



Highways Committee

27th July 2010.

For Action

Wards Affected:
Queens Park

Proposed removal of street tree outside 148 Purves Road NW10

Appendix 1 is not for publication

1.0 Summary

1.1 This report informs the Committee of a petition that was received from residents in Queens Park Ward objecting to the removal of a street tree outside 148 Purves Road NW10. The tree is the subject matter of a subsidence claim. The report also outlines the process undertaken by Officers when a subsidence claim is made and the reasons for the proposed removal of this particular tree. The information provided in Appendix 1 is exempt from publication and summarises the evidence in relation to the subsidence claim and the tree.

2.0 Recommendations

- 2.1 That the Committee note the contents of the petition received and objecting to the removal of the street tree outside 148 Purves Road
- 2.2 That the Committee note current procedures undertaken by Officers in relation to street tree related subsidence claims.
- 2.3 That the Committee note the reasons for removing the street tree outside 148 Purves Road as set out within the report and Appendix 1.

3.0 Petition

3.1 A petition has been received from residents of Purves Road, and other streets in the vicinity, within Queens Park ward. The petition is headed "Petition to save the tree in Purves Road" and states "we the undersigned call upon Brent Council to not remove the mature tree from outside 148 Purves Road. Instead we call for further investigation of the causes of any perceived housing damage"

3.2 The petition has been verified as containing the signatures of at least fifty persons on the Borough's electoral register and hence requiring the consideration of the relevant Committee.

4.0 Subsidence Claims Procedures

4.1 It is proposed to remove the mature Alnus (Alder) street tree in response to a subsidence claim being made in relation to the property at 148 Purves Road. Appendix 1 contains detailed information in respect of the subsidence claim.

4.2 Claims are usually received from insurers on behalf of house owners, however there is a small percentage made direct by residents. The initial contact vary from presentation of a full report on the damage with a report addressing the tree roots and proof that the roots are from the tree in the highway to a letter stating the tree is causing the damage and putting the Council on notice that a claim is forthcoming.

Where a claim is received directly from the resident, the procedures listed below are followed:

- a. Officers will inform the residents that they should contact their own insurers to progress the claim
- b. Officers would not advise residents to proceed with a claim or not
- c. Officers will not make a visit to investigate the crack inside the property
- d. Officers will carry out a site visit to confirm whether or not the tree is on the public highway, precise location of tree, condition of tree, species, and distance of tree to property and whether or not there are any other trees in the vicinity (public or private) that could be responsible for causing damage to the property
- e. Officers would produce a report containing the above information and forward it to Brent Insurance Management.
- f. Officers would give contact details to residents of the persons to be contacted for further update on the progress of their claim.
- g. The final decision to remove or not to remove a tree will be taken by Officers taking into account reports subsequently produced by the Council's loss adjusters and both arboricultural and economic factors.

The above procedures are the same as followed by Local Authorities across London and provide the Council with an appropriate level protection in relation to subsidence claims whilst ensuring that recognition is given to the aesthetic and environmental value of street trees.

5.0 Disclosure of Evidence

- 5.1** The issue of whether or not the Council is obliged or able to disclose information relating to a particular claim has been considered by officers. Officers currently hold the view that a report produced by the Client's surveyor is for the sole use of his client and must not be reproduced or transferred to any other third party without the express written consent of the author'
- 5.2** Officers are of the view that the disclosure of such information to a third party could be prejudicial to the outcome of any case.
- 5.3** This is very frustrating situation for officers who have regular contacts with residents and others who are understandably concerned about proposals to remove street trees and seek sight of the evidence on which a decision has been made.
- 5.4** As outlined above, the information in this particular case is not wholly owned by officers and they are not in a position to disclose it to members of the public unless expressly authorised by the author of the report to do so. The Report out in Appendix.1.

6.0 Officers Decision to Remove the Tree

- 6.1** Officers have taken the decision to remove the tree based on the information set out in Appendix 1 and with regard to;
- **The current legal position:** an analysis of legislation and recent case law in regard to street tree claims. In essence, once it is demonstrated that tree roots are present on the property making the subsidence claim, the claim is more than likely to be successful if progressed.
 - **On economic grounds** - If the tree is felled now it will remove the risk of a claim to recover the cost of underpinning the property being successfully pursued against the Council, Officers estimate that this represents an effective saving of at least £7,000.00.

In the past there have been numerous cases where the Council initially agreed not to remove a tree involved in a subsidence claim and subsequently a claim (submitted by an insurer or other agent) was successfully pursued – resulting in the Council incurring substantial costs. In a time of financial constraints the economic factor must be considered in coming to a decision to remove a tree or not.

- **To protect the Council's current position** - Officers are very reluctant to remove a healthy tree from the public highway (because of the many benefits to be gained environmentally by having a healthy tree on the public highway) and would only in the face of sufficient evidence and where other arboricultural methods have either failed or are not appropriate. This is the case in relation to this particular tree. It is important that decisions made by officers in relation to street tree removals are timely and made in accordance with the process outlined. To depart from this process could result in extensive delays in reaching a solution, unnecessary cost and expose the Council to additional risk.

In order to mitigate against the impact of the loss of this street tree a replacement tree of appropriate size and species would be planted in the vicinity of Purves Road upon removal of the street tree outside 148 Purves Road.

7.0 Financial Implications

- 7.1** If the tree is felled it would remove the risk of a claim for the cost of underpinning being successfully pursued against the Council. This represents an effective "saving" of at least £7,000.00
- 7.2** The most appropriate solution in this case is to remove the tree and plant a similar or the same species of tree but smaller. This would reduce the risk of a potential subsidence claim at this location in the near future. The costs of removing the tree and planting a replacement tree are estimated to be less than £1,000 and would be met from existing revenue budgets.
- 7.3** This report has explained that there is a significant risk in not removing the tree that is the subject of the subsidence claim set out in Appendix 1 and that using other arboricultural methods (Pruning, pollarding etc) to contain the trees would not be successful. That approach has proved unsuccessful in the past and it is necessary to progress claims in a robust way that protects the Council's interests. The Table below sets out the position in relation to street tree claims over the past 3 years.

Year	Number of Claims	Paid £	Outstanding £	Total cost of Claims (£)
2007/08	100	245k	631k	876k
2008/09	38	34k	206k	240k
2009/10	55	19k	339k	358k

8.0 Legal Implications

- 8.1** The legal situation regarding tree root trespass and nuisance has gradually hardened against the owners of trees and the current situation since the decision in *Deleware Mansions v Westminster Council 2001* is that the adjoining owner /claimant only needs to mount a case on the premise that on the balance of probabilities the encroaching tree is causing the damage
- 8.2** The Council has mounted a legal defence to a number of claims. The last case was in 2008 and was unsuccessfully defended.
- 8.3** The *Delaware Mansions v Westminster* was the defining case and there has not been a successful case defended by a Local Authority since that event.
- 8.4** It is also a fact that tree root encroachment is a trespass and as such any landowner who is suffered a tree root trespass on their property can go to the Courts and obtain an injunction on the tree owner to abate the nuisance and the only way that can be achieved is by removing the tree.

10.0 Conclusions

In this particular case officers have considered the evidence in relation to the claim in accordance with the process described and decided that on balance the appropriate course of action is to remove the street tree and replace it with another tree in the vicinity of appropriate size and species.

In coming to that decision officers have been mindful of the value that the Council and the wider community place on street trees – particularly mature street trees.

Nevertheless, in this particular case, removal is considered appropriate.

11.0 Environmental Implications

The removal and replanting of a tree would be in line with our policy to enhance and protect the borough's tree stock, which will improve the borough's environmental status.

12.0 Staffing/Accommodation Implications (if appropriate)

There are no staffing implications arising as a result of this report.

13.0 Background Papers

Street tree files where Subsidence claims have been submitted

Subsidence costs provided by Brent Management Insurance

Any person wishing to inspect the above papers should contact Neal St Lewis, Streetcare Service Unit, Brent House, 349/357 High Road, Wembley, Middlesex HA9 6BZ
Telephone 020 8937 5079

14.0 Contact Officers:

Neal St Lewis, Streetcare Manager
Tim Jackson, Head of Transportation