



Author/Lead Officer of Report: Gillian Charters,
Interim Head of Highway Maintenance

Tel:

Report of: Monitoring Officer and Executive Director, Place
Report to: Cabinet
Date of Decision: 21st October 2020
Subject: Report of the Local Government & Social Care
Ombudsman regarding Street Tree Removals &
Streets Ahead Contract.

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? Environment, Streetscene & Climate Change		
Which Scrutiny and Policy Development Committee does this relate to? Environment and Economic Wellbeing		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>		
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"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."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 summarises the findings of a formal report by the Local Government & Social Care Ombudsman (attached to this report as Appendix A) regarding a complaint made by Mr G about the removal of street trees from the road where he lived, as part of the Council's 'Streets Ahead' programme of works delivered by its contractor, Amey Hallam Highways plc.

The report details the recommendations to the Council arising from the report. The report includes an outline of the steps already taken to improve transparency in relation to decision making. Cabinet are recommended to recognise the failings of the Council and provide a full apology. Cabinet approval is also sought for the creation of a public archive of SCC street tree related material to be held within the City Archives in perpetuity.

Recommendations:

- a) Cabinet endorses the publication of a public unreserved apology accepting the findings of the Local Government & Social Care Ombudsman investigation.
- b) Cabinet notes that the Cabinet Member for Environment, Streetscene and Climate Change has provided a private apology to the family of Mr G recognising the failings of the Council in its communications with him;
- c) Cabinet notes that the Street Tree Partnership Working Strategy details the new, transparent decision process for tree removals, and the additional information requirements from the contractor in submitting the recommendation
- d) Cabinet notes that the Highways Maintenance (Streets Ahead client team) and contractor will receive additional training in the Council's complaints procedure;
- e) Cabinet notes the work that is being done to embed openness and transparency across all of the Council's services
- f) Cabinet approves the funding for Sheffield Archives Service to establish and manage the creation of a complete archive of SCC tree related material to be held within the City Archives in perpetuity.

Background Papers:

Lead Officer to complete:-		
1	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: <i>(Insert name of officer consulted)</i> Chloe Parker
		Legal: <i>(Insert name of officer consulted)</i> Andrea Simpson
		Equalities: <i>(Insert name of officer consulted)</i> Annemarie Johnson
<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	EMT member who approved submission:	<i>(Insert name of relevant Executive Director)</i> Laraine Manley
3	Cabinet Member consulted:	<i>(Insert name of relevant Cabinet Member)</i> Councillor Mark Jones
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 Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Gillian Charters	Job Title: Interim Head of Highway Maintenance
	Date: 20.10.2020	

1. **Report of the Local Government & Social Care Ombudsman regarding Street Tree Removals & Streets Ahead Contract.**
- 1.1 This report summarises the findings of a formal report by the Local Government & Social Care Ombudsman (the Ombudsman) (attached to this report as Appendix A) regarding a complaint made by Mr G about the removal of street trees from the road where he lived, as part of the Council's 'Streets Ahead' programme of works delivered by its contractor, Amey Hallam Highways plc.
- 1.2 Ombudsman Findings
- 1.2.1 The Ombudsman investigation has found fault causing injustice in the way the Council handled Mr G's complaints.
- 1.2.2 The Ombudsman recognises and welcomes the steps already taken by the Council to improve how it consults and makes decisions around street tree removals.
- 1.2.3 The Ombudsman makes a number of recommendations which are detailed in this report, together with an overview of the report findings for Cabinet to consider.
- 1.3 Scope of the Investigation and Discretion applied by the Local Government and Social Care Ombudsman.
- 1.3.1 The investigation covers a time period from summer 2015 through to the Council's final reply to the most substantial of Mr G's complaints in December 2017. The removal of the trees on Mr G's road took place in November 2016.
- 1.3.2 The Ombudsman notes the discretion they applied to not duplicate or trespass on findings made by the High Court. And as such the investigation did not consider:
 - the legality of the Council's PFI contract;
 - the overarching policy set out in the Streets Ahead Strategy;
 - the extent of consultation around the contract;
 - the procedure for appointing the Independent Tree Panel or its remit;
 - the extent to which the Council considered the environmental impact of its strategy; and
 - the extent to which the Council considered the impact of planning law or local planning guidance when implementing its strategy.
- 1.3.3 The Ombudsman also decided it was not an effective use of resources to carry out further investigation into the matters listed below, which the Council did provide responses to Mr G about:
 - Council policies around tree replacement species;
 - a particular flexible paving product;
 - the standards the Council follows when assessing desired footway gradients;
 - whether the Council contractors damaged individual trees along his road, raised in his correspondence between August 2016 and June 2017;
 - the damage to kerb stones reported in July 2017;
 - the condition of tree pits installed by the Council contractors; and

- the substance of Mr G's first complaint in January 2016 about the survey sent to households on his road.

1.3.4 The Ombudsman also used discretion not to investigate the extent of information about the Council's PFI contract now in the public domain. It has been noted that since Mr G first raised this matter the Council has put much more information on its website. The Ombudsman consider it would be for the Information Commissioner's Office (ICO) to take a view on whether the Council could publish more information; for example, where small portions of the documents remain redacted. The Council has provided supplementary information to the Ombudsman of its new direction and approach.

1.4 Outcome of Investigation

1.4.1 Through investigating the complaints raised by Mr G, the Ombudsman found numerous examples where the Council responses to Mr G did not meet the principle of being open and accountable, that is that the Council was not clear and open about policies and procedures and did not ensure that the information it provided was clear, accurate and complete.

1.4.2 The investigation found that even though there were a considerable number of detailed requests from Mr G and that the Council was also responding to a large volume of other correspondence relating to the issues, the delays in responding to Mr G were not acceptable and caused injustice.

1.4.3 When taking the decision to undertake tree removals at Rustlings Road in November 2016 at 5am, the investigation found that the Council did not consider the distress or outrage this may bring. And despite the pressures the Council was operating under with the ongoing opposition to the Streets Ahead programme, the investigation found that the decision to undertake the removals in this manner was a disproportionate response.

1.4.4 Having established the Independent Tree Panel (ITP) procedure to reassure citizens it was acting in good faith when carrying out its Streets Ahead Strategy, the Council undermined the work of the ITP in the way it published the panel's report (interpreted by the Ombudsman as being to avoid scrutiny) and misrepresented the advice received from the ITP about a diseased tree.

1.4.5 The Ombudsman considers a more transparent approach from the Council would have caused less distress to Mr G and many others and would not have resulted in the undermining of public trust in the Council's policy.

1.5 The Council's New Approach and Commitment to Transparency

1.5.1 The Ombudsman recognises in its report, since the events of the complaint and scope of its investigation, the positive steps that Council has taken to make significant changes to how it approaches street tree removals as part of the Streets Ahead programme.

1.5.2 The publication of the Council's Review of Tree Investigations in December 2019 is also welcomed and demonstrates the Council has indeed taken the lead responsibility to reflect on the information it receives and publishes in relation to street tree removals.

1.5.3 At the time the Ombudsman was concluding its report, the Council had yet not published the Street Tree Working Strategy, but it did recognise that this promised to embed more transparent decision making.

1.6 Remedies

1.6.1 Five recommendations have been made by the Ombudsman. The recommendations to Cabinet propose that these recommendations are accepted in full, and also reflect the work the Council has already commenced that contribute to their realisation. The recommendations also include some additional proposals beyond those made by the Ombudsman to further regain the trust of the public. The remedies proposed by the Ombudsman are discussed further below along with the Council's response to these.

1.6.2 Apology

The Council should provide a public unreserved apology accepting the findings of this investigation which draw attention to general failings in the implementation of its 'Streets Ahead' policy. It should also provide a private apology to Mr G's family to include specific recognition of its failing in its communications with him;

1.6.2a The Council accepts the findings of the investigations and has put on record an unreserved apology, issued on 14th October 2020.

The Council unreservedly apologises for mistakes made in its handling of a complaint about the way we removed street trees from Rustlings Road in November 2016 and accepts the findings made in the report of the Local Government & Social Care Ombudsman which draws attention to general failings in the implementation of the street trees elements of the Streets Ahead programme. We apologise for these failings.

Cabinet member for Environment, Street Scene and Climate Change at Sheffield City Council, Councillor Mark Jones said:

"We fully accept the findings of this report and recognise that our approach to managing the city's street trees needed to change. We got some things wrong and whilst this report is reflective of a very different and difficult time, we are continuing to make real and significant progress towards a more transparent and collaborative future when it comes to managing our valuable street tree stock.

"Many of the actions outlined in the report are already underway, with the creation of a partnership group and the recent production of a new Street Tree Partnership Working Strategy for Sheffield. Whilst the report recognises this, we know we must do better and we are confident that through our new collaborative approach, we are now in a much more positive and favourable position to ensure our street trees are properly and effectively managed.

"The new working partnership street tree strategy recognises the many benefits trees bring to our urban environment and proposes a more open and inclusive way of working to ensure more transparent processes going forwards. What's more, we are already in the process of finalising plans to make all historic materials relating to street trees publically available via an online archive. In doing so, we can allow those who want to look over past documents to do so, but equally, we can all start to look

forward as we embark on a new, more constructive chapter.

“Through our new approach, we are committed to retaining trees wherever possible, planting additional trees, increasing canopy cover and building a diverse and resilient street tree stock with varying species and age profiles. We are also committing to engaging with stakeholders and the wider public about our plans for street trees in a more proactive way, to avoid any uncertainty about what we are doing and why. Engagement is key for creating a future-proof strategy that works for us all.

“In this specific case, we will be apologising to the complainant’s family and giving reassurances that we are already on the right path towards a more open and sustainable vision for how we manage street trees, not just for now, but for many years to come.”

1.6.2b The Cabinet Member for Environment, Streetscene and Climate Change, Councillor Mark Jones, has also written and sent a private apology to the family of Mr G recognising the Council’s failings in its communications with him.

1.6.3 Transparency

The Council will share with the Local Government & Social Care Ombudsman the further detailed proposals it has for embedding transparency within its new tree strategy;

1.6.3a The Sheffield Street Tree Partnership Working Strategy was approved by the Leader of Sheffield City Council through an Individual Executive Decision in March 2020. A designed version of the Sheffield Street Tree Partnership Working Strategy was published in July 2020. A public consultation on the working strategy ran for 12 weeks from 16th July to 8th October 2020. The feedback from the consultation will inform the development of a final Sheffield Street Tree Strategy by spring 2021. The Sheffield Street Tree Partnership, which is independently chaired by the Chief Executive of the Sheffield & Rotherham Wildlife Trust, will oversee the development of the final strategy.

1.6.3b As a working strategy it documents the ambition for Sheffield, with the Council working in partnership, to positively, actively and sustainably manage street trees both now and in the long-term.

1.6.3c Throughout the development of the working strategy, the agendas and minutes of the strategy development group meetings were published on the Sheffield & Rotherham Wildlife Trust website. The agenda and papers of the Sheffield Street Tree Partnership continue to be published on this website.

1.6.3d One of the actions in the working strategy is for the Council to review, refine and publish the decision process for the management of Sheffield’s street trees. An outline of the new decision process is documented including, increased requirements of the information received from the contractor with a recommendation to fell together with a street tree condition-impact matrix score (taken from the National BS 5837 standard) and decision process flow chart,.

- 1.6.3e This work has been progressed with advice and guidance from the Sheffield Street Tree Partnership and the decision process will be published on the Council website before the end of 2020. In addition, the Council's webpages on street trees are being revised to make it easier for the public to find information about the management of Sheffield's street trees. The Council is also publishing an online guide to help the public understand the Council's responsibilities in managing the city's street trees.
- 1.6.3f The Sheffield Street Tree Partnership will continue to oversee delivery of the actions in the street tree strategy and is looking to diversify its membership to broaden representation on the group.
- 1.6.3g Details of this work will be shared with the Ombudsman.
- 1.6.4 Contract approach
The Council will share with the Local Government & Social Care Ombudsman how it proposes to ensure its contracts and management agreements reflect its new street strategy;
- 1.6.4a As demonstrated by the papers of the Sheffield Street Tree Partnership published on the Sheffield Wildlife Trust website, the contractor is proactively involved in the development of the new decision process.
- 1.6.4b The PFI contract will be updated to reflect the new decision process once agreed. The Council intends to make this public as part of the suite of contract documents openly available.
- 1.6.4c The Sheffield Street Tree Warden scheme is now live; being actively managed by the contractor, supporting volunteers with training and health and safety.
- 1.6.4d Details of how the Council will ensure that its contracts and management agreements reflect the new Street Tree Strategy will be shared with the Ombudsman.
- 1.6.5 Complaints Training
Consider further how it can ensure contractors and managers are aware of the need to signpost correspondence to the Council's complaint procedure whenever appropriate.
- 1.6.5a The e-learning module for the Council's complaints process is being undertaken by all the Highways Maintenance (Streets Ahead Client) team and in addition a taught/facilitated session has been commissioned for officers that are responsible for investigating complaints.
- 1.6.5b The contractor's team have also had refresher training about the complaints process, including the staff that are responsible for tree inspections.
- 1.6.6 Lessons Learnt
- 1.6.6a *The Council consider if there are wider implications for how it delivers services and lessons it should learn as a result of how it implemented its Streets Ahead programme, in particular, how it can embed the principles of openness and accountability across all its services.*

The Council is committed to ensuring openness and transparency in the delivery of its services and as such are reviewing its interactions with the public through its customer experience programme. This includes digitisation of information and processes and enhancing its publication scheme. This work overlaps with a specific programme of works focussing on openness and transparency that also looks at the way the Council engages with the public, proposes additional training for staff and the simplification of language

1.7 Public Archive Proposal

1.7.1 If agreed by Cabinet, the Council will invest in the development of a public archive of SCC tree related material to be held within the City Archives in perpetuity. The scope and parameters of the archive will be determined by professional archivists but will specifically include the period of dispute and controversy including the judicial review and civil litigation and the period January 2015 to December 2018. It will be a detailed catalogue of all Council records in relation to the street trees element of the Streets Ahead programme and will be publicly accessible.

1.7.2 There will be a detailed Freedom of Information Act/ Environmental Information Regulations redaction scheme, setting out the principles of where redaction would be applied by the Archivists. The archive will be prepared and structured in such a way as to deliver FOIA/ EIR obligations by means of each document having been considered and appropriate exemptions applied.

1.7.3 The archive will look to answer the ongoing FOIA/ EIR requests which the Council continues to receive through providing information publicly and with appropriate exemptions already applied by archivists in accordance with the scheme.

1.7.4 The archive will be hosted digitally and it is proposed that digital preservation software will be included in the project. This ensures that any future obsolescence of the file encodings used for any of the documents does not prevent future access.

1.7.5 The Council has had previous experience and success in managing potentially contentious high public interest information it holds with the Hillsborough tragedy and Orgreave Miners Strike.

1.7.6 The archive project will take around five months to complete, if approved by Cabinet.

2. **HOW DOES THIS DECISION CONTRIBUTE ?**

2.1 This report has implications for the “In Touch Organisation” priority in Council’s Corporate Plan. The Council has considered its policy and procedure in light of the complaint and has proactively taken steps to ensure that no other customer is disadvantaged in the same way.

3. **HAS THERE BEEN ANY CONSULTATION?**

3.1 There is no requirement to consult on the proposal in this report. It has been prepared in response to a public report issued by the Local Government & Social Care Ombudsman on 14th October 2020 following his investigation of a complaint against Sheffield City Council.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 There are no equality of opportunity implications arising specifically from this report. Any changes to policy and process will include the evaluation of any potential equalities impacts.

4.2 Financial and Commercial Implications

- 4.2.1 The estimated costs of establishing the archive is £45,000, which includes: software costs to enable appropriate cataloguing and digital access, professional Archivist time, legal and project governance support costs.

4.3 Legal Implications

- 4.3.1 The Ombudsman has powers to investigate and report on complaints under Part III of the Local Government Act 1974. Where the Ombudsman has made a finding of maladministration section 31 of that Act requires that the report is laid before the authority, and that the authority has a duty to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Local Commissioner may agree in writing, to notify the Local Commissioner of the action which the authority have taken or propose to take

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 No alternative options have been considered, the Council accepts the findings of the report and is pleased to demonstrate our progress and commitments to realising the recommendations from the Ombudsman report.

6. REASONS FOR RECOMMENDATIONS

- 6.1 The recommendations to Cabinet reflect the work the Council has already commenced that contribute to realising the recommendations of the Ombudsman and our commitment to open and transparent decision making.

In addition, Cabinet is asked to approve the new archive project which will allow open access to our records and correspondence in relations to our past approach and decisions.