

Agenda Item IMD8

INDIVIDUAL EXECUTIVE MEMBER DECISION

REFERENCE IMD: 2021/08

TITLE	Updated Tree Inspection Framework
DECISION TO BE MADE BY	Executive Member for Environment and Leisure - Parry Batth
DATE, MEETING ROOM and TIME	31 March 2021, 11am Virtual meeting
WARD	None specific
DIRECTOR / KEY OFFICER	Director, Place and Growth - Chris Trill

PURPOSE OF REPORT (Inc Strategic Outcomes)

Maintaining the vibrancy of Wokingham Borough by updating the formal framework to manage trees within the Council Estate

RECOMMENDATION

The Executive Member for Environment & Leisure agrees that Wokingham Borough Council:

- 1) adopts the Tree Risk Zones;
- and
- 2) implements the proposed inspection framework;
- and
- 3) agrees allocation of resource to be secured through the MTFP to implement.

SUMMARY OF REPORT

This paper sets out to update the formal framework for tree management within the Council's own estate to be consistent with the changed requirements established in the Witley Parish Council v Cavanagh ruling, and the findings of the Berkshire Coroners Regulation 28 on Warren/Bracknell Forrest Council.

This will be done by altering the risk zones and inspection regime based for the zones established in the 2016 Independent Executive Member Decision.

This will mean that all of the Council trees will have a level 1 walked "Lantra" www.lantra.co.uk/about-usinspection inspection based on the timescales set out in Figure 2 below.

Background

Wokingham Borough Council's existing Tree Inspection Framework was approved in Feb 2016. This report reviews the current policy position in relation to existing common practice amongst other Council's activities in delivering an effective inspection regime.

Legislative Background

There are multiple pieces of legislation relating to Councils' management of trees. These are listed below. In broad terms a person or organisation owning a tree is expected to:

- do all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety;
- reduce the risk of property damage from subsidence;
- maintain stocks to preserve their amenity, conservation, and environmental value;
- prevent personal injury through trips and falls on footways disturbed by tree roots;
- prevent vehicle damage and personal injury from obscured sightlines on the highway

It is also good practice to manage trees in line with professional guidance, including British Standard BS 3998:2010

Legislation Summary:

- Abatement of nuisance
- Conservation of Habitats and Species Regulations 2010
- Forestry Act 1967
- Hedgerow Regulations 1997
- Highways Act 1959
- Local Government (Miscellaneous Provisions) Act 1976
- Natural Environmental and Rural Communities Act 2006
- The Health and Safety at Work Act 1974
- The High Hedges (Appeals) (England) Regulations 2005
- The Highways Act 1980
- The Occupiers' Liability Act 1957
- The Occupiers' Liability Act 1984
- The Town and Country Planning (Tree Preservation)(England) Regulations 2012
- Town & Country Planning Act 1990
- Wildlife & Countryside Act 1981 (as amended)

Risks of not taking action

The key risks relating to tree inspections as identified in recent inquiries and court cases are:-

- Liability due not inspecting frequently enough
- Liability due to not inspecting in line with inspection policy
- Liability due to inadequate training for staff inspecting (esp. drive by observational inspections by highways officers)

When a tree related incident occurs, if the Council has not addressed the above, the Council is liable to be found at fault.

Current Tree Inspection Practices

Risk Zones

Wokingham Borough Council introduced an inspection regime for trees based on risk zones in 2016.

The Health and Safety Executive state there should be an effective system for managing trees. This is likely to include *“an overall assessment of risks from trees - identifying groups of trees by their position and degree of public access. This will enable the risks associated with tree stocks to be prioritised and help identify any checks or inspections needed.”*

Figure 1: Wokingham Borough Council’s current Risk Zones and inspecting cycle is as follows **(this will be superseded by the programme below in Figure 2):**

Risk Zone	Area Examples	Frequency of Level 1 “Lantra” Inspection
1	<ul style="list-style-type: none"> • Major roads – Constantly or very frequently used. • Play Areas • Cemeteries • Open spaces or parks on or next to sites with identified risks i.e. schools 	3 years
2	<ul style="list-style-type: none"> • Busy roads • Frequently used footways or cycleway’s • Car Parks • Frequently used buildings e.g. Council offices, health centres 	5 years
3	<ul style="list-style-type: none"> • Parks and open space areas near paths or adjacent to private properties • Frequently used parks & open spaces 	7 years
4	<ul style="list-style-type: none"> • Rural roads with infrequent use • Regularly used woodland paths 	7 years
5	<ul style="list-style-type: none"> • Infrequently used right of way • Minor woodland paths 	7 years
6	<ul style="list-style-type: none"> • Low risk open spaces • Woodland 	Reactive

Business Case (including Analysis of Issues)

Current Good Practice

A review of the tree policies for other local authorities identified that the bulk of councils have three or four risk zones. These can be summarized as:

- *Risk Zone 1* – Most frequent inspection cycle being 12 to 18 month, least frequent being a 3 to 5 year cycle. The majority are based upon either 18 month cycle (50%), with 2 year cycles (50%), greater than 2 years 30%
- *Risk zone 2* – Most inspection cycles are between 3 and 5 years
- *Risk Zone 3* – Mostly 5 or 6 year inspection cycle.
- *Low Risk* – Various no inspection cycle, observational inspections, or 10 year cycle.

Of those undertaking three-year inspection cycles some are relying on case law (Chapman v Barking and Dagenham London Borough Council 1997) which is taken to imply that a three year inspection cycle is sufficient. A more recent case, however, found that as well as operating risk zones the individual risk of trees taking into account the tree species, life-stage, condition and size should be taken into account, and that higher risk trees an inspection cycle of 18 months (leaf on/leaf off) should be considered (Witley Parish Council v Cavanagh 2018)

The Wokingham Borough Council approach established in 2016 has significantly more Risk Zones than is common practice amongst other councils, and a number of the risk zones have identical inspection cycles to manage the risk. The risk zones could be rationalised into a smaller number of zones which would be more in line with identified common practice, whilst still maintaining the same levels of risk control. Also, the inspection cycles in risk zone 1 currently do not reflect expectations of the Witley Parish Council v Cavanagh ruling.

Figure 2: It is therefore proposed to update the risk zones and inspection cycles as follows: **All walked “LANTRA” inspections to be carried out and recorded by qualified staff www.lantra.co.uk/about-us within the following timescales:**

Risk Zone	Area Examples	Frequency of “Lantra” Level 1 Inspection
1	<ul style="list-style-type: none"> • Major roads – Constantly or very frequently used. (3 years) (Category 1,2 & 3 carriageways as defined in the Wokingham Highways Inspection Policy) • Play Areas (3 years) • Cemeteries (3 years) • Open spaces or parks on or next to sites with identified risks i.e. schools (3 years) • Higher risk trees taking into account the tree species, life-stage, condition and size – 18 months (leaf on/leaf off) 	18 months to 3 years (plus reactive)

2	<ul style="list-style-type: none"> • Busy roads (Category 4 carriageways as defined in the Wokingham Highways Inspection Policy) • Frequently used footways or cycleway's • Car Parks • Frequently used buildings e.g. Council offices, health centres Parks and open space areas near paths or adjacent to private properties • Frequently used parks & open spaces 	5 years
3	<ul style="list-style-type: none"> • Rural roads with infrequent use (Category 5 carriageways as defined in the Wokingham Highways Inspection Policy) • Regularly used woodland paths • Infrequently used right of way • Minor woodland paths 	7 years
Other	<ul style="list-style-type: none"> • Low risk open spaces • Trees within curtilage of tenant services properties • Woodland 	Reactive

Resourcing

A large proportion of trees in the borough are on highway land. The common practice in 2016 was embedded into Wokingham Council's approach where highways inspectors inspected the trees on the highway land whilst also carrying out highways inspections. The Berkshire Coroners Regulation 28 report into the tree related death in Bracknell found that:-

- Highway Inspectors were expected to identify a range of potential problems including potholes in the road, damaged or obscured signage and potential hazards from trees abutting the highway which were often of considerable height as part of drive-by investigations conducted at a speed rarely less than thirty miles per hour.

However, there was significant concern raised by the report that while the tree causing the death had been inspected by highways inspectors 2 days prior during a drive by inspection there were shortcomings in the competency of highways inspectors to undertake the work, coupled with clarity around what was required. The approach was found to be unrealistic and fails to meet the standards of a level 1 LANTRA inspection which requires several minutes close up inspection. As a result, the WBC approach is clearly no longer appropriate.

Rationale for increased Resource

To address these findings additional resources will be required to carry out inspections to the frequency indicated in Cavanagh v Witeley, and the standard indicated by Berkshire Coroners Regulation 28 on Warren/Bracknell Forest Council.

To deliver the proposed inspection regime detailed in **Figure 2**, 2 additional tree officers are required and it is proposed to upgrade the existing level 2 tree officer role to manage the team and ensure that risk is addressed. The growth needed to fund these roles is £80k pa and has been submitted through the MTFP process. This increased resource is based on work carried out between May and November 2020 by Arbortrack

who carried out a survey on all Council owned trees. This work helped establish that on average level 1 tree inspections can be carried out at a rate of 3 / 4 inspection per hour which equates to between 11,000 and 15,000 level 1 inspections per annum.

Recording the Inspection Data

Initially the data for the tree inspection regime, will be entered manually however, WBC IMT has developed within ESRI (the Councils mapping system) a “Collector App” that can be accessed on-site to deliver real time inspection reports. The records, can then be downloaded into spreadsheets for regular reporting purposes.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe funding pressures, particularly in the face of the COVID-19 crisis. It is therefore imperative that Council resources are focused on the vulnerable and on its highest priorities.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1- 2020/21)	£0	Yes	Revenue
Next Financial Year (Year 2)	£80	Yes – Secured through MTFP	Revenue
Following Financial Year (Year 3)	£80	Yes – Yes secured through MTFP	Revenue

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications

The management of the Council’s trees directly support the priority for a clean and green borough.

Public Sector Equality Duty

An equalities assessment is not required as this policy does not relate to services provided to specific residents.

SUMMARY OF CONSULTATION RESPONSES

Director – Resources & Assets	No comments
Monitoring Officer	No comments
Leader of the Council	No comments

Reasons for considering the report in Part 2

N/A

List of Background Papers
Tree Inspection Framework for Council Trees (IEMD February 2016)

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