

CHESHIRE EAST COUNCIL

Cabinet Member for Communities and Regulatory Services

Date of Meeting: 7th January 2013
Report of: Nigel Bates (Senior Arboricultural Officer)
Subject Title: Dangerous Tree at 44 Arlington Drive Macclesfield – Use of powers under the Local Government (Miscellaneous Provisions) Act 1976
Portfolio Holder: Councillor Gilbert

1.0 Report Summary

- 1.1 Under the Local Government (Miscellaneous Provisions) Act 1976 (“the Act”) Cheshire East Council has discretionary powers to make safe dangerous trees as a means of last resort in order to avoid causing “*damage to persons or property*”. These powers are not currently incorporated into the Constitution and Scheme of Delegation, consequently in each case authority for officers to act is required from the Portfolio Holder.
- 1.2 The owner of 42 Arlington Drive, Macclesfield contacted the Council in June 2012 about a Laburnum tree within the front garden of 44 Arlington Drive, Macclesfield which has been assessed as being in a dangerous condition. Attempts to resolve the situation since that date have failed and it is considered that the only means now available is to use the powers contained within the Act.

2.0 Decision Requested

- 2.1 This report recommends that approval be given to the Heritage and Design Manager and the Borough Solicitor to use the powers detailed within sections 23 and 24 of the Act to make safe a Laburnum tree within the front garden of 44 Arlington Drive Macclesfield.

3.0 Reason for Recommendation

- 3.1 To enable Cheshire East Council to take action in connection with a dangerous tree when asked to do so by a resident of the Borough, as a means of last resort and where the tree is considered to be in imminent danger of causing damage to persons or property.

4.0 Wards Affected

- 4.1 Macclesfield West & Ivy

5.0 Local Ward Members

- 5.1 Councillor Andrew and Councillor Harewood

6.0 Policy Implications Including - Climate Change - Health

- 6.1 This report does not contain any policy implications for climate change and health.

7.0 Financial Implications 2012/13 and beyond (Authorised by Borough Treasurer)

- 7.1 It is estimated that the cost of making the tree safe is less than £250. The cost of any legal action within the County Court or instructing work and recovering the cost of the work (should any of these become necessary) is not known. The Act allows the Council to recover its reasonable costs for carrying out “the steps” specified in the notice (served on the owner of the tree). This therefore does not include any costs incurred in investigating the claim, tree assessments, serving notices etc (borne by Development Management staffing costs). In the event that the owner does not pay the costs, there will be a financial implication to the Council in either seeking to recover its costs and/or if a charge is made against the property, there could be a delay in the Council recovering costs.

8.0 Legal Implications Authorised by the Borough Solicitor`

- 8.1 Section 23 of the Local Government (Miscellaneous Provisions Act 1976 provides local authorities with the power to deal with dangerous trees. Pursuant to section 23(3) of the Act, where an authority:
- 8.1.1 receives notice from an owner or occupier of land requesting that the council make safe a tree on other land which is in its area and which appears to the council not to be owned or occupied by the person who served the notice; and
 - 8.1.2 considers that the tree is in such condition that it is likely to cause damage to persons or property on the above mentioned land; and
 - 8.1.3 knows the name and address of a person appearing to the council to be an owner or occupier of the other land;
- the council *may* serve on such person as is mentioned in 8.1.3 above to take such steps for making the tree safe.
- 8.2 The notice served by the council must specify the steps to be taken and must specify a period, of not less than 21 days from the date of service of the notice, within which the works must take place.
- 8.3 Anyone served with a notice may, within 21 days beginning with the date of service, appeal to the County Court on one or more of the following grounds:
- 8.3.1 The he is neither an owner nor an occupier of the land on which the tree is situated;
 - 8.3.2 That the tree is not in such condition as is mentioned in paragraph 8.1.2 above;
 - 8.3.3 That less expensive steps than those specified in the notice would suffice for the purpose of making the tree safe;
 - 8.3.4 That it would have been fairer to serve the notice on another person who is an owner or occupier of the land.
- 8.4 In order to reduce the risk of appeal it is important to ensure that the tree in question is assessed and that the steps being specified in the notice are reasonable.
- 8.5 If the person served with the notice, fails to comply with the notice, the council may take the steps specified in the notice and recover from that

person the expenses reasonably incurred in doing so.

8.0 Risk Management

- 9.1 There is a risk of the tree owner taking this matter to County Court, but ownership is not disputed and the tree has been assessed by a professionally qualified officer. As described above there is a risk of costs being incurred that may not be recovered. If it is decided that no action should be taken there is a high risk that the tree will collapse causing damage to the adjacent property and potentially injury to persons.

9.0 Background and Options

- 10.1 The Council was contacted by a resident who lives at number 42 Arlington Drive Macclesfield in June 2012, expressing concerns in respect of the structural integrity of a mature Laburnum tree located within the front garden of his neighbours property number 44 Arlington Drive Macclesfield. The resident was advised that whilst Local Authorities held powers under the Act the affected party would have to demonstrate that they had exhausted all reasonable means possible to resolve the dispute; this included writing to the tree owner, and keeping copies of the letter. They were also advised to contact the relevant highways officer for their area as the tree also threatened users of the public highway.
- 10.2 Following contact between the owner of the Laburnum and an officer from Highways, one of the three main stems which forms the basis of the trees structure (see appendix 1) and extended over the highway was removed. This left two stems, one extending over owners front garden lawn, and the other leaning towards the front garden of number 42 Arlington Drive and an area used for parking vehicles.
- 10.3 Following receipt of further communications from the affected party and a copy of a letter sent to the tree owner, the tree was inspected and deemed to be in a dangerous condition. The two remaining stems were each supported by a thin section of live wood adjacent to a significant area of decay (see Appendix 1)
- 10.4 On the 5th November 2012 a letter was written to the tree owner advising that Cheshire East Council had been contacted by his neighbour and following an inspection it was considered that the tree was in a poor structural condition and should be made safe. The owner was also advised that the Local Authority had powers to intercede under the Act to make the identified tree safe if the owner did not carry out such actions. Following discussions with the owner a second letter was dispatched on the 21st November 2012 confirming that the tree remained in a poor structural condition following removal of the stem over the highway, and that the Highways Officer's view that the tree was safe only related to the highway and not the adjacent property. The tree owner was advised that the tree should be made safe by the 26th November 2012. The necessary works have not taken place and the Laburnum remains in a dangerous and condition, and is a threat to the neighbours property and family.
- 10.5 The Act provides local authorities with discretionary powers to make safe dangerous trees if it considers that *"the tree is in such a condition that it is*

likely to cause damage to persons or property". In this particular case the relevant section under the Act is s23(3), where the owner of the property under threat and the owner of the tree are both known to the council. The local authority is required to serve a notice on the owner of the tree with a time period not less than 21 days and detailing the works that are necessary to make the tree safe. If the work is not undertaken within the stipulated time period the local authority can enter the land and undertake the specified work, recovering the costs incurred as detailed in paragraph 7.1. This action is a means of last resort and is only proposed where the danger is immediate and other reasonable means of resolving the situation have been exhausted.

- 10.6 These powers are rarely used and since the formation of Cheshire East Council requests to take action under the Act have been either declined or successfully resolved before the need to take formal action. The relevant sections of the Act have not been incorporated into the Constitution and Scheme of Delegation, consequently in order to use the powers officers require authority from the Portfolio Holder. The Constitution is currently under review and it is anticipated that the necessary powers will be included in the Constitution within 2 or 3 months time.

10.0 Appendix 1

Photograph of the Laburnum tree showing two stems and the stump of the third limb which was removed to protect users of the highway. Extensive basal decay is visible.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Email: nigel.bates@cheshireeast.gov.uk

APPENDIX 1

Photograph of the base of the Laburnum tree growing within the front garden of 44 Arlington Drive Macclesfield supplied by the owner of 42 Arlington Drive on 28-8-12.

