

## **WEST CHRISTCHURCH RESIDENTS ASSOCIATION**

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Neil Farmer

Executive Director

CBC

By e-mail

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Dear Neil

### **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.

#### ***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 Hill Management Committee or is it CBC? This question is not to be taken lightly because a number of these trees display the problems that are described below.

#### ***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 the damage to the road and the pavement has to be repaired. It's 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.

*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

*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. When 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 educating residents that own a tree covered by a TPO.

#### *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 a large crack along the wall which can reasonably be argued has been caused by the tree and/or its roots. (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

#### ***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 home owner 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.

#### ***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.

##### *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.

### *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?

### **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 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.

### **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.

### **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.

Once you've had an opportunity to study this paper perhaps we could meet and discuss the issues.

Best wishes

Jim Biggin