

JOINT COMMITTEE OF CHRISTCHURCH RESIDENTS' ASSOCIATIONS

Interim draft guidance notes on tree related matters



This document has been produced by the Joint Committee of Christchurch Residents' Associations with the assistance of Christchurch Borough Council. This draft interim guidance is to help residents and other bodies who are affected by trees in or near to their properties. It also applies if you have concerns about works being carried out to protected trees or trees on public land.

1.0 Introduction

Christchurch Borough Council's Planning Department is in the process of producing a draft Landscape Strategy for the Borough which will be a comprehensive statement setting out the Council's approach to tree and landscape management. It will also provide detailed guidance on the protection that exists for certain trees and areas and the procedures available for those wanting to do works to those trees/areas.

(Throughout these notes CBC means Christchurch Borough Council and TPO means Tree Preservation Order).

GUIDANCE NOTES

2.0 Categories of trees

2.1 For the purpose of this guidance trees may be divided into three groups:

A-Trees in public places that CBC, the Highway Authority or others, are responsible for. (Some CBC trees do have TPO's)

B-Trees on private property that are not covered by a TPO, are not within a Conservation Area or are not to be retained through a planning condition

C-Trees on private property that are covered by a TPO, or are within a Conservation Area (if they are more than 7.5cm trunk diameter measured at a height of 1.5m) or are required to be retained through a planning condition.

2.2 **A-Trees in public places** are routinely inspected by CBC, with those on or close to paths and roads or in parks, looked at more frequently than those in more out of the way locations. Such trees in public areas are inspected every 5 years and in addition shortly after severe gale force weather conditions.

2.3 **B-Trees that are on private property** and:

Are not covered by a TPO; Are not in a Conservation Area; Are not to be retained through planning conditions

Such trees are in most cases, a matter for the landowner alone. In consequence, landowners may prune or fell them as they see fit subject only to the usual caveats about preserving public safety when they do. If the tree is dangerous, dying or dead then it is for the landowner to take appropriate action.

2.4 **C-Protected trees** It is the third category; trees on private property that are covered by a TPO; that are within a Conservation Area or are to be retained by a planning condition, that are the subject of the following section. With few exemptions, outlined below, the landowner has no right to act without the prior permission of CBC and could be liable to prosecution and

penalty fines. **It is a criminal offence to carry out work on a protected tree without such prior permission.**

3.0 The Legal Framework

3.1 CBC has specific legal powers to protect trees under **Town and Country Planning Legislation** and does so by making a TPO. Such an order makes it an offence to cut down, top, lop, uproot, wilfully damage or destroy such a tree without the prior written consent of CBC. A TPO can cover all types of tree but not bushes or shrubs and any number of trees from one to a forest.

3.2 If there are two or more evergreen or semi evergreen trees, growing in a line, then the Anti-Social Behaviour Act 2003 may apply. Part of the said Act deals with high hedges. If trees in the hedge are subject to a TPO, a remedial notice will be served under the high hedges legislation. This would override the TPO in so far as to the extent of the works detailed in a notice. If an owner wanted to carry out works in excess of the notice, then they would first have to gain the Council's consent, under the TPO.

3.3 Details of existing TPO's are available for inspection at the Civic Offices. Copies are free for collection or can be posted out at a cost of £2.50. An official search by your solicitor when you purchase your property should reveal the extent of an existing Order or the fact that your intended property lies within a conservation area, or is subject to a planning condition.

3.4 **It is important to note** that as the law currently stands, it could be said that once you have purchased the property you, in many ways, become the owner of a tree with a house in the garden. That philosophy underpins much of what follows and is an important concept for residents to grasp. You are in law deemed to realise that trees grow bigger, take light, drop leaves, branches, cones and needles, and have roots that protrude above ground and so on. If you cannot cope with that then the best advice may be not to purchase such a property. It will not be regarded as a valid argument in law to say, for example, this tree was only 6 metres high when I moved in but it is now 12 metres high. The height of a tree does not per se make it dangerous and you should have known it would grow – it's what trees do.

3.5 CBC can place a TPO on a tree after you have purchased your property. They will write to you, and other interested parties, enclosing a copy of the proposed Order. If you want to object to (or indeed to support) the Order then you must write to CBC within the specified time allowed (usually 28 days). It may be sensible for you to take specialist advice when composing a letter of objection and this is expanded later.

3.6 A new TPO will state the reasons for it being served, mainly on the grounds of amenity. In the past, residents have tried to argue, some years after the TPO was put in place, that the fact that the tree is larger means that the TPO no longer applies as it is not in the same condition now as it was when the Order was made. If there was any validity to this argument CBC would simply rescind the existing TPO and substitute a new one. The phrase 'amenity value' means the general ambience and character of the area and does not necessarily relate to the size of the tree.

3.7 The fact that a TPO is placed on a tree that you own does **not** mean that CBC becomes responsible for the tree. You still own it and are fully responsible for it. If you believe that some work on the tree is essential then you should contact CBC and/or a reputable tree surgeon. If you are concerned about the tree's safety then take independent professional advice and discuss the matter with CBC. You may produce photographic evidence of, for example, large falling branches. To protect you, you should confirm the outcome of such discussions in writing. CBC will write to you if a tree has to be removed and will detail replacement planting if required.

4.0 CBC Assessment Criteria

4.1 A request from a landowner to prune or fell a tree covered by a TPO will be assessed by CBC against the following criteria:

- Is the tree, or part thereof, dead?
- Is the tree, or part thereof, diseased or dying?
- Is the tree, or part thereof, imminently dangerous?
- Does the tree have public amenity value?

4.2 The first of these criteria should be straightforward. The Landowner should have sufficient evidence to support the case that the tree was dead and obtaining professional advice is an option, especially where litigation might arise. The evidence of a qualified arboriculturist declaring a tree dead should avoid any possible disagreement. The onus of proof is on the owner to prove the tree was dead and not up to CBC to prove otherwise. Unless there is an emergency, 5 days notice should be given to CBC of the intention to remove the dead tree, or part thereof.

4.3 The far more difficult questions are: what defines dying or dangerous and against what criteria; what defines amenity value and against what criteria; what process of interaction should occur between the landowner and CBC whilst these questions are being assessed?

4.4 There are degrees of dying, disease and dangerous. These are not defined by legislation. Danger may be immediate (the tree is about to fall down) or the danger may be longer term. In either event, the degree of danger is a matter of expert opinion. It is not unusual for lay members of the public to perceive a danger when in fact, to the expert, the tree does not show signs of significant defect or likely failure. No tree may be described as totally safe since it is a living thing affected by many factors. None of the following are on their own likely to get a tree defined as dangerous in law:

- The height
- The span
- The width
- The degree of lean
- The fact that bits fall off it – again it's what trees do
- It's proximity to property, particularly if the tree was there first
- Its roots protruding above the ground – that's natural for trees

4.5 Tree Preservation Orders *A Guide to the Law & Good Practice* (available from www.communities.gov.uk.) Chapter 6 Section 6.4 states **"In deciding whether trees have become dangerous the Courts adopt the sensible approach of a prudent citizen.** There must be a present danger which need not be limited to disease or damage to the trees themselves. The threatened danger need not have actually occurred; it is sufficient to find that by virtue of the state of the trees, their size, their position and such effect as any of these factors have one can properly conclude that the trees have become dangerous. The Court will look at what is likely to happen, such as injury to a passing pedestrian. Thus other compounding factors are required. A tree that because of its height and span interferes with passing buses might be judged dangerous. A tree that blocks a pavement in such a way that the partially sighted or blind might walk into it could be dangerous.

4.6 The process for dealing with a dead, dying or dangerous tree involves giving the Council 5 days written notification that it is proposed to fell such a tree. Of course, in some extreme circumstances this may not always be possible. **However, you, the owner, will need to justify that the tree was in such a condition or face possible prosecution.** The only sensible way of doing that is to do what "a prudent citizen" would do; take photographs and seek written professional advice before you act. It is not a valid argument to simply state that you are "a long standing prudent resident who acting alone decided the tree was dangerous". That's not what prudent citizens do. Unless you are properly qualified, as far as matters arboreal are concerned, you are a layman and laymen seek advice. Even if CBC fails to respond within 5 days if it can subsequently be demonstrated in law that the owner acted unreasonably then that owner will be liable to prosecution.

4.7 The Arboricultural Association, Ampfield House, Romsey, Hampshire SO51 9PA has a list of approved tree surgeons and tree consultants. You may contact them as follows -telephone 01794-368-717; Email: admin@trees.org.uk or visit www.trees.org.uk/index.php

If you deliberately destroy a protected tree, or damage it in such a way that it becomes likely that it will die, you could be fined up to £20,000 and have costs awarded against you if convicted. The amount of the actual fine will have regard to any financial benefit gained as a result of destroying a protected tree. You will also normally have to plant a replacement tree.

4.8 The question of amenity value is highly subjective and it is not defined in legislation. In the practice notes CBC is advised not to make detailed assessments of the amenity value of every tree but rather is advised to adopt a selective approach, to concentrate on trees and groups of trees which make a significant contribution. CBC has produced a **Borough-wide Character Assessment and** this may be used in the wider assessment of that amenity value. In making this judgement, CBC will assess the application on its individual merits but will also be mindful that it does not wish to create a precedent that could result in many other healthy trees in the area being felled.

4.9 Within the Character Assessment, commentary on the main characteristics and sensitivity to change is included for all the main areas in

the Borough, which amongst other things outline how trees contribute to the amenity of the area. The Assessment contains a range of policies related to the protection of the environment including '*Development affecting Conservation Areas, Special Character Areas, Streetscape Areas and Areas of Good Quality Public Townscape*', which includes the following text:

"the council will ... resist the loss of individual and groups of trees of public amenity value together with open spaces that contribute towards the character of the area"

And

"(the council will) protect vistas, views, landmarks and topographical features, either within or affecting the setting of an area".

4.10 The Character Assessment is available through www.dorsetforyou.com or can be viewed at the Civic Offices. Whilst any case you try to make for felling a tree on the grounds that it has little or no amenity value will be listened to you are most unlikely to succeed if the Character Assessment for your area stresses the existence of suburban trees as an important characteristic. This is true even if your area is bordered by other areas that contain many trees.

4.11 Likewise arguments that felling and replacing an existing "unmanageable" tree will enhance community value are not considered to carry much weight. No healthy existing tree is "unmanageable" although such management may carry a cost. Nor is it generally felt that felling a mature tree and replacing it with a sapling enhances the visual characteristics of an area.

4.12 In general, it will pay you to speak to CBC, and its Landscape & Tree Officer, before submitting a request to do work on a tree covered by a TPO, is within a Conservation Area or subject to a planning condition. Ask a tree surgeon or consultant to visit your premises and inspect the tree before submitting an application for work. Some compromise short of felling or heavy pruning may be possible. A tree surgeon may charge for a written report or to submit an application on your behalf.

4.13 Your request will be subjected to the normal planning application process involving the Landscape & Tree Officer, an inspection of the tree and if necessary the Council Planning Control Committee. The committee is made up of elected Councillors that meet monthly and reach a joint democratic decision. Applications can be approved or refused by the Head of Service unless your own Ward Councillor requests that an individual application be placed in front of the committee if there are justifiable grounds. This will happen automatically if 12 or more residents object to your application. You are entitled to attend meetings of the Planning Control Committee and speak in line with the councils speaking procedures. You will be notified of the outcome of your application in writing.

The Right of Appeal

4.14 If CBC turns down your request to work on a tree covered by a TPO, is within a Conservation Area or subject to a planning condition (or attaches conditions to a permission that you believe to be unreasonable) you have the right of appeal to The Planning Inspectorate at Bristol within 28 days. CBC will send you details of how to appeal with the tree work application decision notice. If you have any queries on the procedure CBC will be happy to discuss them with you. Again, you may consider taking specialist advice if you think it would help your appeal. There is no additional cost for lodging an appeal other than meeting the costs of your own advisor. An appeal form and information on the appeal process can be downloaded from the Planning Inspectorate's website at www.planning-inspectorate.gov.uk or obtained by post at The Environment Team, Room 4/04, Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN , telephone 0117-372-8812.

4.15 In your appeal explain as clearly as possible your grounds for appeal and provide relevant data and evidence. A report from a specialist may be useful to your case. The Inspector will be an expert and will take all relevant matters into account even if they have not been included in the representations. Most people opt for a written procedure rather than a hearing or Inquiry as these take much longer and will involve extra costs. Whichever procedure is used will have no bearing on the quality of the decision which will be based entirely on the merits of the case.

4.16 The Planning Inspectorate will seek a written response from CBC and other interested parties and copies of their replies will be provided for you to respond to in writing if you wish, by a given date. There is little point at this stage repeating things you have already said in your original submission. Try to make all comments relate to your specific grounds of appeal.

4.17 On a date arranged with you in advance, a Tree Inspector, appointed by the Planning Inspectorate, will come and look at the tree in your presence and a representative from CBC . They will measure the bole, the spread in all directions, the distance from property and will estimate the height of the tree (unless that is a key issue in which case they will measure it.) Remember the fact that the tree is taller than it used to be is not on its own relevant. They will closely examine all the points made in your submission and take photographs as evidence. The Inspector may ask you questions to clarify your submission but will not enter into a discussion on the merits of the case with you or the CBC representative.

4.18 It is not the Inspector's job to adjudicate on your case. Rather, the Inspector submits a written report to the Regional Government Office where a final decision will be taken. This will be communicated to you in writing and that should happen no more than 16 weeks after the date of the site visit. At that point their involvement comes to an end. You have no right of appeal other than on a point of law or because proper procedures have not been followed. If you believe that you have such grounds you are strongly advised to consult a solicitor before doing so because the appeal will be to The High Court where you may incur considerable expense.