

Mr Jim Biggin
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Date: 8 November 2012
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Dear Jim

CBC Tree Policies

Our Tree Officer has now had the chance to review the matters raised in your letter of the 29 August 2012 and has reported to me. I hope you find the information helpful and bases for your future discussion with Officers on this matter.

For ease of response I have included your original letter within my reply and added appropriate comments.

1. CBC Policy Covering the Maintenance of Trees

We promised you a discussion paper on this topic. We have raised the pertinent issues by citing actual examples of trees that are causing a nuisance and that could give rise to disputed insurance claims, a situation best avoided in our view.

Response:

West Christchurch has an attractive established character. The tree stock, whether public or private, makes a significant contribution to this. The Council has recognised this for many years and has a policy framework within which the stock is managed.

Below you will find the Council's responses to the points raised. For ease of reference, the points have been numbered. In addition, there are some general comments and information referred to and these have been added as appendices. I have also made comment on Mr Miller's email dated 11 October 2012 which you forwarded to Cllr Mrs Phipps and invited her to share with Officers.

2. Trees that come under the St Catherine's Hill Management Plan

Example: trees behind odd numbered houses in Aston Mead

The question here is who in the future will be responsible for decisions related to the maintenance of these trees? Is it the new St Catherine's Management Committee or

is it CBC? The question is not to be taken lightly because a number of these trees display the problems that are described below.

Response:

The Countryside Service and the St Catherine's Hill & Town Common Management Steering Group (the Steering Group) will have a joint responsibility. The Countryside Service will deal with day to day management whilst the Steering Group will develop the strategy. (See comments attached from the Countryside Service, Appendix 1).

3. Trees that damage Roads and Pavements and Walls

Example - 1: Foreland Close

These trees are on the pavement and represent a drain on public finances because damage to the road and the pavement has to be repaired. It is only a matter of time before they start to damage resident's drives and front gardens. DCC who manage the road repair budget, are in favour of replacing them, thereby saving on future repair bills.

Response:

Dorset County Council (DCC) has responsibility for highway trees and drainage. Any matters should be addressed directly to them at dorsetdirect@dorsetcc.gov.uk or on 01305 221020.

Example – 2: Hillside Drive

Outside the Retirement Housing, just before the junction with Marlow Drive, where there is a substantial bulge in the road that is of significant enough size that it can only be driven over very slowly or alternatively driven around, which means driving on the wrong side of the road.

Response:

The road surface is the responsibility of Dorset County Council (DCC) and any related matters should be addressed directly to them at dorsetdirect@dorsetcc.gov.uk or on 01305 221020. It is noted, that at the time the Trees Officer compiled her report, 25 October 2012, that many of the roadways in the area including Hillside Drive were being resurfaced.

Example – 3: the front of 23 Durlston Crescent

This tree is in the front garden of the property and is covered by a TPO; in the past CBC have allowed some pruning. The tree is now damaging the pavement and will in time probably damage the road. Until we drew it to their attention the residents did not appreciate that they potentially might have some liability for this actual damage and for any consequential damage that resulted from say a pedestrian tripping over the damaged pavement. Whilst CBC liaised with the residents over the pruning, they did not offer any advice or guidance as to what might happen in the future and to the responsibility borne by the resident. We would like to see that change and CBC take a far more proactive role in education residents that own a tree covered by a TPO.

Response:

The Council does provide information at the time of service of a TPO and beyond. Further advice may be obtained from the Citizen's Advice Bureau, Arboricultural Association and www.dorsetforyou.com web site. A TPO does not override the owner's responsibility for the tree(s). Individuals should obtain independent professional advice if they are concerned about liability associated with a tree's health or safety and the Council is not in a position to provide specialist advice to individuals in this respect

Example – 4: the rear of 33 Durlston Crescent

There is a group of five trees located on CBC land immediately behind the rear garden of 33 Durlston Crescent. The largest, most substantial of this group is located closest to the rear garden brick wall. There is now the tree and/or its roots have caused a large crack along the wall, which can reasonably be argued. (Incidentally, there used to be six trees in this group. However, a large branch fell from one of the trees, blocking the public footpath. CBC then cut down the tree.)

It could be argued that these trees are dangerous because they make the pavement in particular uneven and difficult for say a wheelchair to navigate or could cause a wall to collapse. *However, there appears to be no definition of "dangerous", which complicates matters (see also below).* In our view, where a tree stands on public land and causes actual damage to public and/or private property and thus costs council tax payers money, that tree should be replaced by a more suitable tree; these changes to be funded by CBC-DCC.

Where a tree stands on private land and causes actual damage to public and/or private property, that tree should be replaced by a more suitable tree. These changes to be funded by the owner of the land on which the tree is located.

Response:

The definition of 'dangerous' is not, as you say, straightforward. It is an area explored in some detail by lawyers and there is various case law on the subject. It is not an area which can be readily addressed here. You may wish to obtain independent legal advice on the matter.

Each occurrence is looked at on its own merits within the adopted policies of each of DCC and CBC and their respective responsibilities. In every case, it is a matter of balance whether the degree of actual damage caused is proven to be wholly or largely attributable to a tree and whether such damage is sufficient to justify felling or whether a repair can be made without the necessity of felling.

The land to the rear of 33 Durlston Crescent is the responsibility of Dorset County Council (DCC) and any related matters should be addressed to them at dorsetdirect@dorsetcc.gov.uk or on 01305 221020

4. Trees That Cause Unreasonable Inconvenience

Example - 5: 72 Hurn Road

This tree is half in the garden of 72 Hurn Road and half on the pavement. It is large and overhangs adjoining properties. Debris from the tree frequently blocks the drain on the main road causing flooding at and around the site of the bus stop. Passengers are sprayed with water as when a bus pulls into the bus stop. At least one wheelchair has tipped over as the user attempted to navigate the footpath.

This debris also blocks the drains of 72 Hurn Road causing the homeowner to keep a stock of sandbags to use in an emergency (such as occurred during the recent heavy and prolonged rains).

On one, occasion a large branch fell off and caused damage to a parked car. Does this mean that the tree is dangerous? (See below)

The residents would like to replace the tree with something more suitable but CBC won't allow them to take any action and won't itself take any action, which on the face of things is not in the best interests of many local residents.

In our view, where a tree stands on public or private land and causes unreasonable levels of inconvenience to local residents, that tree should be replaced by a more suitable tree, these changes to be funded by the owner of the land on which the tree is located or jointly in cases such as this where the tree is on both public and private land.

Response:

The failure of a branch from a tree rarely renders a tree 'dangerous'. A branch may fail for many reasons and it does not follow that the rest of the tree is likely to fail. The suggestion that a tree be removed on grounds of 'unreasonable levels of inconvenience' is not considered necessarily acceptable. An assessment and judgement would be required on what constitutes an 'unreasonable level of inconvenience' weighed against the positive factors in favour of retaining the tree. Hence, the present position of each case being considered on its own merits is regarded as more appropriate and more likely to achieve a mutually acceptable solution to all parties.

The above mentioned tree is not owned by CBC, hence a direct approach should be made to Dorset County Council (DCC) at dorsetdirect@dorsetcc.gov.uk or on 01305 221020.

5. Trees That Are Dangerous

In 1994, CBC imposed Tree Preservation Orders on virtually every tree standing in private residential property on St. Catherine's Hill. In the past 18 years, these trees have changed substantially in terms of their state, size and shape. There is considerable concern that these ageing trees now present a serious hazard, even if at the present time a tree is not classified as being either "diseased" or "dying". This issue was highlighted by CBC representatives during the creation of the St Catherine's Hill Management Plan and a planned programme of felling and

replacement was agreed upon in principle. This same approach should now surely be adopted with the trees that are on private property.

Response:

The 1994 TPOs were the result of a resurvey to update an earlier area TPO, which was made in 1964, hence the amenity value of these trees, has been recognised at least since 1964. Whilst it is recognised that updating the 1994 TPOs would be a valuable exercise, given the on - going resource constraints this is most unlikely to take place.

Given the numerous number of individual tree owners on St Catherine's Hill the likelihood of obtaining a consensus for a management regime of private tree stock is extremely low. Considerable money (£23,000+) and an enormous number of staff hours have been spent on the St Catherine's Hill & Town Common Management Plan since the lodge of the felling licence back in 2003. It is unrealistic to imagine that CBC will be in a position to repeat a similar exercise for trees in private residential properties.

Example - 6: 25 Normanton Close

Apparently, two independent tree surgeons have stated verbally that this tree, which is covered by a TPO, is "dangerous". Before paying to obtain a written opinion the householder would like to know if CBC is likely to concur.

Response:

No application for tree works has been received from this property either recently or in the past. Neither are we aware of any contact being made to the council, by a tree surgeon or the resident, with respect to concerns over a tree. The sensible thing is for the householder to make an application or give us formal notice, with supporting information, that the works are exempt from formal consent. There is no charge to make such an application.

Example - 7: 3 Lees Close

Three failed applications to fell a substantial tree in the front garden had already been submitted to CBC when in December 2007 two substantial branches suddenly collapsed into the road without warning. Fortunately, nobody was seriously injured. CBC felled the tree immediately due to it being "in a dangerous state". Approximately 18 months before the collapse the tree was described as "a healthy tree in early middle age" by the CBC Landscape & Tree Officer as justification for rejecting a felling application

These examples highlight three important issues: (a) what criteria define that a tree is dangerous; (b) if a resident has made representation to CBC that such a tree is dangerous but CBC have disagreed and taken no action, does this relieve the householder from any liability for damage then done by say a falling branch; (c) can the resident claim compensation from CBC for damage done to their property by such a tree?

Response:

It is assumed that you mean 1 and not 3 Lees Close. Two (not three as stated) applications to fell were made and subsequently refused with the earlier one being dismissed at appeal. In 2007, two branches (not the whole tree) failed partly falling onto the highway. Highway staff were called out to clear the highway and gave authorization at that time for the tree to be felled. No comment is made on the merit of that decision.

Advice on the definition of 'dangerous' or liability should be sought from independent professionals and not the Council. See under example 4 above.

A TPO allows for compensation claims to be made in particular circumstances. These are set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 Part 6 (Relevant extract of the Regulations is attached. See Appendix 2)

6 Trees that prevent residents from using their garden through fear

Example - 8: the rear of 27 Durlston Crescent

This tree, which is on public land and covered by a TPO, is considered dangerous by the elderly residents because during the last year without warning three substantial branches have fallen off the tree into their back garden, on one occasion narrowly missing one of them. They are now understandably reluctant to venture into their own garden. Representation has been made to CBC that this tree is dangerous but CBC disagrees. The resident has offered to replace the tree but CBC has declined this offer.

We are advised that The Human Rights Act (the Act) states that an individual is entitled to the full enjoyment of their own property and that no organisation is permitted to interfere with the right of a resident to the full enjoyment of their property. CBC would appear to be behaving in an unreasonable manner that contravenes the Act.

Response:

I assume that the tree you mention is not to the rear of 27 Durlston Crescent on public land but within the rear private garden on that address. The trees, to the rear, on highway land are not covered by TPOs. The pine at 27 Durlston Crescent was subject to an application to fell submitted by Mr Miller, who lives in the neighbouring property. The Council refused the application. An appeal was lodged and following a recent public appeal hearing, a decision was issued on 25 June 2012 dismissing the appeal. The Inspector gave a thorough report on the case including consideration of the Human Rights Act 1998 (relevant extract of Inspector's report dated 25 June 2012 attached, Appendix 3). The Council refutes entirely the assertion that it has behaved unreasonably in this matter or has, allegedly, contravened the Act. The outcome and the reasoning leading to the Inspector's decision support this view.

7. Trees and Shrubs That Are Unsuitable

Example - 9: 8 Hurn Way

Outside 8 Hurn Way is a prickly bush on public land (not a particularly good choice of shrub one would think for a public highway) that scratches cars, people – including children – and animals. Surely it should be possible to agree that such shrubs should be replaced by something more suitable.

Response:

This is not a shrub but a hawthorn tree, a tree species that is considered suitable for the location. However, it has been vandalised and its top has been broken off. This has led to new growth sprouting at low level from the trunk. It could be either pruned or removed and replaced. As with all DCC highway vegetation a direct approach should be made to Dorset County Council (DCC) at dorsetdirect@dorsetcc.gov.uk or on 01305 221020.

8. CBC Trees That Overhang Residents' Property

Example - 10: 49 River Way

This is a perfectly acceptable tree that stands on the roadside verge. The only problem is that it overhangs 49 River Way and the resident would like to prune away the offending branches. The most sensible approach to this would surely be for CBC to prune the tree so as to accommodate the reasonable requests of the resident.

Response:

Again, this is a highway tree and a direct approach should be made to DCC at dorsetdirect@dorsetcc.gov.uk or on 01305 221020.

To conclude on the matter of tree work applications and the individual cases you have cited there is an established procedure, set out in national legislation, with regard to applications for carrying out works to protected trees. There is also an appeal procedure, should applicants not agree with the decision of the council to refuse an application.

The Council follow best practice and guidance established in case law in the determination of tree work applications. However, the service provided by the council has to be within the allocated resources. Advice is given on pre application enquiries but it does not allow an extensive pre-application service to be carried out or provided.

ADDITIONAL NOTES REF.-

Mr Miller's email dated 11 October 2012

- 1) **CBC does not have a tree policy which is acceptable to many of the local residents - many of these are long term residents who have witnessed a deterioration of their environment over the years**

Response:

Council policies are thoroughly reviewed prior to adoption and are believed to be sound. Refer to CBC Tree Strategy adopted at Community Services Committee 19 January 2011. (Available on www.dorsetforyou.com).

- 2) There is no routine / proper maintenance policy undertaken by CBC with regards to the significant growth of trees on amenity land - such a policy would actually enhance the Amenity Value for residents**

Response:

Maintenance of Council amenity land is on-going. Please refer to said the Council's Tree Strategy

- 3) As a direct result of this lack of both an acceptable tree policy and a proper maintenance policy, it is of concern to residents that examples now have to be highlighted to CBC before any action is being considered - CBC has a responsibility to be proactive for both the safety and well-being of residents**

Response:

The Council does not concur with Mr Miller's views.

- 4) Experience has shown that CBC demonstrates an unsympathetic approach to the genuine concerns highlighted by residents who are responsible for trees growing on their own private properties - there is a far greater emphasis being placed on "Amenity Value" than the Health and Safety and also Human Rights of residents**

Response:

The Council does not concur with Mr Miller's views.

- 5) Decisions on individual tree applications are not being referred to the Planning Committee for consideration despite requests being made to CBC - It would appear to residents that the decision making process is largely / solely the responsibility of one CBC employee**

Response:

This is not the case. The Council's Constitution sets out the scheme of delegation and the mechanism for referrals to Planning Committee. There are very few applications that either are referred by Members or hit the 'trigger point' for objection letters. All TPO application recommendations are reviewed and signed off by higher management.

- 6) The Appeal process is an extremely time consuming exercise for CBC, which appears to be the route favoured by CBC to "justify" their decisions**

Response:

Of all TPO applications registered in 2011, 4% of them went to appeal. The vast majority of these appeals were dealt with under a 'Fast Track' procedure which has been brought in by the Planning Inspectorate to speed up the process, and reduce costs, to both the Planning Inspectorate and councils. The Fast Track is considerably less time consuming. The appeal form states 'Appeals dealt with by written representations (Fast Track) procedures are usually decided more quickly than those which proceed through a hearing or a more formal local inquiry and because of this we recommend the Fast Track procedure.' Mr Miller had the opportunity to use the Fast Track procedure but chose to have a hearing.

I hope you will agree that the Council's officers have considered all the points raised in your letter very carefully, spent time researching each issue raised before formulating an answer.

I hope also we have demonstrated that the Council has the appropriate Strategies, Policies and procedure in place to deal fairly and even handily with tree related matters for which it is responsible. These borough wide documents are reviewed periodically by elected members and as such cannot be varied to suit individual areas of Christchurch.

As I have stated in previous correspondence Mr Duckett's PA will shortly be in contact with you to arrange a meeting, should you feel this is still necessary.

Yours sincerely



Neil Farmer
Strategic Director
Christchurch and East Dorset Councils

Copies: Cllr Mrs S Spittle, Cllr Mrs M Phipps, Cllr T Fox, S Duckett, Carolyn McPhie, G Moir

Enc.

APPENDICES

1. *Countryside Service comments*
2. *Compensation information*

Relevant extract, appeal decision – Human Rights Act