Enforcement of Tree Protection Policy
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1.0 Introduction

1.1 The purpose of this document is to set the framework for dealing with tree enforcement issues in a clear, consistent and fair manner and to ensure that activities in this regard are in accordance with current legislation and guidance and wider Council policies.

1.2 The Council has undertaken to adhere to the principles of good enforcement set out in the Enforcement Concordat. The principles embodied within the concordat comprise standards, openness, helpfulness, proportionality and consistency. This policy, along with other specific enforcement policies adopted by other Council Departments/Divisions, seeks to accord with the spirit of the Concordat.

2.0 The Legislation Regarding Tree Protection

2.1 Trees can be protected under the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999. Trees are protected when they are the subject of Tree Preservation Orders or within Conservation Areas (subject to certain exemptions). In general, it is an offence to cut down, uproot, lop, top, wilfully damage or wilfully destroy a protected tree without authorisation.

2.2 In the case of a tree protected by a Tree Preservation Order, consent is required for any works on the tree following the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the imposition of any condition.

2.3 In the case of a tree in a Conservation Area, six weeks’ notice must be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six week period, the Authority may raise no objection to the works or make a Tree Preservation Order to prevent them being carried out. If the Authority takes no action within six weeks, the works may go ahead as notified.

2.4 There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas. Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

2.5 Secondly, anyone who carries out works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

2.6 In order to bring a successful prosecution, the Authority must be able to prove that:
(1) The defendant has carried out, or caused, or permitted works on the tree
(2) The tree was protected
(3) The works were carried out without the Authority’s consent
(4) The works were not exempt works

2.7 If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

2.8 Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Local Planning Authority). The replacement tree is then subject to the same protection as the tree that was lost. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance. There are rights of appeal against Tree Replacement Notices.

2.9 Trees may also be protected on a short term basis by conditions on planning consents. Such conditions typically require that trees indicated on the approved plans as being retained be retained for a period of five years. If these conditions are not complied with, no offence is committed, but the Local Planning Authority is empowered to serve an enforcement notice or a breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.

3.0 Procedures for Investigating Complaints

3.1 Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites.

3.2 When alleged cases of unauthorised works on a tree come to the attention of the Council, an initial investigation will be carried out as soon as possible (normally within 24 Hours). The initial investigation will consist of a check to establish whether the tree is protected, whether any consent has been granted, and, in most cases, a site visit. In cases where it appears that protected trees are being removed and in other instances where there may be a significant impact on public amenity, a site visit will be undertaken as a matter of urgency. The legislation confers a right to enter land to carry out such investigations.

3.3 Where it appears that unauthorised tree works have been undertaken, notes (and photographs if appropriate) will be taken during the site visit which may be used as evidence later.

3.4 The suspect will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). He or she will be asked to give his or her observations on the incident and any relevant background information. If it appears that the person in question has committed an offence and that answers to questions may be required as evidence,
he or she will be cautioned. The caution will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

3.5. Where appropriate, the suspect will be invited to the Council offices to undertake a tape-recorded interview under caution and under the provisions of the Police and Criminal Evidence Act 1984 (see Appendix 1 for pro-forma letter inviting suspect to interview).

3.6 The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable. However, it will be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

3.7 Complainants and any other witnesses will be contacted as appropriate and requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary.

3.8 Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

4.0 Options for Action

4.1 The Council has a range of possible courses of action available to deal with cases of unauthorised works on protected trees. These include the following:

- Institute a prosecution (which may be for destroying the tree or for lesser works on it).
- Administer a formal caution. This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution (see Appendices 2, 3 & 4 for pro-forma letter and cautions). It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence.
- Under section 206 of the Town and Country Planning Act 1990, require the planting of a replacement tree for each tree destroyed.
- Under section 207 of the same Act, serve a replanting direction. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting.
- Take no formal action. This may be accompanied by informal action, such as advising the alleged perpetrator to ensure that the incident is not repeated.
5.0 Selection of Appropriate Action

5.1 Decisions as to what action to take in cases of unauthorised works on trees will be taken in the public interest, with each case being dealt with on its own merits.

5.2 A prosecution will not normally be brought unless the unauthorised works have resulted in a loss of public amenity.

5.3 In most cases, a prosecution will not be brought if consent would have been granted (or no objection raised) for the works undertaken had they been applied for.

5.4 In considering whether to bring a prosecution, regard will be had to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised works and whether the perpetrator has been prosecuted, cautioned or warned for similar offences in the past.

5.5 Whilst ignorance of the law is not an excuse, the attitude and circumstances of the perpetrator will be taken into account, including any expression of regret, helpfulness and co-operation with the investigation and any indication that the perpetrator was acting in good faith. Individual personal circumstances and any other mitigating factors will be taken into consideration where appropriate.

5.6 Two tests will be applied in cases where a prosecution appears likely, consideration of which will be undertaken in consultation with the Council’s Legal Section:
  • The Evidential Test: A prosecution will not be commenced unless there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction.
  • The Public Interest Test: A prosecution will only be brought where this is in the public interest.

5.7 Cautioning may be applied in cases where a prosecution can properly be brought but where such action is not considered appropriate in the circumstances of the case. Cautions will be used in accordance with Home Office Guidance. Persons who have previously received a formal caution will normally be dealt with by prosecution.

5.8 The planting of replacement trees will normally be required irrespective of whether the perpetrator has been prosecuted or cautioned.

6.0 Procedures for Taking Action

6.1 Tree enforcement issues will be dealt with by the Tree Officer, in consultation with other officers within the Planning Department and with the Council’s Legal Department.

6.2 In cases where it appears that unauthorised works have been carried out on a protected tree, a report will be produced in which a recommendation will be made regarding the action to be taken. A judgement will be made by officers of the Council on whether the final decision should be taken by the Head of Planning under
delegated powers (which are provided for), or whether it would be appropriate for the matter to be considered by the Council’s Development Control & Licensing Committee. In the latter instance, a report will be prepared for the Committee in the usual manner.

6.3 Formal cautions will normally be issued at the Council offices. The perpetrator will be contacted in writing and requested to submit to the caution. Details of the offence will be provided in the letter, along with an explanation of the significance of the caution. Records will be kept of formal cautions issued and will be referred to in court if the offender commits a further offence.

6.4 When a decision has been made to issue a formal caution, but the offender refuses to submit to the caution, the case will be reconsidered, including a consideration of whether to bring a prosecution.

6.5 Where suspects are invited to the Council Offices for a tape recorded interview under caution, the Code of Practice under the Police and Criminal Evidence Act 1984 will be adhered to.

6.6 When replacement planting is required, monitoring will be carried out to ensure compliance.