

# Sheffield Tree Felling Investigation

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## Contents

Executive Summary.....	2
Introduction .....	2
Legal Framework.....	3
Forestry Commission Enforcement Powers and Procedures .....	9
Legal Interpretation .....	10
Assessment .....	12
Background .....	12
Assessment process .....	14
Assessment findings.....	15
Interpretation .....	15
Act of Parliament exception .....	16
Other exceptions.....	17
Conclusion.....	18
Lessons to be learnt .....	19
Record Keeping .....	19
Engagement .....	20
Tree Management .....	21
SCC/Amey Contract.....	23
Annex 1 – Engineering alternatives to tree felling.....	26
Annex 2 – Correspondence with Sheffield City Council.....	32

## Executive Summary

In July 2012 Sheffield City Council (SCC) entered into a 25-year city-wide highways maintenance PFI contract with Amey, to deliver what is known as the 'Streets Ahead' programme of highway maintenance. The contract is worth over £2bn and includes upgrading and maintaining the city's roads, pavements, street lights, bridges and other items on or around the streets. It also includes the management of highway trees as part of the 'other items'. The contract contains a commitment to fell 200 trees per annum and 5,474 trees were felled between 2012 and 2018.

Local residents began to express concerns in relation to the number of trees being felled by SCC in 2014, and established the Sheffield Tree Action Group (STAG) in 2015 as an umbrella protest group. The Forestry Commission (FC) first received allegations that SCC's Streets Ahead programme may constitute illegal felling in autumn 2016.

The felling of trees is regulated in England by the Forestry Act 1967 (the Act). The FC is the government regulator that enforces the provisions of the Act. The Act states that all felling requires a felling licence issued by the FC, unless an exception to the need for a licence applies. The Act provides a list of exceptions. One such exception is in relation to felling which is undertaken in accordance with a duty imposed by an Act of Parliament.

SCC have consistently claimed that all felling conducted under the Streets Ahead programme is in response to its statutory duty under the Highways Act 1980 (the Highways Act) - to maintain the public highway, and the Equality Act 2010 (the Equality Act) - to make reasonable adjustments to accommodate the needs of disabled people.

The FC was content to accept this claim as valid until the terms of the contract between SCC and Amey was made public in early 2018. It was at this point that the commitment to fell 200 trees per annum was revealed. This commitment left open the possibility that those trees were not felled in response to a statutory duty, but as a result of a contractual agreement and SCC policy decision. As such, there was a credible possibility that a felling licence may have been required. Therefore, in April 2018 the FC began an assessment of alleged illegal felling in relation to the Streets Ahead programme to determine whether a breach in the felling licence regime had occurred.

As the felling had occurred over several years, and no evidence was left at the various felling sites, the FC assessment focused largely on reviewing historic photographic and 'Google StreetView' evidence. This evidence was assessed in order to determine if an exception to the need for a licence could reasonably be established for the trees in question.

Having reviewed the photographic evidence for a significant sample of tree felling records, the FC has concluded that, on balance, there is insufficient evidence to say with confidence that an offence of felling without a felling licence has been committed by SCC and Amey. However, the FC has identified a number of areas regarding the Streets Ahead programme where SCC has fallen far short of good practice. These include record keeping, engagement and consultation, tree management techniques and contract management. FC believes SCC, and other Local Authorities, must take note of these lessons learnt for future operations.

## Introduction

This report considers the felling of predominantly street trees carried out by Sheffield City Council (SCC) and their contractors (Amey) during the period of July 2012 to April 2018 in the context of the need for a felling licence contained within the Forestry Act 1967 (the Act).<sup>1</sup>

The report first reviews the legal framework relevant to this particular case, and explores relevant forestry, highways and equality legislation. It then moves on to look at the enforcement powers of the Forestry Commission (FC), before summarising legal advice received by the FC in relation to this case. The report then turns to the method of assessment of the Streets Ahead programme undertaken by the FC, in respect of a potential alleged illegal felling, and the findings of that assessment. Finally it looks at the interpretation of those findings and the conclusion of the assessment.

## Legal Framework

The felling of growing trees in England is restricted under section 9 of the Act. It requires that felling is either authorised by a felling licence issued by the FC or the felling activity is excepted from the need for a licence.

There are many exceptions to the need for a licence, based on the type of the tree, the location of the tree, the size of the tree, the nature and scope of the felling activity and the person responsible for the felling. These are primarily set out in section 9 of the Act as well as the Forestry (Exceptions from Restriction of Felling) Regulations 1979.

As is highlighted elsewhere in this report, SCC has claimed an exception under section 9(4)(b) of the Act. Section 9 also sets out a number of other exceptions, such as in relation to the volume of timber that can be felled each calendar quarter. The relevant parts of section 9 are set out below:

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<sup>1</sup> All references and quotes of the Act are references to the version of the Act as it was at the time of the felling, and therefore does not include amendments made by The Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019 – although it is noted that these amendments have no material significance to this report and serve only to remove references to Scotland from the Act.

Section 9 - Requirement of licence for felling

*(1) A felling licence granted by the appropriate forestry authority shall be required for the felling of growing trees, except in a case where by or under the following provisions of this Part of this Act this subsection is expressed not to apply.*

*(2) Subsection (1) above does not apply—*

*(a) to the felling of trees with a diameter not exceeding 8 centimetres or, in the case of coppice or underwood, with a diameter not exceeding 15 centimetres; or*

*(b) to the felling of fruit trees or trees standing or growing on land comprised in an orchard, garden, churchyard or public open space<sup>2</sup>; or*

*(c) to the topping or lopping of trees or the trimming or laying of hedges.*

*(3) Subsection (1) above does not apply to the felling by any person of trees on land in his occupation or occupied by a tenant of his—*

*(a) where the trees have a diameter not exceeding 10 centimetres and the felling is carried out in order to improve the growth of other trees; or*

*(b) where the following conditions are satisfied, that is to say—*

*(i) the aggregate cubic content of the trees which are felled in the relevant territory by that person without a licence (exclusive of trees to whose felling subsection (1) above does not apply) does not exceed 5 cubic metres in any quarter; and*

*(ii) the aggregate cubic content of the trees so felled which are sold by that person whether before or after the felling (exclusive as aforesaid) does not exceed 2 cubic metres in any quarter, or such larger quantity as the appropriate forestry authority may in a particular case allow.*

*(4) Subsection (1) above does not apply to any felling which—*

*(a) is for the prevention of danger or the prevention or abatement of a nuisance;*

*(b) is in compliance with any obligation imposed by or under an Act of Parliament, including this Act;*

*(c) is carried out by, or at the request of, an electricity operator, because the tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by the operator as to have the effect mentioned in paragraph 9(1)(a) or (b) of Schedule 4 to the Electricity Act 1989;*

*(d) is immediately required for the purpose of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning Act 1990 or the enactments replaced by that Act, or under the Town and Country Planning (Scotland) Act 1997.*

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<sup>2</sup> Public open space is defined within subsection 9(6) of the Act. It is defined as land laid out as a public garden or used for the purpose of public recreation, or land being used as a disused burial ground. It excludes land used for recreation which is a Common, a National Park or land subject to open access under the Countryside Rights of Way Act 2000 (predominantly land which is a mountain, moor, heath and down). There is no suggestion that public open space includes the public highway as it is not laid out as a garden, it is not a disused burial ground, and its primary purpose is not for recreation.

Section 9(4)(b) of the Act provides an exception to the need for a licence where a person, or organisation, is placed under a duty by another Act of Parliament (or Statutory Instrument, such as Regulations, Orders etc., made under an Act). Attention should be drawn to the word “obligation” above. It is considered that “obligation” is synonymous with the word “duty”. A statutory “power” to do something is insufficient to engage section 9(4)(b). There must be an imperative to do something, not just the option to do it.

It should also be noted that the term “quarter” referred to in section 9(3)(b) in relation to the 5 cubic metre allowance is defined elsewhere in section 9 as meaning “*the period of three months beginning with the 1st January, 1st April, 1st July or 1st October in any year*”.<sup>3</sup>

The Act goes on to set out the enforcement regime and penalties associated with felling without the authority of a licence, where one was required.

*Section 17 - Penalty for felling without licence.*

*(1) Anyone who fells a tree without the authority of a felling licence, the case being one in which section 9(1) of this Act applies so as to require such a licence, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale [£2,500] or twice the sum which appears to the court to be the value of the tree, whichever is the higher.*

*(2) Proceedings for an offence under this section may be instituted within six months from the first discovery of the offence by the person taking the proceedings, provided that no proceedings shall be instituted more than two years after the date of the offence.*

Felling trees without the authority of a licence where one would have been required is a criminal offence under section 17 of the Act. Section 17 includes a deadline for the Crown Prosecution Service to lay the case before the courts within 6 months of the case being referred to them, as well as no later than 2 years from the offence of the tree felling having taken place.

*Section 17A - Power of Commissioners to require restocking notice after unauthorised felling.*

*(1) The appropriate forestry authority may serve a notice under this section (a “restocking notice”) on a person where—*

*(a) it appears to the appropriate forestry authority that he has committed an offence in England or Wales under section 17 of this Act, or*

*(b) he is convicted in Scotland of an offence under that section,*

*and (in either case) he has such an estate or interest in the land in question as is mentioned in section 10(1) of this Act.*

Section 17A grants the FC the power to issue a Restocking Notice, compelling the individual served to replant the felled area with trees. It should be noted that this power is conditional upon two elements, both of which must be satisfied before the Notice can be issued. The first is that only a

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<sup>3</sup> Section 9(6), Forestry Act 1967

person who “appears” to the FC to have committed an offence under section 17 can be served with a Notice. Therefore, the FC must have conducted reasonable due diligence of a felling activity and be reasonably satisfied that no exception to the need for a licence existed. The second is that the person served with a Notice must also have an interest in the land (freehold, leasehold, tenancy etc.) at the time of being served. In this case, SCC has not disputed that it owns the land in question and therefore the second element is not in dispute.

In this instance, SCC specifically informed the FC that their felling works were being carried out in compliance with a duty placed upon it by the Highways Act 1980 (the Highways Act) and the Equality Act 2010 (the Equality Act), and therefore engaged section 9(4)(b) of the Act.

The sections of interest from the Highways Act are below:

Section 41 - Duty to maintain highways maintainable at public expense.

*(1)The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty... to maintain the highway.*

Section 41 places a clear duty upon SCC to maintain the highway. In *Goodes v East Sussex CC* [2000] 1 WLR 1356, the House of Lords concluded that the duty is to keep the highway, “in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition.”.

This case focuses attention upon what is “reasonably passable” in the context of the highway, which includes the pavement adjacent to a road as well as the road itself. This is of importance as it determines when the highway authority’s duty under section 41 of the Highways Act is engaged, and therefore when the exception to the need for a felling licence is triggered.

It can be said that a “reasonably passable” highway must not present a danger, although it is acknowledged that a highway may fail to be “reasonably passable” before it presents a danger, i.e. an “unreasonably passable” highway will not always be a dangerous one. Nonetheless, establishing when a highway falls into a dangerous state of repair gives some guidance as to what is “reasonably passable”, as a dangerous highway cannot be “reasonably passable”.

In *Singh v Cardiff CC* [2017] EWHC 1499 (QB), the court considered what presented a danger in the context of a highway and concluded that broken and uneven edging units or paving stones did not on the facts give rise to a breach of the duty under section 41 of the Highways Act (i.e. it did not present a danger). In that case the footpath was wide, with ample room to pass and re-pass without stepping on the edging units. That case also determined that no breach of the duty was presented in that case by a depression of about 60mm, even though the footpath was used many hundreds of times a day.

It should be noted that in *Singh v Cardiff*, the court considered a 60mm *depression* i.e. a smooth edged defect in the surface of the highway. This clearly presents less of a trip hazard than a *stepped* defect such as a raised paving slab. The FC understands that in these scenarios, it is standard

practice among many Local Authority highways inspectors that a defect as little as 20mm is to be considered as being dangerous, due to the potential for pedestrians to trip and sustain injuries.<sup>4 5</sup>

Section 154 - Cutting or felling etc. trees etc. that overhang or are a danger to roads or footpaths.

*(1) Where a hedge, tree or shrub overhangs a highway or any other road or footpath to which the public has access so as to endanger or obstruct the passage of vehicles or pedestrians, or obstructs or interferes with the view of drivers of vehicles or the light from a public lamp, or overhangs a highway so as to endanger or obstruct the passage of horse-riders, a competent authority may, by notice either to the owner of the hedge, tree or shrub or to the occupier of the land on which it is growing, require him within 14 days from the date of service of the notice so to lop or cut it as to remove the cause of the danger, obstruction or interference.*

*For the purposes of this section the following are competent authorities—*

...

*(b) in relation to a highway for which a local highway authority are the highway authority, that authority and also, if the highway is situated in a non-metropolitan district, the council of that district;*

Section 154 relates to trees growing on land owned or occupied by someone other than a “competent authority”. The highway authority, in this case SCC, is one of the competent authorities. As all the trees in question are growing on land within the highway, section 154 is not relevant in terms of their felling.

The sections of interest from the Equality Act are below:

Section 20 - Duty to make adjustments

*(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*

*(2) The duty comprises the following three requirements [only the relevant requirement is shown below].*

...

*(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

...

Where a party is claiming reliance upon a duty as set out in section 20 of the Equality Act (SCC in this case) they would have to demonstrate that there was an obligation to fell the tree in order to

<sup>4</sup> [Footway Maintenance Management](#), Prepared for Pavement Engineering Group, Highways Agency by S. Bird, P.L. Scott, M. Zohrabi and D.R. Cooper of the Transport Research Laboratory. Published 2002. Pages 15-16.

<sup>5</sup> [Annex A to the Surrey County Council Highway Safety Inspection Policy, Identification of Defect Severity](#).

discharge the duty to make reasonable adjustments. If there was no obligation to fell the tree in order to discharge that duty (i.e. the felling was a “disproportionate adjustment”), the highway authority would not be able to rely upon section 20 of the Equality Act in order to establish that the felling benefited from the exception under section 9(4)(b) of the Act.

Section 149 - Public sector equality duty

*(1) A public authority must, in the exercise of its functions, have due regard to the need to—*  
*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

...

*(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*

*(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*

*(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*

*(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*

*(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*

...

*(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*

*(7) The relevant protected characteristics are — age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.*

Section 149 of the Equality Act imposes a duty on public authorities, in the exercise of their functions, to “have due regard” to certain needs, including the need to advance equality of opportunity between disabled and non-disabled persons.

Having regard to something requires a person to think about that thing in a particular way or through a particular lens. Whilst “having due regard” is a duty, it is unlikely in itself to require trees to be felled. More likely, in this context, where highway maintenance is required, that maintenance must be done so with regard to disabled access to the highway. Put another way, the duty under

section 149 is unlikely to significantly impact upon the type of maintenance the highway authority choose to undertake (for instance, the decision to fell a tree or to re-profile a curb or pavement), but the way in which it does it (for example, considering access for wheelchair users when pavements are temporarily closed).

The final element of the legal framework within which an assessment of illegal felling under the Act must be considered is *R (Grundy Excavations) v Forestry Commission* [2003] EWHC Admin 272 (hereafter referred to as “Grundy”). In that judgement Lord Justice Clarke ruled that “*Under section 17 of the 1967 [Forestry] Act the prosecution must prove that the accused felled the trees. Assuming it to be common ground that no licence was issued, it is then for the accused to prove on the balance of probabilities that no licence was required*”. Therefore, once a case has been laid before the court, it is beyond doubt that the burden of proof to demonstrate that an exception to the need for a licence existed rests with the defendant, and not the Forestry Commission.

## Forestry Commission Enforcement Powers and Procedures

The Forestry Commission (FC) is the government regulator of forestry in England, and provides expert advice to the government on forestry matters. It is an operationally independent body. Where illegal felling activity is suspected, it is the FC that makes the initial assessment of the felling activity, and determines what course of enforcement action (if any) should be instigated.

Typically, cases of alleged illegal felling are referred to the FC by concerned neighbours, or the Local Authority. Once a case is received by the FC, there are four potential avenues for that case.

- a. The FC can determine that no offence has been committed and issue an advisory letter to the person involved in the felling alerting them to the potential need for a felling licence in future, if they were not already aware of that fact.
- b. A warning letter can be issued. This is likely to occur where felling is small in scale, but likely to have been a breach of the felling licence regime. The letter alerts the person involved of the FC’s opinion on this matter and provides them with further information on how to avoid committing an offence in future.
- c. The FC may serve a person with a Restocking Notice. That Notice compels the person served to replant the land with trees. The FC can only serve such a Notice where it “appears” to the FC that an offence under section 17 of the Act has been committed, and where the person who committed the offence has an “interest in the land” (ownership, leasehold, tenancy etc.).
- d. The FC may refer a case to Defra Investigation Services (DIS) for criminal investigation - in conjunction with any of the above, or as a sole action in itself. This is done where the FC believe that there is merit in conducting a criminal investigation. The conduct of criminal investigations is regulated by law and DIS provides the FC with this specialist service. DIS gather evidence to a court standard, drawing upon the assessment and evidence collected

by the FC, conduct interviews under caution and prepare papers for the Crown Prosecution Service (CPS).

Upon receipt of a case, the CPS will assess it against the 'evidence test' and the 'public interest test'. The former determines if the evidence is sufficiently strong that a court would be likely to convict the defendant upon hearing the case. The latter assesses whether it is in the public interest to spend public money and use court time to seek a prosecution. The two tests are conducted independently of each other. The CPS is the sole arbiter of these tests.

In a typical case, before any decision on how to proceed is taken, the FC will collect a range of data to assess whether it is likely that an offence has occurred, whether any likely defence to the felling will be offered and what that may be. Even where no defence is offered, or it is not possible to ascertain the motive behind the felling, it is still prudent for the FC to collect data that demonstrates whether or not particular exceptions to the need for a licence exist or not, particularly in relation to commonly claimed exceptions.

While the precise data gathered for each assessment of alleged illegal felling varies from case to case, typically this will include: an assessment of the land on which the trees were felled; a check of HM Land Registry, and if necessary Companies House; a measurement of the felled area; a measurement of the felled timber; a search of local planning applications; a search for live felling licences or FC funded grant schemes; a check for tree diseases and health issues; as well as a check for other relevant environmental designations that may apply to the land. Other checks may be necessary given the particulars of individual cases, for instance in this case, the PFI contract between SCC and Amey. This information is then fully assessed by the FC taking into account relevant previous case law.

For all cases, but particularly for those which may potentially be referred to DIS, prudence dictates that these and other checks are undertaken to establish whether pursuing one of the four enforcement actions outlined above, at the taxpayer's expense, is legally sound and whether it is likely to succeed.

## Legal Interpretation

For clarity, the FC will set out its understanding and interpretation of relevant aspects of the above mentioned legislation.

Any felling operation must be judged in its entirety. This is because all exceptions to the need for a felling licence must be considered before it can be concluded a felling licence would have been required for those works. Some of those exceptions apply to the entire felling works (rather than individual trees), which means that it is not possible to determine whether a felling licence was required for the felling of an individual tree that was felled as part of a wider programme of works without consideration of the entirety of those works.

For example, the 5 cubic metre exception contained in section 9(3)(b) of the Act is cumulative in nature. It is cumulative because the timber from trees felled earlier in a calendar quarter by the same land owner or occupier (in this case SCC) is added to the timber of each subsequent tree felled

within the same calendar quarter. It is not until the 5 cubic metre allowance within a single calendar quarter is reached that a felling licence is required (assuming no other exceptions apply). The volume of timber measured against the owner or occupier's allowance is reset to 0 at the beginning of each calendar quarter.

It is only possible to determine if a felled tree breaches the 5 cubic metre allowance if it is known how much of the allowance remains unaccounted for from felling that occurred earlier in the quarter. That is to say, the felling of an individual tree may or may not require a felling licence, depending upon whether (and under what authority) other trees have been felled by the same land owner or occupier.

Moreover, the 5 cubic metre exception contained in section 9(3)(b) of the Act only applies to trees which are not otherwise excepted from the need for a licence. Therefore, a view must be taken on whether any other exception applies to any of the other trees felled within the wider felling works before this exception can be confidently relied upon.

Given the above, it is not possible to ascertain whether section 9(3)(b) is engaged in relation any particular felled tree unless an assessment is first made of the wider programme of works as to what other trees were felled within the same calendar quarter, the timber volume of those other trees and whether any exceptions applied to those other trees.

In relation to challenging the decision of the highway authority as to whether felling operations would require a felling licence or not, the FC also has a clear understanding of the proper process. In the first instance, it is for a highway authority (as having a statutory duty under the Highways Act) to determine if felling a tree is necessary in order to comply with its duty to maintain the highway. Should the FC wish to challenge the highway authority's interpretation of its duty or any exception to the need for a licence, the FC would have to produce evidence of a sufficient standard so that it can:

- a. credibly "appear" to the FC that an offence of felling without the authority of a licence has taken place.<sup>6</sup> This would be required before a Restocking Notice could be issued.
- b. robustly and demonstrably rebut any claimed, or likely to be claimed, exception to the need for a felling licence within a Magistrates Court. This would be required if a case is to meet the CPS's evidence test, and therefore to be taken to Court by them.<sup>7</sup>
  - i. Note that the Grundy judgement, placing the burden of proof upon the defendant to demonstrate that an exception to the need for a licence applied, only applies once a case is being heard before a Court. It does not apply to the CPS's evidence test.

### Legal Privilege

To the extent that this Report contains any legal advice or refers to any legal advice, Legal Privilege is maintained and not waived in respect of that advice or any communications containing that advice.

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<sup>6</sup> This is the standard set out in section 17A of the Forestry Act 1967 which must be met in order for the FC to issue a Restocking Notice.

<sup>7</sup> This would be required in order to meet the CPS's 'evidence test'.

## Assessment

### Background

In July 2012 SCC entered into a 25-year city-wide highways maintenance PFI ‘Streets Ahead’ contract with Amey. The contract is worth over £2bn and includes upgrading and maintaining the city’s roads, pavements, street lights, bridges and other items on or around the streets. It also includes the management of highway trees as part of the ‘other items’.

The FC understands that initial concerns from Sheffield residents began in January 2014 as a result of the felling of a mature oak tree with concerns continuing to build throughout 2015 including the formation of a number of protest groups and the establishment of the Sheffield Tree Action Group (STAG), an umbrella group, in August 2015. These concerns that the felling may have required a felling licence were not initially reported to the FC.

On 27 April 2016, the High Court dismissed a judicial review claim brought by a Mr Dillner (hereafter referred to as “the Judgement”), in which he argued that SCC had acted unlawfully by resolving not to cease the felling by Amey of trees within the public highway.<sup>8</sup> The Judgment considers in detail a wide range of statutory provisions, including duties and powers under the Highways Act 1980. Although the Judgment is useful, and essentially supportive of SCC’s position, formally it only refused permission to apply for judicial review (see paragraph 230 of the Judgment) and hence it is not a judgment on a substantive judicial review claim given permission to proceed. That said, there are a number of relevant passages contained within the Judgment.

*“Paragraph 167 - The felling or lopping of trees is permitted in a Conservation Area if (inter alia) the tree is dead, or is carried out in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance (see Regulations 13-14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012).”*

*“Paragraph 168 - It follows that provided the felling or lopping of the tree is carried out in pursuance of the duty to maintain (and thus repair) already identified, there is no requirement for consent to fell the tree.”*

While the Judgment does not explicitly mention the Act or the potential requirement for a felling licence, the above paragraphs do implicitly address them. While the above addresses the issue of a Conservation Area, and is also written in the context of Tree Preservation Orders, the same exception of “any obligation imposed by or under an Act of Parliament” exists, word for word, to the need for a felling licence as it does to the relevant permission under a Conservation Area or Tree Preservation Order.

Therefore, given the Judgment from the High Court that Amey and SCC’s felling activities were in accordance with their statutory duty under the Highways Act, and its explicit statement that this engaged the above exception to tree felling protections, the FC took the view at this time that there

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<sup>8</sup> R (Dillner) v Sheffield CC and Amey Hallam Highways Ltd [2016] EWHC 945 (Admin)

was no requirement for a felling licence for the Streets Ahead programme. The FC therefore did not initiate an assessment of alleged illegal felling at this time.

Concerns about the legality of the felling activity were first raised with the FC in autumn 2016 and these were followed up with further correspondence in November 2016 and January 2017 from local residents. The FC considered the basis of the concerns, but given the above, opted not to initiate an assessment of alleged illegal felling. Rather the FC acted to confirm the details of the felling licence legislation and the exceptions available for relevant highway authority work to those who raised the concerns.

Nonetheless, as a result of the concerns the FC contacted SCC in November 2016 to formally seek details of the Streets Ahead programme. This FC correspondence offered SCC the opportunity to meet with the FC to discuss the tree felling programme.

SCC responded by stating that they had taken legal advice and confirmed that they viewed the programme as being exempt due to the fact that the work was being undertaken to meet the requirements of an Act of Parliament. They specifically cited the Highways Act 1980 and Equality Act 2010.

The FC received further correspondence from residents in 2017 regarding concerns over the felling. Those residents also made a Freedom of Information (FOI) request, in November 2017, seeking details from the FC regarding any felling licences provided to Sheffield / Amey and details of any exceptions / correspondence between the parties. The FC responded by providing details of the exceptions and the relevant correspondence.

In 2018 STAG made an FOI request to SCC that resulted in the publication of the PFI contract between SCC and Amey. The publication of the PFI contract identified details of a felling programme of not less than 200 trees per annum to be felled. This was the principal trigger for the FC to initiate an assessment of alleged illegal felling, because a minimum number of trees to be felled per annum left open the possibility that the felling of those trees was being driven not by a statutory duty imposed under the Highways Act (or any other Act) that was assessed on a tree by tree basis, but by some other motivation. As explored above, only a statutory duty requiring the felling of trees excepts that felling from the need for a felling licence. As such, the possibility that the felling activities conducted to date may have required a felling licence became a credible possibility.

The FC wrote to SCC on 26 March 2018 requesting any documentary evidence held to support the proposition of SCC that the felled trees had been assessed as causing the highway to fall into a state of disrepair and therefore that the exceptions to the felling licence regulations were being appropriately applied. The Council failed to respond to this request for such evidence.

The FC therefore took the decision to undertake an alleged illegal felling assessment of the Streets Ahead programme.

The assessment was formally started on the 19 April 2018 with correspondence to both SCC and Amey. That correspondence included a request to suspend all tree felling of street trees in Sheffield

that SCC was responsible for until further notice excepting the need to fell trees which pose an immediate danger to the public.

Following several rounds of correspondence, during which SCC repeatedly failed to provide the information requested by the FC in their letter of 26 March 2018, the FC made a formal request under the Environmental Information Regulations 2004 for that information stating that a response would be expected by 25 May 2018 or that a formal complaint would be made to the Information Commissioner.

SCC responded on 25 May 2018 providing a spreadsheet with the details of records for 5,474 trees felled to date as part of the Streets Ahead programme. The information included location details for the trees, species, a description of the work undertaken and reasons for the exception from the need for a felling licence. However, it was lacking other details that were requested, such as the size of the trees felled, the date of felling and any information on replanting.

Given the failure to supply a complete response, the FC again wrote to SCC on 5 June 2018 requesting the remaining information. Following two holding responses, SCC replied on 30 July 2018, but provided no further substantive evidence to support the exceptions being claimed apart from the details relating to tree condition.

### Assessment process

Given that all trees had been felled and removed (thereby severely limiting the evidence that could be gathered on each tree felled), the FC's assessment of alleged illegal felling focused upon the spreadsheet provided by SCC. Given the limited physical evidence available, a sample approach was taken to assessing the felling activity of the 5,474 trees. Having sought professional statistical advice on what size the sample should be, a total of 691 trees were assessed.

If the information provided on the spreadsheet did not provide clear evidence to support an exception, the individual tree was reviewed using Google Street View or Google Earth, which provides functionality to look at photographs of trees at different points in time, and gives the opportunity to see photographs of the tree while still in-situ. This enabled the FC to consider the relevance of potential exceptions such as dangerous trees, damage to the road or pavement and obstructions to the highway or other street furniture (lamps / signs).

The FC categorised each tree reviewed as follows:

- Green – Spreadsheet data or photographic evidence indicates that an exception to the need for a felling licence applies.
- Amber – Inconclusive evidence (spreadsheet or photographic evidence) to determine with confidence whether or not an exception to the felling licence regime applies.
- Red – Robust evidence that the claimed exception did not apply, and that other exceptions were not apparent.
- Other – No evidence available to corroborate a claimed exception.

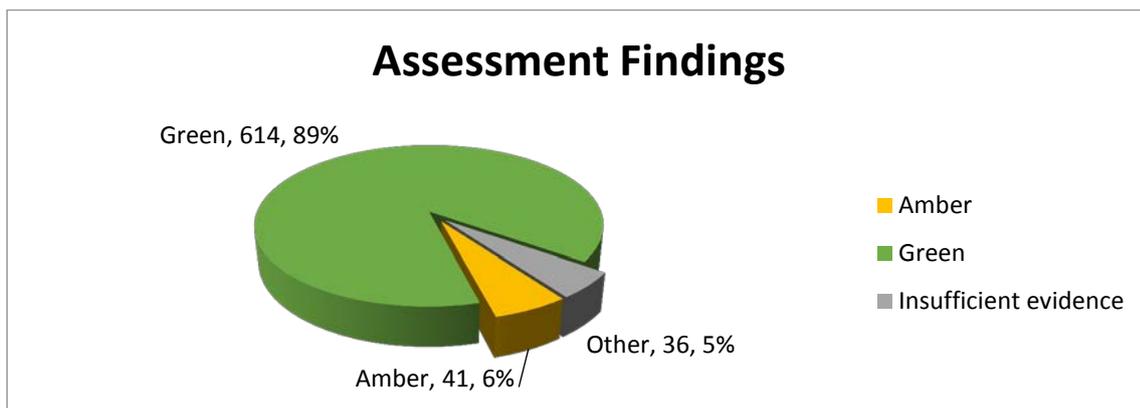
## Assessment findings

Following the assessment of the sample of 691 trees, the trees were placed into the following categories.

- 614 trees categorised 'green'.
- 41 trees categorised 'amber'.
- 0 trees categorised 'red'.
- 36 trees categorised as 'other', where insufficient or no evidence to allocate to another category.

As such, for a large majority of trees within the sample there was readily identifiable evidence to demonstrate that an exception to the need for a felling licence was engaged. This was ascertained either through photographic evidence or from the information provided by SCC.

11% of the sample assessed could not confidently be assessed as being excepted from the need for a felling licence.<sup>9</sup>



The FC's sample survey found that in 89% of the cases it reviewed there was likely an exception from the need for a felling licence. The sample of 691 trees used in this survey was not randomly selected, although post-survey checks suggest no strong bias geographically. If it is assumed that the sample is representative of the total 5,474 trees actually felled, this would suggest a confidence interval of +/- 2.3%. It could therefore be concluded that there was a 95% probability that the range from 87% to 91% contains the true value.

## Interpretation

As set out above, potentially ~600 trees were felled by SCC and Amey which may have required a felling licence.<sup>10</sup> As no felling licence was in place, an offence under section 17 of the Act may have been committed.

However, in order for the FC to take enforcement action in terms of issuing a Restocking Notice the FC's assessment of the felling would need to gather sufficient evidence to demonstrate that the

<sup>9</sup> 41 'amber' trees plus 36 'other' trees amounts to 11% of 691.

<sup>10</sup> Combining the 'Amber' trees and 'Other' trees gives 11% of 5,474, which equates to 602.

felling clearly “appears” to have required a licence. Should the case be referred to CPS, in order to pass the ‘evidence test’ CPS would likely need to see evidence that conclusively countered any claimed, or likely to be claimed, exception.

### **Act of Parliament exception**

In this instance, SCC has clearly claimed an exception under section 9(4)(b) of the Act (Act of Parliament exception), specifically in relation to its duties under the Highways Act and Equality Act. Therefore, in the first instance, the FC/DIS would need to demonstrate that SCC was under no statutory duty to fell the trees, because if a statutory duty did apply, SCC would be excepted from the need for a felling licence.

Given what has been set out above in relation to the Highways Act, to demonstrate that the duty to maintain the highway did not apply, evidence would have to be gathered that categorically demonstrated that prior to felling, the felled trees were not obstructing or damaging the highway to the point that it was no longer reasonably passable by the ordinary traffic of the neighbourhood.

To be able to state that a tree was not interfering with the highway in this way the FC would likely need to demonstrate two things in relation to each individual tree: the condition of the highway immediately prior to felling; and should there be any defects or obstructions to the highway in the vicinity of a felled tree, the cause of those defects or obstructions.

If the highway was reasonably passable, then SCC’s duty derived from the Highways Act to maintain the highway could not be applied to the felling of the tree, and therefore an exception to the need for a licence cannot have been engaged under section 9(4)(b). Equally, if the highway was in need of maintenance, but the felled tree was not responsible for causing the highway to require maintenance, then section 9(4)(b) would also be not likely to have been engaged.

It follows therefore that it could only appear to the FC that a felling licence would likely have been required (subject to any other exceptions applying) where the condition of the highway could be reasonably evidenced as not having been damaged and/or obstructed in the vicinity of each felled tree, or where there is damage/obstruction that damage/obstruction could be positively attributed to something other than the felled tree.

The kind of evidence required in order to demonstrate the above is examined below.

It has been explored in the Legal Framework section above that a 20mm stepped defect in the surface of the highway (pavement) is typically considered as dangerous by Local Authority highways inspectors. Equally, it is suggested in *Singh v Cardiff*, outlined above, that a depression in the highway greater than 60mm may render the highway no longer reasonably passable. Whilst each defect must be judged on its own merits in terms of whether it presents a danger to the highway, these figures do provide an indicative guide to the size of defect that would need to be identified on the highway. To put it another way, the FC must be able to confidently determine and evidence the size of any defect in the highway at an accuracy level of 10s of millimetres in relation to all 5,474 trees.

For the most part, in this case, such evidence would need to be photographic in nature. As the felling of trees was often a prelude to re-profiling the pavement and curb, which in many instances would have occurred several years previous to the date of this report, historic photos inevitably taken for another purpose would need to be sourced. Therefore it is likely that the only evidence available would be photographs that are of a resolution or taken from a distance that are not ideal for this kind of assessment. It should be noted that a typical assessment of alleged illegal felling conducted by the FC would be based on site specific field data, which was not possible in this case.

It should be noted that different evidence thresholds apply to different FC enforcement stages. An initial assessment of a report of alleged illegal felling will require relatively little evidence in order to determine if an exception applies or if a full assessment, looking at all the credible exceptions that could apply to the felling is required. Further thresholds, requiring more robust evidence, apply to the more rigorous enforcement actions available to the FC. There must be sufficient evidence to “appear” to the FC that an offence has been committed, or to meet the CPS’s evidence test (both of which require FC to rebut any exception likely to be claimed) if a Restocking Notice or Court hearing are to be sought.

To a certain extent, this explains the FC’s findings over the course of its assessment. A lower evidence bar is required for the FC to satisfy itself that a single exception to the need for a licence applies, than to positively demonstrate that no exception applies. It also demonstrates the difficulty with using the above mentioned photographic evidence for pursuing more rigorous forms of enforcement action in this particular case.

### Other exceptions

Other exceptions to the need for a felling licence also exist, and need to be considered as part of any assessment of alleged illegal felling. If the FC cannot evidence that it is likely that all other exceptions do not apply, then it cannot “appear” to the FC that an offence has been committed under section 17 of the Act, and consequently the FC cannot issue a Restocking Notice. Equally, the CPS’s ‘evidence test’ would also still apply to all other exceptions, should a referral be made.

The interaction between the exceptions was explored above. The 5 cubic metre exception in particular is both cumulative in nature, and dependent upon other exceptions being applied. As such, every tree felled would need to be evidentially assessed against every exception in order to allow an assessment as to whether the 5 metre cube exception could be applied, and how much of the allowance remained. Application of this exception would necessitate evidencing the precise calendar quarter that each tree was felled within, as well as the timber volume of those trees.

The nature of street tree felling makes the collation of such evidence far more problematic than would otherwise be the case in a woodland setting for a number of reasons.

In a woodland setting, timber is often left on site as felling and extraction are often carried out by different parties. Even when timber has been removed, alternative means are available to the FC to determine timber volume. These include measuring the diameter of a stump, as well as taking plot samples from similar adjacent woodland. Both methods are well recognised methods of accurately

estimating timber volume.<sup>11</sup> By necessity, street felling work often leaves no timber on site which can be directly measured. Equally stumps are often removed and therefore cannot be used to estimate volume. Moreover, in the absence of timber or stumps to measure, it is also difficult to determine beyond refute if a tree is even of a licensable size.<sup>12</sup>

The felling of woodland trees is often condensed in both time and space. Felled woodland trees are adjacent to one another and their felling typically occurs over a short and specific operational period. This is in contrast to street tree felling, which can take place over many years and over a geographically dispersed area. Both of these are problematic when it comes to gathering evidence as part of an FC assessment of alleged illegal felling.

The dispersed nature of the trees means that plot samples cannot be used to estimate timber volumes. The prolonged period of felling, means that the 5 cubic metre allowance (an allowance which is renewed with each calendar quarter) becomes even more problematic as a single felling activity has to be assessed as a series of 3-month long felling incidents. This means that the date of each of the 5,474 trees felled in this instance would need to be traced in a demonstrable way to a particular calendar quarter. This is in addition to demonstrating the volume of timber contained within each particular tree, or at the very least the volume of all those trees which appear to the FC not to have engaged any other exception to the need for a felling licence.

## Conclusion

SCC is known to have felled 5,474 trees, predominantly in roadside locations, between July 2012 and April 2018 as part of the Streets Ahead programme of highway maintenance. This felling activity was carried out by Amey on SCC's behalf, and is not denied by SCC.

All growing trees in England require a felling licence in order to be lawfully felled, unless an exception to the need for a licence applies. SCC claims that an exception applied to the felling works described above. Principally, it relies upon section 9(4)(b) of the Act which grants an exception to the need for a felling licence where felling is conducted in accordance with a duty imposed by any Act of Parliament. SCC claims that the Highways Act and Equality Act place such duties upon them.

In April 2018 the FC initiated an assessment of alleged illegal felling following reports from local residents, and the public disclosure of the contract between SCC and Amey. That contract stipulated that 200 trees should be felled each year, seemingly regardless of whether SCC had a statutory duty to fell those trees or not.

Any assessment of alleged illegal felling conducted by the FC must consider not only those exceptions claimed by the individual/organisation concerned, but all other exceptions as well. As an offence under section 17 of the Act is dependent upon none of the listed exceptions to the need for a licence being applicable, the FC must consider whether *any* exception applies before it can

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<sup>11</sup> For instance, see 'Forest Mensuration: A Handbook for Practitioners' by Robert W Matthews and Ewan D Mackie, published 2006.

<sup>12</sup> Section 9(2)(a) of the Act states that trees must have a diameter of 8cm or more when measured at 1.3 metres off of the ground in order to require a felling licence.

reasonably appear to it that an offence has occurred. Equally, these avenues of defence need to be addressed in order to meet the CPS's evidence test, should a DIS referral be made.

A typical assessment by the FC into alleged illegal felling relies upon evidence collected from the felled woodland site to inform its assessment. In this instance, the fact that the trees in question were street trees rather than in a woodland setting, the length of the felling period, the fact the trees were removed from site promptly after being felled and other factors, left the FC with no option but to review historic photographic evidence of the trees in question. These photographs had to be used to corroborate the limited information provided by SCC, and determine if any exception to the need for a licence applied.

Given the limited evidence that could be collected as part of the FC's assessment, on balance the FC cannot with confidence say that SCC has exceeded the legal duties placed upon it by the Highways Act, nor can it evidence that no other exception applied. Therefore, on the balance of evidence, the FC has been unable to determine, to the standards necessary, that an offence under section 17 of the Act has occurred or appears to it to have occurred. In the absence of this, a Restocking Notice cannot be issued under section 17A of the Act, and no referral to DIS (for criminal investigation and potential prosecution) will be made.

The FC will, however, write to SCC and Amey to share this report with them, and to advise them how to ensure that any further tree felling that they undertake is clearly and demonstrably compliant with the felling licence regime. The FC also encourages SCC to note and apply the lessons learnt below.

## Lessons to be learnt

It is unfortunate that the FC has been obliged, as the government's regulator of forestry, to conduct an assessment of alleged illegal felling in relation to a Local Authority's street tree management programme. This was an avoidable situation and one from which Local Authorities across England could learn lessons.

## Record Keeping

It has been evident from the assessment conducted by the FC in relation to SCC's Streets Ahead programme that the information shared by SCC in relation to the felling of each tree could and should have been more substantial. Had it been, the FC would likely have not been required to conduct a full assessment into alleged illegal felling as SCC would have been able to demonstrate that an exception to the need for a felling licence applied to every tree that had been felled. This would also have been prudent practice given the case law in this area.

As noted above in this document, the Grundy judgement by the High Court has made it unequivocally clear that, once a case is before the Court to determine if an offence under section 17 of the Act has taken place, the burden of proof falls entirely to the defendant to prove their innocence in a court of law that an exception to the need for a felling licence applied. This is in contrast to the prosecution (in this case instructed by the FC), which simply has to prove that the trees were felled and no licence had been issued; although admittedly this is after the FC has had to

meet the CPS's 'evidence test', whereby evidence must be supplied which rebuts all credible lines of defence.

Nevertheless, it follows that it is in the self-interest of every Local Authority (or indeed others undertaking felling activity), to make a record of the relevant exception under which any trees felled without the authority of a felling licence were done so, and to record evidence to that effect.

Record keeping is a matter for Local Authorities, but the FC would suggest that the following is undertaken in relation to tree works:

- i. Date of felling;
- ii. Location of tree;
- iii. Job number;
- iv. Species of tree;
- v. Reason for felling;
- vi. The exception to the need for a felling licence that is engaged for each particular tree felled;
- vii. Size category or actual measurements of trees height and diameter;
- viii. Age (estimate or based on planting date);
- ix. Condition assessment of trunk and canopy;
- x. History of previous works on the tree;
- xi. Surrounding surface type (paving, grass, tarmac, concrete, etc.).

## Engagement

The record keeping undertaken by SCC was limited in nature and not shared with the FC until a request under the Environmental Information Regulations was made. Moreover, SCC did not fully engage with FC throughout the process. This is demonstrated by FC's reliance upon the Environmental Information Regulations 2004 in order to extract information from SCC, as well as SCC's insistence that all correspondence was directed to their legal department, which prevented constructive engagement with their street management team. More open engagement by SCC may have revealed earlier in the process that exceptions did apply to the felled trees and may have saved the FC, SCC and the wider taxpayer both time and money.

Indeed, this case has been characterised by a lack of adequate engagement and consultation by SCC from the very beginning. This is not only in relation to the FC assessment of alleged illegal felling, but can be traced back to the very beginning of the Streets Ahead programme. SCC failed to adequately engage their primary stakeholders, local residents. The formation of STAG is symptomatic of this lack of consultation, and a direct consequence of attempting to deliver a service without the engagement and buy-in of service users. Had genuine consultation and feedback been sought and acted upon at an early stage, and the Streets Ahead programme adapted as a result, the FC would likely not have been required to assess SCC's felling programme, and some of the 5,474 trees that were felled might still have been standing.

It should also be noted that the FC encourages woodland owners and woodland creators to consult their neighbours and local stakeholders when Woodland Management Plans or Woodland Creation Plans are drawn up. This is in addition to felling licence application proposals and woodland creation

schemes (over 0.5 hectares in size, and that are grant aided by the taxpayer) being listed on a public consultation register by the FC, and consultation responses being considered prior to the approval of any licence or grant application. The FC would therefore encourage Local Authorities to engage with local stakeholders at the earliest possible stage, and certainly prior to felling work being undertaken.

## Tree Management

The method chosen by SCC to manage its trees during the period examined by this assessment has in many ways contributed to the need for this assessment.

Trees growing in the highway are usually the responsibility of the highway authority and are usually managed and maintained just like any other element of highway infrastructure (e.g lamp columns, kerb edging, pavement blocks, and signage) that requires maintenance or replacement from time to time.

However, unlike other highway infrastructure trees are not static; they grow over time, both above and below ground. They shed leaves and branches and in some situations may fail, in part or in full, presenting a hazard to users of the highway.

Their value and benefit to the community therefore rises and falls over time. The value of a mature tree can never be instantly replaced by a younger one. This is in contrast to other street furniture, for example, the replacement for a defective lamppost instantly provides the same value and benefit that the previous functional lamppost did prior to its failure.

The FC recognises that this growth and life cycle, which may be perfectly benign in a natural setting, can be problematic when the tree interacts with the built infrastructure around it in a highway setting. Trees can cause maintenance issues for kerbs, footway paving, carriageway surfaces, adjacent shallowly founded structures (direct damage)<sup>13</sup> and in certain conditions damage building foundations as well, when growing in a shrinkable clay soil (indirect damage).<sup>14</sup>

Despite these issues, highway trees are a critical element in the overall canopy cover of the urban forest within towns and cities in England<sup>15 16</sup> and as such they make a significant contribution to the visual amenity of the area.<sup>17</sup> They also provide many ecosystem services to people in towns and cities, with larger landscape scale trees providing the greatest overall benefits.<sup>18</sup>

Unfortunately it is often the larger trees, if not adequately maintained, which may cause the most issues for the highway infrastructure in their immediate vicinity.

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<sup>13</sup> Direct damage is damage caused by the physical expansion of buttress roots, underground roots or trunk growth with sufficient force to deflect or deform built structures immediately adjacent.

<sup>14</sup> Indirect damage is damaged caused by the trees' water uptake creating a persistent soil moisture deficit in shrinkable clay soils such that the clay shrinks thereby reducing the load bearing capacity of the soil and the foundation subsides.

<sup>15</sup> Trees in Towns II. A new survey of urban trees in England and their condition and management; Chris Britt and mark Johnston. DCLG 2008.

<sup>16</sup> Canopy Cover of England's Towns and Cities: baselining and setting targets to improve human health and wellbeing, Doick et al. Forest Research 2017.

<sup>17</sup> The London Tree Survey 1994.

<sup>18</sup> Delivery of Ecosystem Services by Urban Forests. Research Report Forest Research 2017

However, there are a range of engineering and maintenance solutions that can easily be applied throughout any tree's life that allow both the tree and the highway to mutually co-exist, each providing the benefits to society that are valued by residents and businesses in towns and cities; safe, usable highways and a high quality well managed and maintained urban forest.

Some examples, not exhaustive, (see Annex 1 for photos) are:

- i. Use of flexible tree pit sizes, rather than relying on a small range of pre-specified dimensions.
- ii. Use of flexible rubber crumb along pavements and as inserts where previously tarmac or paving has been deformed due to root growth.
- iii. Use of narrow kerb profiles to accommodate flare and buttress roots.
- iv. Dispensing with kerb edging when possible in appropriate streets.
- v. Use of tarmac inserts around the base of trees where the footway surface has become deformed due to root growth.
- vi. Integrating tree pit locations into parking bays as kerbside buildouts.
- vii. Kerbside buildouts.
- viii. Creating kerbside buildouts to accommodate tree growth or redirect pedestrian footfall.
- ix. Placing barriers around trees to discourage parking on verges.
- x. Regular pruning of the tree to control its water uptake and limit its root and trunk annual incremental expansion.
- xi. Use of resin bonded gravel pits.

Other examples where no photos are available are:

- xii. Root pruning of non-structural surface roots to accommodate the laying of new paving, tarmac inserts, rubber crumb surfacing.
- xiii. Root pruning of non-structural roots to accommodate relaying of kerb edging.

All of the above solutions will likely require the co-ordinated response and guidance of an experienced and qualified arboriculturist working closely with an experienced Highway Engineer.

Where there is potential for direct infrastructure damage as well as indirect foundation damage, the need for regular pruning of highway trees in particular can be difficult to justify to residents and incurs a cost. However, tree management and maintenance is a long term management activity and many tree managers take the view that when necessary it is better to retain a large species, large specimen tree in situ, but maintained at a reduced size, than to remove the tree in its entirety. This is because mature trees provide great benefit to local residents, cannot easily be replaced and should therefore, wherever possible, be managed and maintained in situ so that those benefits are not lost for decades to come.

It should also be noted that there is a wealth of technical advice and information available across the relevant sectors that provide practical and comparatively low-cost methods of achieving the

objective of permitting highly valued trees to exist within a well-maintained and inclusive highway.<sup>19 20 21 22 23 24 25 26</sup>

Despite the above, SCC consistently chose to meet their duties under the Highways Act by felling trees, rather than by maintaining them in situ. Often this has been in the face of local objections, hence the formation of the STAG. Had some of the above methods been adopted instead, the FC would likely not have been obliged to assess the maintenance programme for alleged illegal felling.

### SCC/Amey Contract

All documentation currently released by SCC pertaining to the 25 year Streets Ahead Private Finance Initiative (PFI) contract, including the successive but different versions of the Five Year Tree Management Strategy and the yearly revised Annual Tree Management Plans have been accessed by the FC from SCC's website.<sup>27</sup>

The specifications and associated documents for the contract were prepared prior to and during 2011 with the successful contractor being appointed in 2012. In terms of highway management, urban forestry practice and street tree management, the prevailing context of good practice activity and guidance available at the time should have been a material consideration in the drawing up of the contract, its specifications, performance standards and associated supplementary tree management documentation.

Trees are capable of existing and interacting within the full gamut of the built environment's infrastructure. They interact with roads, footways, all public domain utilities, above and below ground as well as buildings' foundations, superstructures and individual services. Trees' multifaceted interaction with the built environment demands a concerted effort on the part of specifiers of contracts to ensure all the consequences of their presence are considered and built into contracts.

The mechanism that was meant to achieve the maintenance objectives for trees in SCC's area was the series of performance service standards 1-8 that set out the individual Service Delivery Output Elements, the Performance Requirements, Rectification Period, Repeat Period, Adjustment Type, Grace Period and Monitoring Methodology.

The relevant Service Standards for the purposes of how these operate in concert to manage and maintain the highway and the tree stock within its curtilage are:

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<sup>19</sup> BS 3998 2010 Tree Work-Recommendations.

<sup>20</sup> BS 5837 2012 Trees in Relation to design, demolition and construction-Recommendations.

<sup>21</sup> Tree Roots in the Built Environment Research for Amenity trees No.8, 2006. Centre for Ecology and Hydrology.

<sup>22</sup> Manual for Streets 2, Wider Application of the Principals, 2010. The Chartered Institute of Highways and Transportation.

<sup>23</sup> A Risk Limitation Strategy for Tree Root Claims, 2009. The London Tree Officer's Association.

<sup>24</sup> National Joint Utilities Group Volume 4, 2007, Guidelines for the planning, installation, repair and maintenance of utility services in proximity to trees.

<sup>25</sup> Subsidence of Low Rise Buildings. 2000, The Institution of Structural Engineers.

<sup>26</sup> The benefits of large species trees in urban landscapes: a costing, design and management guide 2013. CIRIA

<sup>27</sup> The relevant documents are (in no particular order): Service Standard 1 (General); Service Standards 2 (Carriageways and Footways); Service Standard 4 (Street Lighting and Signs); Service Standard 6 and its Annexure 3 (Grounds Maintenance including Tree Maintenance Services); Sheffield City Council's Tree Management Strategies Versions 1-9; Sheffield City Councils Annual Tree Management Plan 2012 to 2018.

- i. Service Standard 1 (General)
- ii. Service Standard 2 (Carriageways and Footways)
- iii. Service Standard 4 (Street Lighting and Signs)
- iv. Service Standard 6 and its Annexure 3 (Grounds Maintenance including Tree Maintenance Services)

Regrettably (with the exception of Service Standard 4, Annexure 1) the performance requirements listed in the above performance standards failed to cross reference trees in any meaningful way and no individual performance requirements on undertaking scheduled or topical maintenance repairs to the footway, carriageway or other built environment infrastructure allowing for the retention of trees was included in this element of contract documentation.

This would likely have meant that at the bidding stage prior to letting the contract these topical repairs would not have been priced into the contract within the schedule of rates. Had these repairs then been requested by SCC subsequently they would likely have been actioned as “Bespoke Item” repairs under the terms of the contract and been dealt with as Non-Core Scheme Construction Services. Typically this would result in higher costs.

These standards are further supplemented by SCC’s Five Year Tree Management Plan which the contractor had ongoing responsibility to revise, amend and agree annually with SCC. Version 1 of the Five Year Tree Management Strategy as amended by the contractor was used during the 2012 to 2013 contract period and also makes no mention of applying engineering solutions to situations where trees may have caused damage to the highway as a consequence of normal growth. The first time the possibility of applying engineering solutions to the repair of highway damage caused by trees appears in Version 5 of the Five Year Management Plan amended and agreed by the contractor and SCC respectively in 2013. At this point these engineering solutions are not specified but merely name checked as a bullet point on page 6.

It is clear therefore that at the very least that the structure of the contract between SCC and Amey and the Five Year Tree Management Strategy adopted by SCC may have had a profound impact on the management methods carried out on the streets of Sheffield. In future, it would be good practice for Local Authorities to review and tender these contracts with the management of street trees specifically in mind.

Moreover, the contract and Five Year Tree Management Strategy have built up problems that SCC will have to address in the future in relation to both species and age diversification.

The approved species tree replacement list that is embedded into the Five Year Strategic Management Plans Versions 1 to 9 covering the period from 2012 to 2017 covers only 13 genera in the Primary Species list for planting on narrow verges and in tree pits in hard surfaces. Within this genus list there is only one species or cultivar from each genus with the exception of Sorbus (2) and Tilia (3).

The native species list approved for planting on wider grass verges where root and crown development is unrestricted covers only eight species (two of which are essentially repeats from the

Primary Species list). The Arboretum/Specimen Species list for planting in prominent positions covers only 9 species in total.

This mix of “approved” species fails to meet the Urban Forester’s ‘10, 20, 30 rule’<sup>28</sup> whereby the target for a resilient urban tree population should be to have no more than 10% of a particular species, no more than 20% of a particular genus and no more than 30% of a particular family.

With so many tree species and cultivars now available (literally hundreds)<sup>29</sup> there is no plausible reason for having such a limited palette from which to choose replacement trees. Such limited variation leaves SCC’s tree stock vulnerable to pests and diseases which can rapidly wipe out a local population of tree species, such as has been seen with Ash Dieback in recent years.

Added to the issues described above, the stated objective or strategic goal as detailed throughout the contract documentation and also as a justification for felling so many “mature” trees is that they are coming to the end of their serviceable lives “en masse” and need to be replaced to improve the resilience and sustainability of the whole tree stock.

While the FC challenges that inaccurate contention, careful consideration of how the contract has been implemented reveals that by undertaking the removal of 50% of the tree stock and on current trend of removing and replacing 5,500 every five years the 17,500 target will almost be reached within 15 years rather than over the 25 years of the term of the contract. The corresponding replacement planting over that 15 year period will also mean all those 17,500 replacement trees will be squeezed into a 15 year planting window resulting in all those trees reaching maturity in roughly the same time frame 70 to 80 years hence. So, rather than diversifying and creating a resilient urban forest, SCC and the contractor have perpetuated the same issues for later generations that they have been aiming to resolve for this one.

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<sup>28</sup> F.S. Santamour, Trees for urban planting: diversity, uniformity, and common sense. Proceedings of the Seventh Conference of the Metropolitan Tree Improvement Alliance (METRIA) (1990), pp. 57-65.

<sup>29</sup> The Urban Tree Manual, The Right Tree in the Right Place for a Resilient Future, Defra 2018.

### Annex 1 – Engineering alternatives to tree felling

- i. Flexible pit size with rubber crumb surfacing wide pavement.



- ii. Flexible pit size with rubber crumb insert narrow pavement.



- iii. Narrow kerb profile with flexible pit size and tarmac insert.



iv. Dispensing with kerb edging.



v. Use of tarmac insert to replace deformed paving (includes narrow kerb profile).



vi. Integrating tree pits into parking bays as kerbside buildouts (x2)





vii. kerbside buildout example



- viii. Creating a kerbside buildout to redirect pedestrian footfall where a tree reduces access, with integrated cycle path.



- ix. Placing a barrier around a tree to discourage car parking that damages verges.



- x. Regular pruning of large trees to retain them and their root systems in situ as an

insurance policy against the expected impacts of future climate change.



xi. Use of resin bonded gravel in tree pits



## Annex 2 – Correspondence with Sheffield City Council

### Sheffield City Council Letter 1

To: Paul Billington

Via email

26<sup>th</sup> March 2018

CC: Sam Cooper, Ewan Calcott

Dear Paul

#### TREE FELLING – SHEFFIELD CITY COUNCIL

I am writing to follow up on the ongoing tree felling programme being undertaken by Sheffield City Council as we continue to receive concerns and objections to the work from interested local parties. In previous correspondence the Council has advised that the tree replacement programme in Sheffield is being carried out in compliance with your obligations as Highway Authority under the Highways Act 1980 and or the Equalities Act and is therefore exempt from requiring a Felling Licence.

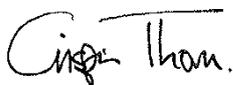
I would like to highlight the fact that in order to ensure an exemption is being appropriately applied under the Forestry Act the Council should have documentary evidence to support the decision to fell specific trees or groups of trees. This should include the rationale for the felling to enable the Forestry Commission (as the government regulator) to confirm the exemption (prevention of a danger / abatement of a nuisance / other legislation) under the Forestry Act is being appropriately applied. I would be grateful if you could confirm what documentary evidence you have to support the programme and ask that this is shared with the relevant Woodland Officer so we can continue to confirm that the felling is exempt from the Felling Licence regulations.

For further details on felling licences please see the link below;

<https://www.forestry.gov.uk/england-fellinglicences>

I look forward to hearing from a member of your team in due course.

Yours sincerely



Crispin Thorn

Area Director – Yorkshire and North East

### Sheffield City Council Letter 2

To: Paul Billington

Via email

CC: Richard Pow, Sam Cooper, Ewan Calcott

19<sup>th</sup> April 2019

Dear Paul

ALLEGED ILLEGAL FELLING INVESTIGATION – SHEFFIELD CITY COUNCIL

I am writing to follow up on my letter dated 26th March and the subsequent conversations with your colleague James Winters. Since writing we have been made aware of new information regarding the PFI contract with Amey as a result of a FOI request. Having given the matter careful consideration we have decided to investigate the felling of street trees in Sheffield as an alleged illegal felling as we have reason to believe there may have been a breach of the regulations (Forestry Act 1967).

Until the investigation is complete you are advised to suspend all tree felling of street trees in Sheffield that you are responsible for until further notice excepting the need to address / fell trees which pose an immediate threat / danger to the public.

It would be very helpful and would minimise further public expenditure, if you could cooperate with us during our investigation. To this end could you please send to me a list of all the street trees for which you are responsible that have been felled in Sheffield over the last four years. For each please provide: a location (ideally GPS coordinates); the species, condition and size of the tree; the date the tree was felled and; the reason(s) why you believe the felling of that tree was exempt from the felling licence regulations. It would also be helpful if you could detail the replanting that has taken place. Please provide this information by Friday 4<sup>th</sup> May (or tell us by when you can do so) to enable us to discharge our statutory responsibilities in this matter in a timely fashion. The information requested should be sent to Richard Pow ([richard.pow@forestry.gsi.gov.uk](mailto:richard.pow@forestry.gsi.gov.uk)) who will be leading the investigation.

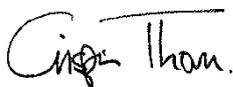
If you refuse to provide this information we will seek to gather this information directly with immediate effect.

Further information on felling trees and forestry regulations can be found on our website: <http://www.forestry.gov.uk/forestry/infd-74adb6>. You are advised to read in particular the following publication:

[Tree felling – Getting Permission.](#)

I have also written today to Amey, copy attached.

Yours sincerely



Crispin Thorn

Area Director – Yorkshire and North East

**Amey Letter 1**

To: Darren Butt

Via email

CC: Richard Pow, Sam Cooper, Ewan Calcott

19<sup>th</sup> April 2019

Dear Darren

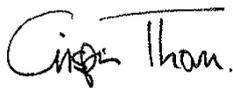
**ALLEGED ILLEGAL FELLING INVESTIGATION – SHEFFIELD CITY COUNCIL**

We have recently decided to investigate the felling of street trees in Sheffield as an alleged illegal felling investigation as we have reason to believe that the felling of some of these trees may not be exempt from the felling regulations (Forestry Act 1967). You are therefore advised to suspend the tree felling of street trees under contract to Sheffield City Council until further notice excepting the need to address / fell trees which pose an immediate threat / danger to the public.

We have also written to Sheffield City Council today on the same matter and asked for detailed information on which trees have been felled and when, copy letter attached. Your cooperation in providing the information we are seeking will be appreciated.

Richard Pow will be leading the investigation and if you have any queries please contact him directly ([richard.pow@forestry.gsi.gov.uk](mailto:richard.pow@forestry.gsi.gov.uk)).

Yours sincerely



Crispin Thorn

Area Director – Yorkshire and North East

**Sheffield City Council Letter 3**

To: Mr Eccleston

Via email

CC: Paul Billington, Richard Pow, Sam Cooper

4<sup>th</sup> May 2018

Dear Mr Eccleston,

**ALLEGED ILLEGAL FELLING INVESTIGATION – SHEFFIELD CITY COUNCIL**

Thank you for your correspondence of 1 May 2018, which I can confirm has been received by the Forestry Commission.

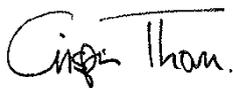
You raise concerns that the Commission is of the opinion that Sheffield City Council has committed a criminal offence and requested clarification of this point. Please take this letter as notification that the Forestry Commission is opening an investigation into alleged illegal felling carried out by Sheffield City Council and your contractor, Amey. Specifically this relates to a concern of an offence having been committed under section 17 of the Forestry Act 1967, which relates to tree felling having occurred without the authority of a felling licence where one was required. I must stress at this time that only an investigation has been initiated, and that no conclusions have yet been drawn by the Forestry Commission on the matter.

Thank you for providing the information in relation to the Dillner vs. Sheffield City Council case of 27 April 2016. We have been made aware of the details of this case previously but as a result of new information identified in the recently published contract we see a need in ensuring the exemptions are being appropriately applied and that Sheffield has the evidence to support this fact. We would be grateful for your cooperation in providing the Commission with additional information to inform our investigation.

The particular issue relates to the “not less than 200 trees” to be felled per annum that is stipulated in the contract. The Commission would like to understand how this seemingly arbitrary figure was arrived at, and what assessment, if any, was undertaken by Sheffield City Council or Amey to ensure that the felling of each tree was done under the duties, powers and obligations statutorily granted to Sheffield City Council. The Commission’s concern is that some or all of the felling may have strayed beyond that which the Council is empowered to do, and therefore would have required a felling licence. We have written to Sheffield Council on both the 26 March and the 19 April requesting that this information be provided. The more recent letter requested that this information to be provided by the 4 May and as yet we have still to receive a response. As such, we are willing to extend that deadline by a further 2 weeks until 18 May 2018.

I trust the above adequately answers your questions. I would be grateful if you could respond to our reasonable request for information to enable us to confirm the appropriate use of the exemptions within the legislation.

Yours sincerely



Crispin Thorn

Area Director – Yorkshire and North East

**Sheffield City Council Letter 4**

To: Paul Billington

Via email

CC: Steve Eccleston, Paul Barber

22<sup>nd</sup> May 2018

Dear Paul

ALLEGED ILLEGAL FELLING INVESTIGATION – SHEFFIELD CITY COUNCIL

I am writing to follow up on my previous correspondence with you dated 26<sup>th</sup> March and 19<sup>th</sup> April and the further clarification response sent to Mr Eccleston on the 4<sup>th</sup> May.

When we wrote to you on 19 April 2018 we asked for some specific information, which we expected to be treated as routine business, however failing this we would have expected it to be treated as a request for information under the Environmental Information Regulations 2004. As I am sure you are aware, there is not a requirement to explicitly mention the Regulations when making a request for information and that the regulations cover a broad spectrum of information as defined in Regulation 2. They also cover information held by the Authority itself and information held on behalf of the Authority which we consider would include information held by your contractors.

In particular we asked for:

- A list of all the street trees that you are responsible for and that have been felled in Sheffield over the last four years
- For each tree provide a location (GPS Coordinates if held)
- The species
- The condition
- The size
- Why you considered it exempt from the felling licence regulations
- Any replanting undertaken

Whilst you have acknowledged the letter and queried the basis of our investigation you have failed to meet your obligations under the regulations, in particular:

- Failed to provide a response within the required 20 working days
- Failed to notify us that you considered the request 'complex' and requiring an extension of time (Regulation 7)
- Failed to seek clarification if the request was unclear, the only clarification you sought was the grounds for our investigations
- Failed to provide advice and assistance on what information is held, our area of interest was clear from our request even if we were unable to identify specific recorded information held (Regulation 9)

I would also like to remind you that the Environmental Information Regulations carry a presumption in favour of disclosure and that if the information is not held a full formal response is still required, and the public interest test, which is still required when information is not held and should consider if any information was created after the request was received that would fall within the scope of the request.

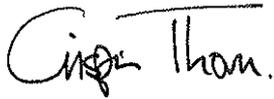
We consider that you are now in breach of the Environmental Information Regulations and will therefore be submitting a formal complaint to the Information Commissioner unless by close this Friday 25 May you rectify your failings by providing the information requested or the reasons (in terms of the Regulations) why you will not disclose this information to us. If you do not provide the information requested by close this Friday we may also need to seek to gather it from other sources, including local residents.

Could you also confirm that the felling programme remains stopped at this point in time except for trees which pose an immediate threat / danger to the public? This was a specific request in the previous correspondence as a result of the fact we are currently investigating the felling. We ask for this reassurance as we have evidence that felling resumed a few days ago. As a result of this evidence we would also request that you provide full details of any forward felling programme for the remainder of this year including locations, relevant tree reports and supporting evidence for any exemptions to the felling licence regulations being claimed.

Finally, I would like to make you aware that we have received a request for information under the Freedom of Information Regulations (that we are treating as an Environmental Information Request). This asks whether we are investigating the street tree felling by Sheffield City Council/Amey and for us to provide copies of correspondence between The Forestry Commission, Sheffield City Council and Amey. We intend to respond to this request as part of our responsibilities under the Act.

I look forward to your response.

Yours sincerely



Crispin Thorn

Area Director – Yorkshire and North East

#### Sheffield City Council Letter 5

To: Paul Billington

Via email

CC: Steve Eccleston, Paul Barber

5<sup>th</sup> June 2018

Dear Paul

#### ALLEGED ILLEGAL FELLING INVESTIGATION – SHEFFIELD CITY COUNCIL

I am writing to confirm receipt of the spreadsheet sent by Paul Barber on the 25<sup>th</sup> May 2018. Thank you for also confirming that the felling programme is currently suspended excepting those trees which have been identified as a specific danger / nuisance and need immediate attention.

We have now had the opportunity to undertake an initial review of the information provided and would raise the following requests to complete the information we asked for and for some further information.

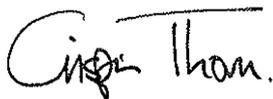
1. The size, condition and date felled of all the trees included in the spreadsheet.
2. Supporting evidence for the exemptions being claimed for each tree felled. In particular, where you have classed a tree as dangerous please specify why you believe it was dangerous and to whom. If it was discriminatory or causing a nuisance, to whom and in what way?
3. Details of the replanting undertaken to replace the trees removed.
4. The classification criteria for the categories listed in the spreadsheet, such as 'felling necessary for the prevention of danger or the prevention or abatement of a nuisance' (e.g. assessment criteria supplied to, or agreed with, inspectors that determine the appropriate category based on the condition of a tree and its immediate environment).
5. Confirm the programme's annual rate of felling to date. In particular would we be right to understand that 5,500 trees have been felled in the first 5 year phase and that this is significantly higher than the projected replacement rate as stated in the Streets Ahead 5 Year Tree Management Strategy 2012 – 2017 which describes a replanting figure in the range of 200 – 400 trees per annum?
6. Specific street tree by street tree details of the forward felling programme to enable us to review and confirm before felling whether or not the exemptions to the tree felling regulations are being appropriately applied?

Please note we are currently undertaking a further more detailed review of the information provided which could give rise to further specific questions and requests for information.

We would ask that the Authority work with us to confirm the appropriate use of exemptions in the forward programme and I would be grateful if you could provide the contact details of an appropriate officer to assist with these details.

I look forward to your response.

Yours sincerely



Crispin Thorn

Area Director – Yorkshire and North East

### Sheffield City Council FOI Response 30<sup>th</sup> July 2018

Dear Crispin Thorn,

Thank you for your recent request for information relating to Request for supporting tree data which we received on 05/06/18.

Please find below/ attached, Sheffield City Council's response to your request:

#### **1. The size, condition and date felled of all the trees included in the spreadsheet.**

*A revised spreadsheet is attached (FoI for fells with attrib and condit 03-07-2018 FINAL.XLSX), containing information on tree sizes on the first tab, and condition attributes (where this information is available) for trees which have been replaced on the second tab. If the tree plot was a stump, or snapped off, then this will be signified by N/A.*

*Please note that the information contained on the condition assessment tab is taken directly from the database and is not a British Standards compliant condition score or analysis. This dataset of condition scores is not held in such a format that it can be interrogated simply to extract the information you seek. We have as part of a*

cost estimate exercise reviewed the time required to collate this information for 50 of the trees which have been felled. To collate the information held in the attached word documents took a total of 28 hours (equating to just over 30 minutes per tree). This means that for 6000 fell jobs, we anticipate that it would take circa 3000 hours to collate all condition records which are held. As part of the management for tree assets under the Streets Ahead contract Amey (our contractor) is required to maintain an "up to date" asset inventory; unfortunately, this means that when trees are replaced, the original asset is automatically removed from the system, and replaced with the new asset. For example if an old tree is removed, when this work is completed, that asset is deleted off the system, and then when the new one is planted, this is plotted in the same place. This process would be the same if a street light was removed and replaced to ensure that the asset inventory reflects the current situation and shows assets present on the highway at any given time.

Where old trees have been replaced and the tree assets have effectively been deleted, the collation activity has meant extracting information about them is an extremely laborious process which involves searching through all deleted assets, extracting asset numbers, checking these and then manually taking screen shots of the information held.

Therefore, to collate all details held on the condition of felled trees meets an exception from disclosure under Regulation 12(4)(b) as the request relates to material which is deemed manifestly unreasonable to collate on cost/burden grounds. As noted, the Council does hold records in relation to highway trees; however, unfortunately these are recorded in a manner which does not allow for the easy collation of all relevant condition data. We have provided a response to the remainder of your request as well as the screen prints identified in the search noted above under our duty to assist a requestor. We consider that the 3000 hours potentially required to collate all relevant condition information will exceed a reasonable amount of time under an EIR request.

The Council accepts that there is a high public interest in the information requested, particularly due to the interest in highway trees within Sheffield over the last few years. The intention of EIR is to publish and make available environmental information so the onus is on disclosure. Disclosure is likely to stimulate debate and be of interest to a wide group of individuals within Sheffield and outside the City; together with the Forestry Commission in regard to their role on forestry management.

We do, however, also need to consider the impact of maintaining the exception including the reduction in the burden on the Council. In this case this is a decision based on the cost of proceeding with your request at significant public expense as detailed above.

The Council believe that in this instance the public interest in maintaining the exception outweighs the public interest in processing your request. We therefore refuse to provide a response to your request for information.

**2. Supporting evidence for the exemptions being claimed for each tree felled. In particular, where you have classed a tree as dangerous please specify why you believe it was dangerous and to whom. If it was discriminatory or causing a nuisance, to whom and in what way?**

The rationale for every tree felled is covered in columns B + C of the original spreadsheet (180320 – All completed fells.xlsx) that was supplied. It is attached again for your convenience.

With regard to your specific query about trees classed as "dangerous" – this is covered within the data already supplied to you. If you filter the columns to show "structural integrity" in column G – the very first job (12010907) shows clearly that this is a tree on Abbey Brook Drive, in the grassed area facing no. 153, including Eastings and Northings, which was surveyed on 25/02/2013 and found to have a stem cavity and basal bark damage. This tree will have been inspected by both an arboricultural inspector from Amey, and their findings verified by an arboricultural inspector from the Council.

The same rationale can be applied to any fell type.

*Trees deemed to be dangerous or discriminatory are affecting the general public when using the highway or private property owners in cases of subsidence.*

**3. Details of the replanting undertaken to replace the trees removed.**

*This is included within the attached revised spreadsheet (Fol for fells with attrib and condit 03-07-2018 FINAL.XLSX) on the third tab.*

*Please note that trees are replanted in the following planting season.*

**4. The classification criteria for the categories listed in the spreadsheet, such as ‘felling necessary for the prevention of danger or the prevention or abatement of a nuisance’ (e.g. assessment criteria supplied to, or agreed with, inspectors that determine the appropriate category based on the condition of a tree and its immediate environment).**

*The selection of Forestry Commission exemption rationale in the spreadsheet provided in the previous response was a dataset based on your own website content, <https://www.forestry.gov.uk/forestry/infd-6dfkw6> and then compared to the information held by arboricultural surveyors in Amey and the Council. This is not something which is recorded at the time of inspection, as all of our operations are undertaken in accordance with BS 3998, BS 5837, and the Highways Act, which effectively mirror the Forestry Commission’s own exemption rationale.*

*An explanation based upon the Council’s own “6D criteria” can be summarised as follows:*

**Dead** – to fulfil an obligation imposed by or under an Act of Parliament, specifically, obligations imposed by the Highways Act 1980.

**Dangerous** – to fulfil an obligation imposed by or under an Act of Parliament, specifically, obligations imposed by the Highways Act 1980.

**Dying** – to fulfil an obligation imposed by or under an Act of Parliament, specifically, obligations imposed by the Highways Act 1980.

**Diseased** – to fulfil an obligation imposed by or under an Act of Parliament, specifically, obligations imposed by the Highways Act 1980.

**Damaging** –to highway infrastructure is to fulfil an obligation imposed by or under an Act of Parliament, specifically, obligations imposed by the Highways Act 1980.

**Damaging** - to third party property is for the prevention of danger or the prevention or abatement of a nuisance

**Discriminatory** – to fulfil an obligation imposed by or under an Act of Parliament, specifically, obligations imposed by the Equalities Act

*In addition to this:*

*5 tree assets were removed by contractors working on behalf of statutory undertakers, which is a valid exemption. We record this information in order to ensure that corresponding replanting jobs are raised to guarantee no reduction in highway tree numbers.*

*150 trees in the spreadsheet were not felled as part of the Streets ahead works. They were felled by third parties without our consent. These are included for completeness as they were our assets and we have planted replacement trees for them.*

*50 trees were felled where other developers (not Streets Ahead) had planning permission. This is covered by the exemption of felling trees immediately required for the purpose of carrying out development authorised by*

planning permission (granted under the Town and Country Planning Act 1990). This work is recorded to ensure that replanting provision can be carried out in order to guarantee no reduction in highway tree numbers.

**5. Confirm the programme's annual rate of felling to date. In particular would we be right to understand that 5,500 trees have been felled in the first 5 year phase and that this is significantly higher than the projected replacement rate as stated in the Streets Ahead 5 Year Tree Management Strategy 2012 – 2017 which describes a replanting figure in the range of 200 – 400 trees per annum?**

Year	Fells completed (any and all reasons)
2013	605
2014	1042
2015	1632
2016	825
2017	1096
2018	301

*The comment you make with regards to the 200-400 figure may be a misunderstanding on your part. As you state, the strategy is clear that this is a planned minimum replanting number, not a projected felling number. The number of fells required is dictated by the condition of the asset and the works required to meet our legal obligations as the Highway Authority. For the avoidance of doubt, there is no felling target.*

**6. Specific street tree by street tree details of the forward felling programme to enable us to review and confirm before felling whether or not the exemptions to the tree felling regulations are being appropriately applied?**

*The current Streets Ahead Annual Investment Programme has no programmed felling works as you will be aware that works are suspended at present.*

*Our teams continue to carry out safety surveying and any associated works.*

I hope the information we have provided is of help to your enquiries. If you have any queries about this response, please do not hesitate to contact us.

If you are unhappy with this decision or with the handling of your request, you can ask us to carry out an internal review by emailing [foi@sheffield.gov.uk](mailto:foi@sheffield.gov.uk) and quoting the EIR ID reference at the top. Please note that you have 40 working days from the receipt of this letter to submit a request for review.

If you remain dissatisfied with the outcome of your internal review, you can contact the Information Commissioners Office. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, telephone 0303 123 1113, or for further details see their website [www.ico.org.uk](http://www.ico.org.uk)

Kind Regards,

Sheffield City Council

PO Box 1283

Sheffield, S1 1UJ

Email: [FOI@sheffield.gov.uk](mailto:FOI@sheffield.gov.uk)