

CODDENHAM PARISH COUNCIL

Agenda Paper



Tuesday 21st March 2019

Report to Council

Item 13. To **RECEIVE** a report on Risk Assessment -Trees

Cllr Hardy requests that Council consider the implications of a recent court case regarding the Liability of Landowners where damage occurs from falling trees which have not had frequent risk assessments. The following details have been reproduced from the National Tree Safety Group [website](#)

Witley Parish Council v Cavanagh Judgement and Implications

National Tree Safety Group comment on Court of Appeal decision in *Witley Parish Council v Cavanagh* EWCA Civ 2232, the recent case discussing a landowner's liability for injuries caused by a falling tree which was alleged not to have been inspected properly.

The case concerned a large, mature lime tree, leaning over a road, which fell following a storm, causing serious injury to the driver of a bus passing by. It subsequently emerged that the tree had some structural decay, which it was alleged could have been discovered if the tree had been inspected more frequently (it had been inspected on a three-yearly cycle, which was agreed by the experts to be normally adequate for roadside trees). Further details of the complex facts of the case, including those relating to the relevant inspection regimes and the different expert opinions offered, are set out in the judgment which can be downloaded [here](#) and as a pdf [here](#), but in essence the defendant council was found to be liable because it had not inspected the tree on a two-yearly cycle.

This case has given rise to concerns that landowners with responsibility for trees may have to undertake more extensive inspections, which may be onerous and in turn lead to pre-emptive felling of trees and deter new plantings. However, it is the view of the NTSG that the case is not a radical departure from standard industry guidance and practice, including that published by the NTSG. It is a case on its own facts. It does, however, highlight that zoning is material in safeguarding against risk to the public, and that some trees in locations with high levels of use (generally to be determined by landowner or agent) may warrant more frequent and thorough inspection than trees in other locations. Decisions will be informed by factors such as tree species, life-stage, condition and size. Whether inspections are two-yearly, or even more frequent, will depend on individual circumstances; equally, three-yearly, or less frequent, inspections may be appropriate in other circumstances. We intend to explore and make comment in our forthcoming revision of the NTSG guidance on certain of the remarks made by court relating to how risk from trees is assessed in the context of the likelihood of harm occurring.

Peter Whitehouse

Parish Clerk