

Trees *and* The Law

EAST HAMPSHIRE



Partners


www.easthants.gov.uk


Introduction


Trees can often be the subject of disputes between neighbours, owners, members of the public or public authorities. The aim of this leaflet is to briefly outline the laws that affect trees, their owners and others.


The leaflet is for guidance only and is not a statement of the law. We suggest you should consult a Solicitor if you are unsure of your legal rights or obligations.

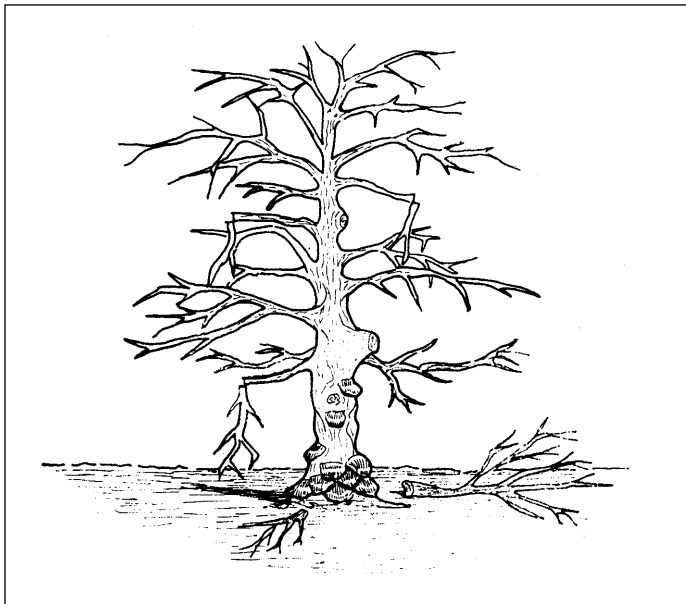
Maintenance Responsibilities

What maintenance is an owner required to carry out? 


 A land owner is charged with the responsibility of maintaining all trees on his land in a safe condition.


How will I know if my tree is safe? 

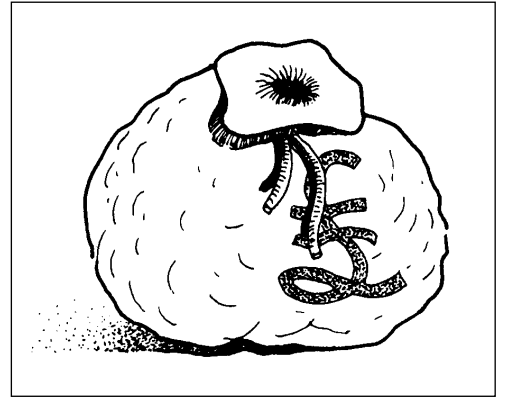
 Responsible tree owners can have their trees inspected on an annual basis by a qualified and experienced Tree Surgeon. The Tree Surgeon will consider the size, condition and species of tree, as well as its position in relation to buildings, footpaths and highways. From this the Tree Surgeon will make recommendations for the necessary works to be undertaken. You should check that your Tree Surgeon carries professional indemnity insurance for up to £2million.




Liabilities for Damage


How can I avoid liabilities for damage caused by my trees? 

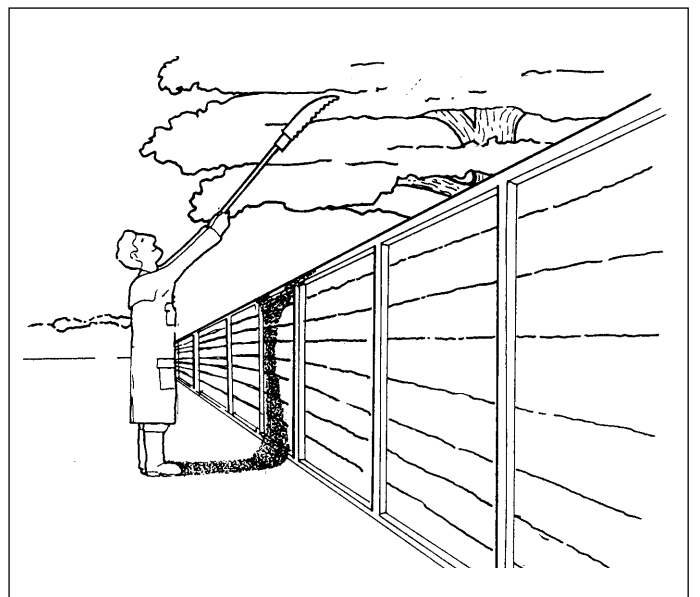
 There is no avoiding these liabilities, particularly where it can be shown that a tree owner has been negligent. The situation should not arise if regular inspections are carried out by a qualified and experienced Tree Surgeon, as described earlier.





Trees: Nuisance on boundaries


Is it true that I have the right to prune back my neighbour's tree to my boundary? 


 Yes, you have a common law right to prune back both branches and roots to your boundary. However, you must take care not to render the tree dangerous. All cuttings must be given back to the owner of the tree, or at least offered back.



Can this right to prune my neighbour's tree be removed? 


 Yes, if a tree is covered by a Tree Preservation Order or stands within a Conservation Area then this Common Law right is lost. The advice and consent of the District Council should then be sought to do work to the tree. See the following sections on Tree Preservation Orders and Conservation Areas.

The tree outside my house blocks the light in my garden, do I have a right to light? 

 No, only if you can prove that you have the right to ancient light, e.g. you can prove that you have had the uninterrupted use of that light for a period greater than 20 years; do you have any right to light. This however, only applies to the windows of your property.





Are there any exemptions from a Tree Preservation Order? 

 Yes, if the tree is dead, dying or dangerous. Even in this case, the District Council require 5 days notice in writing before any work commences on such a tree. This gives an opportunity for the tree to be inspected.

If an emergency situation arises, the District Council should be notified at once and photographs taken of the tree before emergency action is taken. All timber should be retained for inspection.


You will be required to plant a replacement tree if tree is felled.


What are the fines for contravention of a Tree Preservation Order? 

 If the case is taken to a Magistrates Court then the fines are up to a maximum of £20,000 per offence.


If the District Council decides to take the matter to a Crown Court then the fines are unlimited and are often related to the amount of money the offender stands to gain as a result of the contravention.

Tree Preservation Orders

My tree is covered by a Tree Preservation Order, does this mean I can do no work to it? 

 No, but it does mean that the consent of the District Council is required before any work can take place.


How do I get the District Council's consent? 

 An application has to be made to the Development Services Division. There is no cost for the application, which usually takes between 6 and 8 weeks to process. The necessary forms are available from EHDC. Telephone the number on the back of this leaflet.


You must not undertake any work until you have their consent.


Conservation Areas

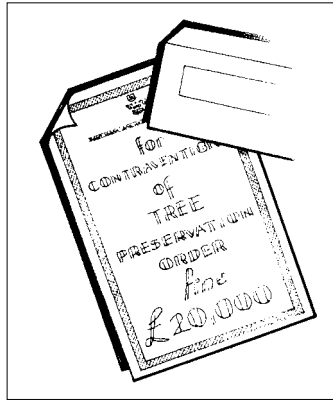
Are all trees within a Conservation Area protected and, if so, does this differ from Tree Preservation Order legislation? 

 All trees within a Conservation Area with a stem diameter greater than 75mm are protected. The difference from a TPO is that rather than obtaining consent of the District Council before carrying out work you are only required to give 6 weeks written notification of your intention to carry out work to the tree.

This gives the Council the opportunity to inspect the tree concerned and decide if it needs to be protected by a Tree Preservation Order.

Are the fines the same as those for Tree Preservation order contraventions? 


 **A** Yes up to £20,000 in the Magistrates Court and unlimited fines if the case goes to the Crown Court.




Further Enquiries


If you have any further questions please contact the District Council's Arboricultural Officer on 01730 234217 or e-mail him at stewart_garside@easthants.gov.uk


Felling Licences


Can I fell any trees without a Felling Licence? 

 **A** Yes, up to 5 cubic metres (m³) of timber can be felled in a calendar quarter if the timber is for your own use. This figure drops to 2m³ if the timber is to be sold.

Does this apply to trees in my garden? 

 **A** No, a Felling Licence is not required if a tree can be described as being in a private garden or orchard. In these cases, however, the consent of the District Council may still be required if the tree is covered by a Tree Preservation Order or stands within a Conservation Area.

Who administers Felling Licences, and where can I get further information about them? 

 **A** The Forestry Commission administers Felling Licences. You can contact them at:

Alice Holt Lodge
Wrecclesham
Farnham
Surrey GU10 4LH

Tel: 01420 23337

