



Abbeydale Park Rise and the Battle of the Fairy Lights

Dore, Sheffield

Report dated 23rd July 2017

Version 1

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Introduction

Abbeydale Park Rise in the Dore suburb of Sheffield is lined with ornamental cherry trees planted four decades ago and paid for by the residents. In the spring, the trees provide a glorious display of blossom. At Christmas, the trees are illuminated with fairy lights. Visitors come from across the suburb and beyond to enjoy these displays.

The trees and their fairy lights are under threat. Sheffield City Council claim that it is necessary to fell 19 of these trees – approximately one third of all of the trees. A small number are diseased or dead but in most cases the reason given is that there is root damage to the pavement or kerb stone.

In order to fell the trees, it is necessary to remove the fairy lights which illuminate them. Letters were sent to residents telling them to remove their lights within a week else they would be removed and that would be likely to damage them. However those letters appeared to rely on legislation which the residents believe does not apply to their fairy lights.

Therefore when contractors arrived in force to attempt to remove the fairy lights and then fell the trees, the residents and others defended against this potential criminal damage by peacefully standing beneath the trees to discourage the work from being carried out.

The lead contractor agreed to meet with residents to find a way forward. This report has been produced for that meeting.

The residents working group has expended a great deal of time and effort in producing this report – probably many times more than was expended by the council and its contractor when deciding which trees to fell on this road. We believe that the findings in this report have resulted in a significantly higher quality assessment than existed prior. We note that the council intends to fell a total of 6,000 trees and this does bring into question the quality of the assessment and decision making for those.

Our findings for two trees do especially bring into question the original assessment and whether felling is truly necessary for highway maintenance and is the last resort:

- The tree outside number 2 Abbeydale Park Rise was listed for felling because the footway was “uplifted and cracked”. This footway has recently been dug by hand, the roots excavated underneath and new tarmac laid. The surface is now flat and the tree has not been felled.
- The tree outside number 36 is listed for felling because the “footway is uplifted and cracked”. The council’s Independent Tree Panel recommended saving this tree using the in-contract engineering solutions but the Council rejected this as being too expensive. The tree walk with residents and Amey (the Council’s contractor) that took place before this decision found that the uplift is some way from the tree and is caused by a tree on private land. The tree appears to have been listed for felling in error.

This report sets out the issues relating to the fairy lights and the trees. It details the findings of the residents working group and enables a way forward that we believe makes much more sense than the original assessment.

Timeline

Approx 40 years ago	<p>Residents were invited to contribute £2 into a council scheme to have a tree planted outside their house. Many did so.</p> <p>Two of those residents still live on the street and recall making their contribution and its amount but not the exact year.</p>
30+ years ago	<p>Fairy lights were first installed in the tree by residents. It soon became a Christmas tradition that has been continued every year since then.</p>
30/5/2017	<p>A letter from Darren Butt (Amey) on Sheffield City Council letterhead to the residents of Abbeydale Park Rise who had fairy lights in a tree that is scheduled for felling. The letter was <i>not</i> delivered to residents with fairy lights in trees not scheduled for felling.</p> <p>The letter said that residents had made “unauthorised attachments to highways assets” and that he would have the lights removed (and damaged) if those residents did not remove their lights within 7 days.</p> <p>He cited 4 sections of the Highways Act as justification for his proposed action.</p> <p>He claimed that he would not return damaged lights to their owners for safety reasons.</p> <p>[The letter is included in the appendix to this report]</p>
5/6/2017	<p>6 sets of residents replied to Mr Butt in a hand-delivered letter stating:</p> <ul style="list-style-type: none"> • That they did not consider that any of those four sections of the Highways Act did apply to their fairy lights. • That each of those four sections specify their own remedy. • That none of those four sections did support his proposed action of damaging and taking away their fairy lights. • That they wanted to know the lawful basis for his proposed action of refusing to return damaged fairy lights to their owner. • That they dispute the “unauthorised” claim owing to the well-established custom and practice of fairy lights in these trees. • That they wanted to know who the letter was from: Sheffield City Council, Amey Hallam Highways Ltd, Amey LG Limited, something else... • That if the letter was from one of the Amey companies then it did not state the company registration details as required by the Companies Act. • That any attempt to remove the fairy lights without lawful justification would be regarded as unlawful and responded to as such. <p>[The letter is included in the appendix to this report]</p>
22/6/2017	<p>A letter from Darren Butt (Amey) on Sheffield City Council letterhead to the residents of Abbeydale Park Rise who had fairy lights in a tree that is scheduled</p>

	<p>for felling. The letter was delivered to all residents with fairy lights in trees – whether scheduled for felling or not.</p> <p>The letter did not address any of the points in the residents’ letter to him.</p> <p>The letter quoted a fifth section of the Highways Act (s132) which allows a highways authority to remove unauthorised pictures, letters, signs or marks from a tree or highway.</p> <p>The letter repeated the threat that, unless the residents removed their lights themselves, that he would have them forcibly removed, potentially rendering them unusable. Again he stated that damaged lights would not be returned to their owners.</p> <p>[The letter is included in the appendix to this report]</p>
26/6/2017	<p>An email was sent by Ann Anderson to Darren Butt on behalf of a number of residents.</p> <ul style="list-style-type: none"> • Asking whether his second letter was his reply to their letter to him (as it did not address their points made) • Asking whether he was acting as the Highway Authority. • Asking for clarification on some confusion about dates. <p>No reply was received to this email.</p> <p>[The email is included in the appendix to this report]</p>
26/6/2017	<p>An email was sent by Steve Robinson, Head of Highways, Sheffield City Council to local councillor Colin Ross.</p> <ul style="list-style-type: none"> • No action will be taken against fairy lights in trees not scheduled for felling [therefore the second letter should not have been delivered to those addresses]. • He hopes that there will be fairy lights in the trees on Abbeydale Park Rise at Christmas. This signifies the approval of a senior officer of SCC to the fairy lights in the trees. <p>[The email is included in the appendix to this report]</p>
29/6/2017	<p>Amey arrived in force to carry out their threat to cut down the lights and then cut down the trees. Residents, local people and campaigners responded and were able to prevent the damage to the fairy lights.</p> <p>Amey agreed to depart and not return until such time as a meeting had been held with residents to “get all the issues on the table”.</p>
6/7/2017	<p>A meeting was held with a sizeable number of residents in attendance and also a local councillor, Colin Ross, at Totley Library. The meeting covered the issues to date and formed a working group to conduct a tree walk.</p>
7/7/2017	<p>Amey hand dug the pavement at the tree outside number 2 Abbeydale Park Rise. They excavated under the protruding root and laid new tarmac.</p> <p>This was one of the most significant examples of pavement uplift. The pavement</p>

	<p>is now entirely flat.</p> <p>This proves that Amey's tarmac crews are able to work around tree roots and that felling of this tree would not be "the last resort".</p>
13/7/2017	The tree walk was carried out to examine the trees listed for felling. The findings are included in this report.
20/7/2017	A meeting was held to prepare for the production of this report and the forthcoming meeting with Darren Butt of "Amey".
23/7/2017	This report was written.
25/7/2017	<p>A meeting is scheduled with residents and Darren Butt of "Amey".</p> <p>At this time we do not know exactly who "Amey" is because there is no such legal entity and there are several companies with "Amey" in their name.</p>

Fairy Lights

The claim of “unauthorised attachments”

- The requirement for “authorisation” and the means by which that is achieved has not been stated.
- The residents maintain that fairy lights have been in the trees for decades and this means there is an established custom and practice that has been known about and tolerated by Sheffield City Council.
- If “authorisation” was required then the Council has had ample opportunity to make that claim and not done so
- It is for the complainant to demonstrate why and how authorisation is required and why they do not pay heed to the custom and practice.
- An email from Steve Robinson (Head of Highways, SCC) to Colin Ross (local councillor) dated 26/6/2017 stated that he hopes fairy lights would be in the trees this Christmas. This casts further doubt on the “unauthorised” claim, given the writer’s position and knowledge of the dispute.

Who is demanding that the fairy lights be removed?

The letters from Darren Butt to the residents is on Sheffield City Council letterhead but appears to be from something that calls itself “Amey”. There is no such legal entity. There are many companies with the word “Amey” in their name but none with precisely that name. The Companies Act requires that letters must state the company's full registered name, number and office but his letters do not.

Are those letters from Sheffield City Council, from Amey Hallam Highways Ltd, from Amey LG Limited or some other entity? If this letter is not from the council, why does it appear to breach the Companies Act?

It is unreasonable to make a threat against someone without informing them who it is that is making that threat.

The powers of the highway authority

The legal powers that Mr Butt quotes from the Highways Act are available to the highways authority to use. Sheffield City is the highway authority. Therefore it is necessary for Mr Butt to prove why he believes he has those powers. Which, if any, powers are delegated to which companies?

The legal power to damage and remove fairy lights

Mr Butt has quoted five different sections of the Highways Act he says supports his intention to damage and remove the fairy lights.

In his first letter he cited four sections:

Section 131 relates to damaging of the highway. The remedy for a breach of this section is laid out in paragraph (3) and is a fine not exceeding £20. We cannot see how, by any stretch of the imagination, the fairy lights are damaging the highway in the manners listed in paragraph (1).

Section 143 relates to the power to remove a structure that *“has been erected or set up on a highway”*. Fairy lights do not seem to be a *structure* and Mr Butt’s concurs by describing them as “attachments”.

Section 149 enables a highway authority to apply to a magistrates’ court for a removal and disposal order against something which is causing a nuisance on the highway. Clearly the lights are not causing any nuisance to users of the highway – joy is quite the opposite.

Section 149 also has provision for removal of *“any thing unlawfully deposited on the highway”* that *“constitutes a danger to users of the highway”* and that thing can be removed forthwith if so dangerous that the delay introduced by obtaining a magistrates’ court order would be unreasonable. However the fact that fairy lights have been in the trees for so long and that request for removal only applies to lights in trees for felling does rather indicate that this provision cannot apply.

Section 162 provides for *“A person who for any purpose places any rope, wire or other apparatus across a highway in such a manner as to be likely to cause danger to persons using the highway is, unless he proves that he had taken all necessary means to give adequate warning of the danger, guilty of an offence and liable to a fine not exceeding [£200]”*. As the lights are up in a tree, they pose no danger to persons using the highway and their visibility does provide adequate warning.

The residents wrote to Mr Butt on 5/6/2017 to inform him of the above response to those four sections of the Highways Act. His reply to them did not address their points but instead quoted a fifth section of the Highways Act, s132.

Section 132 enables a highway authority to remove pictures, letters, signs or other marks from a tree. Mr Butt does not say whether he thinks that fairy lights are pictures, letters, signs or marks but – according to our dictionary – fairy lights are not any of those things.

We must assume that the lack of direct response to our letter, and the fact that the reply instead quoted a fifth section, means that the points regarding the first four sections have been accepted. Clearly the fifth section quoted (s132) does not apply to fairy lights.

The standard of legal argument provided by Mr Butt is unreasonably low and not to the standard which should be expected of a competent authority. It is not for the residents to bat away the

quoting of irrelevant snippets of legislation, it is for the authority (if he is such) to administer the law responsibly and accurately.

Criminal damage

In the absence of a legal argument that allows “Amey” to damage and remove fairy lights, it would appear that such action is nothing more than criminal damage. Mr Butt was notified of this in the residents’ letter to him which stated that an attempt to damage their property would therefore be defended against.

Oversailing, access to private land and trespass

Many limbs of the trees are overhanging private property. When cut off, they become under the control of the workman and this is known as oversailing. Oversailing requires a license from the landholder.

Where oversailing is taking place, safety protocols require that persons (other than the workers themselves perhaps) cannot be directly underneath it. Therefore access is required to private land in order to establish a work zone.

The contract between Sheffield City Council and Amey Hallam Highways Limited requires Amey to have the necessary consents and licenses in place for them to carry out work. Where they do not have that consent, the contract requires them to pass the matter back to Sheffield City Council so that the Council can obtain the licenses and consents.

The Battle of the Fairy Lights

No credible explanation was ever provided about what law they say it is that allows fairy lights to be damaged and removed from trees. Instead, “Amey”/SCC tried bullying...

On the morning of 29th June 2017, workmen under the control of “Amey” and Sheffield City Council arrived in force on Abbeydale Park Rise. It is difficult for us to know exactly how many, but they appeared to comprise the following:

- Three teams of tree surgeons, their chipper wagons and associated paraphernalia.
- Two teams of workmen to erect barriers around trees to establish a work area.
- One or more teams of electricians.
- Jeremy Willis, Operations Director, “Amey”.
- Robert, employed by Sheffield City Council to photograph (without explicit consent) the handing over of pre-injunction notice letters, undertaking forms and draft claims.

They quickly got to work erecting barriers to create work zones around two trees and attempting to cut down fairy lights.



The sudden arrival of so many workmen caused residents to come out of their houses and to contact friends in the surrounding area to come and protect the fairy lights from possible criminal damage. As more people arrived on the streets, more and more trees had people beside them.

The speed with which the workmen acted did mean that one set of fairy lights, at number three, were damaged. The section that the workmen removed was thrown into the resident's garden. As the photographs show, the wiring has been cut.

Graham Turnbull prevented further damage by standing under the tree whose fairy lights were being damaged. His presence prevented the workers from fully removing the lights and cutting down the tree and therefore **minimised what appeared to him to be criminal damage**. Therefore this reduced the need for the workers to oversail and establish a work zone on the private land and therefore **a trespass by Amey was prevented or minimised**. It should be noted that the householder has written to Amey's registered office to explicitly refuse permission for oversail and access to private land.

Mr Turnbull may have also prevented or minimised a breach of the contract between Sheffield City Council and Amey Hallam Highways Limited. As the necessary consents and licenses were not in place for the oversailing and workzone on the private land, Amey should have passed the matter back to the council and not simply carried on regardless.

No other sets of fairy lights were damaged before the culprits were stopped peacefully and without violence. Residents continued to guard the lights in each threatened tree as a stand-off ensued.

The response to this was that Mr Jeremy Willis, Operations Director of "Amey" and other persons attempted to hand out sets of papers comprising of a pre-injunction letter, undertaking form and draft claim. Robert from Sheffield City Council attempted to take photographs of these packs being handed out.

They walked up the road, handing the packs to anyone who would accept them and taking photographs of that. Photographic/video evidence of this is available.

Old ladies who had come out of their houses were given letters that told them the council intends to restrain their unlawful behaviour. They had done nothing unlawful. This has caused them a high degree of fear and is an intimidating and unacceptable way for a local authority to behave.

The person in charge at the scene was Mr Jeremy Willis, Operations Director of "Amey". Mr Butt was not present.

Mr Willis was unaware of the correspondence between the residents and Mr Butt so this was explained to him. He was asked what was the lawful basis under which he has damaging the fairy lights but he was not able to offer one. Mr Willis said he would telephone Mr Butt. A video recording was made of this conversation.

Mr Willis went away for a while and came back to report that he had talked to Mr Butt. They had decided that they would entirely withdraw from the scene and not return until after a meeting had been held with the residents to "get all the issues on the table". He was asked why handing out pre-injunction letters to people who were merely standing on their street (outside any work barriers)

was reasonable behaviour but he was not able to offer an explanation beyond “the Council asked us to”. He agreed to take back the letters and to delete the photographs taken. A video recording was made of this conversation.

Some discussion took place about the shape a meeting would take and then Mr Willis arranged for the crews to leave.

BBC Radio Sheffield and BBC Look North then arrived to interview residents and local councillors who were at the scene.

The duty to maintain the highway

We know from the High Court case of *Dillner vs Sheffield City Council* that felling a tree is not highway maintenance in itself, but it can become highway maintenance if doing so is necessary in order to maintain the highway itself.

Mr David Caulfield, the Council's Director of Development Services at the time of the case, provided the Court with details about the standard that the Council applies to trees which are damaging the highway:

33 (e) Damaging: i.e. that as assessed by Amey and verified by surveyors and highway engineers from SCC, it causes significant damage to a footway, the road surface or underground cables or pipes, private property, or is pushing kerbs out into the road, which causes hazard to motorists or cyclists. The damage must be such that it cannot be rectified by using reasonably practicable engineering solutions such as flexible paving materials, root removal, raising the footpath level or the use of thinner and/or smaller kerbs;

34 According to Mr Caulfield, a tree would only be identified for removal if there was no alternative to doing so. Some trees would fail more than one criterion. Any removal had to be approved by the Council.

The trees

Outside 2 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	<p>Residents request that Amey and SCC to consider sensitive engineering solutions that would allow this healthy tree to remain.</p> <p>The council representative told the residents that the pavement would be planed by machine and this would damage the tree root.</p>
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	Highways Act compliance
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	There is now no damage to the pavement as Amey came and hand dug ,

	removed a little soil to flatten the root and laid new tarmac. The pavement is now flat.
Residents' conclusion	<p>Retain tree.</p> <p>It was not necessary to fell this tree in order to repair the pavement.</p>

Outside 3 Abbeydale Park Rise



SCC reason	Footway uplifted
Tree walk 8/9/2015	This tree was not included in the first walk with Amey
ITP category	Trees which are healthy
ITP findings 28/1/2016	We advise that the Council is justified in removing and replacing this tree.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	All advice considered
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	<p>This exhibits one of the greatest degrees of pavement uplift of all the trees.</p> <p>The resident at #3 reports that the tarmac crew said that they had the skills to dig, flatten and relay this area of pavement.</p>
Residents' conclusion	Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.

Outside 6/8 Abbeydale Park Rise



SCC reason	Footway cracked and lifted
Tree walk 8/9/2015	Residents request that Amey and SCC to consider sensitive engineering solutions that would allow this healthy tree to remain.
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures

Tree walk 13/7/2017	There is minimal pavement damage. The tree requires some pruning.
Residents' conclusion	<p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p> <p>Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.</p>

Outside 9 Abbeydale Park Rise



SCC reason	Buttress root into footway. Possibility of third party damage.
Tree walk 8/9/2015	Amey stated that the footway could be hand dug and relaid.
ITP category	Trees which are diseased or damaged
ITP findings 28/1/2016	We advise that it would be prudent to remove and replace this tree
SCC decision 16/11/2016	Continue with tree replacement as planned.
SCC reason 16/11/2016	ITP, SCC and Amey in agreement.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	The root encroachment into footway is trivial and pavement cracking is minimal.
Residents' conclusion	The footway can be hand dug and relaid. The rationale to fell is based on the ITP's assessment that the tree is diseased. We will seek another opinion on disease – if confirmed then fell the tree, if not diseased then hand dig and relay the footway.

Outside 20 Abbeydale Park Rise



SCC reason	Poor structural condition
Tree walk 8/9/2015	This tree is diseased and requires removal
ITP category	Trees which are diseased or damaged
ITP findings 28/1/2016	we advise that it would be prudent to remove and replace these trees
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	ITP, SCC and Amey in agreement.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Root fungus visible
Residents' conclusion	Replace tree

Outside 22/24 Abbeydale Park Rise



SCC reason	Kerb pushed out of alignment
Tree walk 8/9/2015	<p>Q: Why are there so many trees to be felled when you seem to believe many trees could be saved through engineering solutions?</p> <p>Amey: <i>'The appetite for engineering solutions is not there within the Council . They would rather see new trees and don't like work-arounds'</i></p> <p>Q: Is it possible to save this tree?</p> <p>Amey: <i>Yes, we will recommend an engineering solution.</i></p>
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree.
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the

	highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	<p>Minimal damage to surrounding pavement could be saved with tarmacking as in number 2. The kerb misalignment is trivial.</p> <p>SCC's decision appears to be based on the notion that it is necessary to narrow the footway for a distance of 15m. However we do not feel that any narrowing is necessary.</p>
Residents' conclusion	<p>Retain tree.</p> <p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p>

Outside 30/32 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Minimal damage to footway
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree.
SCC reason 16/11/2016	The financial implications.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	<p>Minimal damage to surrounding pavement could be saved with tarmacking as in number 2. The kerb misalignment is trivial.</p> <p>SCC's decision appears to be based on the notion that it is necessary to narrow the footway for a distance of 15m. However we do not feel that any narrowing is necessary.</p>
Residents' conclusion	Retain tree.

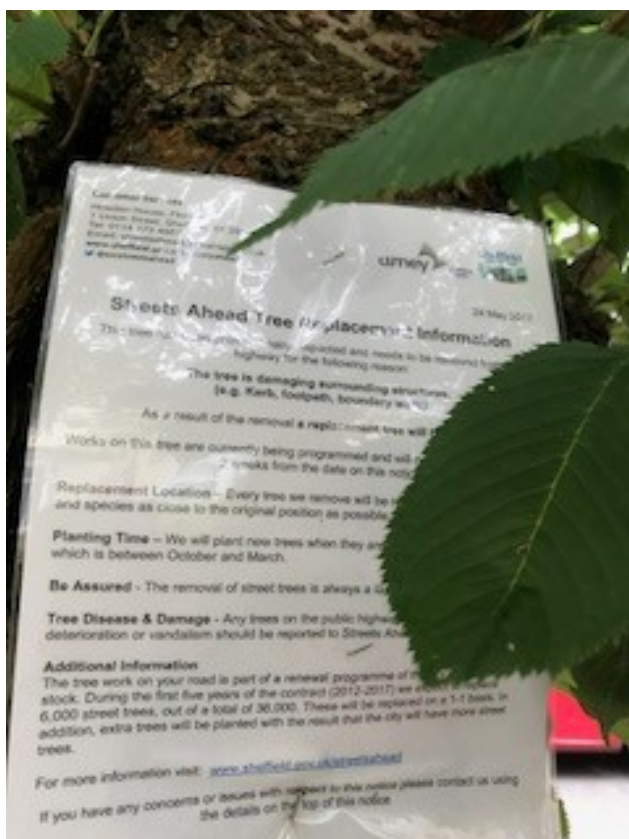
Outside 36 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Q: Whys this tree condemned? <i>Amey: 'It would appear that the surface damage is not attributed to the condemned tree but we would have to remove the surface and have a look. We can do that before the work starts. 'We would hold felling this tree subject to further investigations'.</i>
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree.
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.

Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	There is no footway uplift/cracking alongside this tree. There is a little uplift around/past the top of the photograph and this is caused by a tree coming from the garden alongside. It appears that it has been wrongly attributed to this street tree.
Residents' conclusion	<p>Retain tree. It has been listed for felling in error.</p> <p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p>

Outside 38 Abbeydale Park Rise



SCC reason	Decayed and kerb displaced also
Tree walk 8/9/2015	The tree is dead. <i>Amey: 'There may be Ganoderma spores in the soil where decay is present therefore we understand that a more disease resistant may be better'.</i>
ITP category	Trees which are diseased or damaged
ITP findings 28/1/2016	we advise that it would be prudent to remove and replace these trees
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	ITP, SCC and Amey in agreement.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	The tree is dead.
Residents' conclusion	Replace tree with more disease resistant species.

Outside 39 Abbeydale Park Rise



SCC reason	Displaced kerb
Tree walk 8/9/2015	Minimal damage visible.
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree.
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with tarmacching as in number 2.

Residents' conclusion	<p>Retain tree.</p> <p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p>
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Outside 42/44 Abbeydale Park Rise



SCC reason	Footway damaged and narrowed
Tree walk 8/9/2015	Not part of original tree walk
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with tarmaccing as in number 2. Root incursion into footway is minor and not a reason for felling.
Residents' conclusion	SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree. Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.

Outside 50 Abbeydale Park Rise



SCC reason	Not included in the list for felling.
Tree walk 8/9/2015	
ITP category	
ITP findings 28/1/2016	
SCC decision 16/11/2016	
SCC reason 16/11/2016	
Reason stated on notice pinned to the tree	
Tree walk 13/7/2017	This tree is dead or dying. The homeowner is amenable to having it removed.
Residents' conclusion	Replace tree

Outside 49 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Not part of original tree walk
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with

	tarmaccing as in number 2.
Residents' conclusion	<p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p> <p>Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.</p>

Outside 51/53 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Not part of this tree walk
ITP category	Trees which are diseased or damaged
ITP findings 28/1/2016	we advise that it would be prudent to remove and replace these trees
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	ITP, SCC and Amey in agreement.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Diseased?
Residents' conclusion	<p>Establish whether this tree is diseased or not.</p> <p>If diseased then fell.</p> <p>If not diseased then apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.</p>

Outside 55 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Not part of original tree walk
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with tarmaccing as in number 2.

Residents' conclusion	<p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p> <p>Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.</p>
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Outside 56/58 Abbeydale Park Rise



SCC reason	Rooting over edging into footway
Tree walk 8/9/2015	Not part of original tree walk
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with tarmac as in number 2.
Residents' conclusion	<p>Retain tree.</p> <p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p>

Outside 64 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Not part of original tree walk
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	The financial implications
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with tarmaccing as in number 2
Residents' conclusion	Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.

Outside 75 Abbeydale Park Rise



SCC reason	Footway uplifted and cracked
Tree walk 8/9/2015	Not part of original tree walk
ITP category	Trees which are healthy
ITP findings 28/1/2016	It may be feasible to retain the remaining trees using the in-contract engineering solutions.
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	After a review of the costs of building engineering solutions to retain trees that involve changes to the highway on a number of sample tree situations the cost of applying similar bespoke engineering solutions which are outside the Streets Ahead contract, across the rest of the highway network is estimated to be of the order of £14-26 million. The Council does not have such additional funding available and many solutions would also be of a short term nature.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	Minimal damage to surrounding pavement could be saved with tarmacching as in number 2.
Residents' conclusion	<p>SCC's reason for felling does not comply with the "felling is always the last resort" standard which is displayed on the notice and which they told the High Court in Dillner vs SCC. They have used the cost of "building engineering solutions" for sample situations and do not appear to have properly considered this particular tree.</p> <p>Apply "Tarmac First" policy: Allow the tarmac crew to exercise their skill and judgement. Retain the tree if they are able to do so.</p>

Outside 83 Abbeydale Park Rise



SCC reason	Decay
Tree walk 8/9/2015	Not part of this tree walk
ITP category	Trees which are diseased or damaged
ITP findings 28/1/2016	we advise that it would be prudent to remove and replace these trees
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	ITP, SCC and Amey in agreement.
Reason stated on notice pinned to the tree	No notice
Tree walk 13/7/2017	The decay is not apparent to us
Residents' conclusion	<p>Establish whether this tree is decayed or not.</p> <p>If decayed to a degree that warrants felling from an arboricultural assessment then fell.</p> <p>If not then retain tree. It may be removed in later years if that becomes necessary.</p>

Outside 95 Abbeydale Park Rise



SCC reason	Poor structural condition
Tree walk 8/9/2015	Not part of this tree walk
ITP category	Trees which are diseased or damaged
ITP findings 28/1/2016	we advise that it would be prudent to remove and replace these trees
SCC decision 16/11/2016	Replace tree
SCC reason 16/11/2016	ITP, SCC and Amey in agreement.
Reason stated on notice pinned to the tree	This tree is damaging surrounding structures
Tree walk 13/7/2017	We could not see a reason for felling this tree.
Residents' conclusion	<p>Establish whether there is a reason that requires the felling of this tree or not.</p> <p>If felling is provably <i>necessary</i> in order to maintain the highway then fell.</p> <p>If not then retain tree. It may be removed in later years if that becomes necessary.</p>

Root uplift, tarmac and Flexipave

Root uplift can occur under sealed surfaces such as tarmac because condensation collects under the surface and the roots are attracted to this moisture.

According to Mr Caulfield's evidence in the High Court case of Dillner vs Sheffield City Council, *"the damage must be such that it cannot be rectified by using reasonably practicable engineering solutions such as flexible paving materials"*. Some flexible paving materials, such as Flexipave, are porous. They allow rain water through into the soil below and allow condensation to rise out. This provides a double benefit in that the roots need be sent out less far by the tree to find moisture and that it will not be pushing the roots up against the paving.

Replacement trees

The trees to be planted in place of those felled should be an appropriate species of cherry whose blossom occurs at the same time as the existing species and has an appropriate (probably the same) colour.

The saplings should be larger than those installed as standard under this programme.

The detail of replacement can be discussed in the forthcoming meeting with Mr Butt.

We have heard anecdotal reports of changes to replacement species being agreed but the original replacement species being planted. Therefore we would request that the agreement on replacement be provided in writing so there is a definite record.

There is also the issue that some years ago (approx 2009), Sheffield City Council removed 7 trees from the road and promised to replace them but these replacements have never been made. The residents believe that this promise should be kept.

The way forward

Clearly there is doubt to the accuracy of the list of trees for felling and whether or not such felling truly is necessary in order to maintain the highway. It does not appear that the list has been compiled with a reasonable level of accuracy.

For at least the trees marked in yellow, an expert arboricultural opinion is required. The route to getting this can be discussed at the forthcoming meeting with Mr Butt. This will enable the trees marked in yellow in this report to be recoded as red or green.

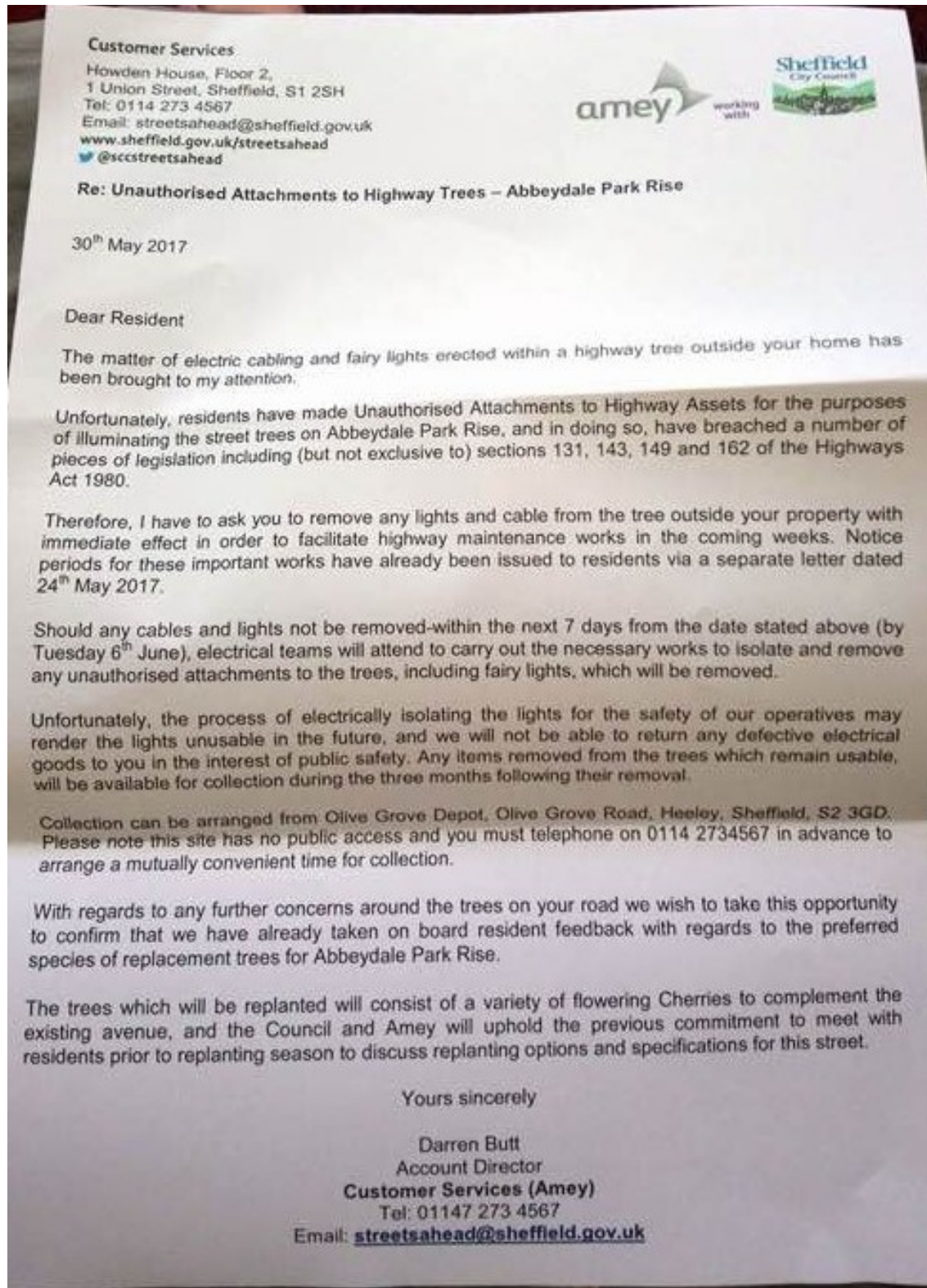
It would then be quite certain that the trees marked in red should be felled. The working group who compiled this report are confident that, once agreement is reached, the fairy lights shall be removed by the residents from these trees or that they shall provide written permission for others to damage and remove those lights.

For the trees marked in green, those who have spent many hours studying these trees and compiling this report are reasonably confident that the a “tarmac first” policy will allow those trees to be retained. If it should be discovered that there is a reason why the pavement cannot be maintained without felling the tree, it would at least become more demonstrable once the tarmac crew have done their excavation.

Whilst it seems to us that Flexipave (or similar) is the appropriate paving material to use (and we understand that Flexipave is supplied to Amey for their contract with Birmingham City Council) , this working group shall leave the choice of material to Amey/SCC.

Appendix: Correspondence with Darren Butt

Letter from Darren Butt ("Amey") on SCC letterhead 30/5/2017



Letter from residents to Darren Butt 5/6/2017

From 6 sets of residents and hand delivered.

Dear Mr Butt,

I am in receipt of your letter about fairy lights dated 30th May 2017.

The trees on Abbeydale Park Rise were paid for some 40 years ago by residents. Thus it is unsurprising that the residents care about their trees and feel a sense of ownership and pride. The trees are now in their fourth decade of illumination and bring joy to those who visit the road to view its glittering display at Christmas time.

This is a well established custom and practice that has been tolerated without question by the local authority. It is - at best - unfortunate that you have disregarded this custom and practice and have instead described the fairy lights in our trees as "Unauthorised Attachments to Highway Assets". Frankly it is tragic and insulting that the local authority be seen to be describing fairy lights and trees in such terms. Please explain this behaviour.

You are concerned that fairy lights are in breach of four sections of the Highways Act 1980 – sections 131, 143, 149 and 162.

Section 131 relates to damaging of the highway. The remedy for a breach of this section is laid out in paragraph (3) and is a fine not exceeding £20. I cannot see how, by any stretch of the imagination, the fairy lights are damaging the highway in the manners listed in paragraph (1).

Section 143 relates to the power to remove a structure that "*has been erected or set up on a highway*". Fairy lights do not seem to me to be a *structure* and your letter concurs by describing them as "attachments". The lights are not obstructing free passage along the highway (s137).

Section 149 enables a highway authority to apply to a magistrates' court for a removal and disposal order against something which is causing a nuisance on the highway. Clearly the lights are not causing any nuisance to users of the highway – joy is quite the opposite.

Section 149 also has provision for removal of "*any thing unlawfully deposited on the highway*" that "*constitutes a danger to users of the highway*" and that thing can be removed forthwith if so dangerous that the delay introduced by obtaining a magistrates' court order would be unreasonable. However the fact that fairy lights have been in the trees for so long and that only some householders have received your letter does rather indicate that this provision cannot apply.

Section 162 provides for "*A person who for any purpose places any rope, wire or other apparatus across a highway in such a manner as to be likely to cause danger to persons using the highway is, unless he proves that he had taken all necessary means to give adequate warning of the danger, guilty of an offence and liable to a fine not exceeding [£200]*". As the lights are up in a tree, they pose no danger to persons using the highway and their visibility does provide adequate warning.

Each of these four sections of the Highways Act have their own remedies. You disregard those remedies and instead threaten to damage and remove the lovely fairy lights.

As the legal basis you have stated for your claim does not support the action which you propose to take, such action appears to me to be unlawful.

You say that “we will not be able to return any defective electrical goods to you in the interests of public safety”. Please detail exactly what legislation you are relying upon with this statement.

It is not clear to me who is making this claim. Your letter appears to be from something that calls itself “Amey” but there is no such legal entity. There are many companies with the word “Amey” in their name but none with precisely that name. The Companies Act requires that letters must state the company's full registered name, number and office. Or do you say that Sheffield City Council is the sender? It is unreasonable to make a threat against someone without informing them who it is that is making that threat.

As it stands, your letter does not provide legal justification for the removal of the fairy lights or for the action that you propose to take should they not be removed. Please either state your case to the necessary degree of detail and clarity or withdraw your claim. I must insist that you decide exactly which provision it is that you are relying upon with regard to the fairy lights in the tree outside my property and respect the processes laid out in the legislation.

At this time I shall not be removing the fairy lights. Any attempt to do so will be regarded as unlawful and be dealt with as such.

Yours sincerely,

Email from Darren Butt confirming receipt of the letter 6/6/2017

> From: David Anderson <annanddavid3@sky.com>
> Date: 6 June 2017 at 08:30:24 BST
> To: "Butt, Darren" <Darren.Butt@amey.co.uk>
> Subject: Re: Phone Call
>
> Thanks for the confirmation of receipt.
>
> Regards
> Ann
>
> Sent from my iPhone
>
>> On 6 Jun 2017, at 07:28, Butt, Darren <Darren.Butt@amey.co.uk> wrote:
>>
>> I can confirm receipt of the letter left at Olive Grove and we'll respond to the residents in due course
>>
>> Regards
>>
>>
>> Darren Butt
>> Account Director | Streets Ahead | Highways
>>
>> To report a problem or issue relating to the Streets Ahead contract:
>> Customer Services | Tel: 0114 273 4567 | Email: streetsahead@sheffield.gov.uk |
>> website: www.sheffield.gov.uk/streetsahead | Twitter: @sccstreetsahead
>>
>>
>> -----Original Message-----
>> From: David Anderson [<mailto:annanddavid3@sky.com>]
>> Sent: 05 June 2017 23:33
>> To: Butt, Darren
>> Subject: Re: Phone Call
>>
>> Thanks for your response Darren. I've no specific issue to discuss at the moment but note your intention to further discuss the substitute trees in due course.
>>
>> However I would confirm that a letter from residents has been hand delivered for your attention earlier this afternoon. Hope these letters have reached you.
>>
>> Regards
>> Ann Anderson
>>

Letter from Darren Butt ("Amey") on SCC letterhead 21/6/2017 (delivered 22/6/2017)

Customer Services

Howden House, Floor 2,
1 Union Street, Sheffield, S1 2SH
Tel: 0114 273 4567
Email: streetsahead@sheffield.gov.uk
www.sheffield.gov.uk/streetsahead
@sccstreetsahead



Re: Unauthorised Attachments to Highway Trees – Abbeydale Park Rise

21 June 2017

Dear Occupier,

The matter of electric cabling and fairy lights erected within a highway tree outside your home was brought to your attention in a previous letter hand-delivered to your property three weeks ago. The letter gave you the opportunity to remove these unauthorised attachments but unfortunately you have failed to do so.

Therefore, for a second and final time, I write to ask you to remove any lights and cable from the tree outside your property with immediate effect to enable us to carry out highway maintenance works in the coming weeks.

I draw your attention to section 132 of the Highways Act 1980 that states as follows:

- (1) A person who, without either the consent of the highway authority for the highway in question or an authorisation given by or under an enactment or a reasonable excuse, paints or otherwise inscribes or affixes any picture, letter, sign or other mark upon the surface of a highway or upon any tree, structure or works on or in a highway is guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.*
- (2) The highway authority for a highway may, without prejudice to their powers apart from this subsection and whether or not proceedings in respect of the matter have been taken in pursuance of subsection (1) above, remove any picture, letter, sign or other mark which has, without either the consent of the authority or an authorisation given by or under an enactment, been painted or otherwise inscribed or affixed upon the surface of the highway or upon any tree, structure or works on or in the highway.*

Should any cables and lights not be removed within 7 days of the date of this letter (by Tuesday 28th June), electrical teams will attend on behalf of the highway authority to carry out the necessary works to isolate and remove any unauthorised attachments to the trees, including fairy lights.

As previously advised, the process of electrically isolating the lights for the safety of our operatives may render the lights unusable in the future, and we will not be able to return any defective electrical goods to you in the interest of public safety. Any items removed from the trees which remain usable, will be available for collection during the three months following their removal. Collection can be arranged from Olive Grove Depot, Olive Grove Road, Heeley, Sheffield, S2 3GD. Please note this site has no public access and you must telephone on 0114 2734567 in advance to arrange a mutually convenient time for collection.

Yours sincerely

Darren Butt
Account Director
Customer Services (Amey)

Tel: 01147 273 4567
Email: streetsahead@sheffield.gov.uk

Email sent to Darren Butt on behalf of residents 26/6/2017

> From: David Anderson <annanddavid3@sky.com>
> Date: 26 June 2017 at 15:46:33 BST
> To: darren.butt@amey.co.uk
> Subject: Abbeydale Park Rise
>
> Darren. Further to your most recent letter dated 21 June to residents of Abbeydale Park Rise, I've been contacted by a number of them with serious concerns and queries about the letter. I would be grateful if you could address the following issues and respond by return.
>
> The letter is dated 21 June and was hand delivered on 22 June. It states that lights should be removed 7 days from the date of the letter which would be 28 June rather than 7 days from receipt of the letter which would be 29 June. Was this your intention?
>
> In the letter you quote Tuesday 28 June as a deadline for removing lights from trees. However 28 June is actually Wednesday. Please can you clarify this anomaly.
>
> A number of residents received the letter dated 21 June which refers to a 'first letter' which they were, in fact, NOT in receipt of. It remains unclear if all lights on trees on Abbeydale Park Rise are requested to be removed. Is this your intention? Or has this second letter been delivered to some residents in error?
>
> The letter dated 21 June refers to different legislation to the letter delivered on 30 May (the first letter). Please could you explain to residents the reason for this alteration.
>
> You seem to intimate that you are acting as the Highways Authority in this matter, which residents point out is not the case. Please can you clarify this specific issue for them.
>
> Finally, letters from residents were hand delivered to you on 6 June in response to your letters delivered on 30 May (the first letter) to some residents on Abbeydale Park Rise. You kindly emailed me to confirm receipt and indicated that you would respond to residents in due course. Can we therefore take it that the letter delivered on 22 June was indeed your response to the letter of 6 June from residents?
>
> Please do not hesitate to contact me if any of the above requires further clarification. We look forward to hearing from you urgently in order to provide complete clarity on the above concerns.
>
> Kind regards
> Ann Anderson

Email from Steve Robinson, Head of Highways, Sheffield City Council

>> From: Robinson Steve <steve.robinson@sheffield.gov.uk>
>> Date: Mon, 26 Jun 2017, 12:34
>> To: "Ross Colin (LD CLLR)" <Colin.Ross@sheffield.gov.uk>, Billington Paul
>> <Paul.Billington@sheffield.gov.uk>
>> Subject: RE: Abbeydale Park Rise
>>
>> I hope so too Colin
>>
>> Regards
>>
>> Steve
>>
>> From: Ross Colin (LD CLLR)
>> Sent: 26 June 2017 12:28
>> To: Robinson Steve; Billington Paul
>> Subject: RE: Abbeydale Park Rise
>>
>> Steve
>> Thanks for the reply. Hopefully there will be some lights there at Christmas!
>>
>> Regards
>> Colin
>>
>> ----- Original Message -----
>> From: Robinson Steve <steve.robinson@sheffield.gov.uk>
>> Date: Mon, 26 Jun 2017, 10:50
>> To: "Ross Colin (LD CLLR)" <Colin.Ross@sheffield.gov.uk>, Billington Paul
>> <Paul.Billington@sheffield.gov.uk>
>> Subject: RE: Abbeydale Park Rise
>>
>> Hiya Colin
>>
>> I am sorry to hear that a resident is upset over our letter which was prompted by
a letter we received from a resident asking for the legal situation to be
explained more fully. We are not planning any action on the lights in trees not
identified for replacement although those trees are also unlawful. I think that
is a resolvable situation and there is no action planned
>>
>> Regards
>>
>> Steve
>>