

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:

4127

Author:

Pete Mitchell

Department:

Commercial and Operations

Contact:

Pete Mitchell

(Job Title: Head of Regulation, Email: [pete.mitchell@nottinghamcity.gov.uk](mailto:pete.mitchell@nottinghamcity.gov.uk), Phone: 07572 262281)

Subject:

Dangerous Trees Local Government (Miscellaneous Provisions) Act 1976 Section 23

Total Value:

Nil (Type: Nil)

Decision Being Taken:

The Council (by DDM decision) determines not to intervene in what is a civil issue between neighbours and liability for the tree owner and,  
Enquiries/complaints about 'dangerous trees' are directed to a Council web page web page <https://www.nottinghamcity.gov.uk/leisure-and-culture/events-markets-parks-and-museums/parks-and-open-spaces/trees> with specific information about 'trees believed to be dangerous' and the responsibilities, and liability, of the tree's owner..

**Reasons for the Decision(s)**

Trees pose a risk to property and life when a branch(es), or the whole tree, falls as a result of extreme weather conditions, or a combination of disease / age and weather conditions. Note: extreme weather conditions fell healthy trees due to the unusually high imposed wind loads and reduced soil cohesion caused by the high winds speeds and heavy rainfall typical of 'extreme' weather.

The Council is under a statutory duty to manage trees on its land, on some public highways, on land abutting the public highway or where trees are a danger to the highway or other publically accessible road or footpath. This work is currently undertaken by an in-house specialist team comprising trained and competent arboriculturists.

Local authorities are not responsible for trees in the private gardens or those in the gardens of housing associations. However, councils have discretionary powers to investigate complaints from a home owner about a 'dangerous' tree in their own garden (or a neighbours garden). There are some limited circumstances where Notice is not first required to be served, and emergency action can be taken. Where a Notice is required to be served and is not complied with, works in default cannot be undertaken until a minimum of 21 days has passed. Therefore, if the tree is in an exceptionally dangerous condition, the Notice may be unsuitable as the damage may have already occurred before the Council can take any action in default.

There is also a right of appeal where a Notice has been served, and if the appeal is commenced, no action can be taken in relation to the Notice until the appeal has been concluded, which could take some time, and will cost the Council money defending the appeal, and the Council could be at risk of an order to pay costs if unsuccessful.

Although works may be carried out in default there is no budget provision within Community Protection (or elsewhere in the Council) to pay for the works, and it may not be possible to recover the cost of the works. There do not appear to be provisions for the Council to put a charge on the property.

Community Protection's Environmental Health and Safer Places team has occasionally and, due to the increasing frequency of extreme weather events, is increasingly receiving enquiries, service requests / complaints about 'dangerous' trees; trees that are leaning / fallen following high winds / heavy rain and causing concern to the tree's owner or the owners of neighbouring properties. Over the last 3 years there have been 4 complaints about dangerous trees, 3 of which were received in February 2020 following storms Ciara and Dennis. However, Community Protection's officers are not suitably trained or qualified in arboriculture (requires NVQ level 3-5 qualifications / experience in arboriculture) and therefore not technically competent to evaluate whether a tree poses 'imminent risk' owing to disease, soil / ground instability, or because of the trees morphology. Therefore officers should not be making such determinations or serving a Section 23 Notice because, if appealed, the officer would not be considered by a Court as an expert witness, placing the Notice at high risk of being quashed and the Council at risk of costs.

Of greater concern is the risk that to the untrained eye a tree may not appear to be 'imminently dangerous', resulting in no action being taken, and injury to residents, or property damage occurring and making the Council potentially liable for the incorrect decision and inaction leading to injury / damage.

It is therefore essential that if this discretionary power is to be used an assessment of the condition of the tree, and any subsequent works to such a tree is undertaken by a qualified / competent arboriculturalist.

Appropriate expertise to conduct an evaluation of a tree's condition and state exists elsewhere in the Council however, due to resource constraints, it is fully utilised in fulfilling the Council statutory duties with respect to its own trees and clearing fallen trees from the highway.

**Other Options Considered:** The Council resolves to exercise the discretionary powers under the Local Government (Miscellaneous Provisions) Act 1976 sections 23 and 24 to intervene when notice is given to the Council under the Act or a complaint or a request for service is received and in doing so. This option is rejected as it would result in an increase in a non-rechargeable initial service provision, increased financial risk where works are required and carried out by the Council and increases the legal responsibility and potential liability of the Council, rather than leaving the matter as a legal and resolvable dispute between neighbouring land owners.

**Background Papers:** None.

**Published Works:** Dangerous Trees Local Government (Miscellaneous Provisions) Act 1976 Section 23 and 24

**Affected Wards:** Citywide

**Colleague / Councillor Interests:** None.

**Consultations:** Those not consulted are not directly affected by the decision.

**Crime and Disorder Implications:** Nil

**Equality:** EIA not required. Reasons: This is not within the remit of the Council

**Decision Type:** Officer

**Executive Decision?** Yes

**Scheme of Delegation Reference Number or Other Source of Delegation:** 127

**Subject to Call In:** No  
The call-in procedure does not apply to the decision because the value of the decision is below the call in threshold.

**Advice Sought:**

**Signatures:**

<b>Andrew Errington (Strategic Director)</b>
<b>SIGNED and Dated: 23/02/2021</b>