

## Appendix C2

### Leicester City Council Tree Policy

#### 1. Introduction

For the purposes of this document the word “tree” refers to both trees and woodlands.

This policy relates to the management of trees owned by the Council.

The Council has enforcement powers under various Acts of Parliament giving it a measure of influence over how some trees in private ownership are managed and maintained. These matters fall outside of the bounds of this policy.

The Council’s “make or buy” policy ensures that the Council’s Trees and Woodlands Section is the appointed agent for managing and/or maintaining all of the trees it owns, or is otherwise directly responsible for.

Reference documents listed in the policy are those that are current at the time of writing. Any subsequent revisions will be regarded as having replaced those referred to.

This policy is informed by the following central government guidance.

#### **DETR Circular 36/78 Trees and Forestry**

#### 2. Capital Works

Capital projects can have a landscape development aspect that includes the felling, pruning or establishment of trees. Other capital projects may be concerned solely with landscape development or tree planting.

In all cases tree planting, including specification details and layout, must be appropriate for the location. During the planning stage provision should be made for the cost of ongoing maintenance of planted trees. This should include a lengthy defects liability period of four years or more, to be borne by the contractor or their agent.

Planting specifications should aim to meet or better the relevant advice given in the following British Standards.

**BS 4428:1989 Code of practice for general landscape operations**

**BS 3936: Part 1:1992 Nursery Stock. Specification for trees and shrubs**

## **BS 4043:1989 Transplanting root-balled trees**

The Trees and Woodlands Section should be consulted over relevant design details during the planning stage.

The Council's appointed client is responsible for initiating, funding and managing any tree works element of a capital project. The client will also be responsible for any consultation required, whether this is a requirement in law, e.g. seeking a planning consent, or a local political requirement e.g. a public consultation exercise. The Trees and Woodlands Section is not normally the client for such a project. It may however be expected to take over responsibility for maintenance of newly established trees at the end of the defects liability period.

## **3. Revenue Works**

### **3.1 Responsibility for the Management of Trees**

Various land holding departments and service areas retain stocks of trees. For the majority the land holding service retains responsibility for tree management. Any delegation of this responsibility within each of these services is established through local agreement or custom.

Three service areas: Housing Services, Highways Group and Parks & Green Spaces Services have delegated maintenance responsibilities for their trees (those growing on verges and public open spaces) to the Council's Trees and Woodlands Section.

In all cases the responsibility for the tree stock reverts to the relevant land holding service once any maintenance or management work that the Trees and Woodlands Section is able to commission (given resource constraints) is completed.

### **3.2 Resources**

#### **3.2.1 Materials, Equipment and Staffing**

Using delegated budgets and other income the Trees and Woodlands Section purchases and manages any materials, equipment, machinery, staffing, training and contractors required for the provision of tree management and maintenance services to the Council.

#### **3.2.2 Financing of Works**

Service areas requiring the support of the Trees and Woodlands Section fund the execution of works. The Highways Group and Parks and Green Spaces Services allocate budgets at the start of each year to support their requirements in this area. The Trees and Woodlands Section is required to aim to contain expenditure within these budgets.

### 3.2.3 Operational Efficiency

The Trees and Woodlands Section will seek to deliver cost effective services. It will use all appropriate means to reduce charges and costs.

### **3.3 Staff and Public Safety during Works to Trees**

Tree work involves the use of cutting machinery and working at height, often in combination. As a result such work is inherently hazardous.

The Trees and Woodlands Section maintains a system of dynamic and task specific risk assessments and safe working guides. These are used to ensure the maintenance of staff and public safety during works.

Regulations and authoritative guides are used to inform risk assessments and safe working guides, and the working practices that arise from these. The following list includes the main sources of guidance and regulation. An exhaustive list is held within the relevant section of the Safety Plan of the Council's Parks and Open Spaces Service.

**Arboriculture and Forestry Advisory Group Guides Nos.103-805**

**Control of Substances Hazardous to Health 2002**

**Arboricultural Association Guide to Good Climbing Practice 2005**

**Lifting Operations and Lowering Equipment Regulations 1998**

**Personal Protective Equipment at Work Regulations 1992**

**Provision and Use of Work Equipment Regulations 1998**

**Safety at Street Works and Road Works, A Code of Practice 2001**

**Work at Height Regulations 2005**

**Control of Pesticide Regulations 1986 (Amendment 1997)**

## **4. Management of Trees**

### **4.1 Objectives**

Historically the Council's primary aim in maintaining a population of trees has been to enhance amenity. This is a broad term and covers a range of imparted benefits such as visual enhancement of the landscape, boundary demarcation, provision of shelter and screening.

It is now recognised however that trees also play a significant part in promoting biodiversity and in reducing air pollution, in part through carbon sequestration. Given this they are important tools in supporting the Council's broader environmental objectives, as determined through adoption of the Environmental Management and Audit Scheme (EMAS), Leicester's Community Plan (2003), Leicester Environment Strategy (2004).

Through EMAS the Council has the objective of at least sustaining its stock of trees. This means maintaining tree numbers and/or the area of land given over to trees.

In detail the picture is dynamic. Individual trees are removed for various reasons over time. To help sustain the stock compensatory replacement is regarded as necessary, although this may not be at the location of the removed trees.

In some cases it is possible to take the opportunity to increase tree numbers at a particular location. This should be taken up as a means for compensating for losses that may not have been made good elsewhere.

There is no specific policy to increase the tree stock numbers over all. However adherence to this as a practice is seen to support the Council's broader environmental objectives.

## **4.2 Standards**

In order to ensure a standard of management that promotes and compliments its objectives, the Council strives to adhere to nationally recognised tree management practices. It therefore aims to meet or better the standards promoted in guides produced by the British Standards Institute and other authoritative bodies, listed as follows.

**BS 3998:2010 Tree Work - Recommendations**

**BS 4428:1989 Code of practice for general landscape operations**

**BS 3936: Part 1:1992 Nursery Stock. Specification for trees and shrubs**

**BS 4043:1989 Transplanting root-balled trees**

**BS 5837:2012 Trees in relation to design, demolition and construction**

**NJUG 10 1995, utility services in proximity to trees**

**NHBC Standard, Chapter 4.2 1995 Building Near Trees**

**Natural England and the Forestry Commission produce various authoritative guides on the management of small woodlands in particular. These are used as reference material as required.**

### **4.3 Legal Constraints**

In some circumstances the Council can be obliged in law to adhere to certain constraints, in terms of the way it manages parts of its stock of trees.

The following are examples of legislation that may apply such constraints

#### **Wildlife and Countryside Act 1981 (also Amendment Act 1991)**

#### **Town and Country Planning Act 1990**

#### **Forestry Act 1967**

The Council will adhere to all relevant legal constraints.

### **4.4 Resolving Conflict and Problems**

#### **4.4.1 Primary Issues**

As both a good neighbour and a landowner inviting the public access and use its land, the Council aims to manage its trees in a way that removes the conflict and hazard its trees can cause.

The Council recognises there are three levels of conflict that can arise between individuals and trees.

Trees can (a) present a danger, (b) be a nuisance in law or (c) may cause inconvenience.

Where its trees become a danger the Council is obliged to address this. The Council will address all such dangers as soon as it becomes aware of them. To that effect it will maintain staffing, equipment and reporting systems that allow it to respond appropriately at all times of the day.

Nuisance in law requires that trees have a material affect on a complainant. Damage to buildings is an example. The Council will seek to resolve all such problems as soon as it can do so practically.

For an extensive list of the type of incidence regarded as constituting a legal nuisance, or that otherwise demands action see Appendix A, part 1

Inconvenience is a lesser problem, where a concerned party may not be eligible for redress in law. An example of this may be irritation caused by leaf litter. While the Council will act as a good neighbour and seek to address such concerns it is in this area that it is most likely to be obliged to consider

whether some of the other policy objectives referred to in this document take precedence. It may also be obliged to consider whether the requirement to manage within resource constraints precludes action. In cases where a practical response to a request to address an inconvenience is declined the Council will advise the requesting party of its decision and the reasons for it. Ultimately the requesting party has the option of an appeal to the Local Government Ombudsman. The Council will assist them with this.

The Council recognises that in owning a stock of trees they are likely to cause some level of inconvenience to some individuals at certain times. On balance it takes the view that this can be acceptable given the benefits trees impart to the wider community and given the Council's broader policy objectives.

For an extensive list of the type of incidence regarded as not constituting a legal nuisance see Appendix A, part 2

#### 4.4.2 Legal Framework

Case and Statute Law help to define the Council's responsibility with respect to the issues discussed in 4.4.1.

The principle relevant statute is as follows,

##### **The Occupiers Liability Act 1957/1984**

Other Acts however have been used in high profile prosecutions relating to problems caused by trees, for example,

##### **The Health and Safety at Work Act 1974**

Case law continues to develop and is too complex to attempt to adequately refer to here.

The Council will heed relevant developments in law and will seek to respond adequately to the implications of these.

#### 4.4.3 Knowledge of the Stock

The Council recognises that knowing about the condition of its tree stock is key to resolving the conflicts and problems the resource can cause. It is also key to its ability to manage trees in accordance with other policy objectives. This former point is reinforced by the outcome of case law in particular. The implication is that trees require periodic inspection by a competent person.

There is no guidance or ruling on how often trees should be inspected to meet the requirements of the law. The need however for inspection that is frequent enough to allow for timely identification of problems can be balanced against the nature of a site, in particular against the degree of risk posed to individuals and property that exists at a site. It is recommended therefore that the following inspection cycles be aimed at.

Trees growing on adopted highway, every 3 years.

Trees growing in public open spaces, every 4 years

Trees growing in schools, every 3 years

Trees growing at sites of limited public access, every 4 years

Trees growing on tenanted/leased land, N/A (unless specifically advised it is assumed this responsibility is delegated to the tenant)

Individuals who can demonstrate that they hold arboricultural expertise will carry out all formal inspections.

#### **4.5 Consents and Consultations**

Pruning or felling of trees, even for safety reasons, can be the subject of significant local concern. Where works that may cause such concern become necessary the relevant authority, residents and local Ward Councillors must be consulted and advised as appropriate. The Trees and Woodlands Section has an established procedure for this entitled.

#### **“Criteria for Consulting over Tree Works, August 2005”**

Procedures cover trees subject to planning controls, trees at locally managed sites and trees at centrally managed sites. The provisions outlined therein will be adhered to as appropriate.

#### **4.6 Arisings**

The works to the Council's trees produces around 5,000 m<sup>3</sup> of timber products each year. In order of greatest volume first these are woodchip, firewood, stems that could be milled, mixed waste (stones/soil/woodchip), stumps.

The Council aims to manage these materials in a way that maximises reuse.

It recognises however that it is also obliged to manage the materials in question in accordance with relevant legislation. In particular the following,

#### **Environment Protection Act 1990 (Amended 1995)**

The Council will balance its reuse aims against its obligations in law.

Author: Alan d'Albe

Date: 7 March 2007

First amendment: 16 March 2007  
Second amendment 4 May 2007  
Third amendment 26 September 2011  
Fourth amendment 3 September 2012  
Fifth Amendment 15 November 2012

## **APPENDIX A**

### **The Council's Trees**

#### **Part 1**

Nuisance and regulated issues

The Council will accept liability for and/or address the following through works to trees

1. Where there is obstruction of a legal access right (vehicular or pedestrian)
2. Where trees demonstrably cause a health problem, such as an allergic reaction
3. Where there is a risk someone might consume fruit known to be poisonous
4. Where there is obstruction of bus stops
5. Public CCTV obstruction where there is no other practical or economic alternative
6. Physical contact of stems or branches with buildings or structures
7. Where trees provide an access or obstruct visibility so that crime is a likely result
8. Climbing by children where there is an obvious hazard
9. Where trees or limbs are damaged or weakened so that a hazard over private or public land/property results
10. Where roots are known to be involved in damaging structures, including surfaces and underground structures (either directly or indirectly)
11. Where trees are host to an infectious or a notifiable disease or pest
12. Where limbs and trees have fallen in a public place, except where conservation is an overriding priority
13. Public footway obstruction
14. Highway obstruction
15. Road sign or traffic light obstruction
16. Highway sight line obstruction
17. Streetlamp obstruction, where the area of intended benefit is compromised
18. Where a trip hazard is caused

#### **Part 2**

Other common causes of complaint

The Council will address these provided it is practical to do so and it has the resources available and works would not damage amenity. In the absence of these provisions it is legitimate to reject requests for works

1. Obstruction of advertising

2. Unsubstantiated claims of ill health caused
3. Bark stripping
4. Seed and berry caste where these are non-toxic
5. Bird droppings and bird roosting
6. Boundary overhang
7. Private CCTV obstruction
8. Climbing by children where there is no obvious hazard
9. Dead or dying trees unless a hazard is caused
10. Fallen trees or limbs where retained for conservation reasons
11. Occurrence of sooty mould and honey dew
12. Presence of insects unless a known human pest species
13. Where the size of a tree draws complaint
14. Direct sunlight obstructed to a dwelling, unless there is a proven environmental health concern
15. Direct sunlight obstructed to a garden or drying area
16. Direct sunlight obstructed to solar panels
17. Satellite or terrestrial television reception obstructed
18. Leaf litter and twigs on roofs and in gutters
19. Leaf litter and twigs in private gardens
20. Dead or damaged newly planted trees
21. Requests for tree planting
22. Contact with overhead services, unless damage to OH plant caused by highway tree
23. Failure of light from street lamps reaching private land
24. Obstruction of views