

Banbury Town Council



Tree Management Policy

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SCOPE

The management and maintenance of mature trees growing on Banbury Town Council owned/ maintained land to ensure the health/ safety of all users to our sites and to protect the tree population along with any neighbouring property to minimise the risk of any potential damage/ injury.

AIMS

- To manage a sustainable healthy tree population on Banbury Town Council sites by undertaking a regular inspection of trees across all sites and using a computer software tree management package
- To reduce the risk of potential subsidence claims to private, residential or commercial property.
- To ensure a diverse population of trees across the town to improve biodiversity and the environmental habitat of the areas on which the trees are located where appropriate
- To ensure the health and safety of users on sites by keeping paths, roads and street lights clear of overhanging vegetation and tree growth
- To produce a clear management regime for trees growing on Banbury Town Council land that is understandable for the residents and visitors to the town

THE COUNCIL'S LEGAL RESPONSIBILITIES

As the owner and manager of trees, Banbury Town Council has a legal duty of care to take all reasonable steps to ensure that any foreseeable hazards can be identified and made safe. This duty is laid down in the Occupiers Liability Act 1984 and the Health and Safety at Work Act 1974 Section 3 below

'It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety'

Breaches of this duty may give rise to a claim of negligence. It is not possible to eliminate all risks from trees however there are often indications that a tree may be in decline. The council employs a professional arboricultural consultant to undertake regular inspections to industry standards. These inspections identify foreseeable hazards and specify the works needed to reducing these risks to an acceptable risk level.

TREE SURVEYS AND INSPECTIONS

Approach/Method

Banbury Town Councils programme of tree risk management inspections is undertaken by an independent professional arboriculturalist. The survey records information on Council owned trees and identifies any which pose a risk to health and safety. Remedial action is undertaken on any tree which pose a risk on a timescale recommended by inspectors. All trees are re-inspected every 3 years with more frequent inspections on those posing a higher level of risk. Works required are identified as part of the inspection and undertaken on a priority basis. Current budget constraints mean that we can only carry out works for health and safety reasons, damage to property, crime prevention and to facilitate other maintenance operations.

Banbury Town Council has moved towards a more proactive approach to managing its tree stock and expanded its survey methodology to include woodland belts. This involves a walking survey of the

woodland blocks and those trees with defects are noted and recorded. Works to woodland trees will be managed on a priority basis and within resources available.

Acceptable Level of Risk

When the level of risk has been established by surveying the tree any works required will be dependent on reducing the risk to an acceptable level. The legal framework does not require the elimination of risk altogether, but that the risk is minimised to an acceptable level.

It may be possible to reduce the risk associated with a tree by pruning or moving the target e.g. re-routing a footpath.

There may be exceptional occasions when a higher risk may be acceptable for example if there is a tree of particular additional value or for reasons of heritage. In these circumstances the advice from an independent consultant will be sought. In addition to this further arboricultural advice or investigations into the condition of the tree may be sought.

TREE MANAGEMENT

Tree management schedules will be produced in accordance with the principles as outlined within the tree inspections, both programmed inspections and those undertaken in response to enquiries from the public.

We respond positively to tree issues raised regarding safety and endeavour to undertake works to alleviate damage to property it is not possible or desirable to undertake all works requested. Some requests would not alleviate the problem others would only be a temporary measure which could not be repeated due to restricted budgets. Pruning can be to the detriment of many trees and can have the adverse effect of accelerating additional growth.

Where a problem cannot be remedied by pruning a tree may need to be removed.

Tree works WILL take place in the following situations:

- Dead, dying or dangerous trees and branches that are or likely to be a danger public safety.
- Trees or branches proven or likely to cause damage to a dwellinghouse or garage. We endeavour to provide a 1.5 metre clearance from overhanging trees to a dwellinghouse (not property boundaries).
- Trees or branches creating unreasonable obstructing to a public highway, public right of way or access to property.
- Trees obstructing established essential fixtures and services situated in the highway
- A tree which is proven beyond reasonable doubt to be the cause of serious structural damage to buildings as identified by a competent professional assessor

Tree works MAY take place in the following situations:

- Trees deemed by the Council to be an inappropriate species for their situation.
- Trees in an area which is designated for development or redevelopment.
- To maintain historic vistas or in the interest of preservation of heritage structures
- Re-pollarding or re-coppicing on a regular cycle.
- Trees giving rise to justifiable fears about risk of crime, or trees that have provided access and/or cover for criminal activity.
- Trees and branches restricting other grounds maintenance operations.
- Trees which need formative pruning to shape or train them during the early years.
- Thinning of trees where it will benefit adjacent specimens or those of more favourable species.
- The tree is a species which is known to ultimately outgrow its location and in doing so unreasonably restricts the use of the area.
- Trees restricting repairs and maintenance of property.
- To protect or enhance biodiversity.
- To improve the aesthetics of the designed landscape.
- Minor structural damage to neighbouring boundary walls.
- Self-set trees on boundaries where they are a significant nuisance

Tree works WILL NOT be carried out in the following situations:

The Council will **not** undertake tree work operations which may be to the detriment of the tree or for the following reasons

- Shade prevention.
- Interference with television/satellite/internet signals and private CCTV operations.
- Contact with overhead telephone lines.
- Branches overhanging neighbouring property where there is no risk to a person or dwellinghouse.
- Prevention of animal and insect droppings.
- Because trees are perceived as being too large by a member of the public.
- Prevention or clearance of seasonal occurrences such as leaf, flower, seed, blossom, pollen, fruit fall, cones.
- Obstruction of views from private residence.
- Where tree roots have entered drains.
- Where tree roots have entered gardens.
- To allow construction of new access or driveway to property.
- To facilitate the implementation of non- essential underground or over ground services.

STANDARDS OF WORK

The Council will undertake work to trees in accordance with BS 3998:201. The Council will not fell or prune any tree without adequate justification.

NATURAL OCCURANCES

Tree Litter

The Council is not legally responsible for fallen leaves, seeds, fruit, pollen, blossom or cones onto private property or any damage that this may cause. Pruning does not alleviate these problems and we would not carry out works to prevent these arisings.

Where gutters are regularly blocked by fallen leaves gutter guards may be fitted to provide a low maintenance solution at the property owner's expense.

Wildlife

The Council does not accept responsibility for cleaning up of animal or insect droppings such as bird droppings and aphid honeydew onto private property.

Pest and Diseases

The Council will take a responsible approach towards pests and disease and will be proactive in planning for any new threats that are posed to the Councils tree population. Advice provided by the Forestry Commission, Arboricultural Association and our Arboricultural Consultant is periodically reviewed and implemented.

Shade

There is no legal right to light therefore the Council has no legal obligation to abate this nuisance. Pruning will often have negligible impact on the amount of light reaching a house and can have the adverse effect of accelerating additional growth. Therefore under normal circumstances tree works is not considered.

Where elderly, infirm or disabled persons who spend a significant amount of time within their home are affected by shading there will be flexibility to look at some intervention if it can be established that the presence of the tree is detrimental to their health. These cases will be considered on an individual basis alongside the species size and location of the tree, the aesthetic value of the tree, the benefits to the wider community and the financial resources available.

The tree in question would also have to meet the following criteria:

- located to the south or west of the property and;
- have a height greater than 12metres with the distance between the trunk of the tree and the window of the nearest habitable room less than 5metres;
- where the gap between the edge of the tree canopy and a vertical line through that window is less than 2metres.

We will not prune or fell a tree in our ownership to improve natural light to a solar panel as trees are an important asset in tackling climate change.

Bird Nesting

All wild birds at the nest are protected by the Wildlife & Countryside Act, 1981, as amended by the Countryside and Rights of Way Act 2000. It is an offence to intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built. It is also an offence to intentionally or recklessly disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young, or disturb the dependent young of such birds.

The Council carries out tree, hedge and shrub removals or substantial renovations outside of the nesting period where possible (August to mid March); exceptions will include works undertaken for health and safety reasons and trees proven to be damaging property.

At times formally grown shrubs and hedges require containment pruning within the nesting season to remove the current season's growth. The works will be carried out in a manner causing minimum disturbance to birds and wildlife.

Where works are required within the nesting season a preliminary inspection will be undertaken to check for the presence of protected species. Should a protected species be present or in the area surrounding, including active bird nests (one being built, in use or containing eggs), works will not be undertaken unless to alleviate a dangerous condition in which case advice is sought from the RSPB.

Bat roosts

Bats are a European Protected Species and are protected by the Conservation of Habitats and Species Regulations 2010 and the Wildlife and Countryside Act 1981 (as amended). Causing damage to or destroying a roost site is a criminal offence which can lead to imprisonment or fine. Trees with suitable features such as holes, cracks, crevices and dense ivy will be risk assessed for their ability to support bats. Trees, in Banbury Council ownership, displaying signs of roosting bats will be referred to an external bat consultant before any work commences. Any trees supporting roosting bats will not be worked on until Natural England is consulted.

DAMAGE FROM TREES

Root ingress in gardens

The Council is unable to prevent root ingress within adjacent gardens, it is not considered actionable nuisance and therefore we do not undertake root removal where this has occurred. Reduction or removal of some tree species which regenerate through shoots from their buried roots can often exacerbate the problem as it stimulates them to produce more roots.

The Council will not accept responsibility for tree roots that have gained access to drains or services as a consequence of this services being unfit for purpose. Tree roots do not generally break drainage pipes but may be attracted by the moisture of a leaking pipe and enter. The onus is on the owner to get the drain repaired at their own expense.

Where tree roots have caused minor damage to non-supporting structures such as garden walls the Council will not take any action. It is the responsibility of the property owner to rebuild or repair garden walls and fences to take account of adjacent trees. This can be achieved in a number of ways (for example installing a section of railing or bridging foundations around the base of a tree).

If a damaged wall or fence was constructed after planting of the tree, it may mean that the design or construction has failed to take the presence of nearby trees into account.

The Council will not accept responsibility for tree roots damaging hard paving in adjacent land. The onus is on the owner to repair paths, drives and patios etc. to take account of adjacent trees and tree roots. Where roots protrude they can be root pruned up to the boundary but not to the detriment of the trees health.

Damage from overhanging branches

The Council will cut back tree branches from a dwellinghouse and garage where they touch windows, walls, roofs or gutters. This will ensure that damage to a dwellinghouse and garage such as tiles or gutters is avoided. We endeavor to maintain a 1.5m clearance from these structures.

Overhanging branches not causing damage to a dwellinghouse, garage, fence or wall will not be pruned back and it is the onus of the property owner to cut them back to their boundary if they perceive these to be a nuisance.

If branches from a tree on Council owned land is found to be causing damage to a boundary wall we will investigate and take action if appropriate. The usual course would be to remove low branches up to a maximum height of 3m.

We will consider tree removal if the walls or fence is irreplaceable and of exceptional importance e.g. a retaining wall or of historical interest, if there is a risk to public health or if other tree works are not appropriate.

Damage to paths and patios

It is often possible to repair paths to take account of adjacent trees and tree roots. Where roots protrude they can be root pruned up to the boundary, or the path re-laid around the tree with flexible materials such as asphalt to provide a smooth surface. Where trees are considered to be causing damage to paths or footpaths, we will not normally consider tree removal except where there is a risk to public health which cannot otherwise be mitigated.

Claims for Subsidence

The Councils insurance company, supported by the Councils Recreation and Amenities Manger and Arboriculture Consultant will manage all claims relating to subsidence

When investigating claims of subsidence and damage to properties from a tree owned and maintained by the Council, the onus will be on the claimant to provide evidence that the tree is the cause. The claimant or their building insurers must submit a structural engineers report demonstrating that on balance of probability the tree is the cause of the damage. This will enable the Council to review the evidence and determine the appropriate course of action. The report must cover:

- A description of the property, including a description of the damage and the crack pattern, the date that the damage first occurred/was noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map

- Details of vegetation in the vicinity and its management since discovery of the damage. Include a plan showing the vegetation and affected building
- Measurement of the extent and distribution of vertical movement using level monitoring. Where level monitoring is not possible, state why and provide crack-monitoring data
- A profile of a trial/bore hole dug to identify foundation type and depth and soil characteristics
- The sub-soil characteristics including soil type -liquid limit, plastic limit and plasticity index
- The location and identification of roots of a culpable species found
- Proposals and estimated costs of options to repair the damage

The Council will challenge unwarranted claims based on insufficient or inaccurate evidence.

A successful claim will not necessarily result in the tree being felled. Options include remedial work to the tree such as heavy repeated crown reductions to prevent further damage. Where the decision to fell the tree is taken the Council will assess whether a replacement tree of an alternative species is appropriate.

OTHER TREE RELATED ISSUES

Telephone Wires

We will not prune or fell a tree in our ownership / management to prevent or reduce interference with telephone wires. We would recommend contacting the telephone service provider in such circumstances.

It is the telephone service providers' responsibility to maintain your service. Several options are available to the utility company that do not require pruning of a tree to maintain the service. Often pruning is a temporary solution and the problem may reoccur when branches grow back.

For example the cable can be sheathed at points of high friction; the lines can also be redirected through the tree canopy. It may be that the telephone service provider is able to suggest an alternative solution to the problem of trees affecting telephone wires.

ADJACENT LANDOWNERS

Permitted Works to Council Owned Trees

Property owners have a common law right to make private arrangements to prune back Council owned tree branches overhanging their property as long as the tree is not subject to a Tree Preservation Order, within a Conservation Area or have any planning restrictions attached to them.

The cutting back should only be up to the fence or boundary line. Should works be required beyond the boundary in order to cut back to suitable pruning points, approval must be sought from the Council. The Council will need to meet the contractor to agree the works, see proof of insurance,

qualifications, professional membership and site risk assessment before they are allowed to carry out work on Council owned land.

Cuttings must be disposed of in an appropriate manner the Council does not require these to be returned. Any cuttings left on council property will be deemed as fly tipping and will be subject to appropriate enforcement action.

Any works undertaken to Council owned trees must be carried out to the relevant industry standards as set out in BS 3998. It is recommended that works are undertaken by a suitably trained professional tree surgeon carrying the relevant levels of Public Liability Insurance unless the works are such that you could carry them out with hand secateurs or similar. The person undertaking these works would be liable for any works which injury/damage or result in the death of the tree as a result of poor practices.

Criminal Damage

Any felling or heavy pruning of Council trees on Council land is deemed as criminal damage. The perpetrator will be investigated and under the Anti-social Behaviour, Crime and Policing Act 2014 a Community Protection Notice may be issued, breach of which would result in a fine of up to £2,500 for an individual and £20,000 for a body.

Dangerous Trees Not Owned by the Council

the Highways Act 1980 Section 154 gives the Highways Authority Oxfordshire County Council (OCC) powers to serve notice requiring the cutting or felling of a hedge tree or shrub which endanger, obstructs or interferes with the passage of vehicles or pedestrian or by reason of its condition is likely to cause danger by falling on to the highway. The owner /occupier will have 14 days to do the works. Failure to carry out these works results in OCC carrying out these essential works and recharging the costs to the owner.

The Local Government (Miscellaneous Provisions) Act 1976 – Section 23 gives the Banbury Council powers to deal with dangerous trees not owned by the council where there is an imminent danger or where there is immediate and unreasonable risk to persons or property (other than to the public highway). It cannot be used in circumstances where, for example there is a fear of trees falling in a high wind.

The Council is unable to assist in disputes regarding privately owned trees.

HEDGES

Hedges on Council Land

Hedges will be retained on Council land wherever possible, managed in a healthy condition in the interest of local amenity and wildlife.

High Hedges

If natural light is being blocked by growth of a hedge then action may be taken to reduce the problem under the high hedges Act, Part 8 of the Anti-social Behaviour Act 2003. Cherwell District

Council are the authority who have the power to intervene in matters involving High Hedge disputes if the complaint conforms to the requirements outlined within the guidance 'High hedges: complaining to the Council' produced by the Office of the Deputy Prime Minister. The hedge must be a line of two or more evergreens rising to a height of more than two metres above ground level and capable of obstructing light or views.

Cherwell's role is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of their property.

There is a cost to the applicant for this assessment of £360. This fee is charged whether the complaint is upheld or refused. The council holds the right to refuse to intervene if we think the applicant hasn't done everything they reasonably could to settle the dispute. Please see more information on this matter on Cherwell District Councils website.