

Meeting of the Cabinet - 27th June 2018

Report of the Strategic Director Place

Tree Strategy

Purpose

1. The purpose of this report is to inform Cabinet of the Council's Tree Management Strategy in respect of nuisance trees and the options available for taking account of local need.

Recommendations

2. It is recommended that Cabinet:-
 - Note the contents of this report regarding management of the Council's trees.
 - Support a refresh of the Council's Tree Strategy.
 - Support the principles of the tree risk management approach currently in place for consideration of works on Council trees.
 - Support feasibility work currently taking place with Housing to seek to further enhance tree works on Council Housing land.
 - Support better use of educational and tree works information to Community Forums.
 - Confirm the use of the Tree Decision Sheet process for Nuisance Trees and promote the Public Pays Policy where appropriate.

Background

3. At the meeting of Council on 19th February 2018, members received and agreed a motion of notice in respect of the Borough's trees.

'Following feedback from residents and Councillors we call for a review of the Council's policy relating to trees. Decision making should take account of local concerns, including Community Forums for consultation, to enable local residents and Councillors to tackle long standing issues with trees.'

This Council calls for a review to be undertaken of the policies relating to nuisance trees and that a report on the results be submitted to the Cabinet, including the options for taking account of local needs via elected Councillors and residents and funding needs.

Any proposals must be in line with a good risk management policy for the safety of residents and their property”.

In line with the terms of the motion, the report therefore seeks to provide members with a better understanding of the policies followed by the Council in respect of tree management and will detail options available for improvements in service provision.

The Importance of Trees

Trees are often the largest structures in most residential streets and open spaces. Globally, they are the largest and longest living organisms on the earth and are crucial in maintaining delicate balances of nature allowing for the continuation of life.

In towns, mature trees act as air filters, each tree able to remove 10kg of dust from the air each day. Trees are therefore beneficial to everyone, particularly children and older people who suffer from respiratory problems such as asthma. With yearly increases in road traffic, they provide key environmental benefits and are desirable along roads, busy streets and shopping areas.

A large mature forest type tree such as a beech can take 2.5 kg of greenhouse gas (carbon dioxide) from the air and provide 1.7kg of vital oxygen every hour. In one year, enough oxygen can be produced by one tree of this type to sustain ten people.

Trees also contribute to our mental wellbeing, with open spaces containing trees for shade and recreation. While buildings remain unchanged, trees provide seasonal variations of flower, leaf, fruit, autumn colour and winter silhouette, which for those of us in towns may be one of the main seasonal changes still left to link us to the countryside. Trees help to keep the air fresher and cooler in hot weather and impact on our overall wellbeing.

Although the world's rainforests are regularly publicised as being under threat, the trees on our own doorstep are essential to the viability of our towns, giving character to areas of the Borough, individual streets and homes. However, pollution, development, pests and diseases, underground services, cables and purely being situated close to human activities, threatens the continuation of the Borough's tree stock.

As local pressures increase, each individual tree becomes more vital and must be considered and managed as an integral part of the Authority's urban forest.

Tree Strategy

Dudley Council's Tree Strategy was developed with an overall aim to "Protect and Enhance the Tree Stock of Dudley Borough". The strategy is divided into

two parts: “Task Areas” and “Management Objectives”, with both parts having key objectives containing policies and ways of how the objectives can be achieved. Equally, by using Task Areas and Management Objectives, Local Management Plans can be implemented, where appropriate, feeding into the strategy itself.

Task Areas include:

- Trees along main transport routes
- Trees in residential areas
- Maintenance of young tree plantations
- Trees on development sites and close to utilities
- Trees in parks and open spaces
- Tree planting for the future
- Trees and nature conservation
- The contribution of trees to Local Agenda 21
- The role of trees in education and information

Management Objectives:

- Perpetuate the existing trees as long as is practicable or desirable in accordance with sound arboriculture and forestry practices.
- Create a diverse population of trees of mixed age and species.
- Maintain the character and appearance of the Borough.
- Adopt planned management and maintenance of trees and woodland.
- Promote the concepts of arboriculture and the urban forest and ensure that these issues are addressed within and outside the Council.
- Maintain and, where necessary, improve established arboriculture and forestry practices.

Each of the objectives consists of policies by which the Council endeavours to carry out its part of the task in order to achieve the aim of the Strategy. The policies provide a framework for decision-making, aid the targeting of resources, give uniformity of purpose across the Council and help other sections of the community to understand Council decisions on tree issues.

In order to maintain the Borough’s tree stock for future generations, the planting of new trees is also a fundamental part of the Strategy, however this has reduced over recent years following the removal of the tree replacement budget. The Council’s Tree Strategy is available on the Council Web site -

<http://www.dudley.gov.uk/resident/environment/countryside/trees/dudleys-tree-strategy/>

Risk Management Policy

Following a number of incidents across the Country where people have been killed by falling trees, the issue of tree inspection continues to be closely examined at both national and local level. As a consequence, the Health and Safety Executive requires that all local authorities manage their

trees in line with a tree inspection policy that considers the condition of trees and their potential risk.

The policy must demonstrate pro-active monitoring and include tree condition assessment, reporting of ongoing incidents/work to the tree and prioritisation of inspections. The inspection process must demonstrate a robust system of recording tree condition and any remedial work that may be required.

The Health and Safety Executive (HSE) have stated that failure to produce and follow a tree inspection policy will result in individual and corporate prosecutions.

Although remedial tree work is identified as a result of proactive inspections, the Green Care Team is mostly engaged in undertaking work identified through the reactive inspection process. This is due to the large number of tree enquiries received by the section (1,705 in 2017/18) and the capacity of the resources currently available to undertake this work.

Inspectors are regularly asked to undertake repeated inspections on trees identified as low priority for work in accordance with the Council's Tree Strategy, with repeated requests from the public, ward councillors and MPs. This in itself significantly reduces the number of proactive inspections and tree condition assessments that can be undertaken, exposing the Council to increased risk from unidentified trees that may be in greater need of attention.

In order to adhere to Health & Safety Executive requirements and the Council's own Tree Strategy and Risk Management Model, the Council should ensure its resources are aimed at those trees that expose the Council to the highest levels of risk.

It should however equally be recognised that by managing the Council's risk in line with a good risk management policy, it is to the detriment of work required to improve lighting, overhang and general neighbourhood nuisance issues etc. The section is currently seeking to emphasise the importance of the proactive tree inspection process in order to identify the highest risk trees for priority inspection. Proactive assessment and scheduling of work is more cost effective and over time will help to reduce the number of nuisance related enquiries currently received.

Reactive Process

Following receipt of an enquiry from a member of the public/customer, a non-visual assessment is made from the information available to determine whether the tree could be considered as high risk. The content of this assessment is important in determining the priority of inspection and any future work that may be required. Although this may be subjective, a range of questions are asked by Dudley Council Plus staff to determine whether the tree meets relevant criteria for priority inspection.

Hazard Tree Inspection Form

In order to assign risk to tree work at time of inspection and following a condition assessment, the Council uses a Risk Matrix, identified as best practice by the HSE, the principles of which are used by Dudley MBC in other areas of risk management and most other local authorities. The inspection process requires completion of a Hazard Tree Assessment Form following each inspection and the application of a risk against set criteria detailed in a risk assessment schedule. The eventual hazard rating and priority of work also considers differentiation of work priorities according to hazard/target. To be able to carry out a Visual Tree Inspection, the officer has to hold a recognised Arboricultural Qualification with relevant practical experience and has to complete and pass specific visual condition assessment training. It is not sufficient to just work and have experience in the industry. (Appendix 1)

Nuisance Trees

The majority of nuisance work continues to be attributed as low priority. However, there are many cases where residents are particularly sensitive to the consequences of living next door to mature trees but the professional opinion is that neither remedial work nor felling could be justified.

Most common complaints include deprivation of light, leaf fall, aphid secretion, and bird droppings etc. Whilst these matters might present a nuisance, they do not present illegality, a key factor for the Council in respect of service pressure for this type of work to be undertaken.

By operating in accordance with our Tree Strategy and Risk Management Policy, the Council has successfully defended all claims received to date from the Local Government Ombudsman where work has been resisted due to it being categorised as low priority.

Tree Decision Sheet

The Dudley Council Tree Strategy was adopted subject to the inclusion of a mechanism for dealing with nuisance trees.

As such, a sum of £25,000 was identified and made available to provide resources to deal with nuisance trees through the decision sheet process, requiring support and approval by the Cabinet Member for Environmental Services.

It should be noted that the Tree Strategy states that work identified solely on the basis of nuisance will be resisted as the impact of undertaking such works for this purpose diverts resources away from higher priority works identified by the Borough's Tree Inspectors through its risk management model.

The tree decision sheet process does however consider the customer's request in addition to a recommendation from the Tree Inspector following an inspection of the tree(s). The documentation also considers the cost of the work and any associated factors such as consistency in the decision and the impact of work on adjacent properties and the sections other priorities.

The mechanism for work on nuisance trees remains and continues to be an available avenue when requested by ward members.

The Public Pays Policy

It is recognised that a tree inspection may identify future tree works, however based on an assessment of risk, this may be deemed as low priority. In recognition of this, and in order to assist the complainant, the Council has in place a “Public Pays Policy” whereby the public may accelerate works to a Council tree by paying for the work directly themselves.

Should this route be supported by the Cabinet Member for Environmental Services, any work subsequently agreed must be supported by the Tree Inspector with work undertaken by the Council’s approved contractor in order that it is completed to industry standard and adheres to and meets all necessary professional and safety requirements.

The Policy, whilst not widely used, has been successfully applied on a number of occasions in the past and ensures that available Council budget is spent on trees that pose the greatest risk to the public.

The Role of Community Forums

Following receipt of the Council motion on trees, detailed discussions have taken place between Officers of Green Care, Public Health and Risk Management regarding the future role of Community Forums in determining work on nuisance trees.

Officers in the Public Health function now oversee the allocation of funding awarded to the various forums in place across the Borough. Notwithstanding issues regarding constitutional roles and responsibilities for granting of works on trees, there are also further issues regarding trees with Tree Preservation Orders in addition to High Hedges Legislation that must be adhered to.

As such, there is little support for important decisions on Council tree work being made through this route as decisions would be made in isolation and not in consideration of wider Council risk. Should failings take place on higher risk trees, the Council would leave itself open to claims of maladministration by not having measures in place to ensure its trees are managed in accordance with a risk management process.

In any event, requests for work on nuisance trees through this route would largely be made by individual residents with work solely benefiting them or a small number of residents and not the wider local community. (Members of Cabinet received a report at its meeting of 21st March 2018 detailing the revised processes for allocation of funding through community forum grants which provides an emphasis on voluntary or community organisations). It is however recognised that Community Forums provide an important opportunity to provide local communities with information on key tree work that is due to take place or has taken place in a local area.

Furthermore, the Forums provide greater opportunity for the provision of information to and engagement with local communities in respect of the Council's Tree Strategy and a better understanding of how the Council manages its tree stock.

Notwithstanding this, individual requests for tree work received by Community Forums can be raised directly with Green Care and where appropriate be considered through the Tree Decision Sheet process if supported by the Cabinet Member for Environmental Services.

Cataloguing and Proactive Inspection of Trees

Recent changes in technology and advancements in digital mapping suggest that the authority has responsibility for over 150,000 trees.

To ensure that the Council is effectively managing its trees in the future, more robust mechanisms need to be put in place to ensure that greater emphasis is placed on tree cataloguing which requires proactive tree inspections, detailing the condition of the Borough's trees and their ongoing maintenance requirements. This essential work has significantly reduced over recent years due to reduced budgets, service pressures and repeated requests for reactive inspections on low risk trees. As a result, if proactive surveys are not sustained, it is possible that trees may decline in condition and pose a risk to the public and property without being identified by the Council. This situation again leaves the Council in a difficult position should it need to defend itself against tree failure in the future.

By progressing tree cataloguing work, the Council will be in a better position to identify and introduce cyclical programmes of work in the future subject to available levels of funding. It is expected that this will also have an impact on the many nuisance issues currently being experienced.

Tree Service Funding

Available funding for management of the Borough's trees has long been a subjective matter with Ward Councillors regularly receiving requests for work that, if low risk or nuisance, has traditionally been resisted to ensure available budgets are allocated to more high risk works.

Additionally, any reduction in budget reduces the amount of work that can be undertaken on trees that have a lower risk score rating. The Arboriculture Section currently has a budget of £487,800 of which £389,500 is spent directly on tree work through the Councils approved contractor. The arboriculture budget has been reduced over recent years in order to achieve required Council savings.

2015/16 - £125k budget reduction

2016/17 - £10k removal of tree planting budget

Housing Trees

The Green Care Section, as custodian of the Borough's tree stock, maintains all Council trees in accordance with the Council's Tree Strategy to ensure a consistent and holistic approach on behalf of the various directorates.

The cost of tree works on Housing land is met from the Housing Revenue Account (HRA) and discussions are currently taking place with Housing colleagues regarding future tree management requirements on housing land.

As part of tenancy agreements, Council tenants are responsible for the maintenance of their front and rear gardens, however, the Council has traditionally accommodated works on higher risk trees due to the liability these may pose for the Council. In many cases, the tenant or previous tenant may have planted the trees themselves however over time they have become unmanageable and costly to maintain.

Consideration of tenants taking responsibility for the maintenance of these trees could be a potential option, however, the Council may not be able to remove its overall responsibility as landowner and could be subject to criticism and potential legal action should a tree fail. In any event, many tenants may be elderly and may not have sufficient means to pay for tree works should this route be further explored.

Summary

In summary, the Council has a clearly defined process for the management of its tree stock that recognises and considers the requirements of the Health and Safety Executive and its responsibilities for the Safety of its communities.

Significant inroads have been made in reducing the number of dead, dying and/or dangerous trees in the Borough.

Cataloguing and carrying out assessments of the tree stock will allow the Council to obtain condition data surrounding its trees, which must be focussed towards future proactive inspections. These actions will lead to improved risk management and resource efficiency.

However, in order to further improve the condition of our tree stock, we must continue to more proactively manage our trees through cyclical programmes of maintenance, reducing the backlog of enquiries and outstanding works associated with tree nuisance.

Proposed Way Forward

This report aims to set the scene on how the Council manages its tree stock and at the same time emphasises the importance of a good risk management model that not only ensures the Council can defend its actions in respect of prioritisation of tree works, but is in line with industry best practice and Health and Safety Executive requirements.

The Tree Strategy is fit for purpose but requires a refresh to consider local and national environmental developments and/or emerging best practice.

Mechanisms currently exist for the Cabinet Member to support works on Nuisance Trees, however each case should be considered on merit in order to ensure that there is no significant conflict with the Tree Strategy

Better engagement should be undertaken with Community Forums on how the Council manages its tree stock in addition to information on any significant local tree works.

More emphasis should be made of the Public Pays Policy. It is recognised that the policy may not always be the most appropriate option but does provide an opportunity for residents of the borough to individually or collectively support tree work in their local area that has been assessed as low priority or not supported through the Cabinet Member Tree Decision Sheet process.

The service has been subject to a number of budget reductions over recent years resulting in less tree work taking place across the Borough and a necessary emphasis on higher risk tree works. Constrained budgets emphasise the requirement to focus resources on a proactive risk based approach and reduce the reactive complaint based calls for action in relation to nuisance trees in order to protect the public from harm and the Council from liability.

Finance

4. The current budget for the service is £487,800 of which £398,500 is spent directly with the Council's approved contractor on tree works. It will also be necessary to make a further detailed analysis of the extent and cost of remedial work identified from tree inspections and the introduction of a future cyclical programme of works to maintain the stock in good order.

Law

5. The Council carries out its function of providing parks and public open spaces under various statutes, notably the Open Spaces Act 1906 and Part IV of the Public Health Act 1875.
6. Section III of the Local Government Act 1972 enables the Council to do anything that is calculated to facilitate or is conducive or incidental to the discharge of its functions, the care and maintenance of the tree stock being such an activity.
7. The provisions relating to trees in the highway are contained in the Highways Act 1980, the Health and Safety at Work Act 1974 and Safety at Work Regulations 1999.

Equality Impact

8. The report takes into account the Council's Equal Opportunities Policy in respect of the delivery of the service, requests for work on the Borough's tree stock and the recruitment of service personnel.

Human Resources/Transformation

9. There are no direct human resource implications associated with this report, however, funding options detailed within the report may require additional resource if supported. Further educational material to the public and Community Forums on how the Council manages its tree stock will make an important contribution to the efforts being made to transform the Council's relationship with the Borough's communities.



.....
Alan Lunt
Strategic Director Place

Contact Officers: Matt Williams
Telephone: 01384 814510
Email: matt.williams@dudley.gov.uk

Garry Dean
Telephone 01384 814506
Email: garrydean@dudley.gov.uk

List of Background Papers

Tree Inspection Form