

Decision Maker: **DEVELOPMENT CONTROL COMMITTEE**

Date: **Tuesday 7 June 2022**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **PLANNING TREES TEAM UPDATE**

Contact Officer: Tim Horsman, Assistant Director (Planning)
Tel: 020 8313 4956 E-mail: Tim.Horsman@bromley.gov.uk

Chief Officer: Director of Housing, Planning, Property and Regeneration

Ward: (All Wards);

1. Reason for decision/report and options

This report is presented to provide information about the Planning Trees team, highlight resourcing shortfalls and to make Members aware of potential compensation costs of contesting tree cases

2. **RECOMMENDATION(S)**

Members note the report and consider the resourcing of the team

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
-

Transformation Policy

1. Policy Status: Existing Policy:
 2. Making Bromley Even Better Priority (delete as appropriate):
 - (4) For residents to live responsibly and prosper in a safe, clean and green environment great for today and a sustainable future.
 - (5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
-

Financial

1. Cost of proposal: Estimated Cost: Report details potential costs exposure on tree cases
 2. Ongoing costs: Further Details: Report details potential costs exposure on tree cases
 3. Budget head/performance centre: Planning Division – Trees Team
 4. Total current budget for this head: c£140k for the cost of the Trees team. There is no specific budget for potential costs of claims against the Council
 5. Source of funding: Existing revenue budget for the Trees team.
-

Personnel

1. Number of staff (current and additional): 3
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
-

Procurement

1. Summary of Procurement Implications: N/A
-

Property

1. Summary of Property Implications: N/A
-

Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: N/A
-

Customer Impact

1. Estimated number of users or customers (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable

3. COMMENTARY

- 3.1 The Trees team within the Planning division comprises two professional officers and a support officer. The team deal with all protection and consent matters relating to trees within private property in the Borough. Matters relating to trees on Council land, the highway and public parks are dealt with by a different team within the Environmental Services division.

The work of the team falls into several streams:

Tree Preservation Orders (TPO):

- 3.2 The team consider requests for Tree Preservation Orders on trees on private land in the Borough. Local planning authorities can make a Tree Preservation Order if it appears to them to be '*expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area*'.
- 3.3 Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified. 'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.
- 3.4 Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.
- 3.5 The team are responsible for keeping the TPO database updated. The TPOs are reviewed upon conveyancing enquiries or by officer site surveys. Many of the TPOs are outdated and require full review. There are currently 2785 TPOs.

Applications for work to TPO trees:

- 3.6 The team receive and consider applications concerning any impact upon protected trees. This can range from permitted development, general pruning and felling. The team receive over 1000 applications annually. Dangerous or dead trees are dealt with by way of a 5 day notice, which can result in exemptions being granted.
- 3.7 The application process is a maximum of 8 weeks. If the Council do not issue a decision within this timeframe, an appeal window is opened for 28 days following the expiry of the application. Any applications highlight with a financial risk, will be submitted for Committee consideration.

Applications for work to Trees in Conservation Areas:

- 3.8 Proposals to trees within a Conservation Area requires notice to be given. This application process differs from TPO applications as the notice is Upon expiry of the 6 weeks, automatic consent is deemed issued. The team may issue a decision of no objections, should the proposals be considered acceptable ahead of the 6 weeks expiry. The only way the Council can prevent unacceptable works from proceeding, is by serving a new TPO.

Consultations on planning applications:

- 3.9 The team also receive hundreds of planning applications each year to comment on and are involved in pre-application discussions on some sites where there are significant tree issues. Some general development applications require site inspections by the team and this is carried

out amongst other visit types, such as enforcement, TPO assessments and TPO/conservation area applications.

Tree Enforcement:

- 3.10 The team deal with around 50 cases a year on average, some of which end up with legal action requiring detailed background work and witness statements. Offences within the conservation area or concerning trees protected by way of TPO constitute a criminal offence. The team carry out investigations in accordance with the Police and Criminal Evidence Act 1984. A typical case has a target of being concluded within 12 months. Depending on the complexity of the case, this can extend beyond this target.
- 3.11 Officers are responsible for gathering evidence during site inspections and by interviews under caution. Interviews can be carried on site, recorded in the office or questioning may be sent by letter.
- 3.12 The Tree Team carry out investigations in accordance with the adopted Planning Enforcement Policy. Offences are mostly registered as high priorities, where works are reported on the day. Some offences are historic and will fall into low priority timescales.
- 3.13 The enforcement team are responsible for investigating breaches of condition and offences concerning ancient hedgerows. The Tree Team play a supporting role in these investigations, providing technical input and guidance. Some visits are carried out jointly.
- 3.14 Cases are concluded by the following options:
- No breach identified
 - Breach rectified
 - Breach identified but not expedient to take action
 - Breach identified and expedient to prosecute
 - Tree Replacement Notice (TRN)
 - Breach of Condition Notice
 - Stop Notice
 - Untidy Site Notice (S215)
 - Simple Caution
 - Informal warning
 - Prosecutions
 - Direct Action

High Hedges Complaints:

- 3.15 Part 8 of the Anti-social Behaviour Act 2003 allows local councils to deal with complaints about high hedges whose area contains the land on which the hedge is situated.
- 3.16 When councils are determining a complaint they must first decide whether the height of the high hedge is having an adverse effect on a neighbour's enjoyment of their home and/or its garden or yard. If it is, then councils can order the owner of a high hedge to take action to put right the problem and stop it from happening again. An average case takes 18hrs from initial assessment to the service of a remedial notice. Appeals and enforcement thereafter is additional time.
- 3.17 The legislation also allows councils to set and charge fees for handling these complaints. This is currently set at £500. To cover the cost of the service, it is proposed to raise this to £750, in line with a number of other Council's.

Subsidence cases:

- 3.18 These are where it is claimed subsidence is being caused by a protected tree where the Council has refused to permit its removal. There are around 10 per year. Officers are responsible for assessing the investigation evidence which comprises the following areas:
- Soil Analysis
 - Arboricultural Report
 - Engineers Report
 - Crack/Level Monitoring
 - Root Identification
 - Repairs Appraisal/Costs

Tree Preservation Compensation Claims:

- 3.19 In addition to providing information about the Planning Trees team, Members are also asked to be aware of the matter of compensation claims in respect of tree cases.
- 3.20 Section 203 of the Town and Country Planning Act 1990 provides that a TPO may make provision for the payment by the local planning authority of compensation in respect of loss and damages incurred by the refusal of consent required by the TPO. Similar provisions apply generally to TPOs made post 2012 pursuant to Regulation 24(4)(b)&(c) in accordance with the Town and Country Planning (Tree Preservation)(England) Regulations 2012.
- 3.21 The Local Authority's liability is limited. In such cases, compensation is not payable for any:
- loss or damage which was reasonably foreseeable by that person; and attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;
 - loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
 - loss of development value or other diminution in the value of land; and/or
 - costs incurred in making an appeal to the Secretary of State against the refusal of any consent or the grant of consent subject to conditions.

3.22 Applications for TPO consent to fell are assessed applying the CAVAT method which applies a notional financial value to the trees concerned. This value is then considered against the additional costs of repair as indicated in the application if tree preservation consent is refused. The amenity value of the tree is also considered and an officer recommendation made. If a recommendation to refuse consent is made, Members are advised of the financial implications of defending the case. Members are also advised that there is no budget allocated for the defence of a tree compensation claims.

3.23 There are 8 claims in progress at the moment with a potential for significant compensation if the outcome is not favourable for the Council.

4. FINANCIAL IMPLICATIONS

4.1 See Part 2 report.

5. PERSONNEL IMPLICATIONS

5.1 The Tree team face a challenging position in respect of the amount of work and additional resourcing may be required based on the current workload. The team structure is currently lead by the Tree Team Manager, with a full time Tree Officer and a full time Technical Support Officer. The Tree Team Manager is currently supporting the Tree Officer in covering application assessments across the borough. Should the team be allocated another full time Tree Officer post, the continuing increases in current workloads/ levels could be split evenly and would allow for improvements which would result in providing a more efficient service. The Tree Officers would maintain the application process, assist with consultations, manage enforcement cases, under the supervision of the Team Manager.

5.2 The Tree Officer role is currently set at a BR9 grade. This would need be raised to BR10 to be competitive with other outer London boroughs. Tree officers are hard to come by and has been a very difficult role to fill when a vacancy has occurred, so retention of existing staff within the Tree team is paramount in maintaining the service moving forwards.

5.3 The defence of tree compensation claims does not have a specific budget at present and due to the number of current claims is not able to be carried out within the existing tree / legal teams budgeting.

6. LEGAL IMPLICATIONS

6.1 See Part 2 report.

Non-Applicable Headings:	IMPACT ON VULNERABLE ADULTS AND CHILDREN TRANSFORMATION/POLICY IMPLICATIONS PROPERTY IMPLICATIONS CARBON REDUCTION/SOCIAL VALUE IMPLICATIONS PROCUREMENT IMPLICATIONS CUSTOMER IMPACT WARD COUNCILLOR VIEWS
Background Documents: (Access via Contact Officer)	https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas