
Cabinet Member for Policing and Equalities

18 January 2024

Name of Cabinet Member:

Cabinet Member for Policing and Equalities – Councillor AS Khan

Director approving submission of the report:

Director of Streetscene and Regulatory services

Ward(s) affected:

Wainbody

Title:

Petition – Save this beautiful ash tree from being felled by Coventry City Council

Is this a key decision?

No

Executive summary:

Works to fell and make safe an Ash tree in Howes Lane Finham, were objected to by a local resident. Subsequently a petition was submitted to the council with 151 signatures to save the tree from felling. A response was sent to the local resident in the form of a Determination letter on the 26 September 2023. The local resident has requested that this matter be dealt with by way of a report.

Further investigation of the condition of the tree, has concluded that it has unacceptable potential for failure which, as the tree stands adjacent to private property, presenting an ongoing and constant risk to the resident.

Recommendations:

The Cabinet Member is recommended to approve the works to fell the tree.

List of Appendices included:

The following appendices are attached to the report:

Appendix 1 – Photo gallery Howes Lane Ash tree

Appendix 2 – Photo gallery Coundon Park Ash tree

Background papers: none

Other useful documents

None

Has it or will it be considered by Scrutiny?

No

Has it or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Petition – Save this beautiful ash tree from being felled by Coventry City Council

1. Context (or background)

- 1.1. Works to fell and make safe an Ash tree in Howes Lane Finham, were objected to by local residents. Subsequently a petition was submitted to the council with 151 signatures to save the tree from felling. A response was sent to the local resident in the form of a letter of determination on the 26 September 2023. The local resident has requested that the matter be reported on to the Cabinet Member for a decision.
- 1.2 The Health and Safety at Work (HSW) etc Act 1974 defines that Coventry City Council has a duty to all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety.
- 1.3 Around half of all fatalities due to falling trees or branches occur in public spaces, such as a park or beside roads, so Section 3 HSW Act may be applicable. Whilst HSE may regard the average risk as extremely low, the law requires that where reasonably practicable measures are available, in individual cases, they should be taken.
- 1.4 The Ash tree was initially assessed by the Urban Forestry Officer visually in reaction to concerns from the owners of the neighbouring property in Canford Close. Their garden is dominated by the tree and they have had branches falling from it over many years. We have undertaken works as have the owners of the neighbouring property, under their common law rights of abatement, to reduce its size and to try and reduce the risk of a catastrophic failure which, would affect their property or person. The most recent request for my attention was in November 2022 which led to the visual assessment.
- 1.5 The conclusion after the visual assessment was that it is now time to remove the tree and make the area completely safe. The tree was and is displaying fungal fruiting bodies of the wood decay pathogen, *Inonotus hispidus*. This disease is significant on Ash species trees due to the way in which it effects the structure of the wood tissue. It makes the wood brittle and easy to snap. This leaves the tree vulnerable to major failure in moderate weather condition or periods of drought.
- 1.6 Works were ordered to fell the tree to leave a standing trunk at approx. 4m tall which, will form valuable habitat for invertebrates whilst making it safe for those that pass by or live adjacent to it. When felling trees, we normally write to all nearby residents to inform them of the works and how the landscape will be affected but, due to the quantity of works being raised at the beginning of the financial year, this task was overlooked and no letters were sent out. When the contractor arrived to undertake the works, a nearby resident complained that no one knew of the works and quite rightly, pointed out that it was bird nesting season. We halted the job and tried to discuss the matter with the local resident. Soon afterwards a petition was raised to stop the tree from being felled. The petition gained 151 signatures.
- 1.7 As part of the discussion with the local residents at a public meeting held by the tree, it was agreed to undertake a detailed assessment of the trees condition. The best method of assessment it was to drill the areas of concern, where the decay will be, with a 3mm micro drill that allows the user to feel the drilling resistance of the wood tissue. Healthy wood has a certain level of drilling resistance and decayed wood is easy to drill through. Each drilling starts with healthy wood tissue and then breaks into decayed, or softer wood tissue. These measurements are recorded on each photo of the Howes Lane Ash Tree photo gallery at appendix 1.

- 1.8 Some people requested that we undertake a scan of the trunk using our decay detection equipment called Picus that uses sound waves to determine the level of decay but, this was not possible due to the position of the decayed areas in the tree. The equipment is quite large and access is not easy. Also, this equipment is good at finding pockets of decay that have formed cavities and we would not be looking for cavities in this tree.
- 1.9 The initial concern for the trees structure is now confirmed by the drilling. Some of the points of drilling in the upper part of concern, have only 10 or 30mms of healthy wood tissue present and with the diameter of the trunk at this level being 525mm, we would need to see approx. 175mm of healthy wood to be able to be happy with its condition. This confirms that a future major failure is likely. Just when this will be, is not easy to estimate but, this tree is outside the known acceptable parameters of tree management in relation to wood decay and should be made safe. The HMSO publication – Research for Amenity Trees, “The Body Language of Trees” outlines the appropriate management of trees with decay and is the reference in situations like this.
- 1.10 This site had a second tree which was removed some years ago to make it safe. A large limb failed from its crown and fell into the rear garden of the adjacent property. The same decay pathogen was present and had degraded the wood tissue significantly.
- 1.11 By coincidence, we have also suffered the catastrophic failure of another Ash tree in Coundon Park due to *Inonotus hispidus* and the photo gallery of this tree at appendix 2 shows how the Howes Lane Ash tree will be decayed internally and how it is likely to fail, if we do not take action now. I believe that we are seeing an increased number of trees failing, due to the weather condition that we have experienced in the last 3 years. Periods of drought in the spring of 2021 and summer of 2022, as well as the early summer of 2023 have all contributed to the overall health state of trees that are living with wood decaying pathogens. “Summer branch drop” is well known problem for all tree officers and is caused by dry weather periods. The wood tissue dries out because of the lack of available water in the surrounding ground, and it becomes slightly brittle and susceptible to a summer storm. If we add in the already decayed parts of this tree, the likelihood of a major failure is increased significantly and why we are seeing more trees breaking during the summer months.
- 1.12 We are aware of the condition of this tree and if we do not undertake works to make it safe, this can be considered as negligence, should a future investigation be carried out by the Health and Safety Executive, into why the tree fell and why the City Council failed to take action. This is not a defensible legal position”.

2. Options considered and recommended proposal

2.1. Options available are:

Option 1

To leave the tree as it is and ignore its condition. This option would place the city council in a negligent legal position. The city council is aware of the true condition of this tree and would be in breach of its duty under HSW Act 1974 and Occupiers Liability Act 1957 & 1984.

Option 2

Remove the tree by felling it to a low stump at 4 metres high. This option makes the tree safe whilst retaining some habitat value for invertebrates that live on deadwood. It also cancels out all liability should the tree fail in the future.

2.2. Cabinet Member is recommended to approve option 2 to fell the tree.

3. Results of consultation undertaken

3.1. No consultation undertaken.

4. Timetable for implementing this decision

4.1. The decision will be implemented soon after Cabinet Member's decision. The works are currently on hold awaiting this decision.

5. Comments from Chief Operating Officer (Section 151 Officer) and Chief Legal Officer

The are no financial implications. Established revenue budgets are funding the works.

5.1. Legal Implications

The City Council will be in breach of Section 3 of Health and Safety at Work Act 1974 and Section 2 of the Occupiers Liability Act 1957 & 1984, if no action is taken.

6. Other implications

6.1. **How will this contribute to the One Coventry Plan?**

<https://www.coventry.gov.uk/strategies-plans-policies/one-coventry-plan>

This decision contributes to the One Coventry Plan – Council's role as a partner and leader.

By undertaking further investigations and engaging with the local residents to explain the reasons why this work has to be undertaken.

6.2. **How is risk being managed?**

The legal negligence is ongoing until the tree is removed. This risk cannot be managed.

6.3. **What is the impact on the organisation?**

None

6.4. **Equalities / EIA?**

An EIA has not been undertaken. This decision is to meet a statutory duty that benefits all.

6.5. **Implications for (or impact on) climate change and the environment?**

The removal of this tree does have an impact by removing tree canopy cover. The city council is currently in the process of planting 360'000 trees over the next 10 years. Currently over 40'000 have been planted. These new trees compensate for the loss of canopy cover.

6.6. Implications for partner organisations?

None

Report author(s):

Name Tim Wetherhill

Title Urban Forestry Officer

Service Area: Environmental Services Team

Tel and email contact:

Tel: **02476972599**

Email: tim.wetherhill@coventry.gov.uk

Enquiries should be directed to the above person

Contributor/approver name	Title	Service Area	Date doc sent out	Date response received or approved
Contributors:				
Usha Patel	Governance Services Officer	Law and Governance	08/01/2024	09/01/2024
Other Members				
Names of approvers for submission: (officers and members)				
Finance: Cath Crosby		Finance	08/01/2024	09/01/2024
Legal: Gill Carter	Regulatory Team Leader	Law and Governance	08/01/2024	10/01/2024
Director: Andrew Walster	Director Streetscene and Regulatory Services	-	09/01/2024	10/01/2024
Members: Councillor AS Khan	Cabinet Member for Policing and Equalities	-	09/01/2024	09/01/2024

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