

Module 1

TREES AND THE LAW



Contents



Trees are awe-inspiring organisms which bring many benefits to humans and wildlife alike. However sometimes they can cause a nuisance, damage to persons or property and can even fatally harm someone if they fail. Conversely, there are times when human activity can threaten the life or health of a tree that is valued in the community, and taking action to protect that tree from damage or destruction is critical for its long-term survival.

As a Tree Warden you will be aware of the threats and challenges faced by trees in your local community. Therefore it is useful for you to understand:

- The legal frameworks that exist surrounding the protection of trees, including the responsibilities and duties of care that tree owners and managers have
- The laws relating to trees, including Tree Preservation Orders, Conservation Areas and Felling licenses
- Other legislation that has an impact on trees, such as wildlife site designations

This learning module will enable you as a local Tree Warden to:

- Strengthen your knowledge base in relation to trees and the law
- Build relationships with your local community and increase awareness by explaining to others the legal frameworks and legislation affecting trees
- Understand potential breaches of legislation and know to whom these can be reported

The key topics covered in this learning module are:

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1. Tree owners and their neighbours



Tree owners or those responsible for a tree or trees have a 'duty of care' under which they must take reasonable care to avoid acts or omissions that could be reasonably foreseen and/or that would likely cause harm to persons or property. An omission by a tree owner to take sufficient care of their trees, which causes harm, can lead to civil or criminal proceedings against them.

There are generally no restrictions on what owners may plant or allow to grow on their land and how big their trees can be.



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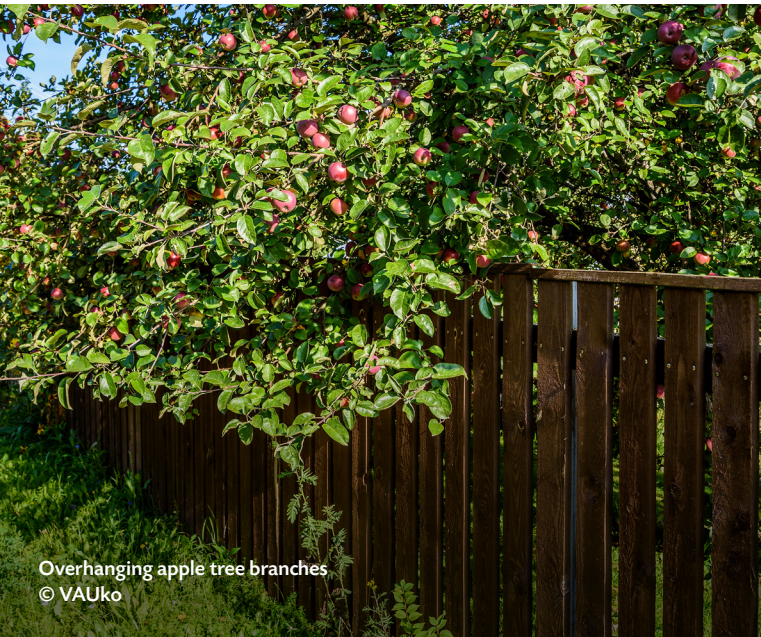
Tree ownership

- A tree is owned by the person on whose land the trunk stands, irrespective of whether it is self-seeded or was planted
- All parts of the tree, wherever they grow, remain the property of that owner
- This ownership includes fruit, such as apples or pears, on overhanging branches, even when it has fallen
- Windblown seeds, such as ash and sycamore, are unlikely to be considered the property of the tree's owner. Leaves and flowers that wither and fall are also unlikely to be considered still to belong to the owner of the tree



What about tree roots and overhanging branches?

Tree owners do not have to cut back branches overhanging another person's property or prevent roots growing into the neighbour's soil. However, that neighbour has a right to 'abate a nuisance' by cutting back branches or roots that encroach onto their land to the boundary between their land and the tree owners'.



Cutting back roots and branches

Care is needed when cutting roots and branches as this may affect the tree's stability and its ability to take up water and nutrients. The nearer to the trunk cutting occurs, the greater the risk. A tree owner may have a claim if the tree dies or falls over because a neighbour cut a tree's roots, or if pruning ruins the tree's appearance or shortens its life.

- There is no obligation to ask the owner's permission, but it is prudent to do so in the interests of neighbourliness.
- Neighbours do not have a legal right to enter the owner's property when cutting back the branches or roots. Crossing the property boundary could result in a claim of trespass or action for criminal damage.
- Removed branches or roots remain the property of the tree owner and must be offered back. They should not be used or disposed of without his/her agreement. They can be returned to the tree owner's property, but only without causing damage. It is fairly common for disputes to arise because someone threw material back over the boundary to the tree owner's land, so this is best avoided.
- It is possible to apply for a court order requiring a tree's owner to prevent the roots and branches from encroaching over the boundary, but this is expensive and there is no guarantee that the court application will be successful.



What about falling trees and branches?

Trees are complex structures that grow and adapt according to the environment in which they live, responding to external and internal influences.

They will add wood to areas of their structure that need reinforcement but will not waste resources. The ability to grow and change is dictated by the vitality of the tree. Most mature trees will have achieved equilibrium with their surroundings and will grow to their full potential.



Despite some people's perceptions, the risks from falling trees and branches are minimal because of the way trees usually develop. Nevertheless, branches can break, and trees may fall due to structural problems such as disease, decay, or damage, especially in the event of strong winds.

What happens if a tree causes damage?

When a tree causes damage, it can be considered that the tree owner has failed to meet their duty of care obligations, if:

- their tree suffers a whole or partial failure; and
- injury and/or damage (harm) is caused; and
- the failure was foreseeable.

In which case, the tree owner may be found negligent and liable to pay compensation for the harm caused.

Owners should therefore inspect trees regularly, particularly those growing where a falling branch could cause damage or injury. Anyone who feels unqualified to assess their trees should seek advice from someone qualified. A Tree Consultant is insured to give advice to tree owners. For further information about what a Tree Consultant is and to find a list of registered consultants visit the [Arboricultural Association website](#).



Can tree roots affect foundations?

The threat of root damage to foundations is probably people's biggest worry about trees near buildings. Often this concern is unwarranted, but trees may cause damage in some circumstances (most commonly, subsidence damage on shrinkable clay soils) and in that case their owner could be liable for compensation.

Importantly, there needs to be reasonable evidence that:

- the tree is responsible;
- the damage was reasonably foreseeable; and
- the tree owner should have known this and acted.

Increasingly, property owners (or their insurers or agents) ask tree owners to fell trees that may be damaging a building but where detailed investigations have not been carried out.

It is reasonable for the tree owner to ask to see evidence showing that the tree is the principal cause of damage. Such evidence should usually include any reports by structural engineers, arboriculturists or root identification experts that have been prepared for the claim. The tree owner or his/her insurance company may then decide to appoint experts to corroborate or challenge these findings.



Even if the tree has stood on the site for hundreds of years and a new nearby building suffers damage, the tree's owner could still be liable.

Many trees grow close to buildings without causing damage. Attempts to produce an objective system of subsidence risk assessment in relation to trees have been unsuccessful because of the complex and variable nature of the interacting system (climate, soil, building and tree). It is therefore very difficult to show that tree damage to a building would have been foreseeable.



Even if there is evidence that a tree is involved in damage to a building there may be no need to remove it. In some cases, it may be sufficient to prune the tree in an attempt to manage the water demand, and therefore its influence on the surrounding soil.

However, unnecessary pruning or felling may even lead to building damage as soil water content increases after the tree work is completed. This will depend on the advice of the arboriculturist.

See the information sheet 'Managing and caring for trees' for more about trees in relation to buildings.

Are poisonous trees a legal risk?



Although many garden and woodland trees have fruits, leaves, or other parts that are poisonous to people, it is highly unlikely that a tree owner would be liable if someone became seriously ill or died after eating them. In fact, despite the folklore, few do die from eating parts of trees. However, with livestock the legal situation

is different because vegetation is often part of an animal's normal diet. Many animals have died because of eating poisonous plants. The most common cases relate to yew foliage eaten by cattle and horses – and anecdotal evidence suggests that dead clippings may be more harmful than live branches.



Where poisonous trees grow near a boundary, care must be taken to reduce to a reasonable level the risk of them being eaten by a neighbour's animals. Walls, hedges and fencing should be checked and made secure and any overhanging branches cut back. It should not be necessary to prevent such trees growing up to the boundary as the courts have ruled that if an animal leans over a boundary and eats poisonous foliage this is not the tree owner's fault.

What if a tree blocks light, views and TV reception?

Disputes can arise when trees are blamed for loss of light, view, or television reception.

Light

There is no absolute right to light from a neighbour's land, but in some circumstances, it can be 'earned'.

Clippings of poisonous foliage should never be left on site or thrown over a boundary into land where animals are present or likely to be there in the foreseeable future.

So, when considering planting trees on or adjacent to land used for grazing livestock or horses, it is important to be aware which **plants and trees can be poisonous to animals**.

- Under the **Prescription Act 1832** and The **Rights of Light Act 1959** a right to light to a building can be acquired, provided the light has been uninterrupted for at least 20 years. The courts do not appear to have determined a case where trees have infringed such a right (only new buildings and structures). The problem is that the prescriptive right may be forfeited if the tree blocks light for more than 12 months without an objection being raised. As trees grow slowly, it is difficult to prove the precise moment that the problem becomes significant.
- A right to light can be granted as a legal covenant between parties and documented in the property title deeds.



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With gardens, shading and blocking of light are unlikely to be considered a significant nuisance by a court unless they jeopardise the livelihood of the owner of the shaded land (e.g. a commercial crop grower).



Views

There is no right in law to a view across another person's property and a view obstructed by the growth of trees cannot legally be regarded as a nuisance. However, the right to a view can sometimes be granted as a legal covenant between parties and documented in the title deeds of a property.

TV reception

There is no legal right to television reception. The TV licence is just a permit to operate a receiver, it does not guarantee reception. There are no court precedents in respect of television reception and trees and it is thought unlikely that trees on neighbouring land that block a signal would be regarded as a nuisance in law.



High hedges

Legislation has changed the situation in the case of high hedges due in part to the prevalence of Leyland cypress (*x Cuprocyparis leylandii*) in the last few decades of the 20th century. Local authorities now have powers under the **Anti-Social Behaviour Act 2003** to deal with complaints about neighbours' high hedges that are made up of mostly evergreen or semi-evergreen species and more than 2m (6ft 7in) tall. You can find further information on how to deal with High Hedges on **this government site**.



If unsuccessful attempts have been made to resolve a hedge dispute, individuals can complain to the local authority about the height of a hedge (not its length, width, or its roots). For a fee paid by the complainant, the council will investigate and make a judgement. It can result in remedial action, which could involve cutting the hedge to a specified height, not less than 2m (6ft 7in), and keeping it no taller than that.

Local authorities and tree owners

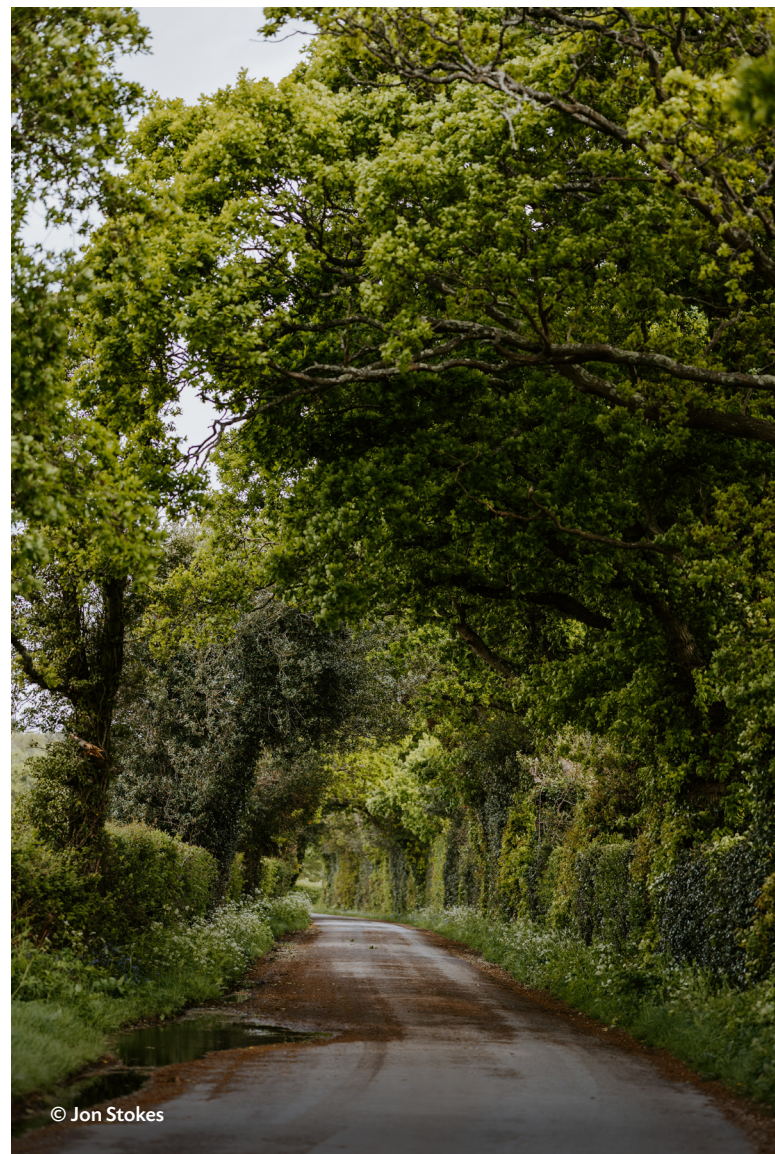
As a Tree Warden you need to be aware that there are also statutory laws which enable local authorities to deal with dangerous or problematic trees.

Highways Act 1980

- If a tree overhangs a public road or footpath so that it obstructs vehicles or pedestrians, or interferes with sight lines, signs or street lights, the highway authority can instruct the owner or occupier to deal with the tree to remove the problem.
- Highway authorities can also instruct owners to deal with dangerous trees that are within falling distance of public roads and footpaths, commonly known as a section 154 notice.
- The highway authority can carry out the work and recover the costs if a tree owner fails to do as instructed.

The council's decision is binding and enforceable, but there is a right of appeal for both the complainant and the hedge owner.

Complaints can only be made by someone in a residential property. It is worth noting, that a new owner can complain about a hedge even though the previous owner may have accepted the situation.



Local Government Act 1976

Under the Local Government (Miscellaneous Provisions) Act 1976, local authorities* have discretionary powers to deal with trees on private property where there is imminent danger of them causing damage to persons or property.

This means that:

- The council may, if it wishes, take action in response to a written request from either a tree owner or, more commonly, an adjoining landowner. Although this is discretionary, it would not be appropriate for a council to ignore such requests from concerned people. It should inspect the allegedly dangerous tree and consider the merits of action.
- The council can instruct the owner to fell or prune a dangerous tree. If the owner fails to do this, the council can undertake the work and recover costs. If an owner refuses to pay, a Land Charge can be placed on the land and when that is next sold the debt (with interest) must be settled before the new ownership can be properly registered.
- The powers under this act are not often used but they can be particularly valuable for dangerous trees on private land that is unregistered and where ownership is not known.

**In this case, local authority means district, borough or unitary councils.*

Settling tree disputes

The best way to avoid conflict is for neighbours to talk to each other about any concerns over trees or plans to carry out work on them. *As Tree Wardens you must never get directly involved in a tree dispute. Instead, your role may be to signpost people to where they can get further advice and refer them to the local authority, if that seems appropriate.*

For more information and guidance about disputes over trees and hedges see the following resources:

Over the garden hedge – [gov.uk guidance](#)

Hedge height and light loss – [Office of the Deputy Prime Minister guidance](#)



2. Legal protection for trees



As a Tree Warden you should be aware and have an understanding of the various laws that have been passed by Parliament that protect trees, both directly and indirectly. There are three main classifications for the protection of trees;

- Tree Preservation Orders
- Conservation Areas
- Felling Licenses

1. Tree Preservation Orders

Tree Preservation Orders (TPOs) are used to protect individual trees, groups of trees, woodlands (although this is less common), or areas of trees from deliberate damage or removal, especially where removal would have significant impact on the amenity value of the surrounding environment and its enjoyment by the public. TPOs can also be applied to significant hedgerow trees but hedges themselves are exempt, as they require frequent management.

Legislation connected to the protection of trees (Town and Country Planning Act 1990) comes under the remit of the Local Authority Planning Department and is usually administered by the local authority Tree Officer.

TPOs can apply to trees on either private or public land.

More detailed guidance on Tree Preservation Orders can be found on the [government's website](#).

The Act advises local authorities to develop way of assessing 'amenity value' and the need to consider key criteria such as:

- Visibility and the extent to which the trees or woodlands can be seen by the public and
- Individual impact such as its rarity, value as a screen, size, or form, and
- The wider impact and the significance of the trees to their local surroundings, suitability to their setting as well as the presence of other trees in the vicinity and
- Other factors, such as importance as a wildlife habitat, may also be taken into consideration, although this alone would not be sufficient to warrant a TPO.



When making a TPO, the local authority must provide the landowner (tree owner) with a copy of the order and the tree(s) must be identified on a map. There is a period of six months when a TPO can be confirmed, terminated or modified. The owner of the tree may provide evidence during this time that, following a detailed tree inspection the tree is in fact dangerous and needs works carrying out to make the tree safe. This could possibly include removing the tree to deal with the danger it poses. If this is the case the local authority may withdraw the application.

If no objections are received within the six month period, the TPO becomes permanent.

Local authorities are obliged to keep a full register of all TPOs in their jurisdiction, available for public inspection at any reasonable time. As a Tree Warden, you might request copies of records of TPOs in your patch as part of mapping important and significant trees.



What to do if someone wants to carry out work on a tree with a TPO?

If anyone wishes to fell, carry out work or uproot a tree covered by a TPO, they must:

- Apply through the **planning portal** setting out the work they wish to carry out and the reasons for it or, if the planning portal is not available, apply in writing using the mandatory application form.
- Not carry out any work until written permission has been granted
- Strictly adhere to the work approved and conditions imposed in terms of extent of pruning and type of operation.

After **making an application**, if consent is refused or no decision is received within the specified time provided in the letter of acknowledgement from the local authority, an appeal may be made to the relevant Secretary of State.

Consent to fell a tree subject to a Tree Preservation Order will normally involve a condition requiring replacement planting. If a tree is felled in breach of a TPO there is a duty to replace it with another tree of the same species at the same place and within a reasonable time period.



Are there any exemptions to obtaining permission to work on protected trees?

There are several exemptions from the normal requirement to obtain the local planning authority's consent for cutting down or carrying out work on protected trees. Some are set out in the Act; others are found in the Tree Preservation Order itself.

Exemptions in the Act state that, in broad terms, consent is not required for cutting down or carrying out work on trees which are dead or have become dangerous.

However, unless the tree is obviously dead or is in imminent danger of structural failure, it is always sensible and prudent to consult the local authority prior to taking any action. Anyone proposing to cut down a tree under this exemption is advised to give the local planning authority five days' notice before carrying out the work except in an emergency.

Why aren't all trees of amenity value covered by a TPO?

The Act states that "although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO" – for example, in respect of a tree which is already under good arboricultural or silvicultural management. However, it may be expedient to make a TPO if the local authority believes there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area, even if the risk of this occurring may not be immediate.

If work is carried out on a protected tree under this exemption, as with any of the other exemptions contained within the act, the burden of proof rests with the defendant to show that, on the balance of probabilities, the tree was dead, dying or dangerous. If the tree is however felled, by law it must be replaced with another tree of the same species in the same place.

More detailed guidance on Tree Preservation Orders can be found on the [government's website](#).



What if someone damages or destroys a tree with a TPO?

A TPO extends to the whole tree, including the roots. Anyone who cuts down, uproots or willfully destroys, or tops, lops, or willfully damages a tree covered by a TPO in that way that is likely to destroy it, is guilty of an offence.

The local authority will decide whether a breach of a TPO will lead to prosecution. Anyone found guilty of this offence is liable to a fine of up to £20,000 if convicted in the Magistrates' Court. If a tree is felled in breach of a TPO there is a duty to replace it with another tree of the same species at the same place and as soon as is reasonably possible.

In serious cases, a person may be committed for trial in the Crown Court and if convicted, would be liable to an unlimited fine. In determining the fine for this offence, the court must have regard to any financial benefit which has accrued or is likely to accrue as a consequence of the offence.

In **one astonishing example** in 2019, a millionaire who had cut back two protected trees in the garden of his Sandbanks house in Dorset, was found to have increased the value of his home by at least £60,000 and ordered to pay almost that amount in fines.

In the case of the **176-year-old giant redwood cut down by a property developer in Penllergaer in South Wales**, both the tree contractor who carried out the felling and the developers were fined a total of £420,000.

3. Conservation areas

Conservation areas are areas of special architectural or historical interest, the character or appearance of which is desirable to preserve or enhance. Conservation areas are designated by local authorities to protect them from inappropriate development and change. They are often, although not always, centred around listed buildings. However, other buildings and landscape features including trees may also contribute to the special character of the conservation area.

Property owners are not formally notified when conservation areas are designated. Therefore it is always wise to check whether a property is in such an area,

before doing any tree work, using online maps and information provided by each local authority.

Under Section 213 (1) of the Town and Country Planning Act 1990, a landowner is under a duty to replace a tree which is removed because it is dead or dangerous or if felling is undertaken without submitting a Section 211 Notice. The duty on the landowner is to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. In other circumstances, the Local Authority cannot require a replacement tree to be planted.



Can you carry out work on trees in conservation areas?



Most trees in conservation areas have a form of blanket temporary protection. Within a conservation area, anyone proposing to cut down or carry out work on a tree which is not already protected by a TPO, but has a trunk diameter over 75mm (3in) when measured at 1.5m (4ft 6in) from ground level, is required to give six weeks' notice, in writing, to the local authority, stating what they wish to do and the reasons for it. If the council does not want the work to take place, it may make a TPO on the tree and the TPO procedures would then apply. If the council does not make a TPO then – after six weeks – the specified work may proceed. If it is not completed within two years, a further notice is needed.

What are the possible penalties?

Working on trees in conservation areas before the six weeks' written notification has expired is a criminal offence and it is open to the local authority to prosecute if it wishes. The same penalties as for those contravening a TPO apply. Additionally, anyone who carries out work in a way that is likely to destroy the tree is liable to a fine in the Magistrates' Court of up to £2,500.

For a guide which sets out the Government's policy advice on conservation areas refer to the online publication **Tree Preservation Orders: A Guide to the Law and Good Practice Chapter 9.**



4. Felling licenses



The Forestry Commission administers regulations under the Forestry Act 1967 on tree felling, particularly in the countryside. The regulations do not apply to Northern Ireland or the Inner London boroughs but do apply to trees in urban woodland, on amenity land and playing fields and in private parks. A felling licence is required by law if someone wishes to fell more than 5m³ of wood in one calendar quarter, roughly the equivalent to three large ash trees. If you are selling wood - for logs for example - then you can only fell 2m³ in a calendar quarter. This applies to trees and hedges as well as woodlands. For help estimating timber volumes, use [**this calculator here**](#).

What is the process to apply for a licence?

- The felling licence processing system is now online as a new digital service called **Felling Licence Online**. Using this new service, it is now possible to track and print felling licences for land in your ownership or authorise an agent to do so on behalf of someone
- Usually the Forestry Commission will arrange for the trees to be inspected. It may also consult local authorities and other statutory bodies to ensure that environmental or land-use aspects of the proposal are taken into account
- When licences are granted, there is usually a requirement to undertake appropriate replacement planting or management for natural regeneration
- There is an appeal process against replanting conditions – or against refusal of a licence
- A licence is valid for a set period and if it expires before felling is completed a replacement must be obtained before work can continue. Any felling without the necessary licence could result in prosecution

Licences are not required if any of the following conditions apply:

- Felling is in accordance with an approved plan of operations under a Forestry Commission grant scheme
- The trees are in a garden, orchard, churchyard or public open space
- The trees are all less than 8cm (3in) in diameter, measured 1.3m (4ft 3in) from the ground (woodland thinning, less than 10cm (4in) in diameter; coppice or underwood, less than 15cm (6in) in diameter)
- The trees need to be felled to allow permitted development or statutory works by public bodies
- The felling is in compliance with an Act of Parliament
- The felling is to prevent a danger

For full details as to the law relating to this, regulations and any exceptions, see the online publication [**Tree Felling: Getting permission**](#).



5. Trees and development



As a Tree Warden, you will be aware of the pressure on land for development, the needs and wishes of your community and the effect that this may have on the trees in your local area. Therefore, it is important that you have an understanding of the law surrounding trees and development.

Planning authorities must consider the preservation and planting of trees in any development proposal. However, a balance between all the various interests must be made and planning permission may allow the removal of some trees (preserved or not) when development begins.

- A Tree Preservation Order may be made to safeguard trees on a site where development – new roads, houses, offices, supermarkets – is proposed

- Planning conditions can require the temporary protection of trees on development sites as well as new tree planting, together with appropriate maintenance for a reasonable period of time

Under the government's **National Planning Policy Framework** revised in 2019, there is greater protection for ancient and veteran trees, with their removal permitted only for "exceptional reasons and a suitable compensation strategy exists".

See Learning Guide 'Threats and Challenges to our Trees' for more information.

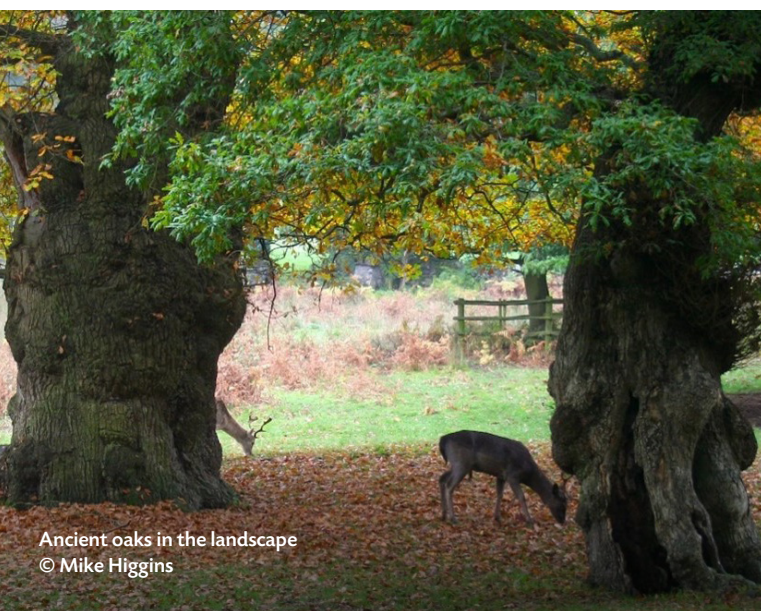


6. Ancient or Heritage Trees



There are currently no specific legal safeguards to protect ancient or heritage trees. Many such trees are unprotected by law and could be damaged or felled without contravening any regulations.

- To qualify for a Tree Preservation Order, a tree normally has to be at least partly **visible from a public place** – some heritage trees are on private ground and are not visible from a public footpath
- Heritage and ancient trees could potentially be considered for a TPO application, because when deciding on a TPO order, the local authority can consider both heritage and biodiversity. Tree Wardens should consult their appropriate local authority TPO Officer when considering making an application
- Permanent protection for such trees in a Conservation Area requires the local authority to serve a TPO on the tree
- Planning conditions can safeguard a tree for only a short, set amount of time and are specific to the approved development - although there is now greater protection for ancient and veteran trees within the newly revised National Planning Policy Framework.
- Environmental designations, such as Sites of Special Scientific Interest (SSSI), also have their limitations, including the fact that a single tree is not regarded as a habitat.



Ancient oaks in the landscape
© Mike Higgins

Many heritage trees survive today largely thanks to the individuals, past and present, who have cared for them. While some trees may remain in benevolent ownership, others may not: it takes only one person in the life of a tree to permanently impact a tree's health through damage or neglect.

The value of trees of historical, cultural, and ecological importance is already formally recognised in many other countries (e.g. Japan, Finland, Czech Republic, Poland, and Germany) and in state legislation in the USA (e.g. California and Pennsylvania).



7. Wildlife Site Designations



Sites and Areas of Special Scientific Interest (SSSI/ASSI)

Under the Wildlife and Countryside Act 1981, SSSIs (or ASSIs in NI), are designated and protected for their significant geological and/or ecological value, by the relevant Statutory Nature Conservation Organisations (SNCO) for each of the countries of the United Kingdom:

- Natural England (formerly English Nature)
- NatureScot (formerly Scottish Natural Heritage)
- Natural Resources Wales (formerly Countryside Council for Wales)
- Northern Ireland Environment Agency

The designation is to prevent the occupier of the land from doing anything that would destroy or damage the special ecological or geological features of the site. The SNCO making a SSSI or ASSI designation has to notify the landowners of their views on the management of the site and a list of operations requiring the SNCO's consent. This information is then included in the site's management plan.

The landowner must in turn notify the relevant SNCO of an intention to carry out any of the agreed operations prior to carrying out any works to enable enough time for consent to be granted.



SNCOs must also be notified of any planned tree felling on a SSSI – whether or not an application has to be made to the Forestry Commission for a felling licence. If a felling licence is required, then the SNCO should be notified at the same time as the felling application is submitted to the Forestry Commission.

If considering tree planting on SSSIs, careful consideration is needed as certain habitats, such as chalk grassland, peatland or wetlands, are extremely valuable and ecologically diverse habitats and would be negatively affected if planted up with trees. The SNCO would need to be consulted for any proposed initiatives.

Find further details about SSSIs in England, Scotland, Wales and Northern Ireland.



Local Nature Reserves (LNRs)

LNRs are a statutory designation made under Section 21 of the National Parks and Access to the Countryside Act 1949 by principal local authorities, and can also be designated by Parish and Town Councils if the principal local authority has delegated powers to them to do so. LNRs are places with wildlife or geological features that are of special interest locally, which can be enjoyed by both people and wildlife. They offer a place for informal learning, engagement and connection with nature. The variety of habitats and sites that can be designated is wide ranging and include both rural and urban locations as they all make a valuable contribution to the biodiversity of an area.

Local Wildlife Sites (LWS)

LWS are areas of land that are especially important for their wildlife value at a local scale but perhaps aren't yet of a quality or status in the local areas to be designated a Local Nature Reserve. Local Wildlife Trusts play an important role in the designation of LWS and they work with local authorities, statutory agencies, landowners and other local partners to establish effective systems for identifying, managing and monitoring these sites. Usually LWS form part of a network of corridors for wildlife, and as such play an important part in the mosaic of habitats across our towns and countryside.

Other wildlife protection

The Wildlife and Countryside Act (1981) gives statutory protection to wild birds, bats and some other mammals, invertebrates and plants. The European Habitats Directive 1992/Nesting Birds Directive also addresses the conservation of all wild birds across the EU. Including their eggs, nests, and habitats. Following the UK's departure from the EU, all wildlife protection legislation must be adopted into UK law through Statutory Instruments. The Office for Environmental Protection (OEP) is the proposed regulatory body that will take on some of the European Commission's oversight and enforcement functions after Brexit. Its role is expected to examine new green policies, investigate complaints and take enforcement action against public authorities for breaching environmental law.



Nesting birds
© John Saller



All wild bird species, their eggs and nests are **protected by law**, unless a special **exception** is made, and it is offence under Section 1 of the **Wildlife and Countryside Act of 1981** to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built, or to intentionally kill, injure or take chicks or adults, or intentionally take or destroy any eggs.

The 'Bird Nesting Season' is recognised by Natural England as being from 1 March to 31 August and it is therefore recommended that vegetation works, such as tree/hedge cutting or site clearance, should be carried out outside these months. The busiest time for nesting birds is from 1 March until 31 July and this of course varies according to species, with some birds nesting from February to the end of August. During this period, much care and attention is needed when carrying out vegetation and tree works.

If tree or vegetation clearance work must be undertaken during the nesting season, a pre-works survey needs to be carried out by a suitably qualified professional. As a rule, it should be assumed that birds will be nesting in trees, and unless the work can be put on hold until the nesting season is over, it is important to assess, record and confirm that any works carried out to manage trees and other vegetation has not disturbed actively nesting birds.

In recent years, the use of netting on housing development sites to prevent birds from nesting has become a cause for concern and is the subject of campaigning for many organisations and individuals **#NestingNotNets**. The RSPB has issued **guidance** to developers on this issue.

Ground vegetation, and therefore ground nesting birds, can often be overlooked by tree workers, so additional care and controls should be taken during access and egress to the work site as this may also cause disturbance or damage to a nesting site. This is also true for retained trees on-site as the removal of adjacent trees or remedial works on a tree may lead to the established nest being abandoned or exposed to the elements or predation. This action is also a breach of the Act and therefore could lead to prosecution.

As a criminal offence the police are responsible for enforcing this legislation. The maximum penalty for offences is a £5,000 fine and up to six months imprisonment in the Magistrates court, and a £5,000 fine and up to two years imprisonment in the Crown Court.

A useful guide to **Birds and the Law** has been prepared by the RSPB and you can also find out more information about **how to protect birds during the nesting season** whilst undertaking tree and hedge works.



Other protected species

This can include mammals such as bats, badgers, dormice, red squirrels as well as reptiles and amphibians such as species of toads, newts, snakes and frogs.

It is important to carry out surveys of trees, particularly those with significant cavities and bark crevices, prior to carrying out any work. This will avoid the potential disturbance of a habitat and importantly, where necessary, allow time for an application for a licence from the appropriate statutory nature conservation organisations (SNCO's)

You can find further information about wildlife protection in [England](#), [Scotland](#), [Wales](#) and [Northern Ireland](#) by following the links.

Planting the right tree in the right place

One of the aims of tree planting is to increase biodiversity and enhance wildlife habitats. This should never be to the detriment of any other habitat and must always comply with all relevant legislation. When planning new plantings, always check with your local County Ecological Records Centre or Local Wildlife Trust to identify any designated SSSIs, LNRS or LWS sites, as tree planting could potentially be detrimental to what is already there. For more information, see the [**Forestry Commission's Urban Tree Manual: The Right Tree in the Right Place for a Resilient Future**](#)



It is important to remember that as part of your role as a Tree Warden you MUST NEVER:

- Attempt to handle tree disputes yourself
- Enter private land without prior permission from the landowner
- Attempt to advise someone if a tree is safe or not

Refer the landowner to a fully qualified and insured tree surgeon or the local authority Tree Officer.



Where to find out more



It is important to note that the law relating to trees varies between the nations of the UK. You can find out more in the links below.

Publications

The Law of Trees, Forests and Hedgerows – Dr. Charles Mynors, C (revised 2011)

Websites

TPOs and Conservation Areas:

- [England](#)

- [Scotland](#)

- [Wales](#)

Tree felling licences:

- [England](#)

- [Northern Ireland](#)

- [Scotland](#)

- [Wales](#)

- **Protection of species and habitats**

Poisonous plants:

- [Blue cross website – nine poisonous plants horses should avoid](#)

Nesting Birds:

- [RSPB - nesting birds](#)

Areas/sites of special scientific interest:

- [England](#)

- [Northern Ireland](#)

- [Scotland](#)

- [Wales](#)

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