

Trees and problem hedges: an overview

Introduction

The Branch dealing with high hedges and amenity trees issues, including tree preservation orders (TPOs) is part of the Urban Policy Directorate. Information on forestry and woodland matters, including community forests is provided by DEFRA.

You can contact ODPM about tree matters at trees@odpm.gsi.gov.uk

You can also contact us about problem garden hedges, such as Leylandii, at hedges@odpm.gsi.gov.uk

Links to documents mentioned on these pages can be found on the trees and hedges 'home' page at www.odpm.gov.uk/treesandhedges.

Trees

ODPM deals with all matters relating to trees that are grown mainly because they help to improve the quality of our lives, rather than for their value as a timber crop. These are known as 'amenity trees', though their benefits go well beyond making places appear more attractive. Amenity trees are found in parks and other open spaces, or lining the sides of our streets, railways, river and canals. They also include all the trees in our own gardens - in town and country alike.

Trees can also provide valuable habitats for wildlife, improve the air we breathe, help to conserve energy in nearby buildings - and much more.

Planting more trees

For these reasons we support the planting of new trees and promote the best practice to ensure the survival of newly planted trees and ensure efficient use of resources.

ODPM sponsor programmes which involve tree planting as part of a wider strategy to improve where we live and work. Financial support is also given to several voluntary organisations that either plant or care for trees themselves, or encourage others to do so. These include the Groundwork Trust, the British Trust for Conservation Volunteers and the Tree Council.

Looking after those we have

We run a small research programme to make sure that people who care for our trees in town and countryside have the latest scientific information and advice on good management practice.

For example guidance on how to avoid damage to trees from highways maintenance and construction is available in the draft document *Roots and Routes*.

The results of our research have generally been published in the *Research for Amenity Trees* series. Current titles are:

No 1	<i>Trees in towns</i> , HMSO, 1993
No 2	<i>Diagnosis of ill-health in trees</i> (2nd edition), The Stationery Office, 2000
No 3	<i>Urban tree strategies</i> , DoE, 1994 (out of print)
No 4	<i>The body language of trees - a handbook for failure analysis</i> , HMSO, 1994
No 5	<i>Urban woodland and the benefits for local air quality</i> , The Stationery Office, 1996

No 6	<i>Arboricultural practice - present and future</i> , DTLR, 1997
No 7	<i>Principles of tree hazard assessment and management</i> , The Stationery Office, 1999
No 8	<i>Tree roots in the built environment</i> - In publication

These can be obtained from The Stationery Office with the exception of Number 6, which is available from the Arboricultural Advisory and Information Service. This organisation provides technical information and advice on amenity trees. They have their own range of publications and services, details of which are on their web site.

Current research projects include:

- **Controlling water use of trees to alleviate subsidence risk** (Partners include the Association of British Insurers and Horticultural Research International.) - This 5-year project is investigating the effect of tree pruning (both crown thinning and reduction) on water extraction by trees. It will assess the potential for such growth control measures to reduce any impact that trees may be having in cases of building subsidence. An interim report - Controlling Tree Water Use and Subsidence Risk- was published in July 2002.
- **Condition survey of non-woodland amenity trees** (Forest Research) - The third phase of this project continues the monitoring of trees in urban and rural situations to identify significant tree problems. This information will assist in the identification of trends in tree health and factors that may cause changes in them. We will be looking at how the data collected during the survey can be made more readily accessible. Annual reports and tree damage alerts are generated from this project.
- **Trees in Towns II** (ADAS Partnership including Myerscough College)
- The sustainable management of our towns and cities' ecological resources, including trees, plays an important part in encouraging an urban renaissance. Trees are an essential part of the urban fabric, whether they are in gardens, private land, streets, urban woodlands, open space or parks. This project seeks to review the findings of the Department's original Trees in Towns survey conducted in 1993 and contribute to one of the Government's key policy commitments to help build a better information base. There are two strands to the project -
- Strand 1: A survey of the national urban tree stock, reviewing the composition and condition of selected urban tree populations. Identify and evaluate pressures faced by urban trees and trends in the national urban tree population.
- Strand 2: To provide insight into the management of urban tree populations by Local Authorities and the resources available for this purpose. The research will identify best practice as well as investigate the barriers and benefits perceived in establishing urban tree strategies.

Preserving trees

We have strong legislation that protects trees and woods in conservation areas, and gives local authorities wide powers to make tree preservation orders (TPO). This protection is similar in many ways to the listed buildings system.

To check whether a tree is protected and to make an application to carry out pruning or felling work, you should contact your local authority. If work to a tree protected by a TPO is refused you may appeal within 28 days of receipt of the decision to the Secretary of State by contacting your local Government Office.

Further information is contained in the leaflet Protected Trees: A Guide to Tree Preservation Procedures. This gives a brief introduction to tree protection procedures and answers some of the most common questions asked by tree owners and the public. Printed copies are available from ODPM Free Literature.

More detailed guidance is in Tree Preservation Orders: A Guide to the Law and Good Practice. Hard copies may be obtained from ODPM Publications Sales Centre. They cost £8.00.

Local authorities can download a copy of the current model tree preservation order form contained in the Town and Country Planning (Trees) Regulations 1999.

Problem hedges

Not all trees improve people's quality of life. The problems that can be caused by high garden hedges - especially Leylandii - have received a lot of publicity.

Part 8 of the Anti-social Behaviour Act 2003 creates new procedures to enable local authorities in England and Wales to deal with complaints about high hedges. It is clearly better if disputes can be settled between the parties concerned, but where negotiation fails, a complaint can be made to the local authority who will be able to assess the case, acting as an independent and impartial third party. If they think it is justified the authority will be able to order the owner to reduce the height of their hedge. But there is no general requirement that all hedges should be kept below a certain height. The text of the Act is on the HMSO web site.

The main features of the complaints system are:

What complaints can be considered?

Complaining to the local authority should always be a last resort. People should have tried to solve their hedge problems by negotiation with their neighbours before approaching the authority. Otherwise their complaint could be rejected.

If someone cannot settle their hedge dispute, they will be able to take their complaint to their local authority provided that:

- the hedge in question comprised wholly or predominantly of a line of two or more evergreen or semi-evergreen trees or shrubs;
- it was over 2 metres high;
- the hedge acted, to some degree, as a barrier to light or access; and
- because of its height, it was adversely affecting the complainant's reasonable enjoyment of their domestic property (that is their home or garden).

How the local authority will deal with the complaint

In considering a complaint the local authority would be able to charge the complainant a fee.

The legislation does not specify the procedures that authorities must follow in determining complaints. But they should take into account all relevant factors and assess each case on its merits. They will need, therefore, to gather information about the hedge, its effect on the complainant and hedge-owner and its contribution to the wider amenity of the area.

In each case the local authority will decide, in the first place, whether the height of the hedge was adversely affecting the complainant's reasonable enjoyment of their property, including the garden. If so, the authority will then consider what, if any, action should be taken in relation to the hedge in order to remedy the adverse effect and to prevent it recurring.

Even if the local authority find that a hedge is adversely affecting the complainant's property it is open to them to conclude that the arguments in favour of retaining the hedge are stronger and that no action should be taken.

Remedies

If the local authority decide that action should be taken to resolve the complaint, they will issue a formal notice to the person responsible for the hedge, setting out what must be done and by when. This will be known as a 'remedial notice'. This could well include long-term maintenance of the hedge at a lower

height, but could not involve reducing the height of the hedge below 2 metres, or its removal. Although the local authority cannot require such action, the hedge-owner would be free to go further than the remedial notice requires.

Appeals

Both hedge owners and complainants will be able to appeal against the local authority's decision. They must do so within 28 days starting from the date that the local authority notifies the parties of its decision. The remedial notice would be suspended whilst the appeal is being determined.

Enforcement

Failure to comply with the requirements of a remedial notice would be an offence. If someone was convicted in the magistrates' court, they could be fined up to £1,000. In addition to, or in place of, a fine the court might then issue an order for the offender to carry out the required work within a set period of time. Failure to comply with the court order, would be another offence, liable to a £1,000 fine. At this point, the court would also be able to set a daily fine for every day that the work continued to remain outstanding.

If the work in the remedial notice is not carried out the local authority will have powers to go in and do the work specified, recovering its costs from the hedge owner. But, there is no requirement or obligation on them to intervene in this way.

Detailed Arrangements - Consultation

Before the complaints system can be brought into operation, we need to put in place Regulations governing certain procedural details and to prepare guidance to help local authorities administer and determine complaints.

The public consultation on the content of the draft Regulations and guidance for local authorities closed on 30 June. We are now finalising the regulations and guidance. The regulations will have to be approved by Parliament before they come into force. We expect the system to be fully operational in early 2005. **Until that time, however, local authorities have no powers to resolve hedge disputes.**

Preventing Hedge Problems

To help people resolve hedge disputes amicably the Office of the Deputy Prime Minister has produced a leaflet *Over the Garden Hedge*.

To prevent problems occurring in the first place we have produced *The Right Hedge for You*. This sets out alternatives to fast-growing species such as Leylandii and describes the upkeep necessary to make an attractive, healthy, hedge.

History

1999 consultation on possible solutions to high hedge problems

Summary of responses to consultation on high hedge problems

The Right Hedge for You: a guide to choosing a garden hedge

Over the Garden Hedge: a guide to how to settle hedge disputes amicably

Building Research Establishment - Daylight and Sunlight - Final Report

Building Research Establishment - A review of the BRE guidance on hedge height and light loss - final report

Building Research Establishment Guidelines on hedge height and light loss 2004 version

Anti-social Behaviour Act 2003 High Hedges is in Part 8

High Hedges Consultation - Implementing Part 8 of the Anti-Social Behaviour Act

High Hedges Complaints: Prevention and Cure - Consultation Draft

Publications

Information on how and where you can obtain these leaflets and other publications produced by the Office of the Deputy Prime Minister is available from the ODPM publication home page.