

## **Trees & Tree Works- Frequently Asked Questions**

We receive many enquiries about trees and the frequently asked questions below will give you an idea of the most appropriate person to contact first in a range of circumstances. There are a number of legal issues that relate to the care and maintenance of trees. This may affect you if you are the owner of land that contains trees, or if you plan to do something that could affect trees on or near to your property. This section also provides a brief description of how legal duties and constraints can apply to trees and tree owners as well as to the council. The information is for guidance only and not a definitive guide to the law on trees.

### **Useful contacts:**

#### **Senior Tree Officer (Western area)**

Andrew Giles

[Andrew.giles@westberks.gov.uk](mailto:Andrew.giles@westberks.gov.uk)

01635 519349

#### **Tree Officer (Eastern area)**

Jon Thomas

[Jon.Thomas@westberks.gov.uk](mailto:Jon.Thomas@westberks.gov.uk)

01635 519611

#### **Customer Services**

[customerservices@westberks.gov.uk](mailto:customerservices@westberks.gov.uk)

01635 551111

### **There are trees on my land. What are my responsibilities?**

Landowners are responsible for all trees within the boundary of their property. They have a duty to maintain the trees in a safe condition. To discharge this duty an owner must ensure the trees are inspected regularly for any outward signs that they are unsafe. Regular, detailed inspections will minimise the likelihood of damage or injury occurring if the tree or parts of it were to fall.

If in doubt, consult a professional Arborist for advice on your trees. A list of suitably qualified contractors and consultants can be found by contacting the Arboricultural Association.

### **I want to cut down or prune a tree in my garden, do I need permission?**

You will need permission to fell or prune tree in your garden if:

- It is covered by a tree preservation order - you will require permission from West Berkshire council and this is an 8 week process.
- It is within a designated conservation area- you are required to notify West Berkshire council and this is a 6 week notification process.
- It is on a rented property - permission from the landlord is required and/or Owner.
- It is protected by a legal covenant - permission from the person(s) benefiting from the covenant.

- It is within a property, which is part of a relatively new development (up to five years), and may be covered by conditions on the original planning permission -contact the Tree Officer for more information.

A felling licence may be required from the Forestry Commission for some kinds of work, although private gardens are normally exempt. Contact the Forestry Commission for further guidance and advice or visit their website [www.forestry.gov.uk](http://www.forestry.gov.uk)

### **Who can I ask to do work to my trees?**

If the trees are protected by a tree preservation order or standing in a conservation area, you must first make an application to the council and the model form can be downloaded from the website.

Employing a tree surgeon is the responsibility of the applicant.

We cannot recommend a particular contractor but a list of approved and suitably qualified contractors is available from the Arboricultural Association.

Collect several competitive quotes / tenders and ask about qualifications, membership of trade associations (e.g. Arboricultural Association, International Society of Arboriculture) and references from previous jobs. Ask to see similar work they have done locally.

Good contractors should be asking you about tree preservation orders, conservation areas and other restrictions - and will usually make the necessary applications for you.

### **What is a Tree Preservation Order or TPO?**

This is an order made by the borough council to protect significant trees, which may be under threat. The order makes it an offence to cut down, top, lop, uproot, wilfully damage, or destroy a tree without the Council's permission. A TPO is different to the protection offered by a Conservation Area in that permission must be obtained to work on the tree rather than just giving the Council six weeks prior notice of the works. It is an eight week application process and the application form can be downloaded from the website.

### **What is a Conservation Area?**

A Conservation Area is an area of special architectural or historical interest.

Trees within a Conservation Area are protected by the similar rules as those covered by a Tree Preservation Order.

### **I live in a Conservation area. How does this affect my trees?**

The trees in your garden in a Conservation area may be protected if a tree has a stem diameter greater than 75mm (7.5cm) measured at 1.5metres from the ground. If it does, you are required to give the Council 6 weeks notice of any tree works that you are proposing. This enables the Council to assess the works that you are proposing and if necessary serve a Tree Preservation Order. It is an offence to cut down, prune, lop, top, uproot or wilfully damage or destroy a tree in a Conservation Area without a prior written notice from the Council.

### **What if I want to fell or prune a tree with a TPO on it?**

Apply in writing by downloading the application form from the website. The council must respond to your application within 8 weeks. If the council does not respond within this time, you may appeal but you are still NOT permitted to work on the tree. In responding to your application, the council will approve the work, recommend alternative work, or refuse permission for the work altogether. If you do not agree with the decision, there is a right of appeal.

### **Will the Council pay for my protected tree to be pruned?**

We will not pay for works to protected trees. All landowners are responsible for ensuring their trees are safe and any pruning work required will be at the landowner's expense.

### **There is a dangerous, fallen or overhanging tree, who should I contact?**

- If the tree is overhanging a surfaced road, road verge or pavement - Contact Streetcare
- Trees affecting footpaths and other un-surfaced rights of way - Contact Streetcare
- If the tree is within the boundaries of your property and presents a significant and immediate danger to people or property, it is permissible to remove the danger without permission from the Council. However, if the tree is covered by a tree preservation order or within the conservation area, you must notify the Council of the action you have taken and a Tree Officer will take steps to confirm that there was in fact a danger that needed immediate attention.
- If the tree is on private property - contact the owner or head of establishment.
- If the tree has fallen onto a building - evacuate the building and do not re-enter unless and until it is declared safe.

If it is your own property, you should contact your house insurer and/or your mortgage provider immediately for advice. They will normally deal with the immediate problems, any repairs and any legal claims arising from the incident.

If you are a tenant, notify your landlord immediately and seek advice from your occupiers' insurer.

- Problems with trees on public open spaces, such as parks - will normally be managed by local Town and Parish Councils or the Tree Officers. Signs in parks usually indicate who is responsible.
- Problems with trees on other public property such as schools - contact the head of the establishment in the first instance.

### **What trees are protected?**

Any tree, group of trees or woodland may be protected, subject to them meeting the adopted criteria of Tempo (Tree evaluation method for preservation orders). Use the online mapping system to check to see if your property is located in a conservation area or whether nearby trees are covered by a tree preservation order. Please take time to read the disclaimer, and if you are at all unsure then contact the tree officers via Streetcare.

### **How can I carry out work to a protected tree?**

Before performing any Arboricultural work to a protected tree, an application must be made to the council. A form and some guidance notes can be downloaded from this website.

### **How can I request a Tree Preservation Order?**

Government advice requires that Tree Preservation Orders are used with discretion, to ensure appropriate trees are protected, and West Berkshire Council can fully justify its reasons for serving an order. When considering a request, the Council is required to establish that:

- The trees are clearly visible from a public place, such as a highway, public footpath or bridleway
- The loss of the trees would have a significant impact on the local environment and its enjoyment by the public the trees are in reasonable health and condition.

In addition, the trees should also be under threat, for example from proposed development or a change in land ownership. For details on requesting a Tree Preservation Order please refer to the guidance to preserving trees and the TPO request form which can be downloaded from this website.

### **My neighbour is cutting down/pruning a tree in his garden, has he permission?**

He would need written permission if the tree was subject to a TPO or within a Conservation Area. If it does not come under any protection cover, then no permission is required, unless:

- The tree is on a joint boundary or the workmen require access to adjoining property to carry out the job, then the permission of the other party is required with respect to civil law.
- The tree is so large and mature that the work, particularly felling, poses potential dangers to property and land and therefore would require clearance and guidance under Health and Safety Regulations.

### **On a nearby building site, the builders are felling/pruning trees, is this permitted?**

The development should have planning permission and the issue of trees, their retention, felling, pruning, and replacement, are part of the deliberation process. Planning permission can override some legal protection of trees. To check whether the work is permitted contact the Tree Officer.

### **Can protected trees be felled to enable development to take place?**

If trees are not the subject of a Tree Preservation Order or are not within a Conservation Area, they may be removed without our permission.

**There is a tree in our street with a broken branch/trunk, branch obstructs path/drive, can you help?**

Report the problem via phone, e-mail, online or by visiting the Council to inform them of problems with trees in the pavement or in parks, playing fields or managed grass areas or contact Streetcare

**I am having problems with a tree in my neighbour's garden, overhanging branches/blocking light, what can I do?**

Common law allows you to remove any overhanging branches that overhang your property back to the actual boundary line, i.e. projected up into the airspace over the line. You should not alter the height of the tree or hedge though. You should notify your neighbour prior to carrying out such works and offer them the debris back as technically the wood removed is owned by the owner of the tree therefore it should be offered or returned to that owner. The rules on trees in Conservation areas or under tree preservation orders still apply.

**There is a council owned tree blocking out sunlight. Can it be pruned or removed?**

Unfortunately, residents have no legal right to light blocked by trees. The Council inspects its trees regularly to ensure that they are maintained safely. Tree works are not generally carried out to alleviate light restriction or overhang. Seasonal inconveniences like shade, leaf fall and sticky honeydew do not justify felling a tree. We must also consider the amenity value that would be lost and the expense of the works.

**I think the tree(s) in my garden/neighbour's garden, is causing subsidence/cracks to my house wall(s), what should I do?**

Just because a tree is nearby, it does not necessarily follow that it is the cause of damage to your property. There are many other reasons why property might be damaged. As a general rule, if it is your own property, you should contact your house insurer and/or your mortgage provider in the first instance - and as soon as you notice or suspect there is a structural problem affecting your property. The insurers will normally investigate the matter, its probable cause and will deal with any legal issues arising.

If you are a tenant, you should advise your landlord immediately if you notice or suspect there is a problem.

If you are not insured, it will be your responsibility to prove that your neighbour's tree(s) caused the problem, if you wish to recover the costs. At the very least, you will probably need a qualified structural surveyor, to establish the cause of the problem, and a solicitor, to deal with your claim.

**There is a tree outside my property that is tall and moving in the wind. Is it dangerous?**

Tall trees are not necessarily dangerous. Healthy trees produce enough wood to remain upright. The action of swaying, allows the tree to withstand normal weather conditions, and even strong winds. If the tree is on council land and you believe it to be dangerous please report it to us or the Streetcare team in Customer Services.

**There is a tree dropping fruit/seeds/leaves on my property. Can I have the tree pruned or removed?**

We do not remove or prune trees for this reason. These are seasonal problems that pruning will not solve. However, if the problem occurs on a public highway you can report the problem to our Streetcare team in Customer Services.

**My neighbour's trees are too tall, are there any height restrictions on trees?**

Unfortunately there is no common law right to light. If the trees do not overhang but block light or dominate your property there is very little that can be done. In such circumstances unless there is an evident fault or problem associated with the tree, you cannot force the owner to prune the trees.

We would recommend you speak to your neighbour and ask him/her to remedy the situation.

**Who is responsible for a tree growing on a boundary?**

A tree is generally yours if the trunk grows on the land you own. Trees growing exactly on a boundary are generally the joint property of the two owners. If in doubt it is important to find the position of boundaries from your property deed plans. Usually, a tree will belong to the owner of the land, on which the major part is growing.

**What do I do if I think someone is working on a tree without permission?**

If you think somebody is working on a tree unlawfully, for example without permission in the case of a tree covered by a Tree Preservation Order or a conservation area, or if you are concerned about the quality of work on a tree, please contact the Tree Officer for advice.