

Sheffield & Rotherham Wildlife Trust

DRAFT Response to the Governments consultation on 'Protecting and enhancing England's trees and woodlands

Q1. Should a duty for local authorities to consult on the felling of street trees be introduced? Please give reasons for your response.

Yes but

The duty is only *to consult* – not to then take in to account the result of that consultation. What if there is a strong community view that a tree should not be felled – but the Council ignores that anyway?

For example, Sheffield City Council undertook a full consultation (option A) on many trees, which reached a 50% trigger to then be referred to an Independent Tree Panel (ITP) for a final decision. However, the ITP recommendation was often ignored by the Council. Hence the process had little value in affecting decision-making.

It is possible that introducing a duty to consult would help to increase transparency and awareness, encouraging local authorities to think more carefully about the street trees they fell. But, for the extra burden it places on Councils, the positive impact could be very limited.

Some options to consider:

- 1) If the duty to consult on individual trees goes ahead: include as part of '3. Reporting on felling and planting of trees' the percentage of consultation results the Council went against. This would then become a national indicator against which Councils' can be compared and measured. This would then help to indicate at a national level (in relation to a national tree strategy for example) where there may be a focus of concern about a Council's culture and approach to street trees as a liability rather than an asset. However, in the end, the actual impact this will have in terms of trees felled is still likely to be limited unless there is some sort of penalty. See section 3 for further response.
- 2) Organisations such as Wildlife Trusts could be formal consultees as part of the process, allowing them to be formally notified and make specific representations as part of the consultation process.
- 3) The consultation papers must include: the indicator/reportable data (see Q9) including a summary of the overall value of the tree eg CAVAT, wildlife, historical, cultural importance; any alternative options considered (eg engineering solutions); any mitigation/biodiversity offset proposed (difficult for veteran trees), how the Authority will ensure it meets its obligations under the NERC biodiversity duty and under the aims of the 25-year Environment Plan.

- 4) Instead/as well as the duty to consult on individual trees, have a duty to consult on '4. Tree and woodland strategies' and make these strategies statutory documents that all Councils have to produce to an agreed standard. See section 4 for further response.
- 5) A duty to consult on large scale contracts that cumulatively have a significant impact on trees, green space etc across an area is really essential. In Sheffield, a 25-year PFI contract to manage the highways was not subject to any external environmental impact 'checks and balances' prior to the tender process. But the cumulative impact of such large scale, long-term contracts is significant. Could the EIA regulation – to screen, scope and produce and Environmental Impact Assessment - be broadened beyond major development to also include major contracts? This would then allow organisations such as Defra agencies, Wildlife Trust, local groups etc to engage, comment and improve the EIA before the contract has even been issued.

The duty to consult, if introduced, must apply to all future works, including existing PFI contracts.

Q2. Do you agree with the proposed scope of the duty to consult? Please give reasons for your response.

Yes

However, a lot of local authorities manage woodland and street scene trees, for example within schools and social housing land, and some of these may be near the highway but outside of the 'Highways Dept'. It will need to be made clear to local authorities and the public what falls into the duty to consult and what doesn't. If social housing or school land is not to be included, even if near a road, this needs to be clear.

Most other felling will be covered by Forestry Commission licensing.

Q3. Do you agree with the government's preferred approach of a closed consultation with trigger point? Please give reasons for your response.

No

This needs further thought and testing in the field.

100m2 – a 100m radius from the tree would be easier to understand and less open to confusion.

What is the purpose of the 50% trigger point? Given that this will be seen as an additional burden on Councils, there is only any point in consulting twice if the second consultation means

something additional. For example, will it lead to an independent assessment by an arboriculturalist? And if this is then ignored by the Council any way, what then is the purpose of having two consultations? Option A may end up being cheaper and is more comparable with the current approach to planning notification.

Publishing in the town hall and online is important as this allows people interested in trees/groups of trees to be consulted beyond immediate residents. For example, in Sheffield, important lime avenues such as the Rivelin Valley Road have no immediate population living alongside them but are a key feature of entry into the city.

Is there a way of using similar consultation systems to that currently used for planning and drawing on best practice i.e. general notices and local letters to residence, so that the process is standardised across the country? Otherwise it may be open to abuse eg the use of unmarked envelopes to carry out the consultation.

What would be the penalty for not carrying out a consultation?

Q4. In what circumstances do you think a tree should be exempt from the duty to consult? Please give reasons for your response.

We agree that 'dead' and 'responding to pest or disease instances' (as long as notified by a regulatory authority) should be exempt.

However, we have concerns about 'dangerous' also being exempt as this is open to interpretation and misuse – it will depend upon each Council's attitude to risk. The word 'immediate' is critical here – implying a sudden, unexpected and obvious change in the tree's condition, requiring people to 'walk in the carriageway, leaving the safety of the footway' (the definition used in the consultation). This would need to be clearly demonstrated as an issue that could not have been identified through regular inspection, where the possibility of an appropriate engineering solution or remedial management could have been put in place in advance to pre-empt any footway becoming blocked. This will need to be carefully evidenced to illustrate that the tree had suddenly become 'immediately dangerous'.

Which leads on to the issue of who will be checking and regulating Councils about which trees are exempt? The Forestry Commission currently has oversight of felling in woodland/forestry situations. Will they now also have powers to check exemptions, if a concern is raised by a member of the public? And if they found the tree was not exempt but has been felled, what will be the penalty?

ie who will be arbiter when the community doesn't agree with how the exemptions are being applied?

If an exemption is the reason for felling a tree, we propose that an exemptions notice should be posted up as early as possible, explaining the reasons for the felling.

Q5. Do you think it is appropriate that trees of special historic or cultural significance are subject to a more rigorous consultation process? Do you agree with the criteria for designating a tree of special historic or cultural significance? Are there any other categories which should be included?

It could be said that this system is already in place to a certain extent through the Town & Country Planning regulations for Tree Preservation Orders. However, the TPO system only allows for appeals to the Secretary of State by a land owner AGAINST a TPO designation by a Council. The weakness in the TPO systems is that there is no right for an individual to appeal to a higher agency IN FAVOUR of a TPO when it has been refused by the Council because it is on their own land. The Council is judge and jury.

For example, in Sheffield, the case was made by the local community for the Vernon Oak to be protected by a TPO but as the Council were wanting to fell the tree there was no benefit to them in considering the tree's historic or cultural significance and making the TP order, so they refused.

So who will decide whether a tree is of special historical or cultural significance? Can a system be put in place that allows a member of the public to submit a tree for TPO designation, with the support of a community and body of evidence, which if refused by the Council can be referred to the Secretary of State, perhaps using similar methods to green space or village green designation?

This could include all trees in conservation areas.

We would like the criteria to identify trees of significance on the basis of wildlife/ecological grounds to be more prominent (currently it is included as a passing reference in one of the bullet points) ie for there to be a specific category to identify and register trees of specific local 'wildlife and biodiversity significance'. This would support the NERC Act and the 25 year Environment Plan.

Q6. Do you think that the duty to consult will have any negative impacts on development?

We think it unlikely as many developer already have to plan for tree management with the Local Authority under the TPO system and planning system or the Forestry Commission for forests and woodlands. This consultation is about how Councils are regulated in relation to trees on their own land.

Q7. Should consultations be done on an individual basis or in groups of trees where, for example, trees are planted in the same location?

Consultations should consider the importance of the tree and groups of trees in the wider urban street scene.

For example, a tree such as the Chelsea Road elm tree in Sheffield is a significant mature tree on a crossroads. It is a key feature of the street scene but also forms part of a corridor of trees. These need to be considered 'in the round'. Could they be managed and, where essential, replaced in rotation, over a period of time (years) rather than in one season? Likewise, the Rivelin Valley Road in Sheffield has one of the longest lime avenues in the country. It needs to be considered as a whole, as well as managed on a tree by tree basis. Considering groups of trees in this way will help to both manage the visual impact of the management over time as well as limit the sudden loss of canopy cover for biodiversity and other ecosystem services at any one time.

Q8. Should a duty on local authorities to report on tree felling and planting be introduced? Please explain the reasons for your answer.

Please see our earlier comments in relation to the duty to consult Q1 and TPOs Q5.

If the duty to consult goes ahead then a reporting mechanism in relation to this duty will need to be introduced in order to assess whether it is being effective.

A duty to consult on a Trees & Woodlands Strategy and then report on national indicators against that strategy (and a national Trees & Woodlands Strategy) would be more useful.

For example, if, as part of a national Trees & Woodlands Strategy, the aims include increasing the urban canopy, increasing natural capital and/or the value of urban trees (using CAVAT or similar) then these might be more useful overall indicators for Councils to monitor against.

Q9. Which trees would it be useful to report on? Please explain the reason for your answer.

As well as the information suggested, as mentioned in our earlier responses, if reporting on individual street trees, it would be important to report on:

Value (CAVAT) of tree lost

Canopy cover lost

Whether it was a tree of significance, in a conservation area or had a TPO

Q10. What information do you think local authorities could gather and hold? Please explain the reasons for your answer.

Total/year:

CAVAT or natural capital value of trees felled (netted with replacements)

Canopy cover change

No. & %age of 'significant' street trees felled

No. & %age of non-exempt/exempt street trees felled

No. of public consultations and no. & % of public consultations that resulted in the Council changing its decision on a tree or group of trees.

These could be used as national indicators both to compare between councils and to aggregate (eg using CAVAT or canopy cover or natural capital agreed metrics with standard methodology) to determine national net gain/losses.

All the information should be publicly available.

Q11. How could local authorities present this information? Should national government play a role in collating and managing information?

National Government will need to play a role in setting the indicator framework and methodology and drawing together in to a national picture. This will also give more incentive to Councils to report.

Q12. Do you agree that Tree and Woodland Strategies help local authorities and the public to manage their trees and woodlands? Would best practice guidance be sufficient for local authorities and the public? Please give reasons for your response.

We have limited experience of this on which to comment – but Sheffield City Council have just now produced their Trees & Woodlands Strategy.

Unless statutory, some Council will not produce and regularly update their Trees & Woodlands Strategies. Nor will they be of an appropriate standard to be comparable across Councils. Because Councils are under such financial pressures, anything considered 'discretionary' is understandably highly unlikely to be delivered.

If none of the interventions proposed in this consultation are statutory or part of new regulations then they will have very little impact.

Q13. Do you agree with the suggested content for best practice guidance for Tree and Woodland Strategies? Please give reasons for your response.

We agree but also suggest including:

Clear ambition about increasing tree canopy cover /natural capital, maps/GIS etc

Clear recognition of the NERC Act duty on all Councils to have regard to biodiversity – and as statement and plan as to how the Tree & Woodland Strategies will deliver biodiversity net gain

Duty to consult on the Trees & Woodlands Strategy with local residents, communities and partners

A timeline for update and review

Reporting of trends and national indicators as set out in earlier questions

Specific sections on street trees and urban woodland.

Q14. Do you support these measures?

We support these measures but also wish to add the following:

Under Pt2. If the new landowner bought the land on the basis the trees had been felled and planning permission could now be sought, why would they consent to replanting? This seems unlikely to ever be applied as it relies on new landowner consent.

Pt 3 Yes with immediate effect. But how does this apply outside of forests and woodlands? For example, would it apply in the situation where a suspected TPO, exempt or 'significant' tree is being felled in an urban areas?

Pt 6 Agree to significant increase in fines eg based on natural capital /CAVAT value of trees. In urban areas the main driver for felling is to reduce long-term liabilities.

This section provides no clarity about regulation and enforcement around the felling of urban street trees (please also see earlier comments). This is an issue that has been highlighted in Sheffield where there was no regulatory oversight or felling license required in order to fell over 6,000 street trees within a 2-3 year period.

Under 9 (4) (b) of the Act it is not clear how licensing applies and interacts with, for example, the Highways Act. There appears to be a general assumption that the Highways Act always 'wins' over the Forestry Act, on the grounds of safety but we would question this interpretation. As mentioned above in our response to Q4 – there is an interpretation of words such as 'danger' and 'damage' and this needs some legal clarification. Where there is debate and concern from the community, then is there a role for the Forestry Commission to provide oversight and regulation, to act as an arbiter providing checks and balances to ensure street trees aren't being felled purely on the basis of reduced long-term maintenance costs but for

essential health & safety criteria? ie the response is proportionate? A standardised approach to tree risk assessment could assist with this.

Q15. Do you think any other measures are necessary to combat illegal tree felling?

We think there is a loophole in the legislation with respect to orchards.

Some older and traditional orchards are a priority habitat but ‘orchards’ are currently not covered by the Forestry Act licensing system and can be felled without a license (see Section 9 (2) (b). For example, Berks, Bucks & Oxon Wildlife Trust objected to an opportunistic planning application *Brookhouse Farm and JPP Land LLP* in 2015, which proposed to build 40 houses on a traditional orchard near the village of Burghfield, Reading. The application was withdrawn, but reappeared a year later with the orchard having been completely felled in the interim. This loss of rare and threatened priority habitat occurred due to a loophole in the Forestry Act which allows orchards to be felled without licence. Although pre-emptive clearance of orchard trees may be intended to facilitate planning approval, proving this is often impossible.

We would like to suggest a change to the wording in section 9 of the act so that it refers to “commercial” orchards only - please see below:

9.(1) A felling licence granted by the Commissioners shall be required for the felling of growing trees, except in a case where by or under the following provisions of this Part of this Act this subsection is expressed not to apply.

(2) Subsection (1) above does not apply-

(a) to the felling of trees with a diameter not exceeding 3 inches or, in the case of coppice or underwood, with a diameter not exceeding 6 inches ;

or (b) to the felling of fruit trees or trees standing or growing on land comprised in ~~an~~ **commercial** orchard, garden, churchyard or public open space ;

...

Or an alternative would be to limit the number of trees that the exemption related to – eg
b) “to **the felling of 5 or fewer fruit trees.....**”