

Guidance Note 5: Planning Tree Enforcement Policy





3.5 Guidance Note 5: Planning Tree Enforcement Policy

1 Introduction

The purpose of this document is to set the framework for dealing with tree enforcement issues in a clear, consistent and fair manner and to ensure that activities in this regard are in accordance with current legislation and guidance.

The Town and Country Planning Act 1990 and the Town and Country (Trees) Regulations 1999 provides the statutory basis for most tree preservation and protection. It allows for Local Planning Authorities to make Tree Preservation Orders, protects most trees in Conservation Areas and it places a duty, where appropriate, for Local Planning Authorities to preserve and protect existing and new trees when granting planning permission.

Tree enforcement issues fall into two principal categories:

- unauthorised works on, damage to or removal of trees that are protected by Tree Preservation Orders or situated within Conservation Areas
- breaches of planning conditions relating to tree retention and protection.

2 Why have tree enforcement?

Trees in Huntingdonshire are increasingly under threat as a result of huge pressures to build more intensively on brownfield sites with older buildings, and often expansive and established areas of vegetation, as well as on undeveloped land. This can comprise gardens and open ground formerly used for such activities as sport or allotments. A common feature of all these sites is well established trees.

The demographic and cultural changes that are bringing this about in Huntingdonshire are likely to increase. Without the stewardship of these trees, delivered through careful and balanced protection and enforcement of protection, the character of HDC could change fundamentally. Such a change will have a deleterious impact on the quality of life for residents of Huntingdonshire and will be in direct contradiction to the District's commitment to sustainable development and a sustainable future.





3 Relevance of tree enforcement to the District's planning enforcement activity

Though high procedural standards remain paramount, tree enforcement cases are handled significantly differently to those associated with a normal planning breach.

In certain circumstances, enforcement notices may be too slow a tool. For example, where ground compaction around trees on a development site is being aggravated dramatically each time a vehicle passes over its root system, a stop notice is likely to be considered more appropriate than a breach of condition notice. Such notices would prevent permanent and irretrievable damage that can be caused so quickly and which cannot be repaired or improved. The provisions of section 183 of the Town and Country Planning Act 1990 enable the local planning authority to serve a stop notice, in certain circumstances, when they serve a copy of an enforcement notice. The stop notice prohibits the carrying out of that activity on the enforcement notice land.

4 The Range of Tree-Related Offences

Breaches of tree protection include:

- Unauthorised removal of tree(s): This always has a detrimental effect on visual amenity and the character of an area. Depending upon the size, species and prominence of the tree(s) the effect will vary from case to case.
- Unauthorised work to tree(s): The effect of work to tree (s) can vary from the expert removal of one minor limb to complete mutilation. This can mean little or no effect on amenity or in severe cases a seriously detrimental effect.
- Breach of tree protection conditions: This generally prejudices the health/safety/life expectancy/appearance of the tree(s) and, therefore, amenity in both the short and long term.





5 Factors Determining an Appropriate Course of Action

Action that can be taken by the Council in respect to the different types of contravention varies and needs to take into account:

- the size of the tree(s)
- the prominence of the tree(s)
- the condition of the tree(s)
- the life expectancy of the tree(s)
- the seriousness of the offence
- the loss of/effect on amenity

Where a tree which is the subject of a Tree Preservation Order is removed without consent or a tree in a Conservation Area is removed without the statutory six weeks notice having been served on the Council:

- If the preserved tree is a single specimen 'amenity' tree in good condition, and could not be adequately replaced by planting another tree, the Council will, in all but exceptional circumstances, be likely to prosecute those responsible for its removal. The Council will also seek to ensure the immediate provision (subject to planting seasons) of another tree.
- In all other cases e.g. lesser trees/trees in groups etc., the Council is likely to prosecute and in all but exceptional cases, require the provision of a semi-mature replacement tree.
- With respect to Conservation Area trees, the seriousness of such an offence will be judged by determining if the tree would have been made the subject of a draft Tree Preservation Order had the requisite notice been served. Where the tree would have been made the subject of an Order, the

Council is likely to take the same action as indicated above.

Where unauthorised works are carried out on a tree(s) which is the subject of a Tree Preservation Order or in a Conservation Area:

- The seriousness of such an offence is determined by the extent and quality of works and the effect on visual amenity and life expectancy.
- Where relatively minor works to an acceptable standard (British Standard 3998 – Tree Works) are involved, the owner/tree surgeon will be formally notified that any future proposed works must be the subject of a formal application to the Council.
- If it is considered that consent would have been granted to a preserved tree(s) or no objection raised to a tree(s) in a Conservation Area where extensive works have been undertaken, notification as at the above paragraph will take place so long as the works have been carried out to an acceptable standard
- Where more extensive works are undertaken without consent or prior notification in the case of Conservation Areas that would not have been agreed had an application been submitted, the Council will seek to prosecute those responsible. This generally applies where the appearance of the tree is altered to a point where there is a clear effect on visual amenity. Where these works have been undertaken to a poor standard remedial works will be required.



- In cases where works are undertaken that would ordinarily have been acceptable, in terms of general form and extent, but to a poor standard, the Council will ensure that all necessary remedial works are undertaken as soon as possible. Where such remedial works are not undertaken in an acceptable timescale and in accordance with a specification issued by the Council, the Council will be likely to prosecute those responsible for the works.

Tree work or tree removal carried out on trees retained by condition of a planning permission without the necessary consent from the Council:

- Where tree removal or tree work has seriously harmed the appearance of the development the Council will seek to remedy the situation - if necessary through an enforcement notice or breach of condition notice.
- Where there is a serious threat of further unauthorised work to trees of value to the development, a stop notice or injunction may be used. The Council may prosecute those responsible for the works.

Failure to implement tree protection on trees protected by condition or a planning permission as agreed by the Council:

- A range of threats to trees are regularly encountered as a result of these breaches of conditions. Inadequate protective fencing, the unauthorised movement of fencing from the agreed positions, ground works taking place within the exclusion zones, installation of hard surfaces, foundations, services etc. contrary to conditions, changes to ground levels represent the major source of contraventions.

- Mechanical damage to trees above ground is usually obvious. An appropriate course of action will be determined by the extent of the damage. The most difficult problem to resolve occurs as a result of damage to trees below ground whether it is soil compaction resulting in asphyxiation of roots to root severance. Both threaten the health and safety of the trees and usually result in a shortening of life expectancy. The consequences are often not seen in trees for several years.
- Where normal Officer approaches do not succeed in achieving an immediate cessation of the works causing the damage, the most expedient method of enforcement involves the service of an enforcement notice for breach of condition accompanied by a stop notice. Normal enforcement procedures are not speedy enough to prevent permanent damage to trees and this represents the only method of enforcement that can realistically bring about an immediate cessation of the breach of condition. The Council may prosecute those responsible.

With regard to any enforcement action, especially where criminal proceedings may be involved, each case will be considered on its individual merits. Any decision to prosecute will have regard to the two-stage test set out in the Code for Crown Prosecutors. This provides that proceedings should only be instituted where evidence is such as to render a conviction more likely than not and, that proceedings should only be commenced where it is in the public interest to do so.



6 Enforcement – trees protected under a TPO or within a Conservation Area

As described above, trees are protected when they are the subject of Tree Preservation Orders or within Conservation Areas (subject to certain exemptions). In general, it is an offence to cut down, uproot, lop, top, wilfully damage or wilfully destroy a protected tree without authorisation. Retention and protection of trees on development sites is also secured through the use of planning conditions.

In the case of trees protected by a Tree Preservation Order, consent is required for any works on the trees following submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against a refusal of consent or the terms of a condition.

Where trees are in a Conservation Area, six weeks' notice must be served on the Local Planning Authority of any proposal to carry out works on the trees. During this six week period, the Authority may raise no objection to the works or make a Tree Preservation Order to prevent them being carried out. If the Authority takes no action within six weeks, the works may go ahead as notified.

There are two offences which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas:

1 Anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable on conviction to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

2 Anyone who carries out works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

In addition to directly carrying out unauthorised works on protected trees, it is an offence to cause or permit such works.

In order to bring a successful prosecution, the Authority must be able to prove that:

- the defendant has carried out, or caused, or permitted works on the tree
- the tree was protected
- the works were carried out without the Authority's consent and
- the works were not exempt works.

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Local Planning Authority). The replacement tree is then subject to the same protection as the tree that was lost. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance. There are rights of appeal against Tree Replacement Notices.



Procedures for investigating complaints

Incidents involving contraventions of the tree protection legislation may come to light as a result of complaints received by the Council. The Council may also become aware of contraventions when carrying out routine monitoring of works on development sites.

When alleged cases of unauthorised works on a tree come to the attention of the Council, an initial investigation will be carried out as soon as possible (normally within 48 hours). The initial investigation will consist of a check to establish whether the tree is protected, whether any consent has been granted, and a site visit. In cases where it appears that protected trees are being removed and in other instances where there may be a significant impact on public amenity, a site visit will be undertaken as a matter of urgency. The legislation confers a right to enter land to carry out such investigations.

Where it appears that unauthorised tree works have been undertaken, notes and photographs will be taken during the site visit which may be used as evidence later.

The suspect will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). He or she will be asked to give his or her observations on the incident and any relevant background information. If it appears that an offence has been committed and that answers to preliminary questions on site may be required as evidence, he or she may be cautioned. Any such cautions will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

Where appropriate, the suspect will be invited to the Council offices to undertake a tape-recorded interview under caution and under the provisions of the Police and Criminal Evidence Act 1984. (See Appendix 1 for a pro-forma letter inviting a suspect for interview).

A judgment will be made at the time of the initial site visit as to whether cautioning and formal questioning is appropriate at that stage. In most cases, the Council will not seek to formally interview under caution on site but will write to the suspect, seeking detailed information regarding the incident. If a satisfactory written reply is received, formal cautioning and interviewing may not be deemed necessary. In the absence of a satisfactory written response, the Council will be obliged to reconsider this matter. The identity of any complainant will be kept confidential and not disclosed to the alleged offender as far as practicable. However, it will be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome. Complainants and any other witnesses will be contacted as appropriate and requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.



Options for action

The Council has a range of possible courses of action available to deal with cases of unauthorised works on protected trees. These include the following :

- seek a prosecution
- administer a formal caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution (See Appendices 2, 3, and 4 for pro-forma letter and cautions). It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence
- under section 206 of the Town and Country Planning Act 1990, require the planting of a replacement tree for each tree destroyed
- under section 207 of the same Act, serve a replanting direction. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting and
- take no formal action. This may be accompanied by informal action, such as advising the alleged offender to ensure that the incident is not repeated.

Selection of appropriate action

Decisions as to what action to take in cases of unauthorised works on trees will be taken in the public interest, with each case being dealt with on its own merits. A prosecution will not normally be brought unless the unauthorised works have resulted in a loss of public amenity.

In most cases, a prosecution will not be brought if consent would have been granted (or no objection raised) for the works undertaken had they been applied for.

In considering whether to bring a prosecution, regard will be given to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised works and whether the perpetrator has been prosecuted, cautioned or warned for similar offences in the past.

Whilst ignorance of the law is not an excuse, the attitude and circumstances of the perpetrator will be taken into account, including any expression of regret, helpfulness and co-operation with the investigation and any indication that the perpetrator was acting in good faith. Individual personal circumstances and any other mitigating factors will be taken into consideration where appropriate.



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Two tests will be applied in cases where a prosecution appears likely, consideration of which will be undertaken in consultation with the Council's Legal Section:

1. The Evidential Test: A prosecution will not be commenced unless there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction

2. The Public Interest Test: A prosecution will only be brought where this is in the public interest. Administering of formal cautions may be applied in cases where a prosecution can properly be brought but where such action is not considered appropriate in the circumstances of the case. Persons who have previously received a formal caution will normally be dealt with by prosecution.

The planting of replacement trees will normally be required irrespective of whether the perpetrator has been prosecuted or cautioned.

Procedures for taking action

Tree enforcement issues will be dealt with by the Council's Planning Enforcement Officers, in consultation with the Arboricultural Officer, and with the Council's Legal Section.

In cases where it appears that unauthorised works have been carried out on protected trees, decisions on how to proceed will usually be made by the District Council's Head of Planning Services.

Formal cautions will normally be issued at the Council offices. The offender will be contacted in writing and requested to submit to the caution. Details of the offence will be provided in the letter, along with an explanation of the significance of the caution. Records will be kept of formal cautions issued and will be referred to in court if the offender commits a further offence. When a decision has been made to issue a formal caution, but the offender refuses to submit to the caution, the case will be reconsidered, including a consideration of whether to bring a prosecution.

Where suspects are invited to the Council offices for a tape recorded interview under caution, the Code of Practice under the Police and Criminal Evidence Act 1984 will be adhered to.

When replacement planting is required, monitoring will be carried out to ensure compliance.



7 Enforcement – use of planning conditions relating to trees

In granting planning consent for sites where trees are to be retained, the Council will typically use conditions relating to tree retention and protection. The Council will expect all conditions relating to trees to be complied with in full and will use its enforcement powers to seek compliance where necessary.

Tree related conditions generally require that the conditions be formally cleared in writing prior to any works commencing on site (including demolition). Trees can be damaged very easily in a short space of time. It is therefore particularly important with tree related conditions that they be cleared prior to works commencing and that they are fully adhered to.

The purpose is essentially to stop further works on site until such time as conditions have been satisfactorily complied with and tree protection details have been agreed. If tree related conditions are not being complied with, there is usually an imminent threat of damage to trees. If it is not possible to resolve the outstanding issues there and then on site, the serving of a Temporary Stop Notice will be considered. Temporary Stop Notices come into effect immediately for a period of up to 28 days.

Contravention of a Temporary Stop Notice is an offence. A person guilty of this offence is liable, if convicted in a Magistrates Court, to a fine of up to £20,000. In a Crown Court, the potential fine is unlimited. If breaches of planning control lead to damage to, removal of or unauthorised works on protected trees, action may also be taken as detailed in Section 2 of this document.

Dealing with breaches of planning control

Breaches of planning control occur where conditions have not been formally cleared prior to works commencing or where the conditions are not complied with once works have commenced.

The principal instrument for dealing with breaches of tree related conditions is the Temporary Stop Notice. Officers of the Council have delegated powers to serve such notices under Section 171E of the Town & Country Planning Act 1990.

Decisions upon action

The nature of breaches of tree related conditions is such that a decision often needs to be made quickly on site. Each case will be dealt with on its own merits and Council officers will make a proper assessment of the situation prior to making a decision on how to proceed.

The serving of a Temporary Stop Notice will be likely if the following apply: - a clear and demonstrable breach of planning control relating to trees has occurred - trees are being damaged or are likely to be damaged if works continue and - the matter cannot be resolved immediately on site.



Appendix 1

Pro-forma letter inviting suspect to interview under caution

Dear _____

TOWN & COUNTRY PLANNING ACT 1990; SECTION 210 BREACH OF TREE PROTECTION
LEGISLATION

As you will be aware, the Council is investigating a breach of the tree protection legislation which occurred at
_____ on _____.

In connection with this investigation, the Council would like to invite you to a formal interview under caution at the Council offices. The caution states: 'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be taken in evidence'. The reason for the interview under caution is that the Council suspects that an offence has been committed, and before any questions are put to you about your involvement or suspected involvement in that offence, the caution should be given so that your answers or silence may be given in Court in evidence.

If you attend the interview then I would advise that you are not under arrest and would be able to leave at any time. Legal representation is allowed during the interview. Alternatively, if at any time you wish to contact your solicitor to seek legal advice during the interview then you are free to do so. Additionally, a copy of the codes of practice would be available for you to consult.

I would be grateful if you could contact me by telephone on the above number and advise whether or not you are willing to attend the formal interview and if so whether or not you will be legally represented. If you do not attend but choose to reply by letter, I would advise that your reply would be considered admissible as evidence since you have been advised of the caution. I would further advise that it is Council Policy to always seek to recover its enforcement costs.

I look forward to hearing from you in the near future.

Yours sincerely,



Appendix 2

Pro-forma letter regarding formal caution

Dear _____

TOWN & COUNTRY PLANNING ACT 1990; SECTION 210 BREACH OF TREE PROTECTION
LEGISLATION

I am writing with regard to the breach of the tree protection legislation which occurred at _____ on
_____.

Under the circumstances, the Council is prepared to deal with the matter by issuing a formal caution. As discussed, this will require you to admit to the offence in question. The caution will remain on your file and should you be found guilty of a similar offence in court, the formal caution will be brought to the attention of the court and will be taken into account when the penalty imposed on you is decided upon. It may also be taken into account in the future when the Council decides whether or not to prosecute if you commit a similar offence. I am enclosing a Preliminary Formal Caution form, which must be completed and returned to me, indicating that you admit to committing the offence and are willing to accept the formal caution. You will then be required to attend the Council offices to receive the formal caution.

I have provisionally booked _____. If this date/time is not convenient, please contact me as soon as possible to arrange an alternative appointment. I must advise you that if you do not agree to being formally cautioned, the Council will be obliged to re-consider the matter. This could result in the institution of a prosecution. You are welcome to be legally represented on this occasion or a friend may accompany you if you wish.

If you have any queries at this stage, please do not hesitate to contact me.

Yours sincerely,



Appendix 3

Pro-forma formal caution (preliminary) (to be sent with above letter)

FORMAL CAUTION (PRELIMINARY)

I, _____ of _____ hereby admit I have committed the following offence: Breach of the Tree Protection Legislation: Section 210 of the Town & Country Planning Act 1990 Details: The formal caution procedure has been explained to me and I am willing to accept a formal caution and for a record of that caution to be kept on file by Huntingdonshire District Council. I understand that if I commit a further offence this caution may influence the Council's decision on whether or not to prosecute me. I also understand that this caution may be cited in any future criminal proceedings should I be found guilty of a similar offence.

I undertake to co-operate fully with Huntingdonshire District Council in administering a formal caution to me.

Signed _____

Name (Block Capitals) _____

Date _____



Appendix 4

Pro-forma caution

FORMAL CAUTION

Mr/Ms _____ of _____ have agreed to be formally cautioned and accordingly I FORMALLY CAUTION you that I am satisfied that you have committed the following offence which you have admitted, namely: Breach of the Tree Protection Legislation: Section 210 of the Town & Country Planning Act 1990 Details: A record of this caution will be held by the Council and may be used in future proceedings against you if you commit further offences. This caution was administered by me, _____ of Huntingdonshire District Council this ___ day of _____ 200_.

Signed _____

This caution was received by me, Mr/Ms _____ of _____ this ___ day of _____ 200_.

Signed _____

The giving of this caution was witnessed by me _____ of Huntingdonshire District Council this ___ day of _____ 20_.

Signed _____



Appendix 5

Pro-forma Temporary Stop Notice

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY TOWN AND COUNTRY PLANNING ACT 1990 (As amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004) TEMPORARY STOP NOTICE SERVED BY: HUNTINGDONSHIRE DISTRICT COUNCIL herein after referred to as "the Council".

To: [name of intended recipient of the notice]

1. On [date], the Council has issued this temporary stop notice alleging that there has been a breach of planning control on the land described in paragraph 4 below.

2. This temporary stop notice is issued by the Council, in exercise of their power in section 171E of the 1990 Act, because they think that it is expedient that the activity specified in this notice should cease on the land described in paragraph 4 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

3. THE REASONS FOR ISSUING THIS NOTICE [Briefly specify the reasons why the temporary stop notice has been issued. There is no requirement to outline specific policies from the Local Plan.]

4. THE LAND TO WHICH THIS NOTICE RELATES Land at [address of land, or description of relevant part of the land to which the temporary stop notice relates], shown edged red on the attached plan.

5. THE ACTIVITY TO WHICH THIS NOTICE RELATES [Specify the activity required by the temporary stop notice to cease, and any activity carried out as part of that activity, or associated with it.]

6. WHAT YOU ARE REQUIRED TO DO Cease all the activity specified in this notice.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on [date] when all the activity specified in this notice shall cease. This notice will cease to have effect on [date 28 days after it takes effect].

Dated: [date of notice]

Signed: [Council's authorised officer]

On behalf of: HUNTINGDONSHIRE DISTRICT COUNCIL PATHFINDER HOUSE ST MARY'S STREET
HUNTINGDON CAMBRIDGESHIRE PE29 3TN

Nominated Officer: Telephone Number:



ANNEX

WARNING - THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 7. THERE IS NO RIGHT OF APPEAL TO THE FIRST SECRETARY OF STATE AGAINST THIS NOTICE.

It is an offence to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on you. (Section 171G of the 1990 Act). If you then fail to comply with the temporary stop notice you will be at risk of immediate prosecution in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch immediately with [Council's nominated officer to deal with enquiries, address and telephone number].

If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.