

## **TREES – YOUR RIGHTS AND RESPONSIBILITIES**



Trees are an important part of our local environment and provide us with a variety of benefits that improve our quality of life. Most people agree that they enjoy trees, however trees can sometimes create problems where they overhang boundaries, block light, or cause damage to property.

North Somerset Council is unable to deal with most issues or disputes involving privately-owned trees. Instead it is a matter for negotiation between property owners; either directly or through a solicitor or insurance company.

This brief guide introduces some key points of English law where tree disputes are concerned, and points you in the right direction for further advice. It is not a full explanation of the law, and so you should consult a solicitor for a full explanation of your rights and responsibilities.

### **PROTECTED TREES**

Important trees in the landscape are often protected for public enjoyment and it is against the law to wilfully cut down, top, lop or destroy or damage a tree that is either protected by a Tree Preservation Order (TPO) or is located in a Conservation Area without the permission of the Council. A number of exceptions exist, such as tree work to the extent that it is urgently necessary to remove an immediate risk of serious harm. You will need to get written consent from the Council prior to carrying out any works to a protected tree. You can check if a tree is protected by using the Council's online planning constraints map, available here: <http://map.n-somerset.gov.uk/planningmap>

The Council will normally grant permission for works provided they are in line with good practice and do not affect the future health or amenity value of the trees. Applying to do work is free of charge, and a decision will take up to eight weeks.

*Further information on protected trees, including when permission from the Council is and is not necessary, please visit this page: <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-applications-tpo>*

### **DANGEROUS TREES**

Every tree owner owes a duty of care under common law to all people who might be injured by the tree. The duty of care is to take reasonable care to avoid acts or omissions that cause a reasonably foreseeable risk of injury to persons or property.

The tree owner is not, however, expected to guarantee that the tree is safe. They have to take only reasonable care such as could be expected of the reasonable and prudent landowner. 'Reasonable care' includes consideration of the risks posed by their tree by virtue of its location and condition, such as the presence of an obvious defect. Existing case law suggests that the reasonable standard of tree inspection is proportional to the size of and resources available (in terms of expertise) to the landowner.

Criminal laws, such as the Health and Safety at Work Act 1974, place specific duties on employers around risk, and give rise to the possibility of prosecution in the event of infringement.

North Somerset Council has discretionary powers to intervene if a tree is causing an immediate danger to the highway, or where there is imminent danger of the tree causing damage to persons or property. We will recover our costs from the tree owner if we choose to carry out work to make privately-owned trees safe.

### **OVERHANGING BRANCHES**

Under English common law there is a general right to cut overhanging branches back to your property boundary, however, the owner of the tree is not usually obliged to cut them back – if you intend to cut overhanging branches you must not go beyond your boundary or 'top' someone else's trees without their permission and you should normally return the branches unless you agree beforehand to dispose of them yourself.

It is always best to discuss any proposed work with your neighbour first to avoid any later claims of damage – you might even manage to get their help or agreement to remove more than you're entitled to.

*Please Note: If the tree is protected by a Tree Preservation Order (TPO) or is located in a Conservation area you will need to apply for written permission from the Council before you carry out any work.*

### **SHADING AND LOSS OF VIEW**

A property owner has no absolute right to light to windows or a garden with regards to trees and other vegetation. So you would normally need to negotiate with your neighbour about the management of their trees. In some instances it may be possible to demonstrate to a Court that a right to light has been earned, but this requires specialist legal advice. There is no right in law to a view, even if a view was enjoyed in the past, and trees obstructing a view cannot be regarded as a nuisance in law.

There is no specific legal restriction on the height that trees may be allowed to grow. See also High Evergreen Hedges, below.

*Please Note: If the tree is protected by a Tree Preservation Order (TPO) or is located in a Conservation area you will need to apply for written permission from the Council before you carry out any work.*

### **SHADING OF SOLAR PANELS**

The efficiency of solar panels for generating electricity is dependent on the level of sunlight reaching the panels. There is no absolute right to light. We recommend you consider the future growth of trees surrounding your property before you install solar panels. Also see Shading and Light Loss, above.

### **TV AND SATELLITE RECEPTION**

TV interference can be caused by trees however there is no legal right to TV Reception in England. If you believe a neighbour's tree is to blame, we recommend you consult a television engineer to assess your aerial/signal.

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### **TREE ROOTS & DAMAGE TO PROPERTY**

A tree can be a legal nuisance if it causes damage. If a claimant can show beyond reasonable doubt that a tree has caused damage to a neighbouring building, the tree owner may be liable for cost of repair. It may also be necessary to show that the damage was reasonably foreseeable and that action should have been taken to prevent it. You should contact your property insurers for further advice - they will often investigate and deal with the issue on your behalf.

### **FALLING LEAVES, FRUIT/FLOWERS, DEBRIS**

Although they can cause a lot of inconvenience, falling leaves & debris are not regarded as a 'nuisance' in the legal sense and a tree owner has no obligation to clear them – it is normally up to each landowner whether they own a tree or not to undertake their own 'property maintenance' if, for example, they need to clear paths or gutters.

### **HIGH EVERGREEN HEDGES**

A domestic property owner has a right to make a formal complaint about a neighbour's high hedge if they feel it is adversely affecting reasonable enjoyment of their property, and if attempts to resolve the dispute amicably can be shown to have failed. Under Part 8 of the Anti-social Behaviour Act 2003, a high hedge is defined

as a line of two or more mostly evergreen or semi-evergreen trees or shrubs, more than two metres in height above the ground and capable of obstructing light or views. There are specific criteria for making a formal complaint, and also a cost. If a complaint is upheld, the council may order the hedge owner to permanently restrict the height of the hedge.

For Government guidance on this issue please follow this link:

<https://www.gov.uk/how-to-resolve-neighbour-disputes/high-hedges-trees-and-boundaries>

### **FURTHER READING AND ADVICE**

Dobson, M. & Patch, D. (2000). *Arboricultural Practice Note 11: Trees and hedges in dispute*. Arboricultural Advisory and Information Services, Farnham. available from Tree Advice Trust, Alice Holt Lodge, Wrecclesham, Farnham, Surrey GU10 4LH - [www.treehelp.info](http://www.treehelp.info)

Mynors, C. (2011). *The Law of Trees, Forests and Hedges*. Sweet & Maxwell, London. (2nd edn.)

**Arboricultural Association**, including Approved Contractor scheme and advice on choosing an arborist: [www.trees.org.uk](http://www.trees.org.uk)

**Citizens Advice** – free, independent and confidential legal advice: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

**DirectGov** - the official UK Government website for citizens: [www.direct.gov.uk](http://www.direct.gov.uk)

**Tree Advice Trust** –tree research and information charity, including publications and Premium Rate Tree Helpline: [www.treehelp.info](http://www.treehelp.info)