

Draft Supplementary Guidance 32

Trees and the Law Control of Tree Felling & Tree Preservation Orders





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Introduction

The purpose of this leaflet is to give general advice on the law relating to trees. Stirling Council takes no responsibility for any omissions or misrepresentation contained within it.

Responsibility for Trees

Tree management and any damage trees may cause is the responsibility of the tree owner. It is important to remember this if you own existing trees or are considering planting new ones.

Ownership

A tree is usually yours if its trunk grows on land you own. Trees growing exactly on a boundary are usually often the joint property of the two owners.

If you are a tenant, your tenancy agreement should list rights and duties in relation to any trees on your property.

If you are a Council tenant, contact your Area Housing Officer regarding any problem you may have with trees.



Overhanging branches

These can often cause problems between neighbours. Provided the tree is not legally protected, you may prune branches of a neighbour's tree overhanging your own property, only as far as the boundary, but you may not enter your neighbour's property containing the offending tree without consent. The cut branches will belong to the tree's owner, you are legally required to either offer to return them to the tree owner or to simply place them on the tree owners land without causing any damage.

If you are unsure whether the tree is protected or not, you should consult Stirling Council's Tree Officer before undertaking any work. (see list of contacts at the end of this leaflet)

Always consult your neighbour as well as the Council's Tree Officer when you want to cut back an overhanging tree. Indiscriminate lopping may damage more than just your tree!

Liability

You are liable for any injury or damage that a tree you own causes to others or their property. Diseased, dead or dying trees, or those with poisonous seeds or berries can be dangerous.

It is therefore worth arranging for a suitably qualified person to inspect mature and over-mature trees every two or three years. Any necessary treatment should be carried out by a tree surgeon operating to BS 3998:2010 Recommendations for Tree Work, and the Arboriculture & Forestry Advisory Group's tree work guidelines, published by the Forestry and Arboriculture Safety and Training Council (FASTCo) Health & Safety Executive guidelines.



Protected Trees

Trees often make a valuable contribution to the amenity of an area, as well as providing shelter, screening and a home for wildlife. Some trees may have historical associations or significance as local landmarks. In recognition of their importance, and in order to prevent unnecessary felling and uncontrolled and often damaging 'lopping', many trees are protected under planning legislation.

Permissions

If you wish to carry out work to trees on your own or a neighbouring property you should always check if formal permission is required.

If this is not done and the trees are legally protected, you may commit an offence and face a heavy fine of up to £20,000 or the amenity value of the tree.

Advice

The Council's Tree Officer will be happy to advise you if trees are protected or other special permissions are required.

Categories of protected trees

There are three categories of protected trees, and before carrying out any work to these, you must obtain permission from the Council's Development Management Section.





The following notes describe each category, and give guidance on how to obtain permission for tree works in each case.

Trees protected by Planning Conditions

On new developments, trees are often protected when Planning Permission is given. If you are thinking of pruning or felling trees in or around a new or recently constructed or extended property, contact the Council's Tree Officer first to check if they are protected.

Trees protected by Tree Preservation Orders (TPO's)

Stirling Council makes TPO's on single trees, groups or whole woodland areas which make a significant contribution to local amenity or because of their cultural or historical significance. TPO's within the Stirling area are mostly, but not exclusively, in or on the edge of settlements.

- TPO Register: The Council's Development Control Management Section has a Register of existing TPO's which can be viewed [online](#).
- New TPO's: If you think a tree is worthy of a TPO, contact the Council's Tree Officer giving details of the tree and the reasons why you think it should be protected. Proposed TPO's are notified to known interested parties shown in the Council's Local Plan and are advertised in the local press and listed on the weekly Planning Schedule. Owners and members of the public are invited to make comments, should they so wish.
- Work to trees protected by TPO's: Any work to a protected tree always needs permission - except in an emergency, when the Council should be notified as soon as possible.



- Make your proposals using the Protected Tree Work Application Form, clearly identifying the tree(s) and proposed work, and send by post or e-mail to the Tree Officer. In certain cases the work may be exempt, and we can advise you if this is the case. A site inspection will usually be made, together with an assessment of the impact of the proposed work on the local amenity.
- You will normally be advised of the outcome within two months of receipt of your application, and generally much sooner.

It is an offence to carry out work without permission, and substantial fines may be imposed. It is also an offence to wilfully damage or uproot a protected tree. In determining the amount of the fine, the court will take account of any financial benefit arising from the offence and the amenity value of the tree(s).

Being unaware of the presence of a TPO is no legal defence.





Trees in Conservation Areas

Many of the older and attractive areas of our towns and villages are designated as Conservation Areas. Established trees make an important contribution to the character and amenity of these areas and, as such, have been given legal protection.

If you are unsure whether your property falls within one of the following Conservation areas, please contact the Council's Development Control Section for confirmation.

Stirling Conservation Areas

Bridgehaugh, Bruce Street Area, Cambuskenneth, Drip Bridge, King's Park, Park Place/Randolphfield, Randolph Road, St Ninians, Stirling Town and Torbrex.

Conservation Areas In Surrounding Towns and Villages

Ashfield, Balfron, Bannockburn, Blairlogie, Bridge of Allan, Buchlyvie, Cambusbarron, Carbeth, Deanston, Doune, Dunblane, Fintry, Gargunnoch, Killearn, Kippen, and Thornhill (if this is confirmed in the LDP).

Work to trees in Conservation Areas

If you want to carry out work on a tree in a Conservation Area, give the Council's Tree Officer a minimum of six weeks notice of any pruning or felling works, using the Protected Tree Work Application Form and, clearly identifying both the tree(s) and the proposed work.



This six week period gives the Council the opportunity to inspect the tree(s) and decide whether it warrants a Tree Preservation Order (TPO). A TPO will be made if the tree(s) concerned makes an important contribution to local amenity. However, other factors will also be taken into account for example, tree health, proximity to buildings and any evidence of damage caused to building or surrounding surfaces.

The Council's Tree Officer will try to respond to straight forward requests well within the six week period - but more complex or contentious works may require the full notification period.

- If a TPO is not initiated, you will be able to proceed. However, if the work is not completed within two years, you will need to reapply to the Council.
- If work is carried out without notification substantial fines may be imposed.
- In certain circumstances, your proposed works may be exempt. We will advise you if this is the case. For example, permission is not required for works to shrubs - however, if a shrub or hedging plant (e.g. holly, beech or conifer) has grown very large it may be classed as a tree. Trees with a diameter of less than 75mm (measured at 1.5m) are exempt. Tree being felled for the benefit of other trees (e.g.in woodlands) are exempt up to 100mm in diameter.

If in doubt, always check. If you have to fell or carry out extensive work to a tree in an emergency, inform the Council's Tree Officer - as soon as possible.





Tree Replacements

If a protected tree is felled, in most instances, there is a legal duty to replace it, and we will advise you if this is the case. Failure to comply may result in the Council taking formal enforcement action, by serving a tree replacement notice under sections 168 and 174 of the Town and Country Planning (Scotland) Act 1997. The Council's Tree Officer and Landscape Architect can advise you on suitable tree species. If the duty to replant trees or woodland isn't complied with, the Council can issue a formal 'notice requiring the replacement of trees' and it has other legal powers to ensure the work is done.

Felling Licences

If you wish to fell trees that are not protected, you may still need a 'Felling Licence', which you can obtain from the Forestry Commission. A Felling Licence is a legal requirement and is covered by the Forestry Act of 1967. Felling trees without a licence can lead to court action being taken against the Landowner.

- A 'Felling Licence' may be required if you intend to fell more than 5 cubic metres of timber in any calendar quarter (approximately two large, mature trees), and the trees are outwith a garden, public park, orchard or graveyard. Replanting conditions are generally imposed.
- Illegal felling can incur fines, so check whether you require permission before you commence work with the Forestry Commission Scotland, Perth & Argyll Conservancy Office (see list of contacts at the end of this leaflet).



Carrying out Approved Works

Work on trees can be very dangerous. Always use reputable contractors who are properly trained, equipped and insured, operating to BS 3998 : 19892010 Recommendations for Tree Work, and are suitably qualified for tree work.

This picture does not clearly show that the climber is attached (by two anchor points) to the tree nor is he seen with his visor in the down position!!! Please use pictures showing good practice.





If you are in doubt, ask to see the following:

- References
- Proof of current insurance
- National Proficiency Tests Council (NPTC) certificate for chainsaw operations.

It is always advisable to get at least two estimates for any work you require.

Be especially wary of unsolicited offers of tree trimming from 'tree surgeons' calling at your door. Reputable firms do not generally operate in this way and not only may your trees be expensively butchered, but if they are protected you could also face prosecution.

Finally

Trees add greatly to the beauty and diversity of our environment. They provide shelter, filter pollutants from the atmosphere, reduce wind speed around buildings, give summer shade and provide a home for all kinds of wildlife.

Trees also help the global environment by locking up Carbon Dioxide, gas that contributes to the 'Greenhouse' effect.

If you want to plant trees, the Council's Tree Officer will be happy to advise you. Grant assistance may be available to Community Groups, Schools and Voluntary Organisations for tree planting - give us a ring for information.



Contacts & Further Information

The Tree & Landscape Officer, Development Management, Economy, Planning & Regulation, Stirling Council, Viewforth, Stirling FK8 2ET.

Telephone: 01786 442772 Fax: 01786 443003

Advice on Tree Preservation Orders, trees in Conservation Orders Areas, trees on development sites and general advice on tree care and tree planting.

The Land Services Manager, Roads, Transport & Open Space, Stirling Council, Viewforth, Stirling FK8 2ET.

Telephone: 01786 443820 Fax: 01786 ??????

email: pattersonn@stirling.gov.uk

Technical Services, Grounds and Cemeteries, Stirling Council, Viewforth, Stirling FK8 2ET.

Telephone: 01786 442558 Fax: 01786 462696

email: mcbrierj@stirling.gov.uk

Advice on trees in public parks, open spaces and other Council property; tree management and general advice on tree planting.

The Landscape Architect, Environmental Services, Stirling Council, Viewforth, Stirling FK8 2ET.

Telephone: 01786 442773 / 442974 Fax: 01786 443003

email: planning@stirling.gov.uk

Advice on choice and care of trees and tree planting grants.



Further Information

Please contact:

Economy, Planning and Regulation
Planning Services
Stirling Council
Viewforth
Stirling
FK8 2ET

Telephone: 01786 442522

E-mail: LDP@stirling.gov.uk

www.stirling.gov.uk/localdevplan

If you need help or this information
supplied in an alternative format
please call 0845 277 700.

