



## TREES AND LANDSCAPING

The Planning Inspectorate provides advice to Inspectors to assist them in carrying out their role consistently and effectively. The Inspectors' Handbook provides advice on procedural and policy matters drawing on relevant Court judgements and the practical experience of Inspectors. Although prepared for Inspectors, this Handbook chapter is publicly available.

The Planning Inspectorate continually updates the Handbook to reflect policy changes, Court decisions and practical experience. In the unlikely event that conflict arises between national policy and guidance, and a part of the Handbook, that particular part will not be given any weight.

The Planning Inspectorate is also working with Communities and Local Government on a new streamlined format for the Handbook to reflect the Killian Pretty recommendation that planning needs to be more user-friendly.

### Legislation

- Town and Country Planning Act 1990 Sections 197 - 214 ('the Act')
- The Town and Country Planning (Trees) Regulations 1999 (SI 1999 No 1892) ('the 1999 Regulations')

### Guidance

- PPG15 Planning and the Historic Environment, paragraphs 4.38 - 4.40 relating to trees in conservation areas
- Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirement (Paras. 2.58-2.76)
- Circular 11/95 The Use of Conditions in Planning Permissions

### Further Information

- BS 5837: 2005 Trees in Relation to Construction – Recommendations
- Arboriculture Research and Information Notes
- Arboricultural Practice Notes (These Notes cover a wide range of tree issues and are published by the Arboricultural Advisory and Information Service.) Index and Notes available from the Library.

- National Joint Utilities Group NJUG Publications Volume 4 - Guidelines for the planning, installation and maintenance of utility apparatus in proximity to trees
- National House Building Council NHBC - Chapter 4.2 Building near trees

### **Tree identification and other books**

- A Field Guide to the Trees of Britain and Northern Europe - Alan Mitchell
- Pocket Identification - Ian Richardson
- The Identification of Trees (Information sheets from the Tree Advice Trust available from the Library)
- The Law of Trees, Forests and Hedgerows - Charles Mynors

### **Websites**

- [www.treehelp.info](http://www.treehelp.info)

# Appeals Where Trees Are a Material Consideration

## **Contents**

### **Site Visits**

- 1-2 Species of Trees
- 3 Location and Spread of Trees
- 4 Girth or Trunk Diameter
- 5 Height of Trees
- 6 Age of Trees
- 7 Health of Trees
- 8 Amenity Value
- 9 Accuracy of Appeal Plans

### **Decision Making**

- 10 Issues
- 11-12 Weighing the Evidence
- 13-20 Effect on Trees During Construction
- 21 Long Term Effects
- 22-23 Effect of Trees on Nearby Development
- 24-25 Effect of Trees on Living Conditions
- 26 Character and Appearance of Surrounding Area
- 27-28 Arguments in Favour of Felling Trees
- 29 Granting Planning Permission
- 30 Conditions for full planning permission
- 31-32 Condition on outline planning permission

### **Tree Preservation Orders**

- 33-34 Full Planning Permission v TPOs

### **Trees in Conservation Areas**

- 35-39 Trees in Conservation Areas

## **SITE VISITS**

### **Species of Trees**

1. When reasons for refusal refer to the presence of trees on a site, or to the adverse effect that a proposed development will have on them, it is fair to assume that trees will be a material consideration in an appeal. At the site visit, the Inspector should be prepared to pay special attention to the trees, and their relationship with the proposed development. Boots, binoculars and a long tape measure may be needed.
2. If a tree survey has been submitted with the appeal, the Inspector should take it to the site visit. There can be disagreement between the parties about the accuracy of a survey. This can often arise from different numbering systems eg T1, T2, T3 or A, B, C. The accuracy of the survey should normally be checked on site, particularly in relation to any trees which are likely to be directly affected by the development. If there is no survey, it is often possible for the Inspector to get the parties to undertake one to the required level of detail or to do so themselves. Inspectors should try to identify the species of trees but should be circumspect in doing so. The Inspector should ask the parties to point out any particular tree(s) that has been referred to in the evidence. Wrongly identifying a tree, or being seen to do so, can undermine the Inspector's authority. It is not always necessary to identify the species of tree. Sometimes all that is needed is an accurate description, e.g. the tree to the front of the house, or the large conifer to the rear of the garage.

### **Location and Spread of Trees**

3. This can often be determined by pacing or, if distances are critical, by using a tape measure, but Inspectors should make sure that any measurements taken on site are agreed with the parties. The spread (or canopy) of a tree is seldom symmetrical so measurements should normally be taken from the trunk in 4 different directions (north, south, east and west) to obtain an accurate picture of the spread. Inspectors should take a careful note of the distance between the nearest part of the proposed development to the nearest part of the tree's canopy and to the trunk.

### **Girth or Trunk Diameter**

4. This is necessary for the interpretation of Table 2 in BS:5837. It is usually measured 1.5m above ground level and sometimes referred to as DBH (diameter at breast height) or stem diameter. To determine the trunk diameter a tape should be stretched around the trunk at 1.5 m to measure the girth (circumference). The

measurement should then be divided by pi (3.142). The resultant figure will be the diameter. Some arboriculturalists carry a tape that is calibrated to give the diameter from a girth measurement. The dimensions are normally expressed in millimetres.

### **Height of Trees**

5. At site visits, the Inspector should, where necessary, ask the parties to agree the height, or to confirm that the details of the tree survey (if submitted) are accurate. Alternatively, a tree's height can be assessed by comparing it with the height of nearby buildings. Where this is not possible, a rough measurement can be done by holding out vertically, at arm's length, a pen, a file, a clipboard, or even a thumb. The person measuring the height should position themselves so that, with one eye shut, the top of the tree appears to be at the top of the pen, and the bottom of the tree at the bottom of the pen. Then, with the pen at arm's length and keeping the base of the tree at the base of the pen, they should turn the pen 90 degrees so that it is parallel with the ground. They should then go to the place where the top of the pen appears to hit the ground, and pace the distance to the tree. The distance will be roughly the same as the height of the tree.

### **Age of Trees**

6. At Hearings, the Inspector can ask the parties whether they can agree the age of a tree. Otherwise, they should make an assessment, remembering that trees are often planted at the same time as nearby houses are built. Tree reference books often give the typical life expectancy of individual species. This information can help in the assessment of a tree's age.

### **Health of Trees**

7. Binoculars can often help the Inspectors determine the health of a tree. Features to look for include open cavities in the trunk or branches, dead wood (in the tree's crown or on the ground), fungus (especially at or near ground level) and loose or missing bark. When the tree is in leaf, it should also be checked for sparse or patchy foliage or bare branches. All of these features can indicate that a tree is under stress, or dying. Its life expectancy is likely to be curtailed. Its ability to tolerate the disturbance of a nearby development is likely to be reduced. Strong growth or vigorous re-growth following pruning, dense foliage and a well represented system of fine twigs would indicate normal vigour.

### **Amenity Value**

8. Amenity value will generally depend on the tree's form, size and height, its prominence from public vantage points and its setting. The amenity value of an individual tree can sometimes be less than its value as part of a group. Therefore, if there is a group of trees, the Inspector should look at each one individually, and then walk away and take a more distant view of the group from different angles. Various "point scoring" methods for assessing a tree's amenity value have been devised. These include the Amenity Valuation of Trees and Woodlands, known as the Helliwell system; and the Safe Useful Life Expectancy (SULE) method, based on the health of individual trees. However, as in other appeals, assessing amenity value is generally a matter for subjective judgement.

### **Accuracy of Appeal Plans**

9. Before leaving the site, the Inspector should do a final check. Are all the site's trees shown on the plans? Are there any hedges? Are there any trees on neighbouring land that overhang the appeal site's boundaries or are close enough to be affected by construction?

## **DECISION MAKING**

### **Issues**

10. As always, Inspectors should tailor the wording of their main issues to fit the circumstances of each appeal. However, the following is a selection of tree-related issues that can be used, or adapted:

When tree felling is part of the proposal:

*The effect of the loss of the [ ] tree(s) on the character and appearance of the surrounding area.*

When tree felling is not part of the proposal:

*the effect of the proposed [ ] on the health and life expectancy of the site's trees; or*

*the effect of the proposed [ ] on the character and appearance of the site and its surrounding area, with particular reference to trees.*

### **Weighing the Evidence**

11. As in all appeals, decision-making is a matter of judgement for the Inspector. Not all trees are worth keeping but, on the other hand, not all developments justify the sacrifice of a tree.
12. Using the information collected at the site visit, it should be possible for the Inspector to assess the effect of a proposed

development on the site's trees and, conversely, the effect of the site's trees on a proposed development.

### **The effect on trees during the construction of a proposed development**

13. BS5837:2005 makes reference to the need for a tree constraints plan (TCP), which is a design tool which should show the below and above ground constraints posed by the trees, and the benefits of an arboriculture implications assessment.
14. During construction works the roots of the tree can be particularly vulnerable. The lateral extent of a tree's roots can vary widely and be irregular. However, as a rule of thumb, the roots of most trees spread to the outer limit of the tree's crown, or slightly beyond. For tall columnar trees (such as Lombardy poplars), it is reasonable to assume that the roots spread out from the tree for a distance equivalent to about half the height of the tree. Almost all of the roots will be spread out laterally, like a shallow underground plate, within the first 600mm of soil under the tree. The majority of roots are typically less than 0.5mm in diameter. They are fine strands, vulnerable to damage by cutting (eg when digging foundations, or stripping topsoil), compaction (eg by storing heavy materials or equipment or soil on the ground above) or by poison (eg by diesel).
15. If foundations and other trenches have to be dug under a tree's canopy, roots are likely to be severed. Where trees are near to a proposed building, developers might volunteer to use "pile and raft" foundations. Piles are inserted through the root plate at regular intervals, and the raft (or slab) sits on the piles. Fewer roots will be severed, but other roots may be damaged by the weight of the pile driving machinery. The fact that a developer is proposing to use the "pile and raft" method may suggest that the building will, in the long-term, be too close to the tree.
16. The construction of driveways and hardstandings can also damage roots. The foundations for a driveway typically go down 300mm, ie half the depth of the 600mm root plate. There is a "no dig" method of driveway construction (described in Arboricultural Practice Note 12 of the Arboricultural Advisory and Information Service). Geo-grid membranes are spread beneath the tree to support the weight of a permeable hard surface. The success of this method depends upon the amount of root area that would be covered, and the health and vigour of the tree.
17. Table 2 in BS 5837:2005 sets out the formula for calculating the necessary root protection area (RPA) around trees during development. If fencing cannot be erected in accordance with the guidance, because the building works would need to come too close, then it is likely the tree would suffer long term harm. Inspectors should therefore normally allow a reasonable margin for error. The good intentions of a developer cannot protect a tree from

an errant digger driver. The distances given in the table are intended to provide a guide for the protection of trees during building works. They are not, as frequently suggested, a guide to the minimum distances within which building may safely take place near to trees.

18. A fully-mature tree may die if it loses 10% of its roots. However, a young healthy vigorous tree might be able to sustain the loss of about 30% of its roots without showing any ill effects.
19. Above the ground, trunks and branches are also vulnerable to damage, mainly as a result of collision from mechanical equipment, or the erection of scaffolding. This is particularly the case if a site is cramped, and there is little room for manoeuvre.
20. In the light of the above information it should be possible for the Inspector to determine whether or not the construction works could be carried out without undue harm to the tree.

### **The long-term effect on trees, once a development has been built**

21. Even if a tree survives the construction phase, the proximity of the development could, over time, stunt the tree's growth by depriving it of light or water. The tree could then die back, or develop an unbalanced shape. Alternatively it could overshadow an adjoining building or garden area or cause damage to the property through root growth or movement of the crown in high winds. Even if the tree is protected (eg by a TPO, or by its presence in a conservation area) its proximity to the development may nevertheless make it difficult for the Council to resist subsequent applications to fell or prune the tree on safety grounds.

### **The long-term effect that any retained tree might have on a nearby development**

22. Trees that are not fully mature at the time of the development, will continue to grow. Tree roots will continue to spread outwards. Development that was not previously affected by the trees might then become vulnerable to damage. Trees that overhang or are adjacent to a development can cause dampness, their leaves can block gutters and their roots can interfere with foundations and underground services. Such potential problems may indicate that planning permission should be withheld if tree growth is likely to cause such unsatisfactory relationships.
23. If the site's sub-soil is a shrinkable clay, the take-up of moisture by trees during periods of drought can cause subsidence and damage to foundations. If the tree has to be felled at a later date, the ground may subsequently swell or heave, as moisture returns to the sub-strata, causing damage to foundations once again. Accordingly, conditions may be necessary to require foundations to take account of tree growth or loss. This is acceptable in order to

achieve a defined planning objective, even though building regulations may (or may not) provide parallel control.

### **The long-term effect that any retained tree might have on nearby living conditions**

24. Trees can cause emotions to run high. A large tree can be frightening, particularly when it sways. Trees can produce poisonous fruit and berries. Birds roosting in the trees can be noisy and messy. Trees can make gardens damp and dark, and prevent garden plants from growing. Debris, such as leaves, needles, cones, pollen and honeydew, falls from trees throughout the year. This can be perceived as a nuisance. Trees can make living conditions inside a dwelling dark and claustrophobic. Occupants may also find it difficult, or even impossible, to insure their premises if they are too close to large mature trees.
25. Any of these problems will, in all probability, result in subsequent pressure from the owners/occupants of the building to fell the offending tree(s). Inspectors may withhold permission for development if they consider it probable that such problems would arise in future.

### **The effect on the character and appearance of the surrounding area, if trees have to be felled to make way for a development**

26. Inspectors should have regard to the fact that what they see at the site visit represents only a snapshot in time. Most trees will continue to grow. Consideration should therefore be given to what they may look like in decades to come. The visual impact of losing a tree has to be weighed against the visual benefits of any new trees planted as part of a landscaping scheme. Landscaping schemes for residential developments seldom include trees that will grow to any great stature. Furthermore, it can be 10-15 years before a new tree makes any kind of a visual impact.

### **Frequent arguments in favour of felling trees**

27. Consideration of all the matters referred to above should help Inspectors in weighing the balance of the evidence. As always, appellants will put forward many arguments in support of their proposal. The following are some of the most common:
  - a. *"The tree is past its best. It would be better to fell it now, and replace it with one or more new ones,"*

Trees do not live forever, but the premature felling of a mature tree is hard to justify. New replacement trees are typically planted at about 2-3m high, and take about 10-15 years to make a visual impact. Larger replacement trees, several metres high, can make an instant impact, but they are expensive to plant and require time-

consuming aftercare. There would also need to be ample manoeuvring space within the site for the necessary lifting equipment. Consideration will also need to be given as to whether there is sufficient space within the proposed development for suitable replacement trees to grow to full maturity. Replacing a mature oak with an ornamental cherry is unlikely to make the same contribution to the character of the area.

- b. *"In due course, the tree will have to be felled anyway, because it is dangerous. Bits are falling off it."*

It is natural for dead wood to fall from trees. Regular cleaning out of the tree's crown by a tree surgeon can prevent the unexpected fall of dead wood.

- c. *"There are lots of other trees in this area; one less won't make any difference"*

This is an argument that can be repeated too often.

- d. *"This is a forest tree. It is not suitable for a domestic garden. It should be felled, to make way for the proposed extension, and be replaced by something more appropriate"*

Which came first; the tree, or the house and its occupants? Prospective house purchasers may be unaware of a tree when deciding to buy a house, failing to appreciate the implications of living next to a large tree, until it is too late. This does not necessarily mean that it is acceptable to remove the tree.

- e. *"The tree could be pruned to keep it away from the proposed development"*

Pruning can make matters worse. New growth will be rapid, and the tree will need regular pruning year after year, and be weak at the point where new growth joins old branches. Unless skilfully done, pruning can result in an unbalanced canopy which, in turn, can destabilise a tree.

28. When writing decisions, there is less chance of error if trees are referred to by their common name rather than their botanical name. If there is any doubt about the common name, Inspectors should normally refer to the tree in some other way (eg the tree in the south west corner of the site).

### **Granting planning permissions**

29. Section 197 of the Act imposes a duty upon decision makers to ensure whenever appropriate that, in granting planning permission, provision is made, by the imposition of conditions, for the preservation or planting of trees.

## Conditions for full planning permissions

30. As always, Inspectors should tailor conditions to fit the site and the proposal. The model conditions in Circular 11/95 may not always be appropriate. The following conditions are offered as alternatives and additions. They have a relatively simple wording that can be used, or adapted, for most situations:

- a. For small developments where only a few landscaping details are required:

*No development shall take place until details of a landscaping scheme showing new trees and shrubs to be planted, a programme for their planting, and existing trees/hedges to be retained, have been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be carried out as approved. If, within a period of 5 years from the date of planting, any tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.*

- b. For large developments where many landscaping details are required:

*No development shall take place until full details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority, and these works shall be carried out as approved. Details of hard landscape works shall include finished ground and floor levels, means of enclosure, vehicle and pedestrian circulation areas, hard surfacing materials, outdoor furniture, play equipment, refuse or other storage units, signs and lighting, and the routes of proposed and existing functional services above and below ground. Details of soft landscape works shall include species of trees and shrubs, their sizes and positions, and the timetable for their planting. If, within a period of 5 years from the date of planting, any tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.*

- c. For large developments where landscape management is required:

*A landscape management plan, including management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any of the dwellings on the site. The landscape management plan shall be carried out as approved.*

- d. For developments where an acceptable landscaping scheme has already been submitted:

*The landscaping proposals (shown on Drwg No....) shall be completed [in the first planting season][within 1 year of the [completion of][the occupation of] the development, or such longer period as may be agreed in writing with the local planning authority. If, within a period of 5 years, from the date of planting, any tree or shrub is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.*

- e. For developments where existing trees or hedges are to be retained and protected:

*All the trees [or hedges] shown on the landscaping plan (Drwg No....) as "to be retained" [and/or any trees whose canopies overhang the site] shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.*

- f. For development where some trees are to be retained and others removed (if not included in another condition)

*No development shall take place until a plan showing those trees to be retained and those to be removed has been submitted to and approved in writing by the local planning authority. Development shall thereafter take place in accord with the approved plan.*

- g. For development likely to be harmed as a result of tree growth or tree loss as a result of soil movement (usually on shrinkable clay soils):

*Details of foundation design to take account of [existing trees][future tree planting][tree removal] shall be submitted to and approved in writing by the local planning authority before the commencement of the development. Development shall thereafter take place in accord with the approved details.*

### **Conditions on outline planning permissions**

31. Even when landscaping is a reserved matter, it can be appropriate to have a condition requiring the retention of important landscape features such as trees or hedges. Paragraph 45 of Circular 11/95 refers. It is imperative however that the retention of trees or hedges should not render the planning permission incapable of

implementation, as this would indicate that planning permission should not be granted. It should also be remembered that any condition which requires trees to be retained can only be of limited duration (i.e. during the course of the development) as there are other legislative powers to protect trees in the longer term.

32. This does not apply to hedges which can therefore be permanently retained by condition, if this is considered essential. However, if the retention of a hedge is considered necessary because of its screening value, Inspectors should remember to include a limitation on the height to which the hedge can be reduced to, in any condition requiring its retention, otherwise the appellant or a subsequent owner could cut the hedge back virtually to ground level and still not be in breach of a condition requiring its retention.

### **FULL PLANNING PERMISSION V TREE PRESERVATION ORDERS**

33. Where appeals involve a tree preservation order (TPO), an INT 31 should be on the appeal file. The INT31 draws the Inspector's attention to the TPO, and reminds them that if full planning permission is granted, or reserved matters approved, the provisions of the TPO will be overridden. Thus, separate consent would not be required for the cutting down, topping, lopping or uprooting of a tree protected by a TPO where the tree work is required to enable a person to implement a planning permission (other than an outline planning permission). However, such things as felling a protected tree to form an open garden area, or removing trees along the path of underground services cannot reasonably be construed as part of the works covered by the planning permission, unless explicitly stated in the decision. A condition requiring trees that are to be removed to be identified and approved by the local planning authority is often necessary.
34. Chapter CT14 contains further advice on TPOs and also provides guidance on handling appeals against refusal of consent to fell/prune and tree replacement notices.

### **TREES IN CONSERVATION AREAS**

35. Sections 211-214 of the Act, and paragraphs 4.38-4.40 of PPG15, relate to trees in conservation areas. Under the provision of Section 211, any person wishing to fell, prune, lop or top a tree not protected by a TPO, but within a conservation area, is required to give notice of their intention (ie not make an application) to the LPA. The authority has 6 weeks to either confirm that it has no objection to the proposed works, or to make a TPO in respect of the tree(s) concerned. If the Council fails to reply to the notice of intent before the time limit expires, the work may be carried out. However, the LPA can still make a TPO after that time.
36. Paragraph 10 of the 1999 Regulations sets out the circumstances where there is no requirement to notify the LPA. These include the

felling or pruning of fruit trees (under the same circumstances as those set out in paragraph 5 of the model TPO form in the 1999 Regulations), the felling of trees whose trunk is less than 75mm (or 100mm where the felling is for the sole purpose of improving the growth of other trees), and the felling of trees that are dead, dying or have become dangerous.

37. If the approved works are not carried out within 2 years, a further notice is required.
38. A Council cannot simply refuse consent. If it opposes the proposal, it must make a TPO which (notwithstanding the fact that the person proposing to carry out the works is likely to object) it can confirm itself. It then remains for the person to apply for consent to fell (or prune etc) the relevant tree(s) under the terms of the TPO, and to appeal to the Secretary of State in the likely event of the Council refusing consent.
39. However, if a Council refuses planning permission for a development in a conservation area, simply because it would result in the loss of a tree which the Council considers to be important, the Council is under no obligation to place a TPO on that tree.