

Getting to the 'Root' of the issue

Trees in Fife

The mosaic of native planting, mature woodland and open ground in Fife raises issues amongst residents "what do we do about those trees?".

This guidance answers the many questions and gives information and contacts for residents.



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Foreword

The trees and woodland of the Fife Area are a fantastic natural resource. They enhance the enjoyment of the area for people who live in, work in and visit Fife and its surrounding towns and villages.

Fife Council recognises the ecological, landscape and economic importance of its trees and woodlands. They make a positive contribution to our quality of life by enhancing the environment of our towns and villages.

Where the Council has designated Tree Preservation Orders and Conservation Areas trees are protected by law. The aim of this guidance is to explain the legislation and help householders understand their rights and responsibilities. It also offers advice on the management of non-protected trees and on common neighbourhood tree problems.

Fife Area Committee hopes that you will share its appreciation of the local tree and woodland resource.

Introduction

What is the basic issue?

Trees are an important part of our environment in both town and country. They have a significant impact on environmental quality, contributing to the natural heritage, attractiveness and character of the area. The visual impact of trees is considered just as important as their subtle benefits such as reducing noise, filtering air pollution and providing food and shelter for wildlife.

Who is the guidance for?

This guidance note is primarily intended to provide advice for householders and residents on some of the common problems associated with neighbourhood trees. It also provides information on the ways in which trees can be protected and safeguarded.

Where a development is proposed please visit the [Planning guidance webpage](#) where you will find the Trees and Development guidance within the Other Guidance section.

Which areas are covered?

The primary focus of this guidance note is the urban and suburban residential areas within the Fife area. However, the advice given will also apply to tree preservation orders which the majority of are in urban environments.

Neighbourhood Tree Problems

Trees do not recognise or respect boundaries. Branches and roots can easily trespass from neighbouring land onto your land, causing a variety of problems.

The following section explains how to approach situations which occur frequently. This is only meant to be a brief and basic guide, if you are in any doubt about a tree related situation you should seek legal advice.

Overhanging Branches

Under common law the owner of a hedge or tree adjacent to their property has no obligation to cut it or prune it, however much their neighbour may object. The neighbouring landowner may cut off any branch which overhangs their own boundary, although it is always courteous to ask the owner's permission first.

If the neighbour's tree is protected permission is required for cutting back branches. This is because the tree preservation order or conservation area designation takes precedence over any common law rights.

Any branches which are removed, including the fruit growing on them, should be returned to the owner. If the owner rejects to them being returned, then you must dispose of this responsibly.

Invasive Roots

Tree roots can cause damage to paving, lawns and drains and the foundations of buildings or walls. Again, where a neighbour's tree is causing problems, you are within your rights to cut back roots to the boundary of your property, unless it is protected by a TPO or is within a Conservation Area. However, it is always worth remembering that you may be undermining the future stability of the tree, and you could therefore be liable for any future damage caused by your actions. Unless you can prove that roots are causing structural problems it is difficult to insist on a tree's removal. A Structural Surveyor or Engineer is the best person to obtain a report from in these circumstances.

If your property is damaged or is likely to be damaged by your neighbours' tree, you can apply to court for an interdict against the owner to prevent further damage. This is obviously a costly legal measure which is not likely to enhance neighbourly relationships – it is always preferable to come to an amicable agreement, discussing the tree problem as soon as it becomes apparent.

Trees Overhanging Roads and Footpaths

Where trees and large shrubs are interfering with the passage of vehicles or pedestrians along an adopted road or footway the person working on the tree holds the responsibility for work being carried out. Fife Council, Transportation Section, as the Roads Authority has the power to order a landowner to carry out such clearance,

and in extreme cases will do the work itself, reclaiming incurred costs from the owner of the offending tree(s). If an order is made to cut back trees which are protected permission will still be required.

Trees Blocking Light

In Scotland, property owners do not have an automatic right to light, to either land or property. We do not undertake tree works to facilitate light to either land or property, as it is preferred not to undertake unnecessary works on a healthy tree.

Leaves Causing a Nuisance

Every autumn people complain about the problems caused by leaves falling from trees. Although they may be irritating or cause inconvenience they are rarely if ever, a “nuisance” in the legal sense. To obtain an interdict stopping their action and claim compensation from the owner of the trees you would have to prove that the leaves have caused a continuing and serious interference to the use and enjoyment of your property.

Trees within Council Properties

Trees in Council House Gardens

As a Council Tenant you should contact your Local Office if you have a problem with nuisance trees within your garden or adjacent to your home. They will then assess the situation and may order some remedial work. Please note, however, that if the tree was planted by you, or your family, then it will be your responsibility to carry out any required works.

Tree Surgery and Tree Surgeons

Safety and Best Practices

The cutting back of deciduous trees is best carried out during their dormant season, between November and March. The form of the tree is easier to see once the leaves have fallen and this also avoids disturbing wildlife.

Any tree surgery carried out on trees can be very dangerous and should only be implemented by properly trained, equipped, skilled and insured arboriculture workers. They should operate to BS 3998 2010 Tree Work—Recommendations and be in possession of a relevant certificate for tree work.

It is advisable to get at least two quotes for any work you require. If you are in any doubt, ask to see references, proof of insurance and that they follow Arboriculture and Forestry Advisory Group guidelines.

Unsolicited offers of tree trimming from “tree surgeons” calling at your door are best avoided. Reputable firms do not generally operate in this way and you may find not only are trees butchered but if they are protected you could face prosecution.

Suitable firms and individuals can be found listed in the Yellow Pages, under “Tree Work” or “Forestry Services”, online information also available.

Protected Trees

Tree Preservation Order (TPOs)

Local Planning Authorities have special powers to protect trees by making “Tree Preservation Orders”, designating Conservation Areas and imposing conditions to retain trees when giving Planning Permission.

Outwith garden ground tree felling may require a felling licence from the Forestry Commission – see useful contacts.

The following section of this booklet provides guidance on tree preservation procedures for tree owners and their neighbours.

What is a TPO and why are they made?

A TPO is made by the Local Planning Authority under Section 160 of the Town and Country Planning (Scotland) Act 1997 and within the procedures set out in the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 1975- 1984. They are made to protect individual trees, groups of trees or woodlands which have particular amenity value, make a significant contribution to the landscape or townscape where they are growing or because they may be a potential threat to the trees. They are retained for public enjoyment. A TPO is not intended to prevent the sound management of trees and woodlands, but to allow the Council to control works which affect them.

What is a tree?

This may sound a rather obvious question, but what constitutes “a tree” is not defined within the Planning Act. In recent legal cases, it has generally been agreed to be “a woody perennial plant which can attain a stature of 6 metres or more in a single stem.

Which Trees are protected?

To become the subject of a TPO trees have to contribute to the amenity and attractiveness of an area and be under threat in some way, usually from development or changes in land ownership. Either individual specimens or groups can be protected in a single Order. The Order is not a guarantee of a tree’s soundness, good health or safety.

There are no limitations on which species of tree can become the subject of a TPO.

Orders are not normally placed on trees on Council owned land.

How does a TPO protect trees?

TPO designations makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destruct (including the roots) the trees without prior permission from the Planning Authority. Carrying out unauthorised work to a protected tree is an offence and can result in a heavy fine of up to £20,000, or for a more serious offence, an unlimited fine. A replacement tree or trees will normally have to be planted to replace trees which were illegally removed or destroyed.

How are TPOs made?

New TPOs can be made at any time by Fife Council. Once approved, a Provisional order is served on the owner of the land which comes into effect immediately; this will lapse after six months unless it is confirmed.

The Order will be served in writing on the owners and anyone else with a legal interest in the land. It is also advertised in the local press. There is then a period of 28 days for objections or other representation to be made in writing to the Council explaining the nature of their concerns.

If no objections are received the Council can then proceed with the formal confirmation of the order. Once confirmed the TPO will remain in effect until it is revoked. Where objections or representations have been made to the Council these will be taken into consideration when the decision is made whether or not to confirm it.

Once confirmed TPOs are recorded by the Keeper of Register of Sasines (Scotland) or in the Land Register of Scotland. They then become legal burdens on the land occupied by present and future owners so that when land is sold on the title is passed on together with the TPO.

Where are the TPOs in Fife Council's area?

Planning Services holds records of the TPOs in the Fife Council area. Each order follows a standard format comprising a map showing the boundary of the area affected, together with a schedule describing the protected trees. A Public Register of TPOs is held by the Fife Council.

TPOs can be searched online using Planning Services Tree Preservation Order Map which can be found on the [Protected Trees Webpage](#).

When a member of the public buys a property, the official search made before the sale is concluded should reveal the existence of an order.

What are the responsibilities of landowners with TPOs?

The owner of protected trees is responsible for them, their condition and any damage they may cause.

To carry out any work on a protected tree permission must be applied for, you can submit an application for tree works through the [ePlanning Scotland website](#). For more information on how to apply or the requirements, please see the Councils [Protected Trees Webpage](#)

You may find it useful to consult a tree surgeon or arboriculturist (tree specialist) to clarify what you want to do before applying (see Tree Surgery section).

If consent is granted there may be conditions attached relating to the replacement of trees or timescale for carrying out the work. Any replacement trees are normally covered by the original TPO, if the applicant objects to the decision made, or to conditions imposed, then an appeal to the Scottish Ministers can be made within 28 days of receipt of the decision.

If you wish to work on protected trees which are dead, dying or dangerous, then 5 days' notice should be given to Fife Council, unless the situation is an emergency. In such cases you do not have to apply formally to do tree works. However, it is always advisable to collect evidence in the form of photographs of the trees, tree surgeons report and/ or an independent witness statement for future reference because what constitutes a danger is a matter of opinion. Only the minimum amount of work necessary to remove a danger can be carried out e.g. a tree cannot be felled if it would have been sufficient to remove a branch. If the council found that work was incorrectly carried out, then you may be taken to court and fined.

Conservation Areas

What are Conservation Areas?

Designated under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, these recognise areas of special architectural or historic interest, the character of which it is desirable to preserve or enhance. The designation not only controls building development but also offers trees protection.

What are the limitations on carrying out tree works?

Anyone proposing to do work on trees in a Conservation Area, which are not already covered by a TPO, is required to give Fife Council six weeks' notice of their intention to carry out the works. Consent should be applied for using the tree works form through the [ePlanning Scotland website](#) where paper forms are also available. This applies to healthy trees, (i.e. those which are not dead dying or dangerous) which are greater than 7.5cm in diameter measured 1.5m above the ground. You must not carry out works within the 6 week period without permission – if you do you could be fined in the same way as when contravening the TPO legislation. Conditions may be applied to the consent to do tree works.

Planning Conditions

If your property was built in or after the mid-1970s the trees within your property may also be protected by planning conditions. These conditions may state that you will need local authority consent to undertake works or felling to trees within the development. If the relevant condition applies you will have to make a written request and apply to undertake the work.

This process will involve providing information on the trees to which works will apply and describing what works are desired and what conditions exist which affect these potential works. More information is provided on the [How to Apply for Works to a Protected Tree webpage](#).

To check if a tree is protected by a Planning condition, please see the [online planning system](#) or refer to Plannings Property History Service which can be found on their [guidance webpage](#).

Felling Licenses

A Felling Licence, available from the Forestry Commission, is required to fell trees unless any of the following criteria apply:

- A Licence is not needed to prune/lop/pollard a tree; if you have planning permission, if a tree is dangerous.
- You are felling less than 5 cubic metres of timber (about 2 mature trees) in any calendar quarter and are selling less than 2 cubic metres of this.
- The trees are within a garden, orchard, churchyard or public open space.
- The trees are less than a certain size (8cm in diameter at 1.3 metres about the ground).

Felling Licences are available from the Forestry Commission. (See [Useful Contacts section](#))

Wildlife and Countryside Action 1981 Nature Conservation (Scotland) Act 2004

Trees can provide an important habitat for many species and larger mature trees may support bat roosts and be used by nesting birds.

It is an offence under the Wildlife & Countryside Action 1981 and the Conservation (Natural Habitats & c.) Regulations, 1994 to deliberately disturb a bat roost, or nesting birds.

As bats are European Protected Species it is important that any tree work which may affect them or their roosts is adequately assessed by a recognised bat expert prior to works commencing. For further information contact Scottish Natural Heritage and Scottish Government (see [Useful Contacts section](#)).

Sites of Special Scientific Interest (SSSI)

Scottish Natural Heritage should be consulted regarding any work to trees within the area of SSSI. See Useful Contacts section for details.

Further Information

Further Reading

Arboricultural Practice Note 3 – Trees in Dispute

Written by Martin Dobson and Derek Patch

Published by AAIS (Arboricultural, Advisory and Information Service), Alice Holt Lodge, Wrecclesham, Farnham, Surrey, GU10 4LH

Permissions

Tree Work Consents

This is required where work to tree/s that are protected by a tree preservation order, planning condition or which are within a conservation area.

You can apply by submitting an application for tree works through the [ePlanning Scotland website](#). For more details on the submission requirements please see the relevant guidance on ePlanning Scotland and [Planning Protected Trees webpage](#).

If you require general advice from Planning regarding works to protected tree then please contact the service using the [Contact Us Form](#)

Useful Contacts

For information regarding trees on Fife Council owned land:

Contact: Fife Council
Grounds Maintenance Service
Environment and Building Services

Email: GM.Enquiries@fife.gov.uk

For tree enquiries on land owned by Woodland Trust:

Contact: Woodland Trust
South Inch Business Centre
Shore Road
Perth
PH2 8BW

Email: scotland@woodlandtrust.org.uk

Website: www.woodlandtrust.org.uk

Telephone: 01738635544

Greenbelt Group

Contact: Greenbelt Group
McCafferty House
99 Firhill Road
Glasgow
G20 7BE

Telephone: 08000281749 (Includes emergencies outside business hours)

Website: <https://www.greenbelt.co.uk/>

Emails: customercare@greenbelt.co.uk

Tree Preservation Order, Trees in Conservation Areas and Planning History Relating to Trees

Information on Tree Preservation Orders and Trees in Conservation Areas can be found on [Plannings Protected Trees webpage](#). You can find information on how to make an application for tree works, access the protected trees map and much more.

Planning can also be contacted using the Contact Us form at the bottom of their pages for general enquiries.

Trees on verges, footpaths and roads

Contact: Fife Council Transportation Services

Telephone: 03451 55 00 11

Email: Transportation.Services@fife.gov.uk

Is Felling Licences needed?

Contact: Forestry Commission
Central Scotland Conservancy
Bothwell House
Hamilton Business Park, Caird Park
Hamilton
ML3 0QA

Telephone: 0300 067 6006

Email: centralscotland.cons@forestry.gsi.gov.uk

Website: <https://forestryandland.gov.scot/>

Information about arboriculturists:

Contact: Arboriculture Association
Alice Holt Lodge
Wrecclesham
Farnham
Surrey
GU10 4LH

Email: admin@trees.org.uk
Website: <https://www.trees.org.uk>
Telephone: 01242522152

Licences for work near European Protected Species

Contact: NatureScot
Great Glen House
Leachkin Road
Inverness
IV3 8NW

Telephone: 01463 725 364
Email: licensing@nature.scot
Website: <https://www.nature.scot/>