



Trees in focus

Practical Care and Management

Trees and Hedges in Dispute*

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Summary

Trees and hedges can arouse strong emotions. In some cases people can be fiercely protective of them, both their own and those owned by others. This is perhaps because of their size, historical or aesthetic value, or because of sentimental attachments. But in other cases there may be equally heartfelt animosity towards trees and hedges and a determination to see them removed or substantially reduced in size. However, there is often overlap between these two camps - the so-called NIMBY syndrome - 'I love trees but...*Not-In-My-Back-Yard*'. The reasons for anti-tree and anti-hedge attitudes include the spectre of damage to property, loss of light and the shedding of branches, leaves and fruit. Trees and hedges can, therefore, be a focus of conflict and dispute for neighbours, conservation groups, tree lovers and councils among others. The aim of this Note is thus to provide guidance on rights and responsibilities and action that may be taken when trees and hedges become the subjects of dispute.

How do Disputes Arise?

Trees and hedges are vital components of the environment, and play an important role in communities. They are valued by the public at large for many different reasons - trees are pleasant to look at and large trees can give a sense of majesty and maturity, while hedges create enclosure and give privacy. Trees and hedges screen buildings, provide colour, shade and wildlife habitat and they filter pollutants from the air. However, beautiful or not, trees and hedges can be a very real problem. Many create potential problems when they shed petals, leaves and fruit. They may also block out light; occasionally branches may fall off and damage property or injure people; and roots may be associated with cracked pavements, blocked drains and building subsidence. Attitudes about a tree or hedge can often become polarised - the owner considers it to be a wonderful and essential feature of his garden whilst the same tree or hedge is cursed by a neighbour whose garden is continually in its shade, and vice-versa.

Many disputes arise because trees and hedges grow! Few people realise that when planting hedges or screens of Leyland cypress (*x Cuprocyparis leylandii*) for example, they are using plants that, allowed to grow unchecked, will achieve forest tree stature. That is 30m (98ft) tall in 50 years. Indeed, saplings of many other trees planted to provide a restricted benefit can,

over the course of time, grow tall and their branches and roots spread to cause problems. Even trees in middle and old age, which appear unchanging, grow in size each year and may become problematic.

What is 'The Law'?

Any person may seek redress for loss, damage or injury they have suffered as a result of the actions (or inactions) of a third party. But before doing so the aggrieved person may want to know whether the law is likely to be in his/her favour, or, to put it another way, was the other person's action 'against the law'. However, in order to determine this it is important first of all to know what is 'The Law'.

The Law has two distinct forms - Statute Law and Common Law. Governments acting for the good of society as a whole, produce codes of conduct for the ways in which people ought to behave. These usually also include penalties, such as fines or prison sentences, that can be applied when people fail to conform. This is called *Statute Law* and is written down in *Acts of Parliament*. For example, even though you may own a piece of land you cannot build a house on it without permission being granted by the local council. Indeed, to ignore this requirement of the *Town and Country Planning Act* may result in the building having to be demolished and ultimately, if an enforcement notice is ignored, also a fine.

However, there are instances when two people may have a serious disagreement and there is no Statute Law to indicate who is in the right. The two parties may elect to argue their cases before a person who is authorised to make a legally binding decision i.e. a Court Judge. When a case is heard in Court by a Judge the judgement becomes a *precedent* which will be considered in similar cases in the future and will have a significant bearing on their outcome. This is known as *Common Law* or *Case Law*. (If a Statute law is unclear on a particular point, the Courts may also make a ruling on how the Law should be interpreted).

Both Statute and Common Law are described as 'The Law'. However, since no two cases are identical in every respect, the outcome of a particular dispute can never be predicted with absolute certainty. Rather, Common Law should be regarded as a set of principles which guide the resolution of disputes not dealt with by Statute Law.

This Note does not attempt to cover all aspects of the Law comprehensively, but to draw out principles which may help to

* First published in 1997 as "Trees in Dispute", Arboricultural Practice Note No 3.

resolve disputes concerning trees and hedges. However, the most sensible way to resolve a dispute is to discuss the matter in a friendly manner in the hope that an amicable settlement can be reached (conciliation). If that fails an alternative may be for the parties to appoint an arbitrator to make an impartial decision (arbitration). If an agreement still cannot be reached either party may ask the Courts to make a ruling (litigation). But this can be a very lengthy and expensive procedure and should only be considered as a final resort and after taking legal advice.

Negligence - a Lack of Care

'An Englishman's home is his castle' the saying goes, and within the boundaries of his own property an individual can generally do what he pleases. However, he is not entirely without restriction since he owes a *duty of care* to those around him and must take reasonable care to avoid causing injury to people or damage to their property. He may fail in this duty and be *negligent* either because of his action (e.g. a garden rubbish fire getting out of control and spreading onto a neighbour's land) or inaction (e.g. failure to maintain a fence, allowing cattle to get into a neighbour's garden). However, liability usually depends on whether a reasonable person should have foreseen the risk and taken action to prevent the incident. If the injury or damage could not have been foreseen (e.g. an out of control vehicle smashing through a fence allowing animals to wander) then the owner may not be judged to have been negligent. But, if the owner fails to repair the fence within a reasonable time, then a Court may decide he has been negligent.

My next-door-neighbour has a horsechestnut tree which overhangs my property. Recently a large branch fell from the tree onto my garage, destroying the roof. I had noticed that the branch had a crack in it several months earlier and wrote to my neighbour asking him to cut the branch back. He didn't reply and took no action. Is he responsible for the cost of repairs?

Since a potential defect had been drawn to the attention of the tree owner it is likely that he could be regarded as negligent by the Courts and therefore liable for the damage because appropriate action was not taken within a reasonable time. However, if the owner had sought advice from a tree expert, then, provided any recommendations had been implemented, the tree expert may be liable in negligence for failing to recognise the potential danger.

The Courts expect people to behave in a *reasonable* manner. In the case of the broken fence a landowner has a duty to keep his animals on his property. As such, the Courts would expect him to inspect his fences at intervals to ensure they remain effective. The period between inspections is not defined, but the Courts would decide what was reasonable. Trees are potentially dangerous structures and a reasonable person should therefore inspect them regularly to ensure they do not pose an unreasonable threat to people or property (see *Trees that Fall or Break*).

Who's Tree¹ Is It?

When a tree is the subject of a dispute it is necessary to determine who is responsible for the tree. In most cases the tree owner is responsible, and unless there is evidence to the contrary, a tree (in its entirety; trunk, branches and roots) is owned by the person on whose land it is growing. However, the issue of ownership may be complicated if a tree is growing on or near to a boundary, especially if the exact location of the boundary is unclear. If the ownership is disputed it will be necessary first to establish where the boundary lies. This may be determined by reference to property deeds or by resorting to traditional conveyancing rules. But if the position of the boundary cannot be determined by these means and ownership of the tree is still in doubt it may be necessary for the concerned parties to come to an agreement, or allow the Courts to rule, on the position of the boundary. The tree, or hedge, will then belong to, and be the responsibility of, the person on whose land the tree is growing, or was first planted. If a tree or hedge grows exactly on the boundary then it will normally be considered to be the joint responsibility of both neighbours concerned, unless the property deeds indicate that one party is responsible for its management.

If a property is rented or leased, responsibility for trees on the land can be either the landlord's or the tenant's. It is important therefore to look at the written tenancy agreement to see who is responsible. For example, a landlord may own the land on which a tree grows, but he may vest the responsibility for management with the tenant.

In the case of streets maintained by the highway authority, trees may be owned by the authority *or* the owner of the adjoining land (the so-called *frontager*). For example, trees which are planted before the highway is adopted are not owned by the highway authority; the presumption is that the subsoil to the centre of the highway belongs to the owner of the adjoining land. Nonetheless, the highway authority has some liability for the management of trees in the highway, or any loss or damage caused by them, because under the *Highways Act 1980* they have *control* over them.

Trees that Fall or Break

Trees increase in size each year and as a result their forms and shapes change. They usually develop in such a way as to minimise the risk of failure (Mattheck and Breloer, 2001). But branches do break off and trees do snap or fall over - usually precipitated by natural events such as an unusually severe storm. In the rural landscape and in woodlands this may be of little consequence, but as man and his built structures get closer together, for example, in gardens, urban areas and near to roads, the risks posed by trees increase. Also the damage caused by man to trees increases (e.g. severance of tree roots) and may render them potentially unsafe. The risk trees pose to people and property should therefore be recognised and trees managed to reduce this risk to a *reasonable* level. This should not be difficult in many instances because defects in trees usually start to develop many years before the structure

¹ "Tree" is used hereinafter to embrace trees and hedges unless otherwise indicated.

becomes unsafe. Regular inspections should identify and monitor such defects along with any other damage caused to the tree so that action can be taken before the tree becomes dangerous (see diagram on back page: and *Young 1984*). Additional inspections may be warranted where a tree has suffered a trauma (e.g. by the action of man, weather, pests or pathogens).

A tree can never be regarded as completely safe. As a result the Courts expect a prudent landowner or tenant to inspect trees regularly, particularly those in a position where, for example, a falling branch could cause damage or injury. If a tree or branch does fall, whether onto adjoining land or even within the tree owner's land (e.g. on a visitor's car) and causes damage or injury, the tree owner may be liable if it can be demonstrated that he was *negligent*. Whether or not he is held to be negligent depends upon how he responded to externally visible signs of weakness and the degree to which the damage/injury was reasonably foreseeable. If an owner feels unqualified to interpret features on a tree it would be prudent to seek assistance from an arboriculturist².

If a tree owner is aware that a tree he is responsible for poses an imminent threat to the safety of people or property but does nothing about it, then it may be possible to obtain a Court injunction requiring that owner to make the tree safe. Alternatively, under the *Local Government (Miscellaneous Provisions) Act 1976* the local authority may serve a Notice requiring the owner to remove the danger. If the owner fails to comply with this Notice the local authority can undertake the necessary work and charge the owner for doing so. However, in order to take this action the local authority must be satisfied that the tree poses a real and immediate danger to people and/or property. But this is very much a power of last resort - the local authority will not necessarily step in because the tree owner will not face up to his responsibility.



Roy Finch

Trees sometimes fall and cause damage. Somebody has to pay, but in this case liability may depend on whether the tree owner was negligent (see *Negligence - a Lack of Care*).

It is often mistakenly thought that grants are available to assist people in undertaking maintenance work on a tree. Some Local Authorities may give grants for the maintenance of important trees but generally ownership carries with it responsibility, including the financial responsibility of ensuring that trees are kept in a safe condition.

My next door neighbour is allowing her tree to grow too big and I am afraid that in a strong wind it will blow over and fall on my house or car, or even me.

Trees are not necessarily dangerous simply because of their size. For example, the giant redwood (*Sequoiadendron giganteum*) is one of the tallest trees in this country (growing to 40m or more in favourable conditions) but is notable for blowing over only when the roots have been severely injured or damaged by a pathogen. Regular inspection should highlight areas of potential weakness so that specialist advice may be sought from a tree expert. Remedial work can then be undertaken to reduce any threat identified to a reasonable level (e.g. by pruning or felling).

There is an ash tree in the park beside my house. Last summer one of the branches which overhang my garden fell off and crashed onto my greenhouse. There was no wind at the time and the branch did not appear to be decayed. I contacted the council who own the park and they say that the tree was inspected only 3 weeks earlier and no problems were reported. Who is going to pay for my greenhouse?

Since the tree had been recently inspected, and provided the Courts were satisfied that there was no negligence (i.e. the inspection had been thorough and any recommended remedial work had been satisfactorily carried out) the council is unlikely to be considered liable and would therefore not be responsible for the costs of repair. However, if your home insurance policy covers such damage your insurance company may pay for the repairs.

Trees that Cross Boundaries

There is no requirement in law to keep a hedge trimmed or to prevent trees spreading over a boundary. It is probably for this reason that many disputes arise in the first place. However, whilst there is no obligation to prune trees, if branches or roots encroach on to neighbouring land, the Courts have regarded them as causing a nuisance, in the legal sense, even if no damage is caused.

Branches

The title of a property includes not only the soil on which the property stands, but also all that is above and below it. With few exceptions (e.g. passage of aircraft) the owner is therefore entitled to the uninterrupted right of the air above the land. On this principle, therefore, the branch of a tree which overhangs a neighbour's land is an infringement of his rights, and, although it may cause no actual harm, is considered in law to be a special kind of nuisance. The tree owner is not obliged to cut back the overhanging branches, but the person whose property is overhung has the right to cut back the branches to the boundary to remove the nuisance. This is known as abatement (but be careful if the tree has statutory protection, see Protected Trees). Although there is no obligation to ask the

²The Arboricultural Association maintains a Register of Consultants. Copies are available from the Arboricultural Association, Ampfield House, Ampfield, Romsey, Hampshire SO51 9PA or on their website www.trees.org.uk

owner's permission or give notice of your intention it would be good neighbourliness to discuss the problem in a friendly way with the owner first - you might be surprised and gain help or agreement to remove more than you are entitled to.

If pruning is carried out without the owner's permission it is important you do not trespass, nor should your equipment cross the boundary - for example it may be a trespass to lean a ladder against the trunk of a tree as an aid to cutting a branch if the trunk is on the other side of the boundary. Even after removing branches the prunings remain the property of the tree owner and therefore you cannot put the branches, fruit, leaves, cones etc. to your own use without your neighbour's permission. To do so would constitute an offence known as conversion i.e. appropriation of your neighbour's property. Nor should you simply burn or dispose of the material because it is of no use to you. You may return the material to the owner's property, but if in so doing you cause damage (e.g. by throwing branches over the fence and damaging your neighbour's conservatory) you may be liable to pay for the damage. But if the owner notifies you (preferably in writing) that he does not want the material you are at liberty to dispose of it as you see fit. However, there is no precedent for you to recover from the owner either the expenses incurred in disposing of the residues, or indeed, the cost of carrying out the pruning.

Roots

Like branches, tree roots do not respect boundaries - they are opportunistic and simply grow wherever the soil conditions are most suitable. Roots crossing a boundary are a nuisance and may be cut back to the boundary in the same way as branches (but caution should be exercised if roots belong to a protected tree, see *Protected Trees*). However, cutting roots may adversely affect tree stability and its ability to take up water and nutrients. The nearer to the trunk cutting occurs the greater the risk to the safety and health of the tree (Dobson, 1995). A tree owner may have a claim against his neighbour if the tree dies or falls over as a result of such action, although this has not been tested in Court.

Having crossed a boundary roots may enter a defective drain and cause a blockage (Brennan *et al* 1997); they may grow under and crack pavements and driveways; and they may contribute to building subsidence (see *Trees and Buildings*). In such cases a neighbour may seek recompense for the damage caused and a Court injunction restraining the owner from allowing further root trespass. However, in considering liability, damages may only be awarded if it can be shown that the tree owner was negligent, that is, that the damage was reasonably foreseeable and the tree owner should have taken preventative action. For example, a building may suffer subsidence because of shrinkage of a clay soil due to moisture extraction by tree roots. However, if the surrounding soil was sandy (i.e. not shrinkable) and there was no way of knowing, without a full localised soil survey, that there was an isolated pocket of clay, the tree owner may be found not negligent since the damage was not reasonably foreseeable.

When is a Nuisance not a Nuisance?

Every autumn people (from householders to rail passengers) complain about the annoyance caused by falling leaves.



Forest Research Photo Library

A tree owner has exercised the right to prune his own tree (background) - the result could be considered mutilation by a tree lover. The tree in the foreground overhangs the neighbouring property; the neighbour may wish to exercise his right to prune back the overhanging branches, but there may be legal restrictions (see *Protected Trees*).

Although the leaves may be irritating or cause an inconvenience, they are rarely, if ever, a nuisance in the legal sense.

A nuisance may be caused by one person's interference with his neighbour's use and enjoyment of land. Interference will sometimes result in tangible damage, but equally nuisance may involve interference with a neighbour's rights to have quiet and comfortable enjoyment of his land - commonly this relates to interference caused by such things as smoke, dust, noise etc.. In relation to leaves, Courts will be unlikely to find nuisance because the general rule is that the neighbour must prove substantial interference with his comfort and convenience.

A reasonable person could be expected to accept that the fall of leaves from a tree is a seasonal occurrence over which the tree owner has no control (other than to remove the tree), neither could he stop the wind blowing them over a boundary. Therefore, leaves, flowers or fruit covering a neighbour's lawn or filling up his gutters may be an inconvenience, but would not normally be considered to be a nuisance (i.e. causing damage). The reasonable person would clear them from his property at intervals.

However, trees can cause a legal nuisance (damage) in some circumstances (e.g. see *Trees and Buildings*). In such cases the affected party may be entitled to claim damages for harm caused and the Courts may make an order (injunction) restraining a tree owner from allowing further nuisance.

Trees and Buildings

The perceived threat of damage by roots is probably the biggest worry people have about trees near to buildings. Much of this concern is completely unwarranted, but trees may cause damage in some circumstances. There are two types of damage - *direct* and *indirect*. The former results from the pressure that may be exerted by a tree's roots or trunk (MacLeod and Cram, 1996). This may affect lightly loaded structures such as garden walls, driveways and patios, for example, but it rarely affects heavily loaded structures such as houses. Indirect damage is unrelated to the force exerted by roots or trunk, but occurs when tree roots take moisture from shrinkable (usually clay) soils (Biddle, 1998). As they do this the soil shrinks and if the foundations of a building are not deep enough, this may result in subsidence and cracks appearing in the structure.

If cracks appear in a building and it is thought that a tree on neighbouring land may be to blame then the tree owner (or his insurer) may be liable for the cost of repairs. But in order to demonstrate liability, in nuisance, evidence should be provided which indicates beyond reasonable doubt that the tree is in fact responsible. Furthermore, it may also be necessary to demonstrate that the damage was reasonably foreseeable and that the tree owner should have taken action to remove the threat.

I have just received a letter from my neighbour's insurance company telling me to cut down my lovely tulip tree because it is causing subsidence to my neighbour's property. I don't want to lose it, do I have to do what they say?

The insurance company cannot require you to remove the tree, they can only make a request, and you have no obligation to comply. However, if you fail to take any action and it is subsequently demonstrated to the Courts that the tree was involved in damage to the building, you (or your insurance company) may be liable for the costs of repair to the building. Nevertheless, before agreeing to take action you should expect your neighbour (or his insurer) to provide reasonable evidence that your tree is the principal cause of damage (see Biddle, 1998 for the assessments that should be made) and that in the absence of the tree the building would be able to withstand normal seasonal drying of the soil. Such evidence should usually include copies of any reports (by structural engineers, arboriculturists and root identification experts) prepared in connection with the subsidence claim. You, or your insurance company, may then wish to appoint your own experts to corroborate or challenge these findings. Also, you may wish to have written assurance that if you carry out the requested work, the building in question, and perhaps even your own property, will not suffer from 'heave' as the soil rewets and swells.

Even if there is evidence that the tree is involved there may be no need to remove it. Another option is to ³prune the tree to reduce its water use, and therefore its influence on the surrounding soil (see Biddle, 1998).

Rights to Light

People generally enjoy sunlight and as a result expect to have light to their property. However, there is no absolute right to light from across a neighbour's land, although this right can be 'earned'. Under the *Prescription Act 1832* a right to light can be acquired provided the light has been uninterrupted for at least 20 years. This is known as an *easement* which is a peculiar legal right or privilege. However, this right applies most commonly to a building, and more particularly, to the window through which the light enters. For the right to be infringed, the loss of light must be substantial and interfere with the reasonable use and enjoyment of the property, for example, needing artificial light during the daytime to read a newspaper might fall into this definition. Shading of a garden is unlikely to constitute an infringement of a right to light. But if it can be shown that a landowner or tenant cannot use a piece of land to gain his livelihood because of shading, it may be possible to convince the Court to issue an injunction requiring removal of the source of shade.

A right to light may be infringed where trees block light, but there does not appear to have been a Court case dealing specifically with this matter. Nevertheless, it is reasonable to expect that if light is substantially reduced the owner may be entitled to damages and/or an injunction requiring the tree owner to reduce the shading (by pruning) and to restrict further growth. However, the prescriptive right may be forfeited if the tree blocks light for more than 12 months without an objection being raised. As it is not possible to say at what moment shading by a tree becomes actionable, then if it seems likely that a tree may reduce light in the very near future it may be possible to obtain an injunction preventing the tree owner from allowing further growth.

There is no right in law to a view, and a view obstructed by the growth of trees cannot legally be regarded as a nuisance.

High Hedges⁴

Hedges are formed by planting rows of woody plants. These are often located on or near to garden boundaries in residential areas. Hedges are a popular form of low level, natural screening and boundary demarcation, which are usually maintained by clipping.

Several tree species, including the notorious Leyland cypress, are amongst those used to form garden hedges. Evergreen foliage and rapid growth in the early years are desirable traits in species chosen to form garden hedges, but rapid growth cannot be expected to stop once a hedge has achieved the desired height and if hedges are not cut back regularly they can quickly become too large for their location. Beheading such plants will not stop upwards growth - it may encourage even denser growth. Neighbouring gardens and properties can be blighted by tall hedges that block light and sunshine and have an overbearing effect.

Several high profile and costly civil disputes involving hedges, along with mounting public concern over the inability of the

³ Research undertaken at Horticulture Research International has demonstrated that a significant and lasting effect on water uptake can be achieved only by severe crown reduction and the subsequent maintenance of the tree at the reduced size.

⁴ A hedge is defined as two or more plants growing in a line with their branches touching.

occupiers of private property to get redress through simple civil channels has led the Government to introduce powers under the *Anti-Social Behaviour Act 2003*.

From 1st June 2005, Local Authorities (Councils), usually the Planning Department, have had powers to deal with complaints about high hedges growing on a neighbour's land. Provided it can be demonstrated that attempts to resolve the difference have been made and failed, individuals will be able to take their complaint to their local Council.

The Council, for a fee, (the amount is set by the Council and paid by the complainant), can investigate and make a judgement based on all the relevant factors, including the opinions of the hedge owner, and can then issue a formal notice to the hedge owner requiring him or her to take appropriate remedial action. The action can involve cutting the hedge down to a reasonable, specified height, not less than 2m, and keeping it no taller than that height in the future. (These notices are in respect of height only, they do not apply to lateral growth of a hedge.)

Complaints to a Council under the *Anti-Social Behaviour Act 2003*⁵ can only be made by a person living in a residential property affected by a high hedge and there is nothing to prevent a new owner of a property making such a complaint about a pre-existing hedge even though the previous owner may have accepted the situation.

Only hedges that are made up of mostly evergreen or semi-evergreen species (trees or shrubs which do not normally lose their leaves in winter) and that are more than 2m tall can be the subject of a complaint. The complaint must relate to the height of the hedge, not its length or width and not to its roots. The Council should consider all the relevant factors in coming to its judgement and its final decision is binding and enforceable (*But there is a right of appeal dealt with through The Planning Inspectorate*).

The Government has published two leaflets that give guidance on the High Hedges complaints system: -“*Over the Garden Hedge*” and “*High Hedges, Complaining to the Council*”.

Protected Trees

Even though the legal principles relating to trees, referred to earlier have been established as Common Law through the Courts, they may be overridden by Acts of Parliament (Statute Law), for example, the *Town and Country Planning Act 1990* which gives local authorities the power to make Tree Preservation Orders, and the *Planning (Listed Buildings and Conservation Areas) Act 1990* which gives them powers to designate Conservation Areas. Guidance on the law relating to tree protection has been published by the Office of the Deputy Prime Minister in a short leaflet “*Protected Trees: A Guide to Tree Preservation Procedures*” (ODPM 2004) and in the longer, authoritative, “*Tree Preservation Orders: A Guide to the Law and Good Practice*” (DETR 2000).

A local planning authority may decide to protect individual trees, groups of trees and woodlands by means of a Tree Preservation Order (TPO). In general this makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully



Derek Patch

The owner of this property would normally be within his rights to cut back branches overhanging his property, but because the tree is in a Conservation Area, the local council will have to be given six weeks notice - this gives an opportunity to place a Tree Preservation Order on the tree.

destroy specific trees without the written permission of the planning authority. There are some exceptions which include dead and dying trees and trees that have become dangerous and the pruning of trees that are cultivated for fruit production. In the case of dead, dying or dangerous trees, it is recommended that at least five days notice of the intention to carry out work should be given to the local planning authority. If a protected tree is damaged or destroyed without permission, or without an exemption applying, then the owner, contractor, or both may be prosecuted and, on conviction in a magistrates court, be liable to a fine of up to £20,000, or in a higher court to an unlimited fine and/or a prison sentence.

The *Town and Country Planning Act 1990* makes exemption where work on protected trees is needed *to prevent or abate a nuisance*. However, it is not clear if this applies to all situations of, for example, a branch overhanging a boundary, or only in cases where damage has occurred or where there is an immediate risk of actual foreseeable damage - an *actionable nuisance*. If this latter interpretation is correct, consent will be needed before cutting back encroaching branches or roots that are not causing damage.

There are also restrictions on what you may do to trees growing in a *Conservation Area*. These are areas designated by the local planning authority because of special architectural or historical interest, the character or appearance of which it is desirable to preserve or enhance. Since trees may contribute to the special character of the area they are also afforded special protection. In general, 6 weeks notice must be given to the local planning authority before carrying out any work on trees that have a trunk diameter of 7.5 cm or more measured at 1.5 m above ground. The plants forming an old hedge could have trunks of greater diameter and in such cases notice of intended work, even routine trimming, should be given to the Council. This period of notice gives the planning authority the opportunity to consider whether the tree merits protection by a TPO. The work may proceed after 6 weeks has elapsed provided the owner has not been served with a TPO, or earlier if a written response is received from the planning authority indicating they have no intention of issuing a TPO. There are exemptions as for TPOs and similar fines apply.

⁵The *Anti Social Behaviour Act 2003* refers primarily to hedges marking the boundaries of gardens and should not be confused with the restrictions imposed by the *Hedgerows Regulations 1997* which relates mainly to rural hedgerows.

⁶Available free of charge from ODPM Free Literature, Wetherby, Tel: 0870 1226 236 or www.odpm.gov.uk

If trees subject to a TPO or in a Conservation Area are removed without permission there is a requirement (which may be waived by the planning authority in some circumstances) for a new tree to be planted.

I have an oak tree in my garden which is blocking light to my conservatory. I want to cut it down but I have been told that all oak trees in Britain are protected. Is that right?

No, oak trees do not have any special protection and no tree species is exempt either. You may prune or cut down any tree in your ownership provided that it is not protected by a Tree Preservation Order (TPO) or situated within a Conservation Area. The local planning authority can advise you whether these apply to your tree. If the tree is protected you may still apply to the local planning authority (LPA) for permission, which may be or may not be granted. In a Conservation Area you will need to give 6 weeks notice of your intention to carry out the work. You may proceed within this time if the LPA gives you written notice that it does not intend to place a TPO on the tree, or at the end of the notification period if no response is obtained from the LPA.

Where trees are to be felled, other than in a garden, and each tree has a trunk diameter of greater than 8 cm measured at 1.3 m above ground level, a Felling Licence may be needed. The Forestry Commission⁷ administer applications for Felling Licences and can advise whether a licence is required for the proposed felling.

While TPOs and Conservation Areas are the main statutory controls over trees, there are instances where there is control because of the flora and fauna that lives on the tree or in a hedge. This is most likely where a tree is very old and has many hollows for example that may be roosts for bats. Under *The Wildlife and Countryside Act 1981* and modifying legislation and *Regulations*, it is an offence to intentionally or recklessly disturb or kill any bird or bat species, or to damage or destroy any bird's nest that is in use or being built. As appropriate, statutory Nature Conservation Organisations must be notified and allowed a reasonable time to advise on whether the proposed work on trees or hedges requires a licence. In order to avoid harming nesting birds, pruning or cutting of hedges should not be carried out between March and August.

There are instances of covenants being made to restrict the action of individuals. Where such covenants exist, their significance should be discussed with a solicitor.

Legal Aid

In order to obtain, or defend, what you consider to be your legal rights it may be necessary to take your case to the Courts. This will almost certainly involve a solicitor, and in some cases also a barrister and possibly expert witnesses. The financial burden of taking such action may be very high. However, financial assistance may be available under the Legal Aid scheme administered by the Legal Aid Board. Aid is means tested and eligibility for partial or full assistance depends upon the disposable income and capital of the applicant. Further advice on Legal Aid may be obtained from a solicitor or the Citizens Advice Bureau.

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⁷Addresses and telephone numbers should be available in local telephone directories.