

<b>BRETTON OAK TREE – ACTION TO BE TAKEN</b>
<b>CLLR NIGEL SIMONS, CABINET MEMBER FOR WASTE, STREET SCENE AND ENVIRONMENT</b>
<b>June 2022</b>
<b>Deadline date:</b> <i>None</i>

Cabinet portfolio holder: Responsible Director:	Cllr Nigel Simons – Cabinet Member for Waste, Street Scene and Environment Adrian Chapman - Executive Director, Place and Economy
Is this a Key Decision?	NO
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	NO

### RECOMMENDATIONS

The Cabinet Member is recommended to:

1. Note that the advice the Council has received from the ‘third expert’ (Ian Brett-Pitt of Brett-Pitt Associates Ltd) is that the damage that has occurred is “probably caused by root induced subsidence” and that “we do not believe there is any evidence which shows the damage was caused by heave movement”.
2. Note that Ian Brett-Pitt includes a view that “it is not possible to conclude that roots from T2 have caused and will continue to cause subsidence to nearby property in Barnard Way” (Conclusion C) and “any decision to remove/retain T2 should be predicated on recent/current evidence of movement and subsidence” (Conclusion H). In essence, the view of this expert is that categorical proof that T2 has, and will continue to, cause the damage, is not yet possible.
3. Note that the original expert advice PCC received (Mr P Harris advice), as previously published to Cabinet, noted “oak tree roots have been found beneath the foundations” and “T2 is very substantially larger than T1. The extent of its roots would be expected to encompass most, if not all, of the footprint of this house (and the adjacent one, 10 Barnard Way)”, and “so long as roots continue to extract moisture from beneath this house there will be continued seasonal subsidence with associated damage”. Consequently, it should be noted that the difference of opinion between these two experts is that one seeks more definitive proof whilst the other uses the available evidence to determine a cause.

4. Note the typical cost of installing a root barrier in this case would be “around £30,000 per property” (excluding any potential compensation costs, and assuming “the owners are prepared to allow appropriate and necessary access mindful of the inevitable disruption and inconvenience that will arise”)
5. Note the estimated cost by Ian Brett-Pitt of underpinning costs are “in the region of £150,000 for each property”
6. Note that the advice of Ian Brett-Pitt is that five realistic options are available to PCC (see his response to Q2 in his report), each of which he describes as having varying degrees of cost, risk and amenity impact, but the options in short are:
  - a) Removal of T2
  - b) Retaining T2 but with PCC meeting the costs of underpinning to any affected properties
  - c) Retaining T2 but with PCC meeting the costs of a root barrier to be constructed in the rear gardens of any affected properties
  - d) Retaining T2 but with PCC undertaking a 70% Hortlink compliant management and control of T2 i.e. 70%+ crown volume reduction followed by biennial pruning
  - e) Retaining T2 but with PCC undertaking a 40%+ Hortlink compliant management and control of T2 coupled with a suitable root barrier as per C & D above. i.e. 40%+ crown volume reduction followed by biennial pruning and the construction of a root barrier across the rear gardens of all affected properties.
7. Note that in considering the options available, officers have had to apply a judgement, balancing a wide range of issues, including professional expertise (arboriculture, structural engineering, insurance, landscape, environment, biodiversity and more) as well as taking consideration of the corporate financial situation.
8. Note that the position taken by the Insurance company representing the homeowners affected is that a root barrier is not a feasible option, meaning the deliverability of such a solution is now very low.
9. Note that, in the opinion of officers, the view remains that the only effective way to legally discharge our duty to abate the nuisance and to implement an affordable solution is the felling of the tree.
10. Agree to the felling of the tree, together with provision of 100 oak trees (‘feathered’ nursery stock, c2m high) to be planted across the city, as a contribution towards mitigating the loss of the oak tree remains the most appropriate solution having made a balanced judgement on this difficult decision.

## 1. PURPOSE OF THIS REPORT

- 1.1 This report is for Cllr Nigel Simons – Cabinet Member for Waste, Street Scene and Environment to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (e) & (f) and delegated decision by Cabinet on 21 February 2022.

## 2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	<b>N/A</b>
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## 3. BACKGROUND AND KEY ISSUES

3.1 There is considerable background to this item, that has been presented to (and debated at):

- Council – 8<sup>th</sup> December 2021
- Growth, Environment and Resources Scrutiny Committee - 15th February 2022
- Cabinet – 21<sup>st</sup> February 2022

Such papers should be consulted when considering this report, and the full set of papers presented at them is not repeated here.

3.2 At the Cabinet meeting of 21<sup>st</sup> February 2022, it was resolved as follows:

*Cabinet considered the report and the recommendation of the Growth, Resources and Environment Scrutiny Committee and **RESOLVED** to:*

1. *Delegate authority to the Cabinet Member for Waste, Street Scene and the Environment to determine whether the consent to fell the tree at 9 Barnard Way, Bretton be implemented or not, subject to:*

- *Obtaining 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 of 9 Barnard Way, Bretton, with such an assessment reviewing the existing reports and clarifying any inconsistencies; and*
- *Ensuring the effectiveness, cost and implications of providing root barrier treatment have been properly considered.*

3.3 This Report therefore updates the applicable Cabinet Member on matters since 21 February 2022, with the aim being that the Cabinet Member can duly make the decision asked by Cabinet.

3.4 Officers proceeded after the Cabinet decision to prepare a short brief for the additional work sought, and commissioned Ian Brett-Pitt of Brett-Pitt Associates. In his own words, he describes his experience as follows:

*Ian Brett-Pitt is a Chartered Building Surveyor and owner of BPA. He has been involved in subsidence claims since 1988 and worked as a Loss Adjuster, Subsidence Claims Manager for a major UK insurer for 11 years and as a subsidence claims expert for insurers, homeowners and local councils. He is also a member of The Subsidence Forum Executive focussing on tree root related subsidence damage.*

3.5 The findings of Ian Brett-Pitt, including the brief for the work, can be found at Appendix A.

3.6 His report includes reference to a large volume of reference documents and legal cases, which were also provided to the council but are not included with this CMDN paper as they are considered suitably summarised in the main report itself.

3.7 In addition to the Ian Brett-Pitt report, and whilst not sought by the Council, a report by 'TreeLaw' was tabled at the Cabinet meeting by one of the external speakers representing the petitioners against the felling of the tree, and for completeness this is also attached at Appendix B. Ian Brett-Pitt was also provided with this report, and makes reference to it in his report.

3.8 Further, post the Cabinet meeting, a solicitor of TreeLaw wrote to officers after the Cabinet meeting, and attached a quote they had secured independently, which set out potential root barrier works that would be needed, and an estimated cost of such works. That cost, according to the quote, was for £36,700 (excluding any compensation payment to the homeowners of the two properties within which such a root barrier would be positioned). For the avoidance of doubt, this quote was not sought by the Council, but as it has been provided, and as it provides useful background information on the purpose and application of a root barrier, officers attach it at Appendix C for completeness. Please note that such a quote is lower than the estimated cost provided by the council's consultant, which estimates a cost of £30,000 per property.

3.9 This Report now turns to the 'third' independent expert advice, as asked for by Cabinet. In summary, this concludes a number of matters listed as (A) to (H). In summary, a fair reading of the conclusions, when taken as a whole, are, in the opinion of officers, that it has become clear to most parties, if not all, that subsidence is the cause of damage (not heave).

3.10 Broadly speaking, officers do not disagree with the findings of Ian Brett-Pitt findings in his report, and indeed find the commentary helpful. However, his findings are considered to significantly fall on the 'cautious' side of the balance of probability, and, consequently, his advice seeks further evidence of 'proof' before any solution is implemented. The problem officers have with this position is that: (i) there is a substantial body of evidence already compiled, and at some point a line has to be drawn in order to make a decision; (ii) time is of the essence – ongoing evidence gathering and monitoring could lead to increased damage; (iii) PCC would highly likely have to pay for the ongoing monitoring and investigations, and any additional damage occurring in that timeframe (i.e. these costs are uninsurable) and (iv) the homeowners would remain in further limbo, perhaps for years to come.

3.11 To illustrate the arguably over-cautious stance of Ian Brett-Pitt is to consider his recommendation (C), as follows:

*“In the absence of DNA analysis and/or the availability of monitoring undertaken following the removal of T1, it is not possible to conclude that roots from T2 have caused and will continue to cause subsidence to nearby property in Barnard Way.”*

An initial reading of this conclusion could be that it offers a reasonable position. However, the fact of the matter is that (i) T1 was substantially smaller than T2; and (ii) for property 10, T1 was substantially further away from the property than T2, to the point that the roots of the smaller T1 would have to extend through the roots of T2, and then continue to extend further than T2. It is not considered plausible that this would occur. However, if absolute proof that T2 is, or is not, causing damage to either Property 9 or 10 is needed, then DNA root testing would be necessary (chargeable to PCC), with DNA samples taken from under the properties of 9 and 10. Officers view is that such expense and time taken is not necessary, because the balance of probability is so strong that T2 is the primary cause of the (now fully accepted) subsidence, that such additional proof was not necessary or reasonable to obtain.

3.12 Separate to the Ian Brett-Pitt advice, and as part of the further consideration of a root barrier solution, officers have taken further advice from the insurance company acting on behalf of the two affected properties. In an exchange of early March 2022, the insurance company has indicated that a root barrier is not a feasible option. This position is important, because, and irrespective of whether the council or any other party agrees or not with such a position of the insurance company, if the insurance company does not support a root barrier solution,

the company is not going to advise its clients (the homeowners) to agree to such installation. On the basis that the council cannot unilaterally install such a root barrier on the homeowners land, the feasibility of a root barrier being a deliverable solution is now very low (irrespective of any risk associated with the success of any root barrier).

3.13 Overall, having considered the new advice (Ian Brett-Pitt, TreeLaw and the insurance company position), in the opinion of officers, the view remains that the only effective way to legally discharge our duty to abate the nuisance and to implement an affordable solution is the felling of the tree.

3.14 However, officers listened carefully to the discussion at Cabinet, where the Cabinet Member raised the prospect of 100 additional oak trees be added to our planting programme, should the tree have to be felled. Officers are confident such a proposal can be resourced within existing budgets, potentially with the help of grant funding, and such a proposal would have significant carbon and biodiversity benefits. The Carbon Impact Assessment has been updated to take account of such an option. Overall, officers recommend that planting proposal be recommended, should the felling consent be authorised to be implemented.

#### **4. CONSULTATION**

4.1 The previous Cabinet papers highlighted the extensive consultation done to date. No additional consultation has been undertaken on the Ian Brett-Pitt report, other than internal consultation.

#### **5. ANTICIPATED OUTCOMES OR IMPACT**

5.1 That the cabinet member will make a decision in respect of this Tree, with the recommendation being that the tree be felled.

#### **6. REASON FOR THE RECOMMENDATION**

6.1 The Cabinet Member 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.

#### **7. ALTERNATIVE OPTIONS CONSIDERED**

7.1 The options are set out in the various papers attached and presented to cabinet, 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
6. A clone can be made of the tree for replanting like the Newton Tree in the Cambridge Botanical Gardens as a legacy.

#### **8. IMPLICATIONS**

## **Financial Implications**

8.1 The following was provided to cabinet in its papers, and remains valid for this CMDN:

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 [*of the Cabinet report*], 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**

8.2 The following was provided to cabinet in its papers, and remains valid for this CMDN:

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 homeowner (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.

There is the added risk that the properties affected by the tree may struggle to sell or mortgage the properties which can result in significant financial detriment to the proprietors.

## **Equalities Implications**

8.3 Nil

## **Carbon Impact Assessment**

- 8.4 The following was provided to cabinet in its papers, and remains valid for this CMDN except see additional paragraph at the end:

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.

NEW PARA: If felling does occur, and if the additional recommendation of 100 trees be planted as a partial mitigation for the felling, then those 100 trees would, over time, result in carbon capture, the degree of which would depend on their survival rates, and their growth rates. However, a reasonable assumption would be that a sufficient number would survive to maturity, which in turn would result in a net gain overall, from a carbon perspective

## **9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

- 9.1 There are none.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

- 10.1 *Please see all documents as published for Cabinet meeting of 21 February 2022, available here:*

[Agenda item - 'Save Bretton Oak Tree' Petition - Action to be Taken | Peterborough City Council](#)

## **11. APPENDICES**

- 11.1 Appendix A – Ian Brett-Pitt Associates Report  
Appendix B – TreeLaw document  
Appendix C - Optera root barrier estimate (as provided by TreeLaw)