure as to why the original application for the tree works in May 2020 has quoted such a variation in costs and felt that the figure of £75,000 was an underestimate of what the true costs would be. Members were directed to the financial information within the covering report in particular section 4.5. Implementation Costs and Finance Considerations. Figures were taken from the Council's previous experience with relevant costs.
 - Officers were satisfied that due process had been followed and lawful consent was in place, and this had been set out within the report.
 - Members reflected on the issues of liability and standards for the tree and the housing construction and questioned what would happen if the case went to court. Sue Addison, Insurance Manager, replied that there were two issues to consider with any claim of this nature. The first was the liability to abate the nuisance and was there liability for any damage the tree had caused, she was however unable to discuss specifics given the ongoing case. However key areas for consideration would be does the council own the tree, was there sufficient evidence of subsidence and if so there was a legal liability to abate that nuisance. The other issue would be was there a liability for the damage that the tree had caused.
 - Members sought clarification with regard to paragraph 4.5.9 in the report and the total cost involved if a further two properties were affected. Officers responded that to underpin a property of this size would be approximately £200,000 per property.
 - Members noted that the CAVAT value of the tree was in excess of £300,000 and asked if the tree were to be felled would the council invest in the equivalent amount to plant new trees elsewhere to compensate for its loss. Officers advised that there was no legal requirement to replace the tree, but the council's policy was to replace the tree and six other trees would be planted within the area. However young trees would not have the same value as an older tree.
 - Members expressed concern about the divergence of the two expert opinions. Officers advised that Mr Harris was asked to review evidence after the second opposing report was submitted. Members felt that a further independent expert should be employed to

review both reports. Officers advised that Mr Harris was an independent expert who was not employed by the council.

- Members queried if the foundations of the property complied with NHBC standards at the time of building. Officers advised that an investigation had revealed that all building regulations were in place at the time and records indicated that all consents had been put in place in accordance with the rules and regulations in place at the time.
- Members were concerned that the felling of the tree would set a precedence for other claims regarding other potential tree damage. Officers advised that every case would be assessed on its own merits.
- Members were informed that if the felling option was accepted, the costs would come from the tree budget and that extensive expenses for underpinning had not been budgeted for and the Council would need to decide where it would come from.
- A lawful consent existed to fell the tree, and this could not be reversed, it was now up to Cabinet to decide if they wish to carry out that consent. Members were informed of the timing considerations within the report at paragraph 4.7.

At this point the Growth, Environment and Resources Scrutiny Committee **RESOLVED** that they would go into private session to discuss Appendix A, and members of the public and press were asked to leave the room.

EXEMPT SESSION

Following the exempt session, the Committee returned to public session and allowed members of the public and press back into the room.

On resuming the public part of the meeting, the Chair presented the recommendations within the report to the committee which were as follows:

It is recommended that Growth, Environment & Resources Scrutiny Committee:

1. Acknowledges the duly made petition considered by Full Council on 8 December 2021, which sought the saving of an oak tree in Bretton, and thanks the petitioner for the considerable efforts in raising awareness on this important issue;
2. Considers the evidence in the papers provided, as well as the evidence as to be presented by speakers at the meeting and determines a set of recommendations for Cabinet. Cabinet is scheduled to meet on 21 February 2022 to consider this matter. The three main options available to Cabinet are:
 - (a) determine that the consent that already lawfully exists for felling the tree be implemented; or
 - (b) determine that the consent should not be implemented, and instead undertake an alternative course of action; or
 - (c) determine not to take a decision, allowing the felling consent to lapse and consequently await to see what action, if any, the applicable insurance company(s) takes against the Council.

Members debated the various issues surrounding the tree, including financial constraints. They further reflected on the divergence of opinion from experts regarding the tree and considered that a further independent report be undertaken to ensure a properly judged decision.

A Member asked for a full report offering all options available, including environmental impact, costs and risks to the Council. There was also a discussion on what impact the potential usage of root barriers would have on the property. Members stressed the importance of avoiding procrastination in making a decision, given future costs resulting from further potential damage if the issue remained unresolved.

Members also emphasised the inclusion of including the local community when considering the tree, given the interest in the petition.

After listening to the public speakers and considering all the evidence provided within the report and from officers in attendance at the meeting, the following recommendation was proposed.

Cllr Skibsted, seconded by Cllr Joseph, proposed the following recommendation which was agreed (6 in favour. 4 against 1 abstention) that Cabinet determines that the consent to fell the tree at 9 Barnard Way should not be implemented, and instead undertake an alternative course of action. Additionally, that Cabinet should obtain a further independent assessment of the issues relating to the Mature Oak Tree and the property at 9 Barnard Way which should not be from those persons who have already provided assessments, and also obtain a detailed report on the cost and implications of providing root barrier treatment.

Cllr Moyo, seconded by Cllr Brown proposed that the committee recommend option (a) determine that the consent that already lawfully exists for felling the tree be implemented. Due to Cllr Skibsted's recommendation being accepted this was not voted on.

RECOMMENDATION

The Growth, Environment and Resources Scrutiny Committee **RESOLVED** to recommend that Cabinet determine that the consent to fell the tree at 9 Barnard Way, Bretton should not be implemented, and instead undertake an alternative course of action. This action should be that the Council:

1. Obtains a further independent expert assessment (i.e. not from the experts who have already provided assessments) of the issues relating to the Mature Oak Tree and the property at 9 Barnard Way, Bretton, with such an assessment reviewing the existing reports and clarifying any inconsistencies, and
2. Obtains a detailed report on the effectiveness, cost and implications of providing root barrier treatment.

Chair

7.00pm - 9.46pm