



Tayside Biodiversity Partnership



BIODIVERSITY
THE VARIETY OF LIFE

PERTH & KINROSS TREE WARDENS NETWORK

For the protection of the environment through the care, nurture and cultivation of trees

TRAINING WORKSHOP NOTES

(PREPARED BY DAVID WILLIAMSON – FEBRUARY 2017)

Trees, the Planning Process and the Law

In PKC there are 82 Tree Preservation Orders and 36 Conservation Areas.

As Biodiversity Officer in PKC Planning & Development I see between 1800 and 2000 planning applications a year (30-40 a week). Around 1250-1300 will need assessed and I will make comments and recommendations on around 180-200. Not all will involve trees but the following gives guidance on the types of issues we look at where trees could be affected on development sites.

Trees and Guidance for Developers

<http://www.pkc.gov.uk/article/15282/Trees-and-guidance-for-developers>

Where there are proposals to develop land, and trees of amenity value may be affected, it is usually necessary to request developers to provide specific, detailed information. This is to help us to make a well-informed decision about the proposed development and its likely impact on the trees.

Guidance is given by the British Standard Recommendations for Trees in Relation to Construction BS 5837:2012. The following is a summary of the information required to comply with the Standard. It is important that the tree survey is carried out by a suitably qualified and experienced arboriculture. The survey information can be used to identify trees for removal and trees for retention, and to guide the layout of the development. Both the tree survey information and detailed information about the proposed development will be needed to inform the planning decision.

Tree survey information to be provided in the form of a plan and schedule

- A scaled plan showing the proposed layout and the location of all trees over 75mm stem diameter measured at 1.5m above ground level, plus any smaller specimens of particular interest or potential value
- Location of other arboricultural features such as shrub masses and hedges should also be shown on the same plan

- Location of features such as existing buildings, services, streams etc.
- Spot heights of ground levels throughout the site as a basis for avoiding changes in soil levels around retained trees
- Location of trees on adjacent land that might affect, or be affected by, the proposed development
- Reference number and species of each tree
- Height in metres
- Stem diameter in mm, measured at 1.5m above ground level
- Branch spread in metres at the four compass points
- Age class
- Physiological condition
- Structural condition
- Preliminary management recommendations
- Estimated remaining contribution in years
- Category: R (=remove), A, B or C. Categorization should be carried out in accordance with Table 1 of the British Standard 5837 2012.

Development proposal information to be provided in the form of a plan

The tree survey information listed above is required to assess which trees, if any, should be retained on the development site, and which, if any, should be removed. The presence of retained trees will act as a constraint on the form and layout of the development.

Protection areas will need to be installed around retained trees, and it is important that the development proposed is capable of being implemented while keeping the protection areas intact. This includes carrying out all the necessary building and engineering operations, any demolition works, and providing services and supplies.

For this reason the submitted plans should show the following details.

- The location of all service runs, including foul and surface water drains, land drains, soakaways, gas, oil, water, electricity, telephone, television and other communications cables
- Any changes in ground level, including the location of retaining walls, steps and back-filling (if no level changes are proposed this should be stated explicitly on the submitted plans)
- Location of all site huts, temporary latrines (including their drainage), cranes, plant and other temporary structures
- Location of site construction access
- Location of storage areas for materials, spoil and fuel, cement and concrete mixing, and any contractors' car parking
- Location of visibility splays (sight lines) required at temporary and permanent accesses.

The information provided will help us to ensure the retention of valuable trees for the benefit of all. It will also be used to avoid situations where trees intended to be retained are lost as a result of damage during construction or because of other conflicts with built development.

Tree Preservation Orders

<http://www.pkc.gov.uk/article/15281/Trees-and-the-law>

Tree Preservation Orders (TPOs) are used to protect selected trees and woodlands whose removal would have significant impact on the amenity of an area. The practical effect of a TPO is to prohibit the felling, pruning or uprooting of trees without the consent of the Local Planning Authority (LPA). A TPO extends to the whole tree including the roots.

Should anyone wish to fell, prune or uproot a tree covered by a TPO, they (the applicant) must:

- apply in writing to the LPA setting out the tree works they wish to carry out and why, clearly identifying the tree(s) - if necessary by reference to a plan and the TPO
- not carry out any work on a tree until written permission has been granted by the LPA
- strictly adhere to any work approved and associated conditions imposed by the LPA in terms of extent of pruning and type of operation
- The LPA's permission is always needed to work on a protected tree except for cutting down or cutting back a tree:
 - if it is urgently necessary in the interests of safety
 - in line with an obligation under an act of Parliament, or
 - on statutory undertakers' land, or
 - which is directly in the way of development that is about to start for which detailed planning permission has been granted
- If there is any doubt about whether works are exempt, checks should be made with the LPA.

Tree protection – Tree Preservation Orders if a 'notable' tree is at risk. Difficult to put in place, costly.

<http://www.pkc.gov.uk/treesandtpos>

<http://www.pkc.gov.uk/conservationareas>

Conservation Areas

Most trees in a Conservation Area (CA) have protection. Anyone proposing to work on a tree in a Conservation Area which is not protected by a TPO, but has a trunk diameter over 75mm (3in) when measured at 1.5m (59in) from ground level, is required to give notice to the LPA concerned.

Anyone wishing to fell, prune or uproot a tree (as defined above) within a Conservation Area, must give six weeks' notice in writing to the LPA detailing the nature and extent of the proposed work and identify the trees.

The LPA may, if it sees fit, place a TPO on the tree and the TPO procedures would then apply - that is, a formal application for permission would have to be made to the LPA. If a TPO has not been made after six weeks, the work may proceed but if it is not completed within two years, a further notice is needed. Such work must be consistent with that specified in the notice of intention.

Working on trees in Conservation Areas without giving six weeks written notification or before the six-week period has expired is an offence and the LPA may prosecute. The penalties are as for TPOs.

Penalties

Deliberate destruction of a protected tree without permission or in contravention of Conservation Area legislation, or damage in a manner likely to destroy it, can incur a fine up to £20,000 on conviction in a sheriff court. In determining the amount of the fine, the court will take account of any financial benefits arising from the offence. For other offences fines of up to £2,500 may be awarded. Serious cases may be taken to the High Court, where there is no limit to any fine that may be imposed on conviction.

Replacement trees

Landowners or their agents will have to plant a replacement tree if:

- they cut down or destroy a protected tree (TPO or CA) in breach of the legislation, or
- except in the case of woodland, because the tree is dying, dead or dangerous, unless on application the LPA says there is no need.

The planning authority may give permission to cut down a protected tree but make replanting a condition of the consent.

LPAs have legal powers to ensure that a replacement tree is planted when required.

Trees and development

One of the most common threats to trees comes from development. The LPA can protect as many of the trees on the site as is appropriate. This is usually most effectively achieved by TPOs.

A TPO may be made to safeguard trees on a site when development is still in the planning stage. However, the grant of full planning permission may permit the removal of those trees that directly impede the approved development when it begins.

Unsafe trees

The landowner or their agent will not normally be held responsible in law for damage caused by a tree falling or losing branches if the failure could not reasonably have been foreseen. However, if the tree had obvious signs of disease or structural weakness, the owner might be sued for any damage caused.

It is therefore particularly important that trees which are in public places or close to areas to which the public has access are regularly inspected to check on their condition and any necessary works carried out. Even though a tree may be covered by a TPO or stand in a Conservation Area consent is not required for the felling or uprooting of a tree where urgently required for safety. If a tree is considered to be dangerous, professional advice should be sought. However, unless the danger is imminent, the LPA should be given five days' notice before any work commences. In order to justify the actions, proof may be required by the LPA detailing the condition of the tree before the remedial work was undertaken. To avoid complications, prior consultation with the LPA is therefore encouraged.

Planning Conditions

Trees are often retained as a condition of planning consent and if your property was constructed within the last 20 years it would be wise to check with the LPA before removing trees.

Roads Scotland Act 1984

If a tree overhangs the highway or footway, causing a danger by obstructing the passage of vehicles or pedestrians or interfering with sight lines or lights, the highway authority may require the owner or occupier to deal with the tree in order to remove the problem. There are similar provisions for dealing with dead or diseased trees, which are likely to fall on the highway or footpath. If the owner fails to comply, then the highway authority may do the work and charge the owner.

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 (care is needed if the tree is protected, see Tree Preservation Orders). Although there is no obligation to ask the owner's permission or give notice of any intention to cut back, it would be good neighbourliness to discuss the problem in a friendly way with the owner first - it may be possible to obtain help or agreement to remove more than was envisaged.

If pruning is carried out without the owner's permission it is important not to enter property, or for equipment to cross the boundary - for example it may be illegal entry 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 the branches, fruit, leaves and cones cannot be put to use without the owner's permission. To do so would constitute an offence known as conversion i.e. appropriation of the owner's property. Nor should material simply be burned or disposed of because it appears to be of no use. The material may be returned to the owner's property, but if doing so causes damage (e.g. by throwing branches over the fence and damaging the owner's conservatory) there may be a liability to pay for the damage. But if the owner gives notice (preferably in writing) that he does not want the material then it may be disposed of. However, there is no precedent for recovery from the owner of the expenses incurred in disposing of the residues.

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 Tree Preservation Orders). 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. 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; they may grow under and crack pavements and driveways; and they may contribute to building subsidence. 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.

Felling licenses

The regulations are set out in the booklet "Tree Felling - Getting Permission" (Forestry Commission), from which this information is taken.

A licence from the Forestry Commission is normally required to fell growing trees (though not for lopping and topping), but in any calendar quarter up to five cubic metres may be felled by an occupier, provided not more than two cubic metres are sold.

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

the felling is in accordance with an approved plan of operations under one of the Forestry Commission's grant schemes

- the trees are in a garden, orchard, churchyard or public open space
- the trees are all below 8cm (3in) in diameter, measured 1.3m (43in) from the ground; or in the case of thinnings, below 15cm (6in) diameter; or in the case of coppice underwood, below 15cm (6in) in diameter
- the trees are interfering with permitted development or statutory works by public bodies
- the felling is in compliance with an act of parliament

Application for a felling licence should be made by the landowner or tenant, or by an agent acting on behalf of the owner or tenant. Applications should be submitted, at least three months before felling is due to commence, to the relevant regional office of the Forestry Commission, on forms obtainable from them. Felling must not commence until a licence has been issued.

Usually the Forestry Commission will arrange for the trees to be inspected. Consultations may take place with the local authority and any other statutory authority concerned in order to ensure that relevant environmental or land-use aspects of the proposal are taken into account.

Where forestry or amenity considerations are important, a licence may only be issued on condition that replanting is carried out. A licence for the felling of broadleaves will normally be conditional on their being replaced with broadleaves. Any such conditions will be discussed with the applicant before the licence is issued. Planting grants will normally be available where a replanting condition has been imposed.

Provision is made for appeal against refusal of a licence and for appeal against replanting conditions.

The licence is valid for a set period of years and if it expires before felling is completed a replacement licence must be applied for and issued before felling can continue. Any felling without a licence, where one is needed, is an offence and carries a liability to a fine not exceeding £1,000 or twice the value of the trees, whichever is higher.

In certain cases, whether or not a felling licence is needed, permission or prior notification may be required for any proposed felling. Examples include Sites of Special Scientific Interest¹ (SSSI) and Conservation Areas. Where a Tree Preservation Order (TPO) applies, the application will be referred to the LPA.

High Hedges

<http://www.pkc.gov.uk/article/15039/High-hedges>

The Scottish Government has passed legislation enabling householders to apply to the Council in specified circumstances for a High Hedge Notice to be served.

A householder can now apply for action to be taken in connection with a neighbouring hedge that consists of a row of 2 or more trees or shrubs and rises to a height of more than 2 metres and forms a barrier to light. Provided that they can show that the height of the hedge adversely affects the reasonable enjoyment of their property and that they have taken all reasonable steps to resolve matters in relation to the 'high hedge', then they can make the application. A fee of £270 will be payable.

WORKSHOP Discussion (February 2017)

If there is a site where trees are felled stop and think why. Don't approach the contractor, but note the details. If you are concerned about any wildlife, especially bats, red squirrels, breeding birds, etc. then the police would be your first port of call, but you should have evidence that wildlife is being disturbed.

Example 1 - Site of a planning application where objectors to the application raised issues of red squirrels being on site and the loss of trees before the application was lodged. Problem is, the trees were already felled and it is too late to contact the police and it is not a planning issue as the trees had already been felled. Also it was not a Forestry issue as in a garden so no felling licence is required. The only way the Council could get involved is if the application was lodged and then the applicant started cutting down the trees.

Example 2 – A large property in a conservation area where a large tree in the garden was in the way of a development opportunity.

Example 3 – a hillside property within a conservation area and a garden and designed landscape. Work is underway to stabilise the slopes and trees are being removed. It is hoped the owners have sought permission from PKC Planning to fell trees.

Example 4 – rural estate development threatened an avenue of trees. The whole estate is covered by a TPO.

Example 5 – A prominent Oak tree in a field threatened with felling to make way for an agricultural show was saved

Example 6 – Street trees which are normally pollarded will be left to grow as a cost saving exercise.