

Trees and the Law

The benefits of trees are many and varied and are not described in detail here, but importantly the retention and planting of trees on new developments significantly improves the quality of life of the people who subsequently occupy the development, work within it, or visit it. The Tree Officer will carefully consider development proposals in order to determine whether the retention or removal of trees is sustainable and in keeping with the relevant planning policies. If only small changes to planning proposals are required, it is sometimes possible at this point for developers to amend their plans in order to retain trees that would otherwise be removed.

After considering the proposals the Tree Officer will give their advice to the Planning Officer for consideration within the wider planning context. Part of this advice will often focus on whether a tree preservation order (TPO) should be made, or whether tree related planning conditions should be imposed, if the application is to be granted consent. The Tree Officer will often also be the officer who considers soft landscaping and tree planting schemes for new development.

Within the TPO system if an application is made to carry out works to trees protected by a TPO then it is normally the Tree Officer who makes the decision whether the works should be permitted or refused. If the tree is located within a Conservation Area then the Tree Officer will decide whether the works can go ahead, or whether a TPO should be made to protect the tree.

Trees and the Law is part of a series of general information leaflets produced by the **Arboricultural Association**.

The Association provides membership services, accreditation and support to 2,500 professional arborists in the UK and further afield.

Should you require further information about the care of your trees please visit trees.org.uk where you can see details about finding and employing professional arborists to provide advice and contracting services.

We strongly recommend that you use an accredited **ARB Approved Contractor** or **AA Registered Consultant** who has been vetted and approved by the Arboricultural Association.

You can find an accredited tree surgeon or consultant though our directories at www.trees.org.uk/**Find-a-professional**

Please note the association is not able to provide direct advice to the general public.



Trees – the law and the planning system

Dangerous trees

The safety of trees is nearly always the responsibility of the owner of the land on which they grow; but there are some exceptions, such as when a rental agreement requires the tenants of a property to manage the trees.

The tree owner or manager has a 'common law' duty of care to:

'take reasonable care to avoid acts or omissions which they can reasonably foresee would be likely to injure their neighbour'

The tree owner also has a duty under the *Occupiers Liability Acts* to take reasonable steps to ensure visitors or trespassers on their land are safe. In practice this means that if a tree fails and causes damage to a person or property then the tree owner may be liable. The chances of making a claim, however, would usually depend on whether the owner had been negligent; for example, if the tree was obviously unsafe through damage or disease, and they failed to act to prevent the incident occurring. Therefore if you own trees it is sensible to have them regularly inspected by a competent arboriculturist. A list of Arboricultural Association Registered Consultants is available on our website at www.trees.org.uk/Find-a-professional

The best way to deal with a dangerous tree on neighbouring land is to write to the tree owner as soon as possible politely expressing any concerns you have and asking them to have the tree checked by an arboriculturist. If you still can't reach a satisfactory conclusion then it may be helpful to ask a third party who is known to both of you to mediate before relationships break down completely. As a last resort it may be possible to obtain a court injunction requiring the owner to deal with the tree, or in limited circumstances the local Council maybe able to help using their discretionary powers under the *Local Government Miscellaneous Provisions Act 1976*.

Overhanging trees and encroaching roots

It is generally best to discuss your concerns with the tree owner beforehand, but under established 'common law', you should be able to prune branches and roots that grow over your boundary, with or without the owner's consent. You also have a legal duty, however, to take 'reasonable care' whilst undertaking the works, and you may be liable if you damage your neighbour's tree, or cause it to become unstable. It is therefore unwise to undertake works without first consulting an arboriculturist. The parts cut off from the tree remain the property of the tree owner, so they should be offered back.

If overhanging trees or encroaching roots have caused damage to your property then you should contact your building insurer for advice. Your insurer will usually contact the owner of the trees asking them to abate the nuisance and will arrange for any repairs to be undertaken. If damage has not yet occurred, but you believe there is a foreseeable risk that the trees will cause damage in the future, then you should discuss your concerns with the owner and write to them asking them to have the trees inspected by an arboriculturist. You should keep copies of any letters sent as they prove that you have highlighted your concerns should damage occur in the future.

Tree Protection

There are a number of ways that trees can be protected by law within the UK. These include *Tree Preservation Orders* (TPOs), Conservation Areas, the Felling Licence system, Restrictive Covenants, and planning conditions within the planning system. It is important to find out from your local Council whether any legal restrictions apply before you undertake work on your trees as you may be liable to prosecution if permission is not first obtained.

Tree Preservation Orders (TPOs)

TPOs are administered by your local Council in its role as the *Local Planning Authority* (LPA) and are made to protect trees that provide a significant amenity benefit to the area.

All species of tree can be protected (but not hedges, bushes or shrubs), and a TPO can protect anything from a single tree to all trees within a defined area or woodland – but no species is automatically protected by a TPO (not even an oak!).

A TPO makes it a criminal offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree protected by that order, or to cause or permit such actions, without the authority's permission. Anyone found guilty of such an offence is liable to prosecution, and an unlimited fine can be imposed for destroying or removing a protected tree without consent from the LPA.

To make an application to carry out works to a protected tree you will need to complete an application form and submit it to the LPA.

Conservation Areas

If a tree in a Conservation Area you have to give six weeks prior written notice to the LPA (by letter, email or on the LPA's form) of any proposed work, describing what you want to do. This gives the LPA an opportunity to consider protecting the tree with a TPO. Normal TPO procedures apply if the tree is already protected by a TPO.

You do not need to give notice if the tree is less than 7.5 centimetres in diameter, measured 1.5 metres above the ground (or 10 centimetres if thinning to help the growth of other trees).

Felling Licences

Felling Licences are administered by the Forestry Commission. You do not need a licence to fell trees in gardens. For trees outside gardens, however, you may need to apply to the Forestry Commission for a felling licence, whether or not they are covered by a TPO. You can find out more about felling licences from the Forestry Commission website www.forestry.gov.uk

Restrictive Covenants

A restrictive covenant is a promise by one person to another, (such as a buyer of land and a seller) not to do certain things with the land or property. It binds the land and not an individual owner. This means that the restrictive covenant continues over the land or property even when the current owner(s) sells it to another person.

Covenants or other restrictions in the title of a property or conditions in a lease may require the consent of a third party prior to carrying out some sorts of tree work, including removing trees and hedges. This may be the case even if TPO, CA and felling licence regulations do not apply. In such cases it may be advisable to consult a solicitor.

Trees – the law and the planning system

continued

Trees and the planning system

Under the UK planning system, LPAs have a statutory duty to consider the protection and planting of trees when granting planning permission for development. The effect of development on trees, whether protected (e.g. by a TPO or Conservation Area) or not, is a material consideration that is taken into account when considering planning applications.

The amount of information required to enable the LPA to properly consider the effects of development proposals on trees varies between stages of the planning process and in relation to what sort of development is proposed. Table B.1 of *British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations* provides advice to both developers and LPAs on an appropriate amount of information that will need to be provided either at the planning application stage or via conditions (see below).

Planning Conditions

Planning conditions are used by LPAs as a means of securing the retention of trees, hedgerows and other soft landscaping on sites during development and for a period following completion of the development. If planning conditions are in place then anyone wishing to undertake work to trees shown as part of the planning condition must ensure they liaise with the LPA and obtain any necessary consent or variation.

What does a Tree/Arboricultural Officer do within the planning system?

The Tree Officer is usually an employee of the local Council. Their job, like any other Council employee, is to serve the interests of the public. In the case of the Tree Officer within the Planning Department this is achieved by maximising the many and varied benefits that trees provide to the Council's administrative area, through an input into the development management system.

