

<b>GROWTH, ENVIRONMENT AND RESOURCES SCRUTINY COMMITTEE</b>	AGENDA ITEM No. 4
<b>15 FEBRUARY 2022</b>	<b>PUBLIC REPORT</b>

Report of:	Adrian Chapman – Executive Director, Place and Economy	
Cabinet Member(s) responsible:	Cllr Nigel Simons – Cabinet Member for Waste, Street Scene and the 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	
<b>FROM:</b> <i>Adrian Chapman – Interim Executive Director, Place and Economy</i>	<b>Deadline date:</b> <i>15 February 2022</i>
<p>It is recommended that Growth, Environment &amp; Resources Scrutiny Committee:</p> <ol style="list-style-type: none"> <li>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;</li> <li>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: <ul style="list-style-type: none"> <li>(a) determine that the consent that already lawfully exists for felling the tree be implemented; or</li> <li>(b) determine that the consent should not be implemented, and instead undertake an alternative course of action; or</li> <li>(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.</li> </ul> </li> </ol>	

**1. ORIGIN OF REPORT**

1.1 This report is submitted to Growth, Environment & Resources Scrutiny Committee following a referral from Council on 8 December 2021.

**2. PURPOSE AND REASON FOR REPORT**

2.1 The purpose of this report is to determine whether or not Scrutiny Committee wishes 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 already lawfully exists, and Cabinet will not be asked to redetermine such consent. Cabinet will simply be asked whether to implement the consent; or, if it determines not to implement the consent, determine what alternative form of action is considered most appropriate.

2.2 This report is for the Growth, Environment and Resources Scrutiny Committee to consider under its Terms of Reference Part 3, Section 4 - Overview and Scrutiny Functions, paragraph No. 2.1 Functions determined by Council:

2. Environmental Capital

2.3 An exemption is sought for Appendix A because it contains sensitive information under:

- Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972 – information relating to any individual
- Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 – information relating to the financial or business affairs of any particular person (including the authority holding that 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. The report is exempt as it relates to data provided to the Council as part of an ongoing insurance claim and therefore the Council is only able to use that data for the purposes of dealing with the claim and cannot make it public. In addition, the report provides advice on the Council’s liability and therefore also has litigation privilege.

**3. TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	<b>N/A (though it is to be considered by Cabinet on 21 Feb 2022</b>
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**4. BACKGROUND AND KEY ISSUES**

**4.1 Background**

4.1.1 Scrutiny Committee will be aware that on 8 December 2021 a petition was presented and debated at Full Council. Full Council determined as follows:

*A vote was taken on the proposal from the Cabinet Member and Council RESOLVED (unanimous with no Members indicating to vote against or abstain):*

- a) Thanks the petitioner for raising this issue within the community and for demonstrating the deep feeling many people have about the potential loss of this tree; and*
- b) Refers the issues to the Growth, Environment and Resources Scrutiny Committee to consider prior to Cabinet, offering suitable but proportionate arrangements to allow interested parties to express their views to the Committee; and*
- c) Asks Cabinet to determine whether or not this Council should proceed to implement the consent already in place to fell this tree, taking account of the cost-benefit implications of either retaining the tree or implementing the felling consent.*

4.1.2 The Growth, Environment & Resources Scrutiny Committee is therefore requested to consider this matter. At the meeting, it is scheduled to hold a debate into the matter, with the benefit of a number of external speakers (at the time of writing, such speakers are being arranged). This could include: speakers representing those whom have signed the petition; independent expertise on behalf of the petitioners; and independent expertise on behalf of the Council. It is likely Members of Scrutiny Committee will be updated approximately 48hrs before the meeting on the speakers attending. Unless strictly necessary, no additional papers will be circulated to Members.

4.1.3 Whilst the case is complex, and the decision very difficult to determine, the options to be presented to Cabinet are as follows. Either:

- (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 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

4.1.4 Attached (Appendix 1) is a letter sent by officers to the petitioner (this being the same letter as presented to Full Council on 8 December 2021). This provides useful background information, and is not repeated here, other than to note a minor error on page 2 which refers to a decision date of 16 July 2020. The decision date was in fact 3 July 2020. This has no significant material effect on the contents of the letter, though Members should note the section below on 'timing issues' where this date is relevant.

4.1.5 Whilst the letter at Appendix 1 is a useful summary of the key issues and background, a number of other issues and queries have arisen since that letter was sent, and therefore this agenda paper provides further detailed background information on the following matters:

- The application to fell the tree, and the procedures undertaken
- The ownership of the tree
- Property damage
- Implementation costs of the options available and finance considerations
- Timing issues

## 4.2 The application to fell the tree, and the procedures undertaken

4.2.1 Page 2 of Appendix 1 provides a summary of the planning history of this case, and highlights:

- i. The original planning application (and consent) of 1998 relating to the building of property of 9 Barnard Way
- ii. The application to fell 2 trees, received May 2020, and consent of July 2020
- iii. 'Felling notification' process of April 2021

4.2.2 A number of queries have been raised in respect of (ii) above, and consequently additional information is provided. In summary, the queries have related to:

- The 'discrepancy' between the details on the original application form, and the final details on the consent notice
- Whether the ownership of the tree makes the application / consent invalid
- Whether all 'due process' was generally followed

4.2.3 This report now first deal with the issue relating to the 'discrepancy' between the details on the original application form, and the final details on the consent notice.

4.2.4 The Council received an application (20/00652/TRE) to fell Oak T1 (Appendix 2). The application was supported by various documents, all of which are (and continue to be) available on the public register on our website\*. One such supporting document is an Arboricultural Assessment Report (Appendix 3). That Report made recommendations within section 4 to fell trees T1 and T2, with such two trees identified on a map in the appendices of the Report.

*\*Whilst it is not considered necessary to review all the paperwork associated with the original application, should anyone wish to do so, then to view the application, you need to:*

*(a) start with our 'search page' for all planning applications:*

<https://planpa.peterborough.gov.uk/online-applications//search.do?action=simple&searchType=Application>

*(b) On that page, enter the application number in the box at the bottom of the page and press 'search': The reference number is 20/00652/TRE*

*(c) Once you have done that, it should take you to the 'summary page' for that application.*

*(d) To view detailed documents, click on the 'Documents' tab, and then click on 'view associated documents'. This should bring up a list of 14 documents for this particular case, with each document given a brief title so you should be able to pick the ones you are interested in.*

- 4.2.5 That report in section 5 states that Peterborough City Council had confirmed to the applicant prior to application that T1 is subject of a Tree Preservation Order (TPO) but T2 was not. This was clearly incorrect, and it is unclear if, and if so why, the planning service of the council had made this statement. Nevertheless, the error was quickly spotted by the Council's tree officer post application being received, and a request was made to the applicant to amend so that it referred to T1 and T2. The Applicant responded with documentation and confirmed the amendments in an e-mail dated 08.06.20. The application description and reports were then updated accordingly within the Council's administrative system (Uniform).
- 4.2.6 Notwithstanding the corrections described above, the Arboricultural Assessment Report submitted also stated that tree T1 is requested to have a reduction rather than felling. Therefore, the Council's Tree Officer e-mailed the Applicant back on 08.06.20 questioning the works and requesting additional details. The Applicant responded by e-mail on 09.06.20 apologising for the confusion and confirming the felling (not reduction) of Tree T1.
- 4.2.7 Throughout the application process, therefore, the supporting information within the application has clearly indicated the recommendation to fell T2 (T8 within 06/0004/TPO). The applicant's omission to identify this within the original application was addressed promptly by the Council's Tree Officer, as was the clarification on the works requested (felling or reduction). The email correspondence with the applicant confirming these matters were recorded on the Council's internal case file. For completeness, they are attached for reference (Appendix 4).
- 4.2.8 This report now turns to the issue of whether the ownership of the tree invalidates the consent. A full explanation of the issues relating to ownership are set out at section 4.3 below. However, in respect of the application / consent process, the final conclusion on ownership is immaterial in terms of whether the consent is valid or not.
- 4.2.9 This conclusion can be reached because anybody can apply for any form of planning (including tree works) consent on anybody's land. Of course, implementing such consent would be impossible without the landowners' consent, but that is not a relevant matter for the application process and the decision maker. Where an application is made by someone for something on someone else's land, the planning system has an expectation that the actual owner be made aware. In this case, there are only two possible owners of the tree: the home owner and the council. The homeowner submitted the application, and the council received the application. Both parties are therefore clearly aware of the application.
- 4.2.10 In terms of the consent itself, all planning related consents follow the same basic principle that the consent goes with the land, not the applicant. Thus, if the ownership of the land changes, the consent simply transfers automatically to the new land owner. Consents cannot be withheld, or sold separately.
- 4.2.11 As such, overall, it is irrelevant who applied, who owns the land, or whether the ownership has changed. The consent exists, and remains with the owner. In terms of due process and consent procedures, therefore, the issues around who actually owns the tree is irrelevant.
- 4.2.12 Finally, this report now turns to whether all other due process was followed. In this case, no evidence has been provided by any party to suggest that all legal steps were not taken, or that the council's constitution was not followed. For example, the constitution does not require the application to be determined by the council's Planning and Environment Protection Committee.
- 4.2.13 Overall, therefore, officers are confident that a valid consent exists and the consent can lawfully be implemented.

### 4.3 The ownership of the tree

- 4.3.1 Whilst the ownership of the tree is not deemed relevant to the consent procedures, ownership is relevant in terms of who would implement the felling consent (or determine not to implement it).
- 4.3.2 At the outset, it is worth noting that the homeowners (via their agents and insurance company) applied to fell the tree in question, as direct damage to property was occurring. Ultimately, if ownership was determined to be with the homeowner, then the council has the extremely strong expectation that the tree would be felled. This is on the basis that not to do so would highly likely be contrary to the advice of their insurance company, and consequently future damage to their property would highly likely be uninsured. In effect, the homeowner would likely have to pay for all future damage occurring.
- 4.3.3 As such, the homeowner is not seeking to fell the tree because of some minor nuisance. Felling the tree is on the advice of their insurance company, and failure to follow the advice would amount to the property being uninsurable (and, consequently, highly likely unsellable for anything like market value). The homeowner faces the predicament that they don't want to lose the tree, but they can't live with the tree (unless a solution is found which satisfies the insurance risk – see options below).
- 4.3.4 Regarding the ownership of the tree, on which the consent falls upon, and the liability to act falls upon, there are two possible routes to take to attempt to confirm this.
- 4.3.5 The first option relates to legal ownership. For land (and trees) on what appear to be on-the-ground as sitting on the 'boundary line' between properties, it can be extremely difficult to determine precise legal ownership. Such boundary lines may be centuries old. Land registry records are insufficiently accurate to this scale (it is generally accepted all land registry records have a margin of error of at least 1m on boundaries).
- 4.3.6 To get as near as definitive answer as possible, a specialist in boundary disputes could be employed. Such specialists use a wide range of evidence, and make judgements based on both written material and on-the-ground evidence (taking account of things such as any ditches, and whether trees were likely planted on the boundary line, or inside it). Such specialists are expensive and hard to secure (and therefore time consuming). Such costs and time weighed in favour of not securing such services.
- 4.3.7 Weighing even greater in favour of not securing such services was the issue that legal ownership is not even relevant if it is deemed one party has legal **responsibility** for the land (tree). Such responsibility can occur if one party has persistently and over a long period of time managed and maintained such property. In the case of this tree (and the hedgerow it sits within), the council has managed and maintained the tree (and hedgerow) for at least the last 15 years, and probably since the homes were constructed just over 20 years ago.
- 4.3.8 Such a length of time means that there can be no doubt that the responsibility to manage the tree in the future (and abate any nuisance it causes) falls with the council. It is, therefore, the council's responsibility to take action, and it would be liable if it failed to do so.
- 4.3.9 At the time of the application, ownership (or responsibility) was not clear (and notes on the case file confirm this). However, as this was not a relevant matter to the determination of the application, a categorical ownership and/or responsibility position need not be reached. It was only when it came to the felling of the tree, post consent, that the council accepted the tree was its responsibility.

### 4.4 Property Damage

- 4.4.1 There has been some speculation as to whether damage has actually occurred, and if so, to what part of the building. It has been suggested the damage is 'only' to a conservatory, and that such

a conservatory does not have planning consent. It is therefore necessary to clarify the situation on all these matters.

- 4.4.2 It is the Council's understanding that the greatest visible evidence of damage relates to the conservatory. However, further damage is clearly apparent, both external and internal, of the main property itself. As part of the application (Engineering Appraisal Report) (Appendix 5), such damage was classified as follows:

*"The level of damage is moderate, and is classified as category 3 in accordance with BRE Digest 251 - Assessment of damage in low-rise buildings."*

And, the same report concludes that the cause of damage is as follows:

*"we are of the opinion that damage has occurred due to clay shrinkage subsidence. This has been caused by variations in the moisture content of the clay subsoil, resulting in volume changes, which in turn have affected the foundations"*

It further recommends:

*"We consider the damage will not progress if appropriate measures are taken to remove the cause. In this instance it is likely that vegetation for which the Local Authority is responsible is contributing toward the cause of damage."*

(Note: by 'vegetation' it is referring to the tree in question)

- 4.4.3 It is important to consider the issues that have been raised regarding the conservatory. It is confirmed that the tree is causing damage to the conservatory at the property and that such a conservatory was built (by a previous owner) without the necessary permissions. The Council as Local Planning Authority has undertaken an enforcement review and concluded, however, that no prosecution action could be taken as the conservatory was at least 10 years old and therefore immune from any enforcement action. As a result, if a tree that is the responsibility of the Council which is proven to be causing damage to the conservatory, it has a legal duty to abate that nuisance.
- 4.4.4 However, as the damage extends beyond the conservatory to the main house, it is largely irrelevant what damage is occurring to the conservatory, or its planning history as even without the conservatory, the same issues (and difficult decisions) remain. As such, no further commentary is considered necessary or appropriate on this issue.
- 4.4.5 This report now turns to the independent arboricultural report submitted on behalf of the petitioners, prepared by Ethical Arboriculture, and received by the council towards the end of 2021. To be clear, this report was not sought by the council, but in the interests of transparency, it is presented to Scrutiny Committee (Appendix 6). That report makes a number of claims, including two principal ones:
- Whether the damage is caused by 'heave' rather than 'subsidence' (and, hence, removal of the tree could make matters worse); and
  - Justification for removing the tree, considering the "conservatory is technically an illegal structure"
- 4.4.6 In terms of the 'heave' point, the Council commissioned specialist advice to advise on this suggestion, as well as wider issues raised in the independent report. Such advice is provided at Appendix 7. In summary, such advice states that 'heave is not the cause of the damage'. The advice also makes reference to the matter of the conservatory, and is aligned to the issues already addressed above, and not considered again here.
- 4.4.7 Overall, the advice the Council has received determines that no material evidence is presented by the Ethical Arboricultural report that points to a course of action, or need for new investigation, that has not previously already been considered or investigated. As such, whilst the Council is

grateful to the petitioner for sending the independent report, it does not change the options available to the Council.

- 4.4.8 There is one additional very recent piece of evidence to be considered. On 12 January 2022, the council received confirmation from insurers (Sedgwick) acting on behalf of 10 Barnard Way (i.e. the neighbour to 9 Barnard Way) that subsidence damage is also occurring to 10 Barnard Way, and that an insurance claim is proceeding on that basis. The insurers have confirmed that they have consented for this information to be shared with Scrutiny Committee. Whilst the full details are not available, should the Council fail to abate the nuisance in accordance with the first claim (9 Barnard Way), then it is extremely likely that a second claim will be made to the council regarding damage to this second property (10 Barnard Way).

#### 4.5 Implementation Costs and Finance Considerations

- 4.5.1 Officers are confident beyond any reasonable doubt that the tree is causing structural damage to private property, and will continue to cause further structural damage in the future. Whilst it is uncertain of the scale of future damage, there is now a known high risk that damage has spread beyond the original single property to the neighbouring property. Potentially, damage could extend to three more properties in the future, though it is accepted that, whilst a real risk, it is a lower risk than the two properties we are aware of.
- 4.5.2 The Council has a legal duty to abate the nuisance (i.e. take action to prevent further damage) caused by the tree. Do nothing is not considered to be an option. As the letter to the petitioner demonstrates, a number of options have been considered.
- 4.5.3 Ultimately, felling the tree is the only proven way to most likely succeed at abating the nuisance. All other options would have a considerable risk of failure, or would do nothing or very little to mitigate the risk of damage to wider properties. Regarding the root barrier option, the Council has no means of enforcing this option, as such work would have to take place on private land.
- 4.5.4 Finance is, undoubtedly, a key consideration for the council.
- 4.5.5 To date, the costs to repair the damage are covered by insurance. Therefore the council has no financial liability at this stage as the damage was reasonably unforeseen. However, now that the Council **knows** damage is occurring, and will likely lead to further damage, all future costs are, in simple terms, uninsurable i.e. the council would have to meet all such costs. There is one exception to this. If the tree is felled, the evidence suggests that further damage in the medium to long term should not occur, and that the council would have taken reasonable steps to abate the nuisance. If, despite felling, further significant damage did occur, the council would be in a very strong position to resist claims (because it had done all it could, and had followed the advice) and instead such further repair would, in all likelihood, be covered by insurance.
- 4.5.6 If alternative options, such as pruning or root barriers were undertaken, but damage continued (or went on to cause damage to a third property) the council would be in a very weak position to resist such claims and the costs would most likely fall on the council. There appears to be a misconception that such future damage would also be covered by insurance, and it is important to stress that it would not.
- 4.5.7 Financially, felling is consequently the lowest cost option. Pruning would also be low cost, but with some on-going management costs (and, in reality, the pruning would be so severe as to lose much of the wider value of the tree in any event). Root barriers are somewhat of an unknown cost, but would be a significant five figure sum for each property installed, plus additional unknown compensatory sums payable to the home owners affected (and this assumes the home owners were willing to have root barriers installed across their gardens). Greater certainty on root barrier costs is not possible, as it is not a common form of intervention (and hence there are limited case studies to draw upon) and even less common involving multiple landowners. The Council has no direct experience of using root barriers. However, to put the scale of works into context, the root barrier must be deep enough to prevent the roots going under them; they must be wide enough to prevent roots going around; and they must be high enough (i.e. above ground level) to prevent

roots going over. Both pruning and root barriers have a higher risk of failure, in the long term; and if they did fail, damage to the property which arose would highly unlikely to be covered by insurance (i.e. the council would be liable for such costs).

- 4.5.8 Retaining the tree and underpinning all affected properties is a realistic deliverable option, but financially is an exceptionally high-cost option. The Council has direct experience locally of underpinning costing in the region of £200,000 for a single house, smaller than the property affected today but similarly affected by a mature tree, and undertaken a few years ago. For the current affected property, it is clearly expected a larger sum would be payable and the Council is now aware of a second property affected. If a third or more properties were affected in the future (low risk, but still a risk), the same such sums would be payable again for each home underpinned (or, for such second or third cases, the tree felled at that stage, which in effect would make the first underpinning a redundant but very costly exercise).
- 4.5.9 Officers have spent a considerable time grappling over the loss of such a valued tree (the letter at Appendix 1 confirms the CAVAT value of the tree in excess of £300,000), and the exceptionally high costs and risks associated with attempting to save it. Ultimately, officers continue to reach the same conclusion: it is not justified to place the council in a position of liability to spend £100,000s. The council is aware of two properties already affected with a potential cost for each of c£200,000 and there is potential for up to a further three properties to be similarly affected.

#### **4.6 Other important matters for consideration**

- 4.6.1 There is widespread acceptance that the oak is a fine tree of considerable landscape value, and much loved by the local community. Its loss would undoubtedly be deeply felt.
- 4.6.2 The tree (like all trees) also provides many wide-ranging other benefits, including its contribution to biodiversity, carbon fixing, air quality improvements, urban cooling and mitigating against flood risk. Mature oak trees, such as this one, are particularly highly valued on many of these counts, especially the biodiversity value they bring.
- 4.6.3 As stated above, and in Appendix 1, it is even possible to put an estimated monetary value to these wide-ranging benefits, and this stands at approximately £330,000. Such value has been taken into account by officers considering the options for this tree.
- 4.6.4 There is, therefore, common ground by all parties, that retaining the tree would be highly beneficial. That is not questioned. The issue is whether the council can afford to pay the substantial costs to save the tree, and whether it would be value for money to do so. In a nutshell, this is the matter that Scrutiny Committee, and then Cabinet, have to grapple with.

#### **4.7 Timing considerations**

- 4.7.1 Time is of the essence with timing considerations raised below.
- 4.7.2 From a procedural point of view, the felling consent ends on 3 July 2022. If the felling has not happened by that date, the consent lapses, and felling could not lawfully proceed. A new application to fell would have to be made, and such a fresh application considered. This would, of course take time, and with uncertain outcome.
- 4.7.3 From a biodiversity perspective, the bird nesting season will commence shortly. In summary, it is illegal to damage or destroy an active bird nest. As such, if nests are apparent when felling is due to take place, either only partial felling would be allowed (i.e. away from the nests) or no felling at all if there was a risk to a nest. The risk is, should a nest be identified, the delay would extend beyond the planning consent, meaning the consent would lapse.
- 4.7.4 The most crucial timing aspect to consider is the commencement of the growing season. As soon as the tree 'springs' into life after its winter dormant period, it will rapidly suck moisture from the ground. The ground will then start to dry and, ultimately, the clay soil will start to shrink once more. Once it starts to shrink, the subsidence risk recommences. The timing and degree of these



matters is hard to predict, and to a large degree is weather dependent. But if we have a dry spring, the subsidence risk is brought forward earlier than would be the case with a wet spring. The consequence of this matter is important to understand.

4.7.5 As soon as property movement (subsidence) is recorded again this spring or summer, the insurance company(s) would be in a strong position to claim that the council has failed to take action in a timely manner to abate the nuisance (i.e. the council had allowed another growing season to occur). On that basis, the insurance company may decide to wait no longer for the council to abate the nuisance and commence its own action to reduce the damage on the property(s). This is likely to be the underpinning option.

4.7.6 If the insurance company does so, there is a very real and likely prospect that the council would be faced with paying for such costs which, as identified earlier, would likely run to several hundred thousand pounds. The Council would then be left with an on-going liability of the tree, as well as financial payment to make.

4.7.7 Therefore, timing is a very important consideration. If no decision is reached, matters will likely be taken out of the council's hands. Furthermore, 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 defend.

#### **4.8 Growth, Environment and Resources Scrutiny Committee Consideration**

4.8.1 This agenda report has been written and published in advance of the Scrutiny meeting due to take place on 15 February 2022. It is anticipated that there will be considerable debate at that meeting, assisted by external speakers. It is important, therefore, that Scrutiny Committee retains an open mind on this matter, and listens carefully to the contributions made at the meeting by all parties.

### **5. CONSULTATION**

5.1 The original tree works application was duly consulted upon in accordance with all necessary procedures. Post a decision, a tree felling notification consultation was also duly undertaken in accordance with all necessary procedures. Officers are confident there have been no failures in respect of appropriate consultation. At the time of writing, the intention is to hold briefing meetings in early February with both the householders affected, and those leading the petitioning to save the tree.

### **6. ANTICIPATED OUTCOMES OR IMPACT**

6.1 That Scrutiny Committee will offer recommendations to Cabinet in respect of whether or not the felling consent should be implemented.

### **7. REASON FOR THE RECOMMENDATION**

7.1 Full Council has expressly asked Scrutiny Committee to offer its recommendations to Cabinet. The various options are set out in the letter to the petitioner, attached.

### **8. ALTERNATIVE OPTIONS CONSIDERED**

8.1 The options are set out in the attached appendix 1, and discussed throughout this report, 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. The Council is 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

The additional option to ‘defer’ a decision is discussed in this covering report, and is not recommended due to the considerable uncertainty and risk involved due to a number of matters (consent lapsing; bird nesting season; growing season; insurance risk)

## **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 is 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 the council’s hands. Furthermore, 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 defend.

### **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 CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> emitted from the steel). Any concrete used would similarly have a high impact (around 200 kg CO<sub>2</sub> per tonne produced, or 400 Kg CO<sub>2</sub> 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 - 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

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