

CABINET	AGENDA ITEM No. 6
21 FEBRUARY 2022	PUBLIC REPORT

Report of:	Adrian Chapman – Executive Director, Place and Economy	
Cabinet Member(s) responsible:	Cllr Nigel Simons – Cabinet Member for Waste, Street Scene and Environment	
Contact Officer(s):	Adrian Chapman – Executive Director, Place and Economy Richard Kay – Head of Sustainable Growth Strategy Darren Sharpe – Natural and Historic Environment Manager Sue Addison – Insurance Manager	

‘SAVE BRETTON OAK TREE’ PETITION – ACTION TO BE TAKEN

RECOMMENDATIONS	
FROM: <i>Adrian Cabinet</i>	Deadline date: <i>21 February 2022</i>
<p>It is recommended that Cabinet, after considering the recommendations of Scrutiny Committee of 15th February 2022 (to follow), either:</p> <ol style="list-style-type: none"> 1. determine that the consent that already lawfully exists for felling the tree be implemented; or 2. determine that the consent should not be implemented, and instead undertake an alternative course of action; or 3. 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. 	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to Cabinet following a referral from Council on 8 December 2021, together with a likely referral from Growth, Environment and Resources Scrutiny Committee scheduled to have taken place on 15th February 2022.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to determine whether or not to implement the felling consent for an oak tree in Bretton. For the avoidance of doubt, the consent to fell already lawfully exists, and Cabinet is not being asked to redetermine such consent. Cabinet is simply being asked whether to implement the consent, or, if it determines not to implement the consent, indicate what alternative form of action is considered most appropriate.
- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1, *‘To take collective responsibility for the delivery of all strategic Executive functions within the Council’s Major Policy and Budget Framework and lead the Council’s overall improvement programmes to deliver excellent services.’*
- 2.3 Appendix B is exempt and NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 because it contains commercial information. The public interest test has been applied to the information contained within this exempt annex, and

it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. **BACKGROUND AND KEY ISSUES**

- 4.1 For a full background and explanation of the key issues, please refer to the attached report as submitted to Scrutiny Committee on 21st February 2022.

5. **CONSULTATION**

- 5.1 For an explanation of the consultation undertaken, please refer to the attached report (Appendix A) as submitted to Scrutiny Committee on 21st February 2022, together with the associated appendices 1-7 as considered by Scrutiny Committee.

6. **ANTICIPATED OUTCOMES OR IMPACT**

- 6.1 That cabinet will determine whether or not the felling consent can proceed.

7. **REASON FOR THE RECOMMENDATION**

- 7.1 Cabinet needs to decide whether proceeding to fell the tree is the most appropriate course of action, when considering all options and taking account of all harm and costs of such options.

8. **ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 The options are set out in the attached appendices, but in summary:

1. to install root barriers – high risk of failure, despite considerable cost, and not under the control of the council to implement.
2. to prune the tree (and regularly prune thereafter) - not generally effective, unless extensive and frequent, negating the amenity value of the tree. Even with frequent pruning, risk remains. Relatively low cost, albeit ongoing annual (or so) costs.
3. to do nothing – not legally an available option. We are duty bound to abate the nuisance.
4. to accept liability and costs associated with underpinning properties affected. Effective, but very expensive, and not covered by insurance.
5. to fell the tree – effective at abating the nuisance, and low cost, though obviously the tree is lost in its entirety

9. **IMPLICATIONS**

Financial Implications

- 9.1 The costs associated with felling the tree can be met from the current tree maintenance budget.

If an alternative recommendation is taken forward, then the pruning option is likely to be affordable within the current (and future years) tree maintenance budget. If the pruning option failed to achieve its objective (i.e. failed to abate the nuisance), the council would be liable for all future costs associated with damage occurring. This will be substantial, and not budgeted for.

If the root barrier or underpinning options are taken forward, these are not budgeted for and there is no scope with existing budgets to allow for such costs. Such costs are somewhat unknown in scale or time. The root barrier option, whilst still substantial but likely lower cost than underpinning, will be dependent on (a) willingness of homeowners to install them, with agreed compensation; and (b) the success of their implementation.

If no decision is reached by cabinet in the very near term, then no action is taken and no cost is directly, immediately, incurred. However, as stated at section 4.7.7, if no decision is reached in the near term, matters will likely be taken out of our hands. And, the likely scenario of such a 'no decision' would be a very high financial claim made on the council, a claim which would be very hard to resist.

Legal Implications

- 9.2 The council has a legal duty to abate the nuisance caused by the tree. Do nothing is not a legally available option.

Felling the tree is an immediately available legal option, as a consent exists (albeit this lapses in July 2022).

Installing root barriers is not an immediately available legal option, and would rely on an agreement (including compensation) with at least one home owner, but more likely more than one. There is no guarantee such agreement will be reached, therefore there remains doubt that this option will ever be legally available.

The option to underpin the property will depend on discussions taking place with the home-owner (or their representatives, such as the insurance company). It is likely the works would take place, by arrangement of the insurance company, with the council being liable for such costs.

Equalities Implications

- 9.3 Nil

Carbon Impact Assessment

- 9.5 The tree is assumed to be still healthy and growing, and consequently will have a positive climate impact in terms of capturing carbon from the atmosphere. Whilst impossible to determine with any accuracy, a figure of 20-30kg CO₂ per annum would be reasonable for this tree. To put that in context, that's the equivalent of approximately a single 100 mile journey in a typical car, each year. Felling the tree would obviously stop that carbon capture, albeit 6 replacement trees are proposed which over time, should they mature, likely capture greater amounts per annum than this single oak. The felling, and 6 replacement, proposal is therefore, on balance, and over the long term, probably carbon neutral, potentially carbon positive (though uncertain).

Alternative options of root barriers and underpinning would mean the tree continues to capture carbon. However, the extensive works involved would in themselves have a carbon impact. Underpinning the property with steel would have a high negative impact (1,900 kg CO₂ is emitted for every tonne of steel produced. It is unknown the volume of steel to be used, but there would be a considerable long period of time for the tree to 'payback' the CO₂ emitted from the steel). Any concrete used would similarly have a high impact (around 200 kg CO₂ per tonne produced, or 400 Kg CO₂ per sq m). Whilst difficult to quantify, there is the potential for the alternative options (whereby the tree is saved) to be carbon negative, or will take a long time to become carbon neutral or carbon positive.

Overall, the numbers for all options are, on the scale of things, fairly marginal.

The worst scenario would be the need to underpin more than one property. If that was the case, the balance would clearly become a negative carbon impact, potentially significantly.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 Report to Full Council 8 December 2021 – Petition for Debate 'Save Bretton Oak Tree'

11. APPENDICES

- 11.1 Appendix A – Report to Scrutiny Committee on 15 February 2022
- Appendix B - Exempt
- Appendix 1 - Letter to Petitioner, dated 29 November 2021
- Appendix 2 – Original application form
- Appendix 3 – Arb Assessment Report
- Appendix 4 – Email exchange with applicant
- Appendix 5 – Engineering Appraisal Report
- Appendix 6 – Independent Arb Report
- Appendix 7 – P Harris Comments on Independent Arb Report