

## **Cabinet**

**18<sup>th</sup> December 2013**

### **Draft Tree Management Policy**

**Key Decision NS/25/13**



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#### **Report of Corporate Management Team**

**Terry Collins, Corporate Director of Neighbourhood Services**

**Ian Thompson, Corporate Director of Regeneration and Economic Development**

**Councillor Brian Stephens, Portfolio Holder for Neighbourhoods and Local Partnerships**

**Councillor Neil Foster, Portfolio Holder for Economic Regeneration**

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#### **Purpose of the Report**

1. To consider consultation on a draft countywide tree policy for the management of all trees under Durham County Council's ownership and for those trees in private ownership which pose a safety risk to the public highway.

#### **Background**

2. Trees make a significant contribution to the character of our landscape and can provide environments rich in biodiversity.
3. The species, size and nature of our trees of course varies considerably, from those planted for amenity in well maintained grassed open spaces such as road verges and school grounds, through to those in relatively more natural or established settings of parks, hedgerows, cemeteries and of course woodland.
4. Although trees are a very positive feature, they can sometimes cause problems, from being a nuisance or inconvenience to potentially causing serious injury or even death. As a tree owner, Durham County Council have a direct responsibility for ensuring its trees do not pose a danger to the public or property and are managed appropriately. Furthermore, Durham County Council has a duty under the Highway Act to ensure that those trees in private ownership adjacent to the highway do not pose a danger to its users.
5. Whilst the Councils owned woodlands have management plans governing their day to day maintenance, there is currently no written countywide policy to guide management decisions on trees within open spaces. The arboriculture teams have been guided by the broadly consistent practices inherited from the former Councils that healthy trees would never be removed or heavily pruned without good reason. The absence of an adopted policy does however expose the Council to risks of inconsistent responses and challenge. Such a policy would seek to balance the risk and nuisance to individuals sometimes posed by trees

in specific circumstances against the public and environmental benefits they bring.

6. Whilst a policy will help to guide the response to the considerable reactive work on trees (there were 2562 service requests Aug 12-July 13), it will also be of use in relation to proactive work, in particular the surveys of tree stock that have recently commenced in highways. It is proposed, subject to approval, to consult widely on the draft policy, allowing Members to consider any amendments or revisions that are required before formal adoption.

### Summary of the Draft Policy

7. A draft policy is attached in **Appendix 2**. It has been developed involving a wide range of officers, for example specialist Tree Officers, Clean and Green Teams, Highways and Planners. It takes into consideration the previous tree management frameworks/practices inherited from the former Councils. It is important to note, that there are no significant changes to current practice as a result of these new policies. Paragraphs 8 to 14 summarise the approach, the policy is a guide however and the circumstances on the ground may involve a combination of factors identified. Some element of discretion is therefore required.

### 8. Inspection of Trees and Scheduling of Work

- We work to a risk-based approach to tree management: a programme of inspection identifying and prioritising potential hazards. The cycle of inspection for trees will be set according to their location and area of risk. Highway trees are considered the highest priority. This work has now commenced.
- The following categories will be used when prioritising tree works:

Priority	Response
Priority 1: Urgent Public Safety	From within 24 hours to one week depending upon the risk
Priority 2: Non-urgent but essential work	Between 1 to 6 months depending upon risk and time of year.
Priority 3: Desirable	12 months where possible
Non- priority	No action proposed

- If proposed tree works are judged to be likely impacting on the local area we will advise local ward members and consider appropriate publicity.
- Non-urgent major tree work will not normally be undertaken during bird nesting / breeding season (1<sup>st</sup> March to 31<sup>st</sup> July). Any trees knowingly supporting roosting bats will not be worked on until Natural England is consulted, if works are commenced at bats present, work will cease to allow specialist advice.
- Note should be made that this work may generate service requests beyond the capacity of existing budgets to cope, however this will not be fully known until when the survey is well in hand. If budgetary pressures do emerge, these will be reported for consideration, with a view that all priority 1 and 2

are unavoidable, and would need to be undertaken, whilst trees works relating to priority 3 may need to be put on hold.

## 9. Dealing with Tree Care – Guidance

The following measures in the policy are in line with current practice:

- **Obstructing / Overhanging Tree Branches** – we will prune trees to eliminate hazards caused by obstructive branches. However we will not normally prune trees that overhang neighbouring properties unless the tree is dangerous or there is a need to avoid damage to the property. Landowners do have their own common law rights to prune back to their boundary, and we will work with them in seeking the best solutions.
- **Shading and Loss of Light** – in many instances pruning to improve light levels will only have limited affect. However this will be looked at on a case by case basis taking into account the proximity and size of the tree to the nearest habitable room or where elderly, infirm or disabled persons who spend a significant amount of time within their home. Work will be undertaken in these instances of genuine need.
- **Loss of Views** – trees will normally only be pruned or removed to restore views when necessary to retain important public viewpoints or significant public benefit, rather than work because they are considered generally too big or too tall for their surroundings.
- **Trees affecting reception (Television / Satellite / Solar Panels)** - Pruning of trees to improve reception is often only a short term remedy, as the flush of growth that follows can make the future position even worse. We would therefore not normally consider the removal or pruning of trees to enable clear television reception, particularly as other technical solutions from the provider including boosters, relocation of aerial/dish are generally more effective.
- **Overhead Cables / Telephone Wires** – we will not normally prune or fell a tree to prevent or reduce interference with telephone wires. We will recommend contacting the telephone service provider in such circumstances.
- **General / Minor Nuisances** – we will not normally prune or fell trees solely to alleviate problems caused by seasonal issues e.g. falling leaves, sap, blossoms, fruit, nuts, bird and insect droppings. We will not normally prune or fell a tree solely because it bears poisonous fruit / foliage. However, where it is known that unsupervised young children are likely to be exposed to berries or foliage that will make them ill if eaten, we will investigate and take action, where appropriate.

## 10. **Alleged Damage and Tree Roots**

- Some tree conflicts arise on account of the presence of tree roots and the perception that they are causing damage. Where damage is alleged, each complaint will be investigated on an individual basis. Guidance, as detailed in the full policy document, will be used in assessing levels of nuisance and identifying appropriate action.

## 11. **Circumstances on Private Land**

- Where the tree is causing a danger / obstruction to the Public Highway - under the Highways Act we have powers to request the owner to make safe / remove the obstruction. If they do not, we will undertake the work and recharge the owner.
- Where the tree is on private land causing a danger (other than to the public highway)- we have discretionary powers to deal with trees if it is felt there is an imminent threat to people or property. We can serve notice on a tree owner to carry out specified works. Where the specified works are not carried out, we do have powers to carry out the works and reclaim the costs.
- We are not able to become involved with private trees causing a nuisance to a neighbouring property by causing shade, blocking views or dropping leaves, flowers or fruit etc. unless the trees are imminently dangerous.

## 12. **Anti-Social Behaviour, Vandalism and Disputes**

- If a county council owned tree is the focus of a nuisance leading to anti-social behaviour we will take measures to reduce the problem. These measures will be determined on a site by site basis.
- Vandalism - We will investigate any reports of damage to trees in our ownership / management, and try to repair any damage where we can. Where possible, we will take legal action against the person(s) causing the damage.
- High Hedges - Once all avenues for resolving a hedge dispute have been tried and exhausted, a complaint about a neighbour's evergreen hedge can be made to the Council's Planning Enforcement Team. A fee is payable for this service.

## 13. **Planning / Protected Trees / Trees in a Conservation Area**

- We will ensure that full consideration is given to both the retention of existing trees and the planting of new ones on new developments.
- A Tree Preservation Order (TPO) is a legal document to protect specified trees and woodlands with public amenity value. The policy document outlines the application process for carrying out works to protected trees and the penalties for failing to do so. It is an offence to carry out works to a tree in a Conservation Area without having given us prior written notice.

- Where a tree is protected by a Tree Preservation Order and it is dead or unsafe a tree replacement will normally be required. In other circumstances tree planting will be carried out subject to available resources.

#### 14. **Maintenance and Bio-Security**

- We will seek to ensure that tree works are carried out to the highest standards as far as possible ensuring that pruning conserves the overall amenity value, form and shape of the tree and all tree works must be carried out in accordance with British Standard 3998 – Recommendations for Tree Work.
- The threat to trees from pests, pathogens or invasive species has never been greater. As a large landowner we undertake to follow best practice and specific advice which is regularly published by the Forestry Commission.

#### **Next Steps**

15. Subject to approval of the tree management policy in its current draft form, it is proposed to consult with a wide variety of groups and organisations as well as inviting comments from residents. Members will have an opportunity to consider the consultation responses early in the new year to inform the decision on the formal adoption of policy.
16. Engagement with stakeholders will be necessary for this policy. In line with our approach to consultation, an engagement plan has been drafted in conjunction with the lead officer. The plan will then be approved by the Consultation Officers Group and the actions implemented. The activities carried out, and the results of the consultation, will be included in a consultation summary document, as part of a future report on this subject.
17. Subject to approval, the adoption of this policy will provide a countywide standard to direct the Council's approach to tree management and a guide to how the Council deals with requests for tree work for both public and privately owned trees.

#### **Recommendations**

18. That Cabinet consider the draft tree management policy, and associated proposed consultation.
19. That Cabinet note the on-going survey of trees on highways, and its future extension to open spaces.
20. That a further report is brought back to Cabinet following the consultation exercise in order to confirm the final recommendations for the adoption of the tree management policy.

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## **Appendix 1: Implications**

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**Finance** Moving from a re-active to a pro-active tree inspection regime will generate additional tree maintenance works. These will need to be costed and included in an annual work programme.

Further information will be provided for consideration if it is felt that the volume of requests generated as a result of this work exceeds the budget available. If necessary implementation of all priority 3 (desirable) will be dependent upon the availability of budgetary resources at the time.

**Staffing** The tree inspection regime will be accommodated within existing staff resources from both Neighbourhood Services and RED

**Risk** We will work to a risk-based approach to tree management: a programme of inspection identifying and prioritising potential hazards. The cycle of inspection for trees will be set according to their location and area of risk. Highway trees are considered the highest priority.

The implementation of a more pro-active tree inspection regime will enable us to more effectively defend claims which will mitigate some of the financial losses currently experienced in this regard.

Currently the absence of a written policy exposes the Council to risks of inconsistent responses and challenge.

A comprehensive Risk Assessment will be carried out following consultation.

**Equality and Diversity** An Equalities Impact Assessment has been carried out and is attached at **Appendix 3**. Where issues arise relating to the needs of disabled, infirm or elderly people the presumption in favour of tree protection will be weighted against those needs on a case by case basis. This approach recognises the Council's duty under the Equality Act 2010 to advance equality of opportunity for disabled people, as well as other people with protected characteristics specified in the Act.

**Accommodation** - N/A

**Crime and disorder** – Vandalism is an increasing pressure on trees. There are various ways in which vandalism can be counteracted, but none of these is 100% effective against determined attack. We will investigate any reports of vandalism / damage to trees in our ownership / management, and try to repair any damage where we can. Where possible, we will take legal action against the person(s) causing the damage.

**Human rights** – N/A

**Consultation** – a working group of officers from Neighbourhood Services and from RED have been involved in the development of this draft policy.

Subject to Member approval, public consultation is proposed in this report, with the findings reported back for consideration.

**Procurement**– N/A

**Disability Issues** Where issues arise relating to the needs of disabled people the presumption in favour of tree protection will be weighted against those needs on a case by case basis.

**Legal Implications** Advice from Legal Services has been sought. There is a range of legislation which has been considered during the development of this policy (listed in Section 4 of the policy document).