

Protected Trees and their Management



A Guidance Note For Owners and Managers Of Protected Trees

Trees make a major contribution to the South Hams

landscape, whether in the woods and hedgerows of the countryside, or in the parks and gardens of the villages and towns.

Many of these trees are of particular importance in the landscape and may be subject to protection. This guidance note sets out the different types of protection and the Council's approach to this protection. It also outlines how protected trees should be managed.

It should be remembered that trees are living beings - they often grow vigorously when young and may mature over many centuries. Many have strong and vivid links to the past but as with all living things they have a limited life.

Those who own, manage and appreciate trees must be aware of this and care for them accordingly. Trees are one of the South Hams greatest natural assets but their protection and retention needs to be carefully balanced against problems they can cause.

The Council will bear these guidelines in mind when serving Tree Preservation Orders and considering applications to work on protected trees. This guidance reflects legislation in the Town and Country Planning Act 1990, the Town and Country (Trees) Regulations 1999 and information contained in Government Guidance "Tree Preservation Orders: A Guide to the Law and Good Practice".

This guidance note has been drawn up in conjunction with South Hams Tree Wardens - a group of volunteers who work in the towns and villages promoting tree planting, management and protection. Further details of the scheme are available from the Council.

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The types of tree protection

Tree Preservation Orders (TPO's)

General Information

- These are orders made by South Hams District Council on selected trees and woodlands which have amenity value.
- The Council currently administers over 600 TPOs covering in excess of 80,000 trees. They can be in force on trees (even saplings) of any species in any location. They are not marked on site.
- Details of the presence of TPOs are included in a Land Charge search and details can also be obtained from the District Council.
- The responsibility for managing trees covered by a TPO rests with the owner not the Council.
- It is an offence to wilfully damage, destroy, fell, top, lop or uproot a TPO tree without prior consent from the Council.
- Any works undertaken without consent are an offence liable to a fine up to £20,000.

Works to Trees

- Certain works are exempt and do not need permission (see page 5). All other works to the tree, or which may affect the tree and its roots, require permission from the District Council and you will need to make an application.
- The Council produces a standard application form for your use. There is no charge for an application.
- The Council has 8 weeks in which to consider an application. It will consult with the Town or Parish Council and place the application on a Public Register.
- The Council can either grant consent for the works (with or without conditions) or refuse to allow the works.
- If the works are refused, or conditions imposed, you have the right of appeal to the Secretary of State.

Conservation Areas

General Information

- Conservation Areas are designations placed on the historic cores of towns and villages. There are 50 Conservation Areas in the South Hams.
- Trees within these areas, with a stem diameter in excess of 75mm at 1.5m above ground level, are protected (although the figure is 100mm where woodland thinning is involved).
- If you are intending to work on a tree in the historic parts of a town or village you should establish whether it lies within a Conservation Area. The District Council holds details of the location of Conservation Areas.
- It is an offence to wilfully damage, destroy, fell, top, lop or uproot a tree in a Conservation Area without having first served notice on the Council.
- Failure to serve notice, and then carrying out prohibited works, is an offence liable to prosecution and a fine up to £20,000.

Works to Trees

- Certain works are exempt and you do not need to serve notice (see page 5). All other works to the tree, or which may affect the tree and its roots require prior notification to the District Council.
- The Council produces a standard notification form for your use. There is no charge for making a notification.
- The Council has 6 weeks in which to consider the notification. It will consult with the Town or Parish Council and place the notification on a Public Register.
- The District Council can either allow the works (by allowing the 6 week period to lapse) or prevent the works by serving a TPO. The Council cannot issue a refusal or impose conditions on the work.

Planning Conditions

General Information

- When building development is permitted the District Council can attach conditions to control how the development takes place.
- The retention of trees and hedges can be covered by such a condition.
- The presence of conditions will be revealed by a search of the planning history on a site.
- Failure to seek consent of the District Council prior to undertaking tree or hedge works may constitute a Breach of Condition which could lead to enforcement action by the Council.

Works to Trees

- Applications to work on trees or hedges subject to control by Planning Condition should be made in writing to the District Council.
- The Council will consider the effect of the proposed works.
- If the Council considers the works to be appropriate then approval will be granted. If tree works are considered to be unacceptable a TPO may be served.

Felling Licence

General Information

- Anyone intending to fell in excess of 5 cubic metres of timber in woods or countryside in any calendar quarter (of which no more than 2 cubic metres can be sold for firewood) has to obtain a Felling Licence.
- This is a powerful control over the removal of countryside trees. It allows for limited felling on farms and estates for firewood or other purposes but prevents uncontrolled removal.
- Failure to obtain a Felling Licence is an offence liable to prosecution and a fine up to £2,500 on conviction.
- If you are intending to fell trees in the countryside you should check whether you need a felling licence.

Works to Trees

- Application for a Felling Licence needs to be made to the Forestry Commission.
- A standard application form is available from the Commission which sets out current details.
- There is no charge for an application.
- When considering a felling licence application the Forestry Commission will consider a wide range of issues including landscape and environmental impact.
- The District Council does not deal with Felling Licences and no further details are given in this note. Please refer to the Forestry Commission for further advice. Contact details are on the back page of this leaflet.

Private Covenants

General Information

- Some trees are subject to private covenants placed by previous owners which may require the retention or management of trees.
- Details of covenants are usually contained in property deeds or Land Registry documents.
- The District Council does not hold details of private covenants.

Works to Trees

- Independent legal advice should be sought in relation to any covenants in force on your property.
- The Council plays no role in the enforcement of private covenants.



The Council Policy on Serving Tree Preservation Orders

The Council's primary means of protecting trees is through the serving of Tree Preservation Orders (TPO). The use of TPOs is set out in legislation and government guidance and the Council will consider serving a TPO in the following circumstances: -

- Where the trees have, or will have, significant public amenity value, and
- Where it is expedient to do so - usually where there is a threat of removal or damage, and
- Where the trees have life expectancy of at least five years, and
- Where the trees are not likely to cause significant structural damage in the foreseeable future.

TPO's can also be served where the trees have other exceptional value.

Additionally the Council is under a duty to protect trees when considering Planning Applications.

When an Order is served it protects the trees for an initial period of six months and anyone can object to, or support, the serving of an Order. The Council must take any objections or letters of support into account when deciding whether to make an order permanent (called "confirmation").

Getting Permission to work on Protected Trees

Applications To Work On TPO Trees

The presence of a TPO does not necessarily prevent works taking place to a tree - what it does is place a control on what can be done and a legal duty on the owner to seek permission in advance unless works are "exempt".

When seeking permission to work on protected trees the application must:-

- Be made on the standard application form;
- Include a plan identifying the tree(s);
- Clearly specify the work;
- State the reasons for making the application; and
- Provide appropriate evidence describing the damage or defect where the work is proposed to address any structural damage to property, or in relation to tree health or safety.

When considering applications to work on TPO trees the Council will:-

- Assess the amenity value of the trees or woodland and the likely impact of the proposed works on amenity;
- Consider whether the works accord with good tree management;
- Consider any comments or letters;
- Consider whether any damage is likely to arise if consent is refused; and
- Consider whether the reasons given for the works outweigh the amenity reasons for protecting the tree.

In general terms, the higher the amenity value of the tree or woodland, and the greater the impact of the proposal on the amenity of the area, the stronger the reasons needed before consent is granted. If the amenity value of the tree or woodland is low, and the impact of the proposal in amenity terms is likely to be negligible, consent might be granted even if there is no particular need for the work.

Where an application relates to an area of woodland, the Council will normally grant consent so long as the works accord with the practice of good forestry unless the works fail to secure the special character of the woodland or the woodland character of the area.

Where trees stand close to buildings the District Council will consider proposals to overcome direct interference where this is consistent with retaining the tree in a healthy condition with continued amenity value. Where this can't be achieved removal may be considered.

The Council will not normally support work merely to open up, or maintain, views where these works have an unacceptable impact on amenity.

Where the Council agrees to the felling of trees, or where this is undertaken without consent or under "exempt" works, the Council may require the landowner to provide replacement planting. This should be of a suitable species in an appropriate location - normally the same species in the same location.

Conservation Area Tree Work Notifications

When submitting a Conservation Area Notification the applicant must identify:-

- Which trees are involved (including a plan as necessary).
- Precise details of the works proposed (see pages 6 and 7).
- The reasons for proposing the works.

When considering notifications to work on trees in a Conservation Area the Council will:-

- Assess the amenity value of the tree and the likely impact of the works on the character of the Conservation Area.
- Consider whether the works accord with good tree management.
- Consider any comments or letters.
- In light of the impact on amenity, and the character of the Conservation Area, either
 - a) Allow a six week period to elapse after which the works can go ahead, or,
 - b) Prevent the works by serving a Tree Preservation Order.

If a tree is removed under “exempt” works or without consent the Council may require the landowner to provide replacement planting. This should be of a suitable species in an appropriate location - usually the same species in the same location.

Applications To Work On Trees Subject To A Planning Condition

When submitting an application to work on trees subject to a Planning Condition the applicants must identify in writing:-

- Which trees are involved (including a plan as necessary).
- Precise details of the works proposed (see page 6 and 7).
- The reasons for proposing the works.

When considering such applications the Council will:-

- Assess the public amenity value of the trees and the likely impact of the works in relation to the Planning Condition.
- Consider whether the works accord with good tree management.
- In light of the impact on amenity value and the reasons for imposing the condition either
 - a) Allow the works or
 - b) Prevent the works by serving a Tree Preservation Order.

If a tree subject to a Planning Condition is removed without consent, replacement planting may be sought by serving of either a Breach of Condition Notice or Enforcement Notice.

Which Works Need Permission

- Tree felling.
- Any works or surgery to living wood.
- Cabling or bracing of branches.
- Changes in ground levels around the tree which either cut roots or change the level of cover over roots.
- Any other works which affect the living parts of a tree.

Be aware that other operations close to trees, for example use of toxic materials or bonfires, can damage trees and their roots, and unless they have consent could be considered a breach of the protection.

Which Works Are Exempt?

- Removal of dead trees or dead branches; dying trees or dying branches; dangerous trees or dangerous branches.
- Removal of trees, or parts of trees causing a legal “nuisance”
- Clearance work above highways or certain other works undertaken by power, drainage and communication companies.
- Minimum tree works immediately necessary to implement a detailed planning consent.
- Pruning in a commercial orchard in accordance with good horticultural practice.
- Felling covered by a Felling Licence.

Except in an emergency, anyone undertaking exempt works is advised to give the District Council at least 5 days notice. The burden falls on anyone undertaking emergency works or exempted works to prove that such works were exempt. Photographs or the evidence of a competent arborist may help.

Tree Felling and Surgery

Far more is now understood about the structure and biology of trees and how they respond to decay and disease. Inspection of tree condition is now more formalised and an objective assessment can be made of whether a tree can be retained untouched, requires surgery or should be felled.

Felling is obviously the last resort for significant individual trees (although it may be more acceptable in groups or woodlands). If you are contemplating making a request to fell a tree, the Council will expect this to be clearly supported by appropriate reasons.

Where felling isn't being considered, then surgery is an option. This should only be undertaken when absolutely necessary - particularly when it involves removing large branches. It should be undertaken in accordance with best practice and ideally by a trained professional.

Any surgery creates a wound on the tree and this can act as an opening for infection and decay. Whilst trees do have the ability to recover from some wounding they will struggle if the work is extensive, poorly undertaken or inappropriate. Poor surgery can disfigure a tree and condemn it to a slow death.

Wildlife

Trees are home to a wide variety of wildlife and you need to consider the impact on wildlife species when undertaking tree work. In particular nesting birds and bat roosts are subject to legal protection and any tree works causing disturbance could be subject to prosecution. Make sure you discuss this issue with your tree surgeon in order to avoid damage or disturbance.

Type of Tree Surgery

Crown Reduction

This involves reducing the overall size and outline of a tree and if done skillfully the shape of the crown can be retained. Reduction does open up numerous wounds in the crown from which dense, weakly attached, new branches arise. If undertaken to increase light or views, reduction can be counter-productive as the rapid re-growth will soon restore the size of the tree, often more densely than originally. The presence of weakened branches can also start a cycle of continual surgery.

Limited reduction may be appropriate where the tree is structurally weak as a means of ensuring retention, or where direct interference or nuisance is taking place.

Applications for crown reduction should be stated in terms of the intended height and spread after reduction.

Crown Cleaning

This involves removing deadwood, crossing and rubbing branches, ivy and other debris in, or on, the tree. It has minimal impact on the shape of the tree.

Crown lifting

This involves the removal of lower branches and is often undertaken to 'raise' trees over roads, paths and properties. It can assist in gaining light and ventilation beneath a tree. Over zealous lifting high into the crown is unacceptable and can misshape and destabilise a tree.

Applications for crown lifting should specify the height in metres or the branches which are to be removed along with details of which part of the tree will be affected.

Crown thinning

Crown thinning reduces the branch density within a tree, without having much effect on the overall shape, through the removal of a percentage of the branches. It can lighten the crown, allowing through more light and wind, but as with crown reduction the tree is likely to respond with re-growth. As with all surgery, numerous wounds will be made in the tree which may affect its long-term health and structural stability.

Applications for crown thinning should specify the amount as a percentage along with details of which part of the tree will be affected.

Topping or Pollarding

Pollarding is a process of tree management, most commonly seen in street trees, where the crowns are cut back to a single stem. Trees are specifically managed in this way from an early age allowing them to adapt to such severe work.

“Pollarding” or “topping” of a normal mature tree is usually unacceptable. Only where there are ecological, historical or overriding nuisance reasons will pollarding be considered. There are very few true pollard trees in the South Hams area.

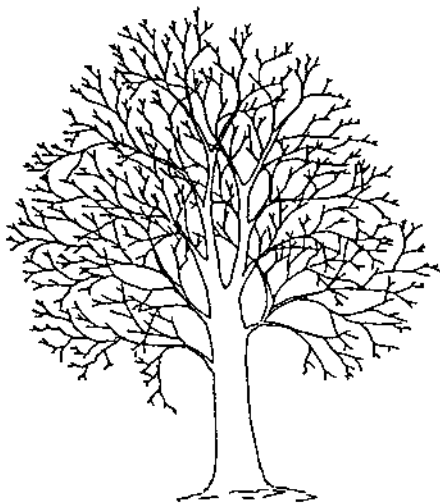
Bracing and Cabling

When a tree has an identified structural problem, for example a weakly attached branch, it may be possible to introduce some artificial restraint or support.

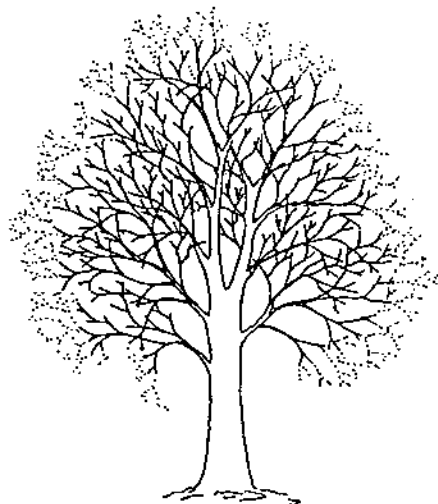
There are numerous products available including metal rods, cables and belts. The use of such restraints or supports in a protected tree will require consent and in making proposals for such works the applicant will need to demonstrate that the technique proposed is likely to be the most effective and least damaging option available. Suitable professional advice will be important in such cases.

Coppicing

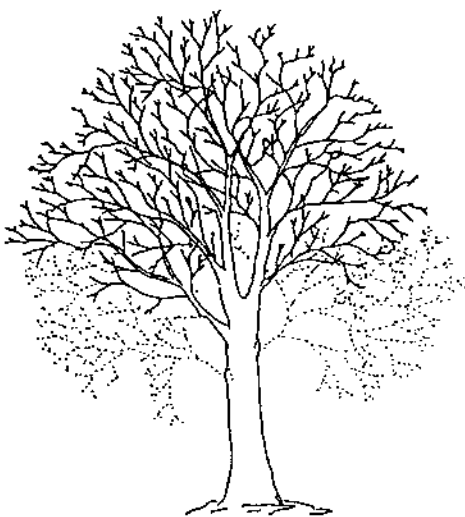
When broadleaved trees are cut to the ground they re-grow with multiple stems. Many woodland and hedgerow trees have been managed in this way (particularly Ash and Sycamore) and re-coppicing of such trees is often preferable to tree surgery. Any decision needs to be based on a detailed assessment of the coppice stump at the base of the tree.



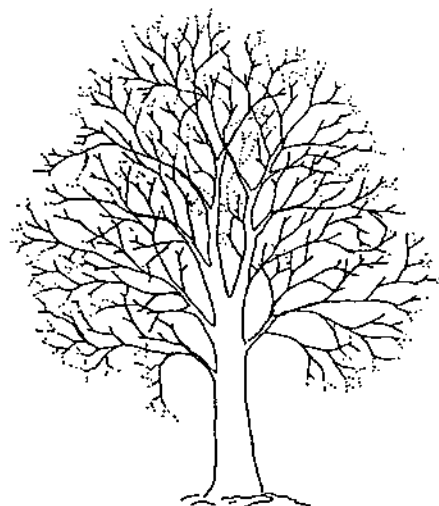
Tree before pruning



Crown Reduction



Crown Lifting



Crown thinning

Employing a Tree Surgeon

Tree surgery is a skilled operation and careful attention is required to the type of cuts made and the timing of works.

The standard practice for tree surgery techniques is contained in **British Standard 3998: Recommendations for Tree Works**. When the Council grants consent for any works to protected trees it will always be conditional on the works being undertaken to this standard as a minimum. If you (or your tree surgeon) can't undertake the works to this standard you shouldn't be working on the tree.

Before employing arborists to assess or work on your trees you should consider the following: -

Checklist

Before undertaking tree surgery, felling or other works affecting a tree have you: -

- Checked whether the trees are protected?
- Sought specialist advice on what works are necessary and appropriate?
- Obtained consent for the works?
- Checked whether there are nesting birds or roosting bats?

When undertaking works have you: -

- Completed works in accordance with the approval?
- Used appropriately qualified and insured contractors?
- Undertaken any replacement planting?

If an **emergency** matter relating to a protected tree occurs outside office hours, or at the weekend,

there is a 24 hour contact number -

01803 867034

However the Council cannot guarantee to have staff available to come on site and your priority should be to contact a suitably qualified and experienced tree surgeon in order that they can advise you directly.

- Are they appropriately experienced and qualified?
- Have they the necessary public liability and employer's liability insurance to cover the tree surgery work?
- Do they have the necessary professional indemnity insurance to cover any inspections or reports they are undertaking for you?
- Can they show you examples of their previous work?
- Are they registered with a trade organisation such as the Arboricultural Association?

Further Advice

- The Arboricultural Association hold a list of "Approved Contractors" who specialise in tree surgery and a list of "Registered Consultants" who specialise in tree inspection.
01794 368717 or www.trees.org.uk
- The International Society of Arborists maintain a list of "Certified Arborists".
0121 556 8302 or www.isa-uki.org
- The Institute of Chartered Foresters issue a register of "Consultants" who specialise in woodland and individual tree management.
0131 225 2705 or www.charteredforesters.org
- The Council can provide further advice on the contents of this Guidance Note.
01803 861234 or tree.office@southhams.gov.uk
- The Forestry Commission can provide further advice on Felling Licences and the planting and management of woodlands.
01626 890666 or www.forestry.gov.uk

This note is one of a series encouraging good practice in environmental management. It has been produced by South Hams District Council. For further information on this Guidance Note please contact:

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