



Report to Policy Committee

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Report of: Richard Eyre, Director of Street Scene & Regulation
Report to: *Waste and Street Scene Policy Committee*
Date of Decision: *21st December 2022.*
Subject: *Grass Verge Options, including Wildflower Planting and Community Funded new Street Trees*

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|--|-----|-------------------------------------|----|-------------------------------------|
| Has an Equality Impact Assessment (EIA) been undertaken? | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| If YES, what EIA reference number has it been given? <i>(Insert reference number)</i> | | | | |
| Has appropriate consultation taken place? | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Has a Climate Impact Assessment (CIA) been undertaken? | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/> |
| Does the report contain confidential or exempt information? | Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
| If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:- | | | | |
| <i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i> | | | | |

Purpose of Report:

This report sets out a new approach to managing the competing demands on the Council's urban verges around the city, including options for protection measures to prevent anti-social parking, establishment of wildflowers and community funded tree planting.

Recommendations:

That the Committee approves

- 1) The new Grass Verge and Community Funded Street Tree Planting Policies as outlined in appendix 1.
- 2) That the Council's Ecology Section (alongside the Sheffield and Rotherham Wildlife Trust) be permitted to give residents advice on appropriate wildflower species for grassed areas near their homes.
- 3) That Local Area Committees, Citizens and Elected Members have a greater suite of verge protection measures made available to them and for bespoke verge protection measures to be applied where safe/appropriate to do so.
- 4) That authority be delegated to the Head of Highways Maintenance to develop the 'Trees for Streets' offer for Sheffield in consultation with the Sheffield Street Tree Partnership.

Background Papers

Report to Cabinet October 2017: Changes to Environmental Maintenance Services

Verge Management and Verge Parking Policy: Briefing for Highways Committee (December 2022)

| Lead Officer to complete:- | | | | | | |
|--|---|--|----------|--|----------------------------|---|
| 1 | <table border="1"><tr><td rowspan="4">I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.</td><td>Finance:</td></tr><tr><td>Legal: Richard Cannon, Professional Officer</td></tr><tr><td>Equalities & Consultation:</td></tr><tr><td>Climate: Jessica Rick, Sustainability Officer</td></tr></table> | I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required. | Finance: | Legal: Richard Cannon, Professional Officer | Equalities & Consultation: | Climate: Jessica Rick, Sustainability Officer |
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| | Legal: Richard Cannon, Professional Officer | | | | | |
| | Equalities & Consultation: | | | | | |
| | Climate: Jessica Rick, Sustainability Officer | | | | | |
| | <i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i> | | | | | |
| 2 | SLB member who approved submission: Ajman Ali, Exec. Dir. Operational Services | | | | | |
| 3 | Committee Chair consulted: Cllr Joe Otten | | | | | |
| 4 | I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Committee by the SLB member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1. | | | | | |

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| Lead Officer Name: David Wain | Job Title: Technical Officer, Highways Maintenance |
| Date: 12 th December 2022 | |

1. PROPOSAL

1.1 Introduction

- 1.1.1 There is around 2.8 million m² of grass verges which form part of the public highway, maintained by Amey on behalf of the Council.
- 1.1.2 All aspects of Highways Maintenance (from surfacing of footways and carriageways, litter and fly tipping removal, street lighting and street signs, gritting and environmental maintenance such as tree care and planting, flower beds and shrubs and grass cutting) for highways maintainable at the public expense is undertaken by Amey on behalf of the Council as part of a PFI contract to 2037.
- 1.1.3 Across the city, residents and communities aspire to different uses and methodologies for verges and to maintenance. On some roads, parking is at a premium as Sheffield's housing stock and verges were constructed when most people didn't own a car. Some communities are keen to invest in new street trees to provide shading and new ecology whilst others value wildflowers or the traditional look of regular mowing.
- 1.1.4 This report proposes approval of a range of options available for managing verges across the city. These are detailed in Appendix 1 - Grass Verge and Community Funded Street Tree Planting Policies. The options allow the flexibility to use different approaches across neighbourhoods depending on local needs and priorities of the Council's customers.

1.2 Background

1.2.1 Wildflowers

As part of the 2017 Street Scene Savings decision, the Leader approved reductions to mowing frequency to 20% of all grassed areas in the Council's maintained highway network to enable the natural establishment of wildflower. However, this would not include verges which were directly outside people's homes (i.e. standard verges on suburban streets of normal layout).

- 1.2.2 Typically, wildflowers require low quality soils to thrive, which is contrary to the condition of most verges which, with a cut and leave grass technique, are Nitrogen rich. It can also be difficult to establish a range of wildflowers, without one species becoming dominant. Where the Council has implemented wildflower verges on highway, these are only cut once per year with the clippings removed and the Council's seed mix has been developed to reflect native species with a prolonged range of flowering time.

1.2.3 Section 142 Licences to Residents

The Council has operated a scheme for residents to maintain verges

outside (only) their own homes typically to permit the planting of bedding plants and deployment of planters.

- 1.2.4 Although general maintenance of such highway areas is easily licensed, the complication arises when cultivating or planting physically into highway verges as the particular type of licence which the Council may grant for this activity (under section 142 of the Highways Act 1980) requires residents to indemnify the Council as highway authority against any claim in respect of injury, damage or loss in order for the Council to lawfully grant the licence. For the Council's purposes, this requires that the residents demonstrate sufficient public liability cover should someone be injured.
- 1.2.5 The Council's insurance team experts have scoured the market and this kind of insurance is simply not available to residents who are not qualified highway maintenance professionals or running a similar formal society or group with public liability insurance (for example an allotments group). Therefore, it remains a difficult and unpractical option for most residents to use.
- 1.2.6 The proposal in this report is therefore to utilise the pre-existing deaccrual model within the Streets Ahead contract to change the classification of cutting of areas down to a single annual cut and take a passive approach to residents then overseeding these areas with their own wildflower seeds. This ensures Amey as the Council's PFI provider retain liability both from an insurance and maintenance perspective.
- 1.2.7 **Community Tree Planting**
Through the Sheffield Street Tree Partnership, trial schemes for the past two years have seen over 100 new street trees planted from funding raised by local residents.

The trials have provided learning such as considerations for prospective locations, local consultation and raising awareness of the opportunity to fund new street trees. The Council has also negotiated reduced rates with Amey for the planting of community funded street trees.

1.3 **Proposals**

1.3.1 **Wild flower/no mow**

1.3.1i Appendix 1 details the Council's proposed new approach to supporting the development of local wildflower verges.

1.3.1ii No large-scale changes to grass cutting frequency across the entire grass verge estate are being proposed as part of this proposal. It will only affect isolated, appropriate areas of grass rather than whole swathes of the city. Where resident wildflower seeding is proposed in respect of suburban verges, the caveat included in the 2017 decision described in paragraph 1.2.1 will be dispensed with.

- 1.3.1iii This change will enable areas of highway grass in suburban areas within view of people's homes (as deemed to be appropriate by the Council's Highways Maintenance Division) to be placed upon a relaxed mowing cycle to facilitate the establishment of wildflowers.
- 1.3.1iv This change to mowing regimes will be achieved through the pre-existing contractual de-accrual model, meaning that no contract change is needed and liabilities remain clear for all parties.
- 1.3.2v With over 2 million m² of verges, Amey do not have the time to check on each mowing cycle which have been rewilded. Therefore, the Council cannot uphold requests for wild flowering of verges on a piecemeal basis, so areas need to be cohesive swathes of grass that have resident, LAC and backing from the Council as highway authority.
- 1.3.2vi The goal is to encourage biodiversity and the establishment of wildflower in these areas. Despite the absence of a Section 142 licence, the Council will not seek to prosecute any residents found to be spreading wildflower seed or carrying out other cultivation of these areas, nor will the Council discourage voluntary activities from proactive members of the community which are beneficial to biodiversity - such as raking off of grass cuttings
- 1.3.2 **Resident Led Verge Protection Measures**
- 1.3.2i Section 4 of Appendix 1 details the proposed approach to actions taken by residents to deter the use of verges for parking.
- 1.3.2ii It is proposed that the Council take a relaxed approach to residents deploying low level planting or decoration of verges. However, any significant structures or intrusion into the soil will result in action where this presents health and safety risks and/or liability issues for the Council.
- 1.3.2iii It is proposed that, in these areas (as deemed to be appropriate by the Council's highways specialists), the Council will not expect residents to seek a license under Section 142 of the Highways Act 1980 for their maintenance or management – they shall be retained under the overarching management of the Council's PFI contractor, Amey.
- 1.3.2iv The Council retains powers which enable it to carry out enforcement in respect of nuisances on the highway and, where that thing constitutes a danger (including a danger caused by obstructing the view), to remove that thing forthwith. This enables the Council to act where complaints are received, or where a safety issue is highlighted by the Council's highway cyclical safety inspection programme.
- 1.3.3 **Community Funded Street Trees**
- 1.3.3i Working with the non-profit organisation Trees for Streets, the Council has identified an appropriate web platform for residents to make requests for additional street tree planting in their community.

- 1.3.3ii The platform offers a mapping system where residents can very simply drop a pin for a tree request, follow a few qualifying questions around site suitability and either crowd fund or pay outright for an appropriate street tree.
- 1.3.3iii Any additional street trees will need to meet the outcomes of the Sheffield Street Tree Partnership Strategy in terms of being a resilient and climate tolerant selection.
- 1.3.3iv The Council will also consider requests for fruit trees subject to site suitability, and if going in a soft verge.
- 1.3.3v Trees which fail in the first three years due to insufficient watering or vandalism will not be replaced by the Council.
- 1.3.3vi Community engagement will be actively encouraged both in terms of crowd funding, agreeing locations and involvement in the successful establishment of the new tree.
- 1.3.4 **Council-Led Verge Protection Measures**
- 1.3.4i The Council already has a large number of verge protection measures available via the Streets Ahead contract. The various options for protection measures are detailed in section 5 of Appendix 1 to this report.
- 1.3.4ii This policy does not seek to introduce any new measures or powers, but instead recognise that Local Area Committees or Elected Members may choose to seek their own verge protection measures in response to localised issues which may be outside of the scope and scale of the Streets Ahead project.
- 1.3.4iii The work to implement the verge protection measures will be carried out by the Council and its Highways Maintenance Division will retain ultimate control over schemes from a road safety, suitability and safe passage of emergency or maintenance vehicles perspective to ensure that verge protection or anti parking measures do not inadvertently cause a safety issue for highway users.
- 1.3.4v This policy in no way prevents blue badge holders from seeking a designated parking bay to be installed outside of their property – any proposal for such will be assessed against the relevant criteria in the usual way.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 One of the Council's six strategic goals in the Our Sheffield Delivery Plan 2022/23 is for strong and connected neighbourhoods which people are happy to call home.
- 2.2 The Council's commitment through this is for clean, vibrant and caring communities including focused work in the year to improve the quality and appearance of our roads, pavements and neighbourhood centres across the city.
- 2.3 The proposals in this report provide a range of solutions and options for different communities to address local needs.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 A public consultation was run via the Council's Citizenspace platform between 26th September 2022 and 14th October 2022. This was promoted via GovDelivery, to increase awareness of the survey and the opportunity to participate.
- 3.2 1891 responses were received as well as direct correspondence from representatives of The Sheffield and Rotherham Wildlife Trust and some elected members on behalf of their constituents.
- 3.3 Public consultation outcomes for rewilding can be summarised as follows:
 - a. The majority of respondents felt that the Council currently cuts grass at ***"about the right frequency"***.

As such, no large-scale changes to grass cutting frequency across the entire grass verge estate are being proposed as part of this committee decision, which will only affect isolated, appropriate areas of grass rather than whole swathes of the city.
 - b. **67.48%** of all respondents felt that there **should be more wild verges** across the city.
 - c. **72.18%** of respondents said that they would be supportive of larger areas of highway grass (not the verges outside people's homes) being managed as wild areas.
- 3.4 With regards to verge protection, the top preference for residents was access to a community tree planting project where people could fund trees being planted outside their homes to prevent anti-social verge parking.
- 3.5 The second strongest preference for respondents around verge protection was that the Council should not actively enforce against

residents undertaking their own verge management or protection measures to prevent anti-social verge parking.

3.6

A full analysis of the consultation is provided in appendix 2.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality Implications

4.1.1 An Equality Impact Assessment has been completed.

4.2 Financial and Commercial Implications

4.2.1 As the changes will be made utilising the existing contractual accrual and deaccrual mechanisms, there are no financial implications.

Any costs for verge protection measures would be met by Local Area Committees.

Any costs for community tree planting would be met through crowdfunding via the forthcoming Council website or via individual donations, again via this platform.

4.3 Legal Implications

4.3.1 Section 41 of the Highways Act 1980 ('the 1980 Act') imposes a duty on the Council, as highway authority, to maintain highways which are maintainable at the public expense. This duty is delivered, in part, through the Streets Ahead highways maintenance contract between the Council and Amey. Other functions which are unrelated to maintenance may be carried out on the Council's behalf by Amey within the terms of the contract.

4.3.2 The Council is under a further duty at section 130 of the 1980 Act to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it. The proposals described in this report are not considered to conflict with these duties. In the event that any scheme which is purported to be carried out pursuant to these proposals should conflict with the aforementioned duties, whether that constitutes a nuisance or otherwise, the Council will exercise its powers (including powers of enforcement where applicable) so as to remain compliant with its duties.

4.3.3 Section 142 of the 1980 Act enables the Council to grant licences which permit the occupier or the owner of any premises adjoining the highway to plant and maintain, or to retain and maintain, trees, shrubs, plants or grass in such part of the highway as may be specified in the licence. In other words, the Council may choose to grant licences in respect of an area of highway directly outside of residents' homes

(including verges) for those residents to maintain. This may include, for example, the planting and cutting of grass or to retain barrel planters with decorative bedding plants. However, the licensee must indemnify the highway authority against any claim in respect of injury, damage or loss arising out of the planting or presence in a highway of trees, shrubs, plants or grass to which the licence relates. The Council is not required to grant a licence wherever activities which may be the subject of a licence are carried out.

- 4.3.5 Where any thing is deposited on a highway so as to constitute a nuisance, section 149 of the 1980 Act enables the Council to serve a notice requiring that the thing be removed by the person who deposited it there. This would include residents responsible for placing an obstruction on a highway verge. If that thing is considered to constitute a danger to users of the highway (including a danger caused by obstructing the view) and ought to be removed without the delay in giving notice or obtaining the aforementioned order via the court, then the Council may remove it immediately. The proposals described in this report do not conflict with the potential use of these powers and the Council's ability to use them will not be affected by the proposed policy change.
- 4.3.6 Community tree planting proposals will be facilitated using powers for the improvement of the highway under Part V of the Act. Specifically, under section 96 of the Act, the Council may exercise its power to plant trees, shrubs and other vegetation (and lay out grass verges) in highways maintainable at the public expense. Anything not included within that section which is necessary to facilitate community planting proposals and deemed by the Council to be work carried out for the improvement of the highway will be achieved using other powers under part V, such as the general power of improvement under section 62 of the Act. The Council is not under a duty to improve the highway and therefore not required to facilitate community planting.
- 4.3.7 Community funding for tree planting will be received as a donation pursuant to section 139 of the Local Government Act 1972. This provides that the Council may accept, hold and administer gifts of property made for the purpose of discharging any of its functions or gifts made for the benefit of the inhabitants of its area (or some part of it) and may execute any work (including works of maintenance or improvement) incidental or consequential on the exercise of the powers.

4.4 Climate Implications

- 4.4.1 The scheme has demonstrable climate change impacts.

There are two key actions arising:

- a. Interested residents or groups will need to be signposted to the Sheffield and Rotherham Wildlife Trust or Council's ecology department for specialist advice on wildflower seeds and also for education on the benefits of raking off of arisings after cutting.
- b. Interested residents or groups should be encouraged to compost any arisings raked off at home rather than disposing of them into the Council's waste streams to minimise the amount of waste generated by the project and service changes.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 An alternative model which would enable residents to cultivate, seed and maintain their own wildflower verges directly outside their properties licensed under Section 142 of the Highways Act 1980 was explored.
- 5.2 This piece of legislation requires the homeowner must indemnify the highway authority against any claim in respect of injury, damage or loss arising out of management and maintenance of that area of the public highway. The Council therefore requires homeowners to have specific Public Liability Insurance for this purpose, which exhaustive searches of the market proved unattainable for the average citizen.
- 5.3 An alternative model where the Council would cut, collect, transport and dispose of grass clippings was previously explored as per the recommendations of the Wildlife Trust to optimise conditions for wildflower establishment.
- 5.4 This model was found to be financially prohibitive, requiring not only a full re-procurement of fleet and more stop/start approach to grass verge cutting which would result in slower progress and more operatives being required to deliver the service – but would also generate additional carbon through additional vehicle mileage in transporting of vast quantities of grass clippings across the city.
- 5.5 Highways Maintenance Division will therefore instead provide a quotation to Local Area Committees, members of scheme leads for sowing of Yellow Rattle as a natural grass sward suppressant, and let key interested stakeholders such as the Wildlife Trust and Council's Ecology Section extoll the benefits of residents raking off and home composting arisings from grass cutting activities.

6. REASONS FOR RECOMMENDATIONS

- 6.1 Approval of the recommendations will allow:
 - An increase in the number of areas of wildflowers and areas on reduced grass cutting cycles in suburban areas in keeping with

resident desires and the consultation outcomes.

- The rollout of a community tree planting website and crowdfunding portal for the planting of trees in protecting verges from anti-social parking practices as well as improving the aesthetic and climate resilience of neighbourhoods in 2023.
- Key stakeholders such as the Wildlife Trust and Council's Ecology Section to engage with interested Local Area Committees, residents and elected members and provide specialist technical input around wildflowers and rewilding in their community.
- A suite of verge protection measures being made available to each Local Area Committee in accordance with consultation results for verge protection schemes to be deployed where appropriate on a bespoke basis, reflecting the needs, identity and use of each neighbourhood.

These steps will all cumulatively contribute positively to the city's response to the declared Nature Emergency.

Appendix 2 Consultation Response Analysis

Consultation outcomes can be summarised as follows:

- d. The majority of respondents felt that the Council currently cuts grass at “*about the right frequency*”.

As such, no large-scale changes to grass cutting frequency are being proposed as part of this change, which will only affect isolated areas of grass rather than whole swathes of the city.

- e. 67.48% of all respondents felt that there should be more wild verges across the city.

This is in line with the recommendations being made to committee to make changes to the 2017 decision around placing grass verges onto reduced cutting cycles to encourage the growth of wildflowers.

- f. 72.18% of respondents said that they would be supportive of larger areas of grass (not verges outside people's homes) being managed as wild areas.

Again, this is in alignment with the proposed changes being made which would not impact upon grass verges on a typical street layout and would be focussed upon more incidental and ancillary areas of highway grass land in suburban areas.

- g. With regards to verge protection, the top preference for residents was access to a community tree planting project where people could fund trees being planted outside their homes to prevent anti-social verge parking.

The Council is currently working on the launch of a crowdfunding and community tree planting website planned for early 2023 implementation in recognition of this.

- h. The second strongest preference for respondents around verge protection was that the Council should not actively enforce against residents undertaking their own verge management or protection measures to prevent anti-social verge parking.

Although the Council and Amey have powers under Section 149 the Highways Act 1980 to act when there is “nuisance” and “danger”, it is considered that this can clearly be applied with pragmatism when residents are managing and maintaining verges in a safe way.

- i. In terms of delivering a bespoke solution to the needs, design and aesthetic of each neighbourhood, opinion was overwhelmingly that either residents, local councillors or the Local Area Committee

should decide the "best fit" for dealing with each neighbourhood based on its identity.

Less than 20% of respondents felt that the Council's Highways Maintenance Division Engineers should make these decisions.

As such this report recommends that the suite of options for verge protection be made available to Local Area Committees and Local Elected Members to take guidance from their constituents and citizens in deployment of verge protection measures.

Highways Maintenance Division will just provide an advisory role in these schemes around safety, suitability and legal tolerances.

Separate correspondence was received directly from Dr. Nicky Rivers of The Wildlife Trust with regards to the proposals on the consultation highlighting the benefit of a "cut and collect" service for grass clippings to optimise the likelihood of establishment of wildflowers in such areas.

The Council is not in a financial position to be able to offer this service change to the Streets Ahead contract, however residents and Local Area Committees who express an interest in establishing such wildflower areas will be pointed in the direction of The Wildlife Trust or Council's Ecology Department for specialist guidance on the benefits of collection of grass clippings after our Highways Contractor, Amey, has cut the areas in question.

In accordance with the Climate Impact Assessment for this scheme, residents will also be actively encouraged to compost any arisings at home rather than disposing of them into the Council's waste streams to minimise climate impact and reduce the amount of waste generated by the scheme.