



SHEFFIELD TREE ACTION GROUPS (STAG)

Press Release

19 July 2019

FORESTRY COMMISSION HEAVILY CRITICISE SHEFFIELD CITY COUNCIL FOR REMOVING THOUSANDS OF TREES, WHICH MAY HAVE BEEN ILLEGAL

- Today, after 15 months of investigating alleged illegal felling of street trees in Sheffield, the Forestry Commission have finally published their report.
- Whilst the Forestry Commission have held back from taking SCC to court, neither have they exonerated them, stating that:

“...~600 trees were felled by SCC and Amey which may have required a felling licence. As no felling licence was in place, an offence under section 17 of the Act may have been committed.”

- The Forestry Commission heavily criticised both Sheffield Council and Amey for failing to fully comply with their criminal investigation, and for failing to supply sufficient evidence to conclude conclusively one way or another.
- STAG campaigners still believe is there conclusive evidence of illegality, which they did feed into the Forestry Commission report.
- Having already sought a Barrister’s Opinion, STAG are now consulting interested stakeholders and considering their legal options.

The full report from the Forestry Commission may be found here

<https://www.gov.uk/government/publications/alleged-illegal-tree-felling-investigation-report-sheffields-streets-ahead-programme>

In April 2018, the Forestry Commission began a criminal investigation into the illegal felling of street trees in Sheffield.

Specifically, under the terms of the Forestry Act (1967), organisations are required to apply to the Forestry Commission for a licence to fell trees unless there is a permitted exemption.

Sheffield Council believed that the Highways Act (1982) allowed them that exemption, and so failed to apply for a licence.

However, the investigation was launched by the Forestry Commission because evidence suggested that street trees were being felled unnecessarily, not because of Highways Act obligations, but instead because of obligations and targets within the Private Finance Initiative (PFI) contract with their highways maintenance contractor Amey. (See Appendices A, B and C for a more detailed legal explanation of the illegality).

Whilst that criminal investigation has now ended inconclusively with the publication of a report today, the Forestry Commission do heavily criticise Sheffield Council and Amey. These criticisms include:

- **Poor record keeping** - not being able to prove which exemption category applied to each tree, and therefore not being able to provide the evidence to confirm their innocence;
- **Failure to properly engage with the criminal investigation** - forcing the Forestry Commission to source evidence from less than ideal Google images;
- **Failure to engage with the community** - No genuine consultation effort made, nor was feedback listened to, throughout the whole period of the contract;
- **Felling as a first resort** - *“SCC consistently chose to meet their duties under the Highways Act by felling trees rather than maintaining them in situ.”*
- **Poor strategic management of the street tree assets** - Incorrect classification of trees as “over-mature” leading to unnecessary felling of trees “en-masse”

Meanwhile, Sheffield Tree Action Groups (STAG) campaigners welcome the outcome of the report, and are considering their options.

Sheffield resident and STAG campaigner Paul Selby said:

“STAG has submitted lots of evidence to the Forestry Commission throughout the course of their 15 month investigation. This includes before and after photos of hundreds of trees that have already been felled, and Sheffield Council’s weak justifications for their felling.

We’ve also shown them evidence from the recent joint investigations of trees that were previously listed for felling as a last resort, but which have now been saved using simple cheap solutions, such as installing thinner kerbs or removing multiple layers of old tarmac.

There is no difference in the alleged damage being caused by the trees that have been saved, and those that have already been felled. In other words, the trees already felled were unnecessarily felled, and did not need to be felled to meet Highways Act obligations.

Sheffield Council therefore did not have an exemption, and hence were required to apply for a licence, but didn't. This means these trees were felled illegally.

I'm disappointed that the Forestry Commission felt unable to proceed with a prosecution, although I understand that bringing such a case would be challenging given the burden of proof required, and the fact that Sheffield Council appear to have deleted all the evidence required. However I fully agree with their criticisms of Sheffield Council and Amey."

Paul goes on further to say:

"In addition to the evidence we submitted, we also sought legal advice. This legal advice confirms that Sheffield Council acted illegally, even if the Forestry Commission don't feel that the burden of proof meets the criminal standard of 'beyond all reasonable doubt.'

As a result of this legal advice, we are working with interested stakeholders to consider our legal options going forward."

"Whilst the relationship between Sheffield Council and campaigners is still not perfect by any means, I am pleased that we are now working together with them and Amey to save many of the remaining threatened trees. Neither I or other tree campaigners in Sheffield want to damage the progress that has been made: we would like to avoid further legal conflict if possible.

We are therefore considering alternative legal routes which would clarify the legal position, without taking Sheffield Council to court. That would at least ensure that our Council, and all other UK local authorities, never commit such criminal activity again."

Campaigner Rebecca Hammond, said:

"I, and countless other campaigners, feel vindicated in our long-held belief that the felling of healthy street trees in Sheffield was wrong and unlawful. This report sends a clear message to Sheffield Council, and to other councils across the country, that this sort of approach to street trees is wrong. They relied on what they thought was a legal loophole: they can't do that any more. Councils, including Sheffield Council, will have to think much more carefully about how they look after street trees. This is a success for our campaign, and good news for other towns and cities where residents are fighting to keep their trees."

ENDS

Appendices – Additional Useful Information

Appendix A – More detailed legal explanation for the Forestry Commission investigation

- Under the Forestry Act 1967 (Section 9), unless an exemption applies, Sheffield Council, like all organisations, have had to have a licence to fell healthy trees
- Exemptions to the above include when statutory duties are in place
- Sheffield Council have argued that they have the statutory duty to maintain the highway
- They made this claim in court in 2016 (which was mistakenly never challenged), and it appears they also made this case to the Forestry Commission to justify not having to apply for a licence
- However, the STAG legal teams' reading of the Highways Act 1980 (Section 41) is that Sheffield Council have not interpreted their "duties" correctly. For example the Highways Act talks about a reasonableness test, about the duty being to rectify dangerous situations, and the level of maintenance required varying by the type of street
- The recently revealed un-redacted parts of the PFI contract prove that trees are being felled for two primary reasons:
 - A contract obligation to fell 17,500 trees over 25 years (and a minimum of 200 a year); and
 - A contract obligation to maintain a perfectly straight kerb line, with no deviation or curving of the kerb line around tree roots.
- These contract obligations are not Highways Act obligations or duties, and therefore mean that healthy trees are being felled for contract reasons, not statutory duties
- As a result, for all but the dead/dying/diseased trees, Sheffield Council should have applied for a licence from the Forestry Commission to fell the majority of the street trees already felled (and to be felled).
- Felling without a licence (as required by the Forestry Act) can incur a fine from the Forestry Commission of up to twice the value of the trees felled without a licence
- An independent arborist supported STAG in valuing the felled trees, and it came to a conservative estimate of £66 million using the CAVAT valuation methodology. So a fine of up to £132 million maybe!

Appendix B – Contract Obligation to fell 17,500 trees over 25 years

The various documentation (hundreds of pages in tens of Schedules of the contract) can be found at the following web page:

<https://www.sheffield.gov.uk/home/roads-pavements/streets-ahead/streets-ahead-documents>

However, one of the key contract obligations is in Schedule 2 of the contract, with the obligation to fell 17,500 trees over 25 years being Measure 6.38.

The Council have tried for months to try to explain the wording off as not an obligation, but an insurance policy, in case this number really does need to be felled and replaced (eg if a disease kills many trees). But this doesn't add up, and press announcements made by the Council in 2012 suggest that the 17,500 felling obligation really was the aim and intent when

the contract was signed. A Freedom of Information request in August 2018 confirmed that the requirement to fell 17,500 trees was a “contractual obligation”, and not “insurance” as the Council had previously claimed.

<https://www.whatdotheyknow.com/request/streets Ahead contract highway t>

Appendix C – Contract Obligations for straight kerb lines

As with Appendix B, the various documentation (hundreds of pages in tens of Schedules of the contract) can be found at the following web page:

<https://www.sheffield.gov.uk/home/roads-pavements/streets-ahead/streets-ahead-document s>

However, another suite of relevant key contract obligations are also in Schedule 2 of the contract, with the obligations about strict straight kerbs being stated in Measures 2.58(a) to 2.61 on pages 150 to 154.

Appendix D - very brief summary of the Sheffield tree campaign

- In 2012, Sheffield City Council signed a 25 year PFI contract with Amey to repair and maintain the city’s highways, including 36,000 street trees.
- In 2015, residents started becoming aware of the scale of tree removals, and campaign groups were established across the city, under the umbrella of Sheffield Tree Action Groups (STAG). Petitions opposing the felling of street trees gathered many thousands of signatures. A campaigner requested a Judicial Review in early 2016, but this ultimately failed to stop the tree-felling programme.
- Residents resorted to standing under trees to stop trees being felled. In November 2017 the first people were arrested for doing this, under controversial Trades Union legislation (the charges were subsequently dropped).
- In August 2017 the Council obtained a High Court injunction to try and prevent direct action. However the protests continued. In the winter of 2017-18, Amey and the Council brought in hired security staff and the Police to try and enforce the injunction. However the situation was unsustainable, and in March 2018 tree felling was “paused”. By this time, approximately 5,700 mostly healthy street trees had been removed.
- Since then, STAG have supported Amey in removing trees that genuinely need felling (e.g. emergencies, and dead trees).
- In late 2018, a series of mediated talks resulted in a Joint Position Statement.<https://www.sheffield.gov.uk/content/dam/sheffield/docs/roads-and-pavements/managingtrees/Joint%20position%20statement%20SCC.%20Amey%20&%20STAG.pdf>
- The Council and Amey agreed to carry out joint investigations of the trees that were still due to be felled
<https://savesheffielddtrees.org.uk/take-action/joint-tree-investigations-rolling-update/>
- STAG continue to call for an independent inquiry.