

# **West Suffolk Council Tree Management Policy**

## **Appendix 7: Legislation**

There is a well-developed legislative framework which the council must consider in regards to the management of trees, the most notable of which include:

**Occupiers Liability Act 1957 (revised 1984).** This act places a legal duty of care on a tree owner towards visitors and requires them 'to take reasonable care' to maintain its trees and woods in a reasonably safe condition. The 1984 revision deals with liability relating to other persons, including trespassers and it should be noted that occupiers can be held negligent in their duty of care even if injury or damage occurs on land where people do not have access by right or by invitation. The Courts expect occupiers to be prepared for children to behave less carefully than adults. The courts also expect occupiers to make regular inspections of their trees and to take reasonable steps to reduce risk where appropriate.

**Local Government (Miscellaneous Provisions) Act 1976.** Sections 23 and 24 give councils discretionary powers in respect of dangerous trees in private ownership. There are various situations where these powers could be exercised by the council but only after careful consideration.

**The Highways Act 1980.** The Highway Authority has a responsibility to keep public highways open and remove obstructions and encroachments which may affect the use and safety of the highway. Section 154 makes provisions for the Highway Authority to deal with such encroachments and obstructions (such as may be caused by trees), which includes dangerous trees which would pose a risk to users of the highway.

**The Wildlife and Countryside Act (as Amended).** The act provides much of the legislation for the protection and conservation of wildlife and habitats in England and Wales, and as such is a cornerstone piece of legislation. Of particular relevance to this strategy are the following provisions:

It is an offence (subject to exceptions), to kill, injure, or take any wild bird; take, damage or destroy the nest of any wild bird while that nest is in use or being built; take or destroy an egg of any wild bird.

The Act makes it an offence (subject to exceptions) to kill, injure or take any wild animal listed on Schedule 5, and prohibits interference with places used for shelter or protection, or intentionally disturbing animals occupying such places.

It is an offence (subject to exceptions) to intentionally pick, uproot or destroy any wild plant listed in Schedule 8, or to sell, offer or expose for sale, or possess (for the purposes of trade), any live or dead wild plant included in Schedule 8, or any part of, or anything derived from, such a plant.

The Act contains measures for preventing the establishment of non-native species which may be detrimental to native wildlife, prohibiting the release of animals and planting of plants listed in Schedule 9.

The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSI) and Special Protection Areas. Such designated areas are afforded additional protection, and any activities or operations on such sites must be consented.

**Town and Country Planning Act 1990 and Planning (Listed Buildings and Conservation Areas) Act 1990.** Provision is made within these acts for Tree Preservation Orders (TPOs) and protection for trees within Conservation Areas. In short permission must be gained from Local Planning Authorities (LPAs) to carry out work to trees in these categories (subject to exemptions). Where trees owned by the council are covered under such orders or areas, permission must still be sought to carry out certain works. Exemptions include dead or dangerous trees, or branches that are classed as de minimis. Good practice is to still consult the LPA in such exemptions.

**The Hedgerow Regulations 1997.** If trees are within a hedgerow and the removal of the hedgerow is proposed, permission must be sought for the removal under the Hedgerow Regulations 1997. The local planning authority can grant or refuse permission for removal of hedgerows based on examining the hedge using certain criteria. The criteria identify hedgerows of particular archaeological, historical, wildlife or landscape value.

**The Countryside and Rights of Way Act 2000.** This act predominantly deals with providing increased access and updates the Rights of Way system. However, as some of the council's tree stock is now on designated open access land, this must be taken into account when dealing with trees in these areas. The act also introduced for the first time a statutory duty on Central Government to produce and maintain a list of species and habitats for which conservation steps should be taken or promoted. This list was published under Section 74 of the Act and was identical with the United Kingdom BAP list at the time.

**Anti-Social Behaviour Act 2003.** Part 8 this act creates procedures to enable local authorities in England and Wales to deal with complaints about high hedges. A complaint can be made to the local authority who can assess the case, acting as an independent and impartial third party. If they think it is justified the authority will be able to order the owner to reduce the height of their hedge. But there is no general requirement that all hedges should be kept below a certain height.

**The Natural Environment and Rural Communities Act 2006.** This act created Natural England and the Commission for Rural Communities and, amongst other measures, it extended the biodiversity duty set out in the Countryside and Rights of Way Act 2000 to public bodies and statutory undertakers to ensure due regard to the conservation of biodiversity. This duty is set out in section 40. Section 41 of the Act requires the Secretary of State to publish a list of species of flora and fauna and habitats considered to be of principal importance for the purpose of conserving biodiversity. The S41 list replaces the list published under Section 74 of the Countryside and Rights of Way Act 2000. The S41 list must be used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 40 'to have regard' to the conservation of biodiversity in England,

when carrying out their normal functions. Management of the districts' tree stock and wooded areas is one such function that can benefit biodiversity and ensure the council complies with this requirement.

**Common Law.** Common law is based on judgments made by the courts. Most common law relating to tree problems is based around 'duty of care' principles which dictate that the tree owner is responsible for the tree and any actions arising in connection with it. The areas of common law relevant to trees are;

**Trees and boundaries: Roots or Overhanging branches.** A tree usually belongs to the owner of the land on which the tree stands. It is the position of the centre of the trunk that determines ownership not the branches. A neighbouring landowner has the right to prune the branches of a tree which encroach onto their land. However they may only prune the branches back to the boundary and do not have the right to enter the other property without permission. The timber remains the property of the tree owner and removing it without permission could result in a charge of theft. Throwing it back could also constitute damage to property. The neighbour also needs to consider if the tree has a TPO order on it or if the tree falls into a conservation area. If either apply then the permission of the relevant local authority is required. Tree roots are also liable to the same common law principles. The owner of a tree is also usually liable for any damage to another property as a result of either its branches or roots.

**Unsafe Trees.** Under common law it is considered that the owner of a tree or trees has a duty of care. This asks whether a reasonable person could have foreseen the potential for the mechanical failure of the tree leading to damage to property or injury to a person. The owner is responsible for the health, safety and maintenance of their trees and is expected to where reasonably practicable to foresee any health and safety issues that could cause damage to property or people. If a tree had a large cavity in the trunk and the tree failed then the owner would have been expected to have foreseen the tree's failure and would be negligent for not sorting out the problem.

**Right to light.** There is no right to light under British common law. There have been no cases or precedents set. However the Anti-social Behaviour Act 2003 introduced a right to light in respect to high hedges.