



BOROUGH OF POOLE - LEISURE SERVICES

TREE MANAGEMENT POLICY

This Tree Management Policy was adopted by the Council on 13th April 2010 following adoption by the Cabinet.

1.0 SCOPE

1.1 The policy covers all Council managed trees growing within the area of the Borough of Poole. It does not cover shrubs, hedges, including 'High Hedges' or *Rhododendron ponticum*.

1.2 This policy contributes towards the Council's Vision: 'Poole is a vibrant town, with strong communities, where people enjoy healthy lifestyles, care about their environment and support each other.'

1.3 The policy is intended to act as a point of reference for the public, Councillors, Officers and professionally interested people, to enable informed discussion and to establish a clearer, consistent and more structured approach to the issues affecting trees in the area.

1.4 Planning matters in relation to trees, tree preservation orders and conservation areas are outside the scope of this policy. Information on these topics may be found at <http://www.boroughofpoole.com/az/page:T> under Tree Preservation and Conservation Areas.

2.0 INTRODUCTION

2.1 On behalf of the Council, Leisure Services is responsible for the management of a large number of amenity trees in public open space, parks and on the highway.

2.2 The Borough of Poole includes a variety of landscapes and trees are one of the most important natural elements within the landscape. Trees, whether appearing as individuals, groups or as woodlands, have a very significant beneficial effect on our quality of life.

2.3 Some environmental benefits of trees include: the production of oxygen, influence on rainfall, essential wildlife habitat, creation of shade and shelter and reduction of soil erosion. Trees recycle organic matter, process atmospheric pollution and improve the landscape by giving height, scale and depth. They screen unsightly views, improve aesthetics by softening buildings and have an important cooling effect in the urban environment.

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2.4 Some landscapes however, are important for other reasons: heathland areas sustain a variety of flora and fauna in a protected landscape where trees are not needed. For this reason, from time to time, small trees may be removed to support such an environment.

2.5 Trees contribute to the green infrastructure of Poole. Parks and open spaces with trees, connected by green routes comprising highway trees, trees growing on footpaths and cycle routes and trees growing in gardens adjoining highways and footpaths contribute to this green infrastructure, to the benefit of residents and visitors. Greening the connections as well as the spaces is to be encouraged. (See South East Dorset Green Infrastructure Framework Document adopted by BoP December 2009)

2.6 The policy contains a number of aspirations which will be reviewed periodically for relevance, affordability and prioritising in accordance with the Council's policy framework.

3.0 CONCERNS ASSOCIATED WITH TREES IN POOLE

3.1 Residents of Poole are fortunate to live in close proximity to trees. However trees can cause inconvenience to residents when they grow near dwellings. A dilemma often occurs for the Council when the tree makes an important contribution to the local environment but also causes inconvenience to those living nearby.

3.2 With any population of trees, there are a number of common sources of complaint, including overhanging branches, shade, leaf/fruit fall, sticky deposits, obstruction and physical damage etc. Many of these problems can be dealt with by careful pruning once the tree is established. However, sometimes the problem is a result of inappropriate species selection in the past and may be difficult or impossible to resolve to a positive outcome for all parties.

3.3 An increasing concern for homeowners is the potential for structural damage caused through soil moisture extraction by tree roots. This type of damage only occurs in areas where the soil type is heavy, shrinkable clay, which is prone to fluctuations in volume caused by changing soil moisture levels. There has been a lot of concern about tree roots and foundations in recent years. Much of this is unsubstantiated and the incidence of proven tree root related claims against the Council remains low despite the level of tree cover and a proportion of the Borough having soils with partial clay content. There are however, occasions when heavy pruning or removal/replacement of a tree or group of trees is required to halt a serious or a worsening case of subsidence damage.

3.4 Although trees are naturally able to withstand stormy weather conditions, a small proportion can suffer failure, either through the loss of branches or complete uprooting of the tree. Unusual events such as the 1987 and 1990 storms caused extensive damage to trees in the South East.

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Fortunately, these events are comparatively rare and should not lead tree owners (including the Council) to take unnecessary pre-emptive action.

3.5 Sometimes, where trees have been inspected and the investigation found to be a potentially high risk to members of the public or property, a decision will be made to fell the tree as a matter of urgency. These decisions are based on the arboriculturist's specialist knowledge and in such instances where safety is paramount, no consultation is appropriate.

3.5 Where feasible, Members and residents groups (where known) will be informed of any significant tree work likely to affect the amenity of their area.

3.6 Access to the arboricultural work programme is via the internet using the following link:

http://www.continental-landscapes.co.uk/poole/arboriculture_programme.php

4.0 AIMS

The Tree Management Policy has been designed for the following purposes:

- To provide a policy framework for decisions made by the Council that affect trees.
- To provide Leisure Services Arboricultural Level of Service Statement that will support the policy.
- To support the core values of the Council.
- To be subject to a review process to enable performance monitoring and be flexible to change.
- To act as a source of information about issues affecting trees within the Borough.

4.1 The policy will ensure that the trees and woodlands within the Borough are adequately protected, cared for and supported by new planting and good urban forestry practice so that their extent, quality, biological diversity and contribution to the character and appearance of the Borough can be sustained and enriched for the benefit and enjoyment of residents and visitors to Poole, both now and in the future.

5.0 RESOURCING LEVELS AND SERVICE STATEMENTS

5.1 The current Level of Service Statement outlines 8 service areas. The first four are either statutory functions or duty of care functions which must be undertaken by the Borough. Currently, staff resources are disproportionately weighted to service area 7 (advice to the public) through the tree-work application system. This is non-statutory, reactive work and results in a *lower emphasis on* proactive and scheduled work. In order to rebalance the workload, Leisure Services proposes to move away from a system of tree-work application requests to a planned programme of managing trees on private boundaries. This is likely to take several years of transition without

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additional resource. In the short term, this will result in residents being informed of their common law rights concerning overhanging branches but unless the tree is dangerous or they (or their agents) require access to Council owned land, they will not receive a visit from a Leisure Services Arboricultural Officer. Instead, residents will be able to access a program of works via the website. Over time, through analysis of the highest numbers of enquiries and their source, it will be possible to prepare programs for removal of smaller trees at the margins of woodland and plantations according to good arboricultural or silvicultural practice. This will have the effect of gradually reducing the number of enquiries concerning trees affecting property and allow residents to maintain their boundaries. In turn, the balancing effect will be more officer time to deal with statutory responsibilities.

5.2 There is a general presumption in favour of retaining trees where they make a contribution to the amenity of the locality and its enjoyment by the public, and where there are no overriding arboricultural concerns or where the reasonable enjoyment of property by adjoining landowners is not compromised sufficiently to justify the felling of a tree.

5.3 A long-term aim is to achieve an appropriate type of tree for its particular location. However where this is not possible and the tree is too valuable in the landscape to fell and replace on grounds of appropriateness, the tree(s) will be retained and managed in the short/medium term while replacement options are considered and trees established.

6.0 HIGHWAY TREES: Service Area 1

6.1 Trees situated within the boundaries of the public highway are generally the responsibility of the highway authority. While trees on private roads or in adjacent boundary hedges and gardens are usually the responsibility of the land owner/occupier, all trees within falling distance of a highway are defined as Highway Trees for the purposes of the Code of Practice (Well-Maintained Highways: Roads Liaison Group).

6.2 It is neither reasonable nor desirable to remove all healthy trees just because of their proximity to high 'target areas' such as heavily used roads in case a tree might fail. Rather, such 'target areas' should be systematically identified and available resources used to survey trees that have the potential to affect such areas.

6.3 Leisure Services will:

- Seek to ensure the safety of highway users;
- Endeavour to pursue measures to minimise damage to the health and condition of street trees, including threats from highway refurbishment, statutory undertakers and road salt applications, through close liaison with Transportation Services and the various statutory undertakers;
- Preserve a healthy tree stock;
- Allow the trees to develop their natural form and size, monitoring their condition and taking action to remove hazards where necessary;
- Retain trees as long as their condition allows;

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- Fell only as a last resort where the health, structure or condition of the tree presents a unsustainable risk to the public or property;
- Place a priority on the replacement of ageing highway trees, particularly those on major routes, where services allow;
- Maintain an historical treed environment e.g. Branksome Park.

6.4 After storms and gales (more than gale force 8 on the Beaufort Scale) or extreme weather events, a 'drive-by' inspection for roadside trees on all major or high-risk roads will be checked to highlight obvious defects, in order that remedial safety work may be implemented as soon as possible after the event.

6.5 Leisure Services will give advanced notice, by email and through the web, to Ward Councillors and local residents groups of proposed tree work programmes, tree planting and where appropriate, attend area committees to provide an overview of the management of highway trees.

7.0 TREES ON COUNCIL OWNED OR MANAGED LAND: Service Area 2

7.1 The existing tree population is a valuable resource that requires more than just maintenance if it is to continue to provide the range of benefits that we expect. Management must include a long-term view of the tree resource, providing for the future as well as for today.

7.2 All work will be carried out to current safety and technical standards, and to standards set within BS 3998 1989 'Recommendations for Tree Work' and subsequent revisions. Precautions will be taken to avoid disturbance of nesting birds (between March to September), and bat roosts. Advice will be sought if bat roosts are believed to be present.

7.3 Trees are only removed as a last resort, but it is sometimes necessary to remove trees for the following reasons:

- When they are dead, dying or dangerous.
- To allow space for the development of nearby trees that may be more desirable for retention.
- To allow light and room for new planting.
- To make way for any approved engineering or building works.
- To abate actionable nuisance.

7.3 Leisure Services will seek to manage all trees to limit damage as far as is reasonably practicable in accordance with the Health and Safety Executive Sector Information Minute (appendix 2) and additionally based on a structured assessment of risks, accounting for:

- The likelihood of failure
- Occupancy of target
- Likely severity of the damage

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7.4 Claims made against the Council for alleged cases of actionable nuisance, subsidence damage, other forms of loss or damage etc., caused by trees for which the Borough of Poole is responsible, will be forwarded to the Borough's insurance section for their attention. In certain circumstances, loss adjusters will be appointed (**Service Area 4**).

7.5 Where there are properties adjoining Council owned woodland, Leisure Services will seek to manage the boundaries of the woodland by removing trees within a 1.5m - 2m edge strip to avoid nuisance to those residents. The selection of trees will be based on arboricultural and silvicultural merit and those which warrant retention in their own right and where the benefits they provide outweigh the perceived disadvantages, will be retained.

7.6 In common law, the Borough of Poole has the same responsibilities as any other land owner: while there is no obligation on the Council to cut back branches where they overhang a neighbouring property there may be a liability on the Council where loss or damage arises as a result of the trespass of branches causing legal nuisance; one of the reasons the Leisure Services Arboriculturist usually makes an assessment.

7.7 Standing deadwood is a rare and valuable asset in urban woodland and the creation and retention of standing deadwood will be encouraged where it is considered silviculturally acceptable. Where standing deadwood is left within clear view of neighbouring property, ivy or other appropriate climbing plant may be used to cover the remainder of the stem.

7.8 Ivy provides valuable habitat and feeding resource and should not be removed during the bird nesting season or where there may be roosting bats. Where trees are colonised by ivy, it can be left undisturbed unless:

- The tree is becoming visibly suppressed
- The ivy interferes with highway visibility splays
- It makes the tree likely to be vulnerable to wind damage
- It needs to be removed where restricting inspection of overall tree health.

7.9 Bats are a protected species and a risk assessment is made to assess the likelihood of their presence. If found roosting in a tree scheduled for removal, all work must stop. The Council is legally obliged to obtain advice from qualified/licensed persons before restarting work.

8.0 TREE PLANTING: Service Area 5

8.1 Highways

8.1.1 In wide verges or other suitable areas the Borough will endeavour to replace any removed tree with a tree of appropriate species provided that the site:

- Does not interfere with visibility sight lines or is detrimental to road safety considerations.

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- Allows room for the proposed species to grow to their full height and spread without encroaching over buildings, carriageways or footways etc.
- Will not interfere with overhead or underground services or pipes.
- Does not interfere with street furniture e.g. signs, lighting etc.

8.1.2 In standard verges or tar macadam footways, due to the high risk of failure, removed trees may not be replaced. Where this happens, planting sites will be reinstated.

8.1.3 Often, planting and replanting in the highway is precluded by site conditions. In these situations, where resources allow and at the discretion of the Council, street trees may be replaced by offering a young tree to the resident where a suitable space in a front garden may be utilised. In this way trees can be planted in those areas of the Borough where trees are needed to create shade, green connections or to generally enhance the area for the continued benefit to the community.

8.1.4 Solar access (allowing sunlight for the purposes of solar collectors) may become increasingly important in the future and will be considered by Leisure Services in devising planting schemes that are intended to have a long future.

8.2 Council owned or managed land

8.2.1 The Council will ensure that the tree population continues to be developed and expanded with new planting of suitable species where appropriate. Any trees removed will be considered for replacement with appropriate species unless there are special circumstances preventing this. The Council aims to provide a sustainable, high quality tree population. Where appropriate, native species will be planted to maximise habitats for wildlife but in some important wildlife areas like heath land, no tree planting will be carried out.

8.2.2 On occasion, trees (particularly conifers) may have been planted on Council owned land without consent. There a number of examples of this, probably deriving from development in the 1970's & 80's. These conifers often outgrow the location or have a potential to damage property. The Council also receive requests to prune or to maintain them as a hedge which is a drain on resources. Therefore, the Council's stance will be to remove the problem planting rather than become involved in their ongoing management, or be potentially liable for damage to private property.

8.3 Establishing new woodlands

8.3.1 Where possible, the Council will seek to establish woodlands and groups of trees on open spaces using forestry planting techniques and fencing to ensure protection for the new trees.

9.0 OTHER ISSUES

9.1 High Hedges

9.1.1 Part 8 of the Anti-social Behaviour Act 2003, which gives local authorities powers to deal with complaints about high hedges, came into operation in England on 1 June 2005.

9.1.2 Provided they have tried and exhausted all other avenues for resolving their hedge dispute, people can take their complaint about a neighbour's evergreen hedge to Borough of Poole Environmental and Consumer Protection Services.

9.1.3 The role of the council is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether - in the words of the Act - the hedge is adversely affecting the complainant's reasonable enjoyment of their property. In doing so, the council must take account of all relevant factors and must strike a balance between the competing interests of the complainant and hedge owner, as well as the interests of the wider community.

9.1.4 If they consider the circumstances justify it, the local authority will issue a formal notice to the hedge owner which will set out what they must do to the hedge to remedy the problem, with a time limit. Failure to carry out the works required by the authority is an offence, which on prosecution, could lead to a fine of up to £1,000. (See www.boroughofpoole.com and use the High Hedges pages).

9.2 Poole Housing Partnership

9.2.1 Housing Associations, not the tenants, are responsible for trees growing in gardens and open spaces in areas managed by the Housing Association.

9.2.2 Where tenants have concerns about a tree they will need to discuss this with the Housing Officer who will then contact Leisure Services for arboricultural advice on behalf of the tenant. For further details, contact Poole Housing Partnership (01202 264444).

9.3 Climate change

9.3.1 An increase in canopy cover in Poole will help to offset future temperature rises, provide shade and help pollution capture. Trees also help to mitigate the effects of flooding.

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9.4 Wood fuel

9.4.1 Where possible and as required by Council wood fuel/biomass projects, the Council will consider using arisings and possibly timber harvesting in order to provide biomass for wood fuel projects

10.0 POLICY REVIEW

10.1 The policy is to be monitored on an annual basis and be reviewed every five years. This review process will need to include performance monitoring of the action plan and policy. Any amendments to the content of the tree policy as a whole will be dependant upon:

- a) Feedback from internal and external sources.
- b) Changes in legislation or Council policies.

10.2 The following organisations have supported the development of this policy and will be involved in the review process:

- Leisure Services
- Continental Landscapes Ltd.
- Planning and Regeneration Services
- Poole Housing Partnership
- Transportation Services
- Property Services

11.0 FURTHER INFORMATION AND CONTACTS

11.1 Arboricultural Association email admin@trees.org.uk. Website Information available includes Tree Surveys: A guide to good practice Arboricultural Association Guidance Note 7

11.2 Forestry Commission website where you can download best practice guidance, including “Hazards from trees – a general guide”.

11.3 “Managing Visitor Safety in the Countryside – principles and practice” produced by the Visitor Safety in the Countryside Group.

12.0 LEISURE SERVICES ARBORICULTURAL SECTION LEVEL OF SERVICE

12.1 There are a number of areas of service which the arboricultural section provides. The focus of these service areas will need to be changed over the coming years in order that the Council has a reasonable and robust system of management.

12.2 The Policy will be implemented using eight Service Areas to measure levels of service (LOS). The **2010 LOS is in bold**. The *essential or desired LOS is in italics*. Improvements to an area LOS will result from increased resources and/or switching of resources, in which case a corresponding drop will be seen in another area LOS – this is shown diagrammatically on page 13.

12.3 STATUTORY OBLIGATION FUNCTIONS:

12.3.1 Service Area 1. Highway and public footpath trees

LOS 1 Survey trees as advised by Transportation Highway Inspectors, record and action necessary works as resources allow on an as and when basis

LOS 2 (NOW) Survey all trees on and adjoining the highway on Transportation A, B & C routes, record and action necessary works as resources allow on a 2 year cycle

LOS 3 (ESS) Survey all trees on and adjoining the highway, record and action necessary works on a 1 to 5 year cycle depending on target areas and road speed limits to prove a robust, defendable system of management.

LOS 4 Survey all trees growing on and adjoining the highway, record and action necessary works as resources allow on an annual basis

Summary: Systematic highway surveys started over last two years for A, B and C routes needs to move to cyclical surveys of all highway trees, to provide a reasonable system of management. Currently, within current resources, footpaths, bridleways and unclassified roads are not surveyed and need to be included.

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12.3.2 Service Area 2. Trees on open spaces (proactive)

LOS 1 (NOW) Intermittent surveys of trees on key sites as resource allows

LOS 2 Survey trees on key sites only

LOS 3 Survey all trees in high-use areas presenting visible defects, record and action necessary works.

LOS 4 (ESS) Survey all trees presenting visible defects, record and action necessary works. Implement program of works to deal with boundary issues using Ezytreev enquiry frequency data.

Summary: Service needs to move from surveys of sites as time and resource allows to essential 'duty of care' as laid out in the Occupiers Liability Act (1957) and to provide a reasonable system of management.

12.4 STATUTORY RESPONSIBILITY FUNCTIONS:

12.4.1 Service Area 3. Operations

LOS 1 (NOW) No or infrequent un-documented supervision

LOS 2 (ESS) Unscheduled supervision to carry out spot checks

LOS 3 *Supervise contractors working on high-use BoP sites, recording appropriate use of equipment and ppe.*

LOS 4 Supervise contractors working on BoP sites

Summary: Service needs to move from infrequent and undocumented monitoring of contractors to a recorded system under The Management of Health and Safety at Work Regulations (1999).

12.5 DUTY OF CARE FUNCTIONS:

12.5.1 Service Area 4. Insurance claims

LOS 1 Complete claim form and provide photocopies of Ezytreev and other records

LOS 2 *Provide technical input as required by BoP Insurance Manager to all tree related insurance claims.*

LOS 3 Make site visits, take photographs and produce reports for all tree related insurance claims against the Borough of Poole.

Summary: Service at a reasonable level.

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12.6 NON-STATUTORY WORKLOAD:

12.6.1 Service Area 5. Tree planting

LOS 1 Plant replacement trees for <50% of those felled

LOS 2 (NOW) Plant replacement trees for 50-75%% of those felled

LOS 3 Plant replacement trees for 75-100% of those felled

LOS 4 Tree planting programme for all those felled plus proactive annual planting programme

LOS 5 (DES) *Proactive tree planting in zoned locations working with community*

Summary: Although some tree planting is carried out every year, it is desirable that this level is increased, but is entirely dependent on resources.

12.6.2 Service Area 6. Advice to others (not the public)

LOS 1 Fail to provide arboricultural advice to others as and when requested.

LOS 2 (NOW) Provide a reactive arboricultural advice service to PHP, Grounds Maintenance, Highways and others on a first come first served basis with no agreed response time

LOS 3 (DES) *Provide a reactive arboricultural advice service to PHP, Grounds Maintenance, Highways and others*

LOS 4 Provide a comprehensive arboricultural consultancy service including individual visits as requested

Summary: Level of service could be improved but is dependent on resources.

12.6.3 Service Area 7. Advice to the public

LOS 1 NOW React to calls from the public

LOS 2 (ESS) *Provide broad advice as to future proactive work to deal with Council owned trees adjacent to private property*

LOS 3 Provide written advice to all tree work applications in date received order and within an agreed timeframe

LOS 4 NOW Provide a comprehensive arboricultural consultancy service including individual visits as requested

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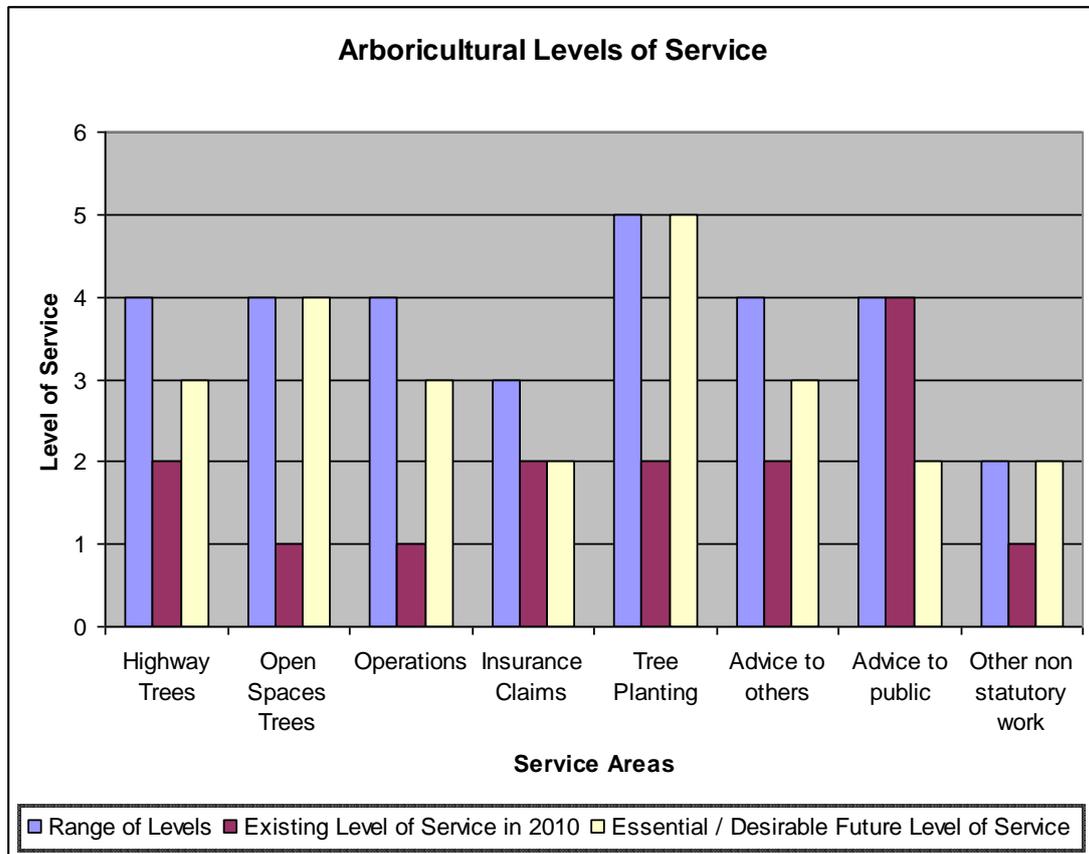
Summary: It is necessary to move from a high level of service to a broad based proactive service in order to achieve better implementation of statutory function.

12.6.4 Service Area 8. Other non-statutory work

LOS 1 Ad hoc work e.g. tree surveys at school sites as time permits

LOS 2 Any other work requested by line manager within a suitable timeframe

Summary: Currently, resources do not permit Leisure Services to provide an arboricultural service to schools and for any other projects required.



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APPENDIX 1

Hazard Assessments and Remedial Work: Highway trees

The purpose of tree inspections is to detect defective trees, assess the severity of the defects and recommend corrective actions before failure occurs.

The guidelines for vertical clearance of branches or trunks over the highway are:

- Carriageways - 5.3m (including lateral clearance of 0.5m into footway / verge)
- Footways / Cycleways – 2.3m
- Bridleways – 3.65m

However, in order to preserve the amenity value of certain streets, minor encroachments of the tree canopy will be permitted where it is considered safe to do so. In these circumstances, the character of the highway and the traffic, which can be reasonably expected to use it, are considered (Ref: Clause. 58 (2) b of the Highways Act 1980).

Tree work shall be categorised, and prioritised in accordance with the following table:

| Category | Description | Timescale | Comment |
|----------|-----------------------|----------------|------------------------------------------------------------------------------------------------|
| 1 | Emergency | 1 hr | Trees that are perceived as imminently dangerous. |
| 2 | Public Safety | 2 days | Trees that are perceived to be dangerous but where work needs to be undertaken at a safe time. |
| 3 | Essential Safety | 7 days | Trees where work is required but there is no immediate perceived risk. |
| 4 | Essential Maintenance | 28 days | Low risk, possibly tree care etc. |
| 5 | Desirable | 6 weeks | Very low risk, small items of work i.e. dead wood etc. |
| 6 | Monitor | 6 to 12 months | Seasonal inspections etc. |

APPENDIX 2

Highway Trees: Best Practice requirements

The Roads Liaison Group publication 'Well-maintained Highways' sets out in 9.6.3 the level of training for inspectors and advises on the use of an arboriculturist to determine frequency of visits and works required.

Circular 52 of 1975 Inspection of Highway Trees is extant. It gives advice that the highway inspectors:

- Should note any obvious dead, dying or dangerous trees that are within falling distance of the highway. Such facts should be reported so that necessary action and further inspection can be carried out. The county engineer should arrange for frequent examination of highway trees, preferably when they are in leaf.
- Should keep records containing details of inspections, works carried out etc.
- Should inspect trees growing on private land within falling distance of the highway should also be carried out. The Highways Authority has a right of access on to private land to inspect potentially dangerous trees and can order that any dangerous trees are made safe.
- Should also consider works carried out by statutory undertakers especially trenching around roots.

Under Section 154 of the Highways Act 1980 the highway authority has powers of enforcement to ensure that trees on private property adjoining the public highway do not endanger the highway or its users.

APPENDIX 3

Sector Information Minute – Health and Safety Executive; Management of the risk from falling trees - SIM 01/2007/05 (APPENDIX 1). This SIM is aimed specifically at duties under Section 3 of the Health and Safety at Work Act

Management of the risk from falling trees - SIM 01/2007/05

Target Audience:

FOD Inspectors

Local Authority Enforcement Officers

Date issued: 2007-07-03 OG Status: Fully open Review date: 2011-07-03

Author Unit/Section: Agriculture & Food Sector (Agricultural Safety Section)

Summary

This SIM outlines guidance on the standard of risk management of trees, including risk assessment and where appropriate, routine checks by a competent person. Duty holders should have such systems in place to control risks from trees to their employees, contractors and members of the public. This SIM is aimed specifically at duties under Section 3 HSW Act and should be read in conjunction with HSC's Enforcement Policy Statement, HSC policy on Section 3 enforcement and HSE's guidance on Section 3 enforcement. It also gives guidance on enforcement action, which should be taken in accordance with the principles and expectations of HSC's Enforcement Policy Statement (EPS). It is not intended as a guide to duty holders.

Background

What is the risk?

1 Each year between 5 and 6 people in the UK are killed when trees fall on them. Thus the risk of being struck and killed by a tree falling is extremely low. Around 3 people are killed each year by trees in public spaces; but as almost the entire population of the UK is exposed, the risk per person is about one in 20 million. The risk, per tree, of causing fatality is of the order of one in 150 million for all trees in Britain or one in 10 million for those trees in, or adjacent to areas of high public use. However the low level of overall risk may not be perceived in this way by the public, particularly following an incident.

2 The average risk is firmly in the "broadly acceptable" region of the tolerability of risk triangle published in HSE's "Reducing Risks Protecting People". However, "Reducing Risks, Protecting People" explicitly states that "broadly acceptable" is a general guide and not a definitive statement of what is reasonably practicable in law.

What is required?

3 Employers, persons carrying out undertakings or in control of premises all have duties under the HSW Act. In particular, there is the duty to do all that

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is reasonably practicable to ensure that people are not exposed to risk to their health and safety. Doing all that is reasonably practicable does not mean that all trees have to be individually examined on a regular basis. A decision has to be taken on what is reasonable in the circumstances and this will include consideration of the risks to which people may be exposed. The issues that need to be included in the risk assessment are discussed in paragraph 10.

4 Around half of all fatalities due to falling trees occur in public spaces, such as a park or beside roads, so Section 3 HSW Act may be applicable. Whilst HSE may regard the average risk as extremely low, the law requires that where reasonably practicable measures are available in individual cases they should be taken. Whilst the risk of such incidents puts them outside HSE's and LAs main proactive priorities, inspectors may be called upon to investigate serious incidents, including fatalities.

Other legislation

5 In addition to duties under the HSWA there are a number of reasons why LAs (as duty holders) and others may want to manage their tree stocks, for example responsibilities under other legislation and the risk of civil liabilities to:

- reduce the risk of property damage from subsidence;
- maintain stocks to preserve their amenity, conservation, and environmental value;
- prevent personal injury through trips and falls on footways disturbed by tree roots; and
- prevent vehicle damage and personal injury from obscured sightlines on the highway.

For these and other reasons, some duty holders may undertake inspection of trees in a manner well beyond the reasonably practicable requirements of the HSW Act.

6 Other legislation relevant to the management of trees includes, for example the Occupiers' Liability Acts 1957 and 1984, Occupiers Liability Act (Scotland) 1960, Land Reform (Scotland) 2003, the Countryside and Rights of Way Act 2000 (CRoW), the Wildlife and Countryside Act 1981 as well as legislation relating to Sites of Special Scientific Interest, planning issues and Tree Preservation Orders.

Suggested approach

7 This SIM provides guidance on handling these issues and approaching enforcement decisions for HSE Inspectors and LA Enforcement Officers. Stakeholders, including LAs (as duty holders), major landowners and arboriculturists are being encouraged to agree a simple tree management

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standard. Given the large number of trees in public spaces across the country, control measures that involve inspecting and recording every tree would appear to be grossly disproportionate to the risk. Individual tree inspection should only be necessary in specific circumstances, for example where a particular tree is in a place frequently visited by the public, has been identified as having structural faults that are likely to make it unstable, but a decision has been made to retain it with these faults.

8 HSE believes that public safety aspects can be addressed as part of the approach to managing tree health and tree owners should be encouraged to consider public safety as part of their overall approach to tree management. A sensible approach will ensure the maintenance of a healthy tree stock, the sound management of the environment and will usually satisfy health and safety requirements.

9 There are several approaches to managing the risks from trees that involve 'zoning' trees according to the risk of them falling and causing serious injury or death. Zoning approaches have been adopted by a number of large landowners and can be an effective approach. The complexity of zoning systems varies considerably, some involving as many as 12 different levels. Given the relatively low risk, some will involve a level of sacrifice (time, trouble and money) that not only meets, but also goes beyond reasonable practicability, as required by HSWA Section 3.

10 An effective system for managing trees should meet the requirements set out in the Management of Health and Safety at Work Regulations 1999 and the associated ACoP (guidance is contained in HSG 65 Successful health and safety management and INDG 163 Five steps to risk assessment) and is likely to address the following:

- i. An overall assessment of risks from trees, particularly identifying groups of trees by their position and degree of public access. This will enable the risks associated with tree stocks to be prioritised, and help identify any checks or inspections needed. As a minimum, trees should be divided into two zones: one zone where there is frequent public access to trees (e.g. in and around picnic areas, schools, children's playgrounds, popular foot paths, car parks, or at the side of busy roads); and a second zone where trees are not subject to frequent public access. As a rough guide 'trees subject to frequent public access' are those that are closely approached by many people every day. Maps may be useful here as individual records for individual trees are unlikely to be necessary if zones and the trees in the zones are clearly defined.
- ii. For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist. Informing staff that work in parks or highways as to what to look for would normally suffice. Duty

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holders should ensure that any system that is put in place for managing tree safety is properly applied and monitored.

- iii. A short record of when an area or zone or occasionally an individual tree has been checked or inspected with details of any defects found and action taken.
- iv. A system for obtaining specialist assistance / remedial action when a check reveals defects outside the experience and knowledge of the person carrying out the check.
- v. A system to enable people to report damage to trees, such as vehicle collisions, and to trigger checks following potentially damaging activities such as work by the utilities in the vicinity of trees or severe gales.
- vi. Occasionally a duty holder may have responsibility for trees that have serious structural faults but which they decide to retain. Where such a condition is suspected and the tree also poses a potentially serious risk because, for example its proximity to an area of high public use, a specific assessment for that tree and specific management measures, are likely to be appropriate.
- vii. Once a tree has been identified by a check to have a structural fault that presents an elevated risk, action should be planned and taken to manage the risk. Any arboricultural work required should be carried out by a competent arboriculturist; such work tends to present a relatively high risk to the workers involved. Duty holders should not be encouraged to fell or prune trees unnecessarily.
- viii. Inspection of individual trees will only be necessary where a tree is in, or adjacent to, an area of high public use, has structural faults that are likely to make it unstable and a decision has been made to retain the tree with these faults.
- ix. Monitoring to ensure that the arrangements are implemented in practice.

Enforcement guidance

11 Enforcement action may be appropriate following an incident or investigation of a complaint and should be in accordance with HSC's EPS and with HSE's Enforcement Management Model (EMM). In particular, consideration should be given as to how far the duty holder fell below what could reasonably be expected in the circumstances. This should be informed by the broad approach outlined above and factors such as:

- i. the frequency of public access to the tree;
- ii. the existence of a system for managing trees based on the level of risk;

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- iii. the implementation of the system in practice, including a procedure to act on reports of structural faults;
- iv. the need to comply with other legislation e.g. the Wildlife and Countryside Act, Tree Preservation Orders etc. Such legislation generally allows that trees in a dangerous condition may be felled, however a specific check should be made before considering enforcement action.

12 Consideration should also be given to the risks to persons that arise from the failings of the duty holder, along with the factors set down in paragraph 39 of the EPS. Of particular relevance will be any history of previous incidents in the area managed by the duty holder and any previous advice or enforcement in relation to the duty holder.

13 For the purposes of the EMM, the guidance in this SIM should be 'established' guidance. The benchmark, based on duties under HSW Act is a 'remote' risk of 'serious personal injury'.

14 Inspectors should seek advice from the Agriculture and Food Sector or the Central and Local Government, Education and Research Sector as appropriate before issuing an improvement notice or considering prosecution.

Action by inspectors

15 When called upon to examine standards of tree management following an incident or if they identify a matter of evident concern during a visit, inspectors should base their approach in deciding whether to investigate on HSC's general guidance on Section 3 HSW Act and HSE's operational guidance on Section 3 enforcement as well as the additional advice and guidance in this SIM. Proactive inspection of duty holders' systems for tree management is not envisaged. Any enforcement action should be taken in accordance with HSC's EPS.

16 A good deal of relevant guidance is produced by various organisations, including the Arboricultural Association and Forestry Commission. Their guidance provides advice to help duty holders comply with the Occupiers Liability Acts and other legislation. It is also likely to be helpful to investigating inspectors, however it should be remembered that it represents best practice guidance for managing trees, not the minimum standard required by Section 3 HSW Act outlined above.

Appendix 4

Implications of case law on 'Reasonable Practicability'

Because, ultimately, it is a matter for the courts to decide whether or not duty-holders have complied with such duties, considerable attention must be paid to how the courts have interpreted the above qualification. Case law on duties qualified by 'so far as is reasonably practicable' (SFAIRP) makes it clear that the courts will look at all relevant circumstances, on a case by case basis, when reaching decisions on the appropriateness of action taken by duty-holders in meeting this qualification.

Of particular importance in the interpretation of SFAIRP is *Edwards v. The National Coal Board* (1949). This case established that a computation must be made in which the quantum of risk is placed on one scale and the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk is placed in the other; and that, if it be shown that there is a gross disproportion between them, the risk being insignificant in relation to the sacrifice, the person upon whom the duty is laid discharges the burden of proving that compliance was not reasonably practicable.

In seeking to apply this case law, when regulating or producing guidance on compliance with duties qualified by all injunctions embodying the concept of 'reasonable practicability' such as SFAIRP, ALARP (as low as reasonably practicable), ALARA (as low as reasonably achievable), HSE believes that such duties have not been complied with if the regime introduced by duty holders to control risks fails the above 'gross disproportion' test. Moreover, HSE believes that in making this compliance assessment, the starting point for determining whether risk has been reduced as low as reasonably practicable, should be the present situation in the duty holder's undertaking. However, in certain circumstances, it will not be possible to assess options in this way. In such situations, the starting point should be an option which is known to be reasonably practicable (such as one which represents existing good practice). Any other options should be considered against that starting point, to determine whether further risk reduction measures are reasonably practicable.

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