

Pinchbeck Parish Council

Tree Policy

This is a policy for the management of trees managed by Pinchbeck Parish Council.

A principle of English Common and statute Law is that land/tree owners have a duty of care to visitors, residents, passers-by and indeed trespassers when on their land.

Any queries on trees belonging to Pinchbeck Parish Council, should be made to the Parish office, telephone 01775 724348 or email: clerk@pinchbeck-pc.gov.uk. Trees on other spaces may be the responsibility of South Holland District Council 01775 761161.

Trees situated within the public highway, adjacent to the road or on roadside verges are generally the responsibility of Lincolnshire County Council you can contact them on 01522 782070 or www.lincolnshire.gov.uk.

Trees help to add variety to our landscape and provide valuable habitats for many species while providing us with cleaner, filtered air. Pinchbeck Parish Council aims to preserve Pinchbeck's trees for future generations to enjoy.

Work that Pinchbeck Parish Council will carry out on Parish Council Owned Trees.

In maintaining our trees, the Parish Council will:

- Remove dead, dying and dangerous trees
- Remove dangerous and damaged limbs
- It is our policy to survey our trees on a regular basis, but if trees require work under this section, members of the public should contact: clerk@pinchbeck-pc.gov.uk
- The trees will be inspected and if works are required this will be programmed as necessary.
- All work carried out on private land by Contractors employed by the Parish Council, prior permission would be sought before any work commenced.

Work that Pinchbeck Parish Council will not carry out to Parish Council Owned Trees.

The Parish Council has no obligation to carry out the following tree works:

- Cut back branches overhanging private property.
- 'Top' trees or remove branches to increase daylight or decrease height in relation to property.
- Remove branches or trees affecting views or interfering with TV reception.
- Remove branches or trees to prevent falling leaves, honeydew from aphids or other minor debris.
- Remove roots from drains or repair root damage to structures, where the tree has not been clearly demonstrated to be the principal cause.
- Remove branches or trees to prevent potential root damage to structures.
- Remove branches nearly touching buildings, walls, roofs, fences etc.
- Remove branches or trees to prevent access to squirrels or birds.
- Undertake any work that the Parish Council, or its assessors, do not consider necessary.

If members of the public would like tree works carried out as per this section, they should make their own arrangements as described below. The Parish Council reminds residents and landowners that pruning may be carried out on unprotected trees (i.e. not subject to a Tree Preservation Order) where they overhang your property, VERTICALLY in line with your boundary.

Carrying out Tree works yourself and Pruning Guidance.

In common law, a property owner can cut back overhanging branches to the boundary of their property. All pruning material must not be thrown back over the boundary, as this could be classed as fly tipping.

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The Parish Council would usually have no objection to property owners carrying out tree work or engaging a contractor at their own expense, provided that:

- Access is not gained onto neighbouring land or to a tree within that land; if access to our land or to a tree on that land is required, our permission must be sought.
- Where trees are in public community areas and access is required to carry out pruning, you will require written permission before carrying out such work from the community area.
- The tree is not situated in a Conservation area or protected by a Tree Preservation Order (TPO).
- Any work done to a tree is not detrimental to its health or stability; for their own protection members of the public are advised to obtain advice from a qualified tree surgeon.
- For tree pruning work, whoever does the work, it is carried out to an acceptable standard, in accordance with the British Standard Recommendation for Tree Work 3998:1989.
- The property owner notifies us (before the work begins) of the proposed work and commencement date.

The Council does not carry out works to privately owned Trees

Tree Removal

The Parish Council will avoid felling trees unless it is necessary. Tree felling will usually be for health and safety purposes, or to prevent the spread of serious diseases and pests. The Parish Council reserve the right to fell trees to prevent overcrowding, to improve habitats, to restore landscapes in line with site management or to remove a tree that is inappropriate to its location and has a significantly detrimental impact on the appearance or amenity of a site.

Emergency Procedures

If a tree presenting a hazard is observed by a member of the public and is deemed potentially dangerous and constitutes an emergency, then the appropriate authority should be notified to enable a prompt response to be made.

An emergency would be classed as:

- Imminent danger to property or persons.
- A blocked road resulting from a fallen tree.

Emergency Contact Numbers;

- South Holland District Council 01775 761161, Lincolnshire County Council 01522 782070
- For Parish Council trees that are causing imminent danger to property or persons please contact; The Parish Office T; 01775 724348, email clerk@pinchbeck-pc.gov.uk.
- In an emergency dial 999.

Full details of the Policy can be found on the Parish Council website on: <https://pinchbeck.parish.lincolnshire.gov.uk/>.

If you are in doubt as to the rights you may have or actions you are considering taking regarding trees owned or managed by the Parish Council, please contact the Parish Office to discuss before proceeding.

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Appendix I - Trees and Boundaries

Overview

There is nothing to prevent any owner planting or growing a tree anywhere on their property. Neither is there any restriction upon the size to which the tree may grow.

A tree overhanging a neighbour's property may be a nuisance and the neighbour is permitted to remove any branch or root that reaches into their property beyond the boundary line.

The tree owner has no legal obligation to prune the branches back to the neighbour's property boundary line.

Cutting back of overhanging branches can be done without notice to the owner but pruning material must not be thrown back over the boundary. This common right is invalidated if the tree concerned is subject to a Tree Preservation Order (TPO) or lies within a Conservation Area.

Any work carried out should be to modern tree pruning recommendations. However, this should be flexible to allow a common-sense approach to householders to prune sensibly without incurring unacceptable and unnecessary costs.

Trees encroaching over a public thoroughfare that cause obstruction or restrict the view of road users may be regarded as a danger and the Local Authority Highway Service may serve notice on the tree's owner to address the problem.

The tree owner owes a duty of care to all third parties and is liable for any nuisance or damage that their tree causes.

Should a tree owner neglect to address a known defect to a tree and it causes damage, the tree owner may be held liable for negligence. This duty of care extends even to persons who may trespass onto private land.

Communication

A parishioner, or their agent, wishing to discuss a particular aspect of this policy should contact the Clerk, who will then pass on details to the Parish Council. The Parish Council will formally reply to enquiries and act to bring about an effective resolution within a reasonable timescale.

Arbitration Process

This Policy has been developed to encompass all aspects of English law that are applicable to trees located on or near adjacent property boundaries and the care of such trees in accordance with current 'best practice' guidelines and wider consideration for the green environment.

The Parish Council will discuss the Policy content if a parishioner, or their agent, expresses particular concerns relating to their property, its boundaries or other similar concerns. The Parish Council will enter into an arbitration process, should this be necessary, at full cost to the parishioner (or their agent) who requests such.

Adherence to this Policy

Unless confirmed in writing from the Parish Council, no deviation from this policy and its implementation is permitted. Deviations will only be permissible via a formal Parish Council meeting and a majority vote for such deviation obtained.

Any action found to have been carried out contrary to the Policy will be acted upon to include seeking of full compensation through the Small Claims Court and possible prosecution under current English law in force at that time.

Review of this Policy

This Policy will be reviewed every 3 years, or as necessary.

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Appendix II - Trees and the Law

Introduction

This appendix gives a brief outline of some of the more common points of the law affecting trees. It is not a definitive guide and is not intended to be used as such. As the law is complex there may be exceptions to the rules. Always seek legal advice if clarification of the law is required.

Who owns a tree?

Trees are the property of the owner of the land on which they grow. When it's obvious where the tree is growing ownership can be assessed easily. However, if a tree is growing adjacent to or spanning boundaries ownership detection can be problematic. To find out who owns the tree, first establish where the boundary line runs, and on which side the tree first grew or was planted. Neither of these is easy to find out especially if the tree is mature. Property deeds will sometimes definitely place the trees. Otherwise, an amicable agreement between landowners should be sought. If an amicable agreement is impossible, a court will decide. Remember that all trees are owned by somebody.

Responsibility for maintaining trees

The owner of the tree is responsible for maintaining it in good order. In the case of tenants or leaseholders, it is usually the landlord who is responsible unless the tenancy agreement or lease specifically states otherwise. The responsibility for maintaining a tree does not necessarily require regular action, but if someone is injured or the property is damaged because the owner did not maintain it, a liable case, due to negligence, could be brought against the owner.

Trees that overhang boundaries

It is not the responsibility of the tree owner to prevent their trees from overhanging an adjacent property.

Common law provides a 'right' for a landowner to cut back encroaching branches or roots from a neighbour's tree. The individual scenario must be reviewed to ensure that this view of Common Law applies, and it should be noted that action under this law brings conditions that must be adhered to.

A frequent problem is the extent and positioning of pruning allowed under this 'right', frequently does not compare with modern tree pruning recommendations and if taken to the letter of the law, may result in a disfigured and potentially dangerous tree. The property owner will not be protected should damage or loss occur. The branches and roots can only be cut back as far as the boundary. Care must be taken when cutting back roots to avoid killing the tree or causing it to fall over. The tree cutter/neighbour has no right to cross the boundary, or trespass on another property, to do this.

Any cut branches and fruit remain the property of the tree owner. Disposal of the pruning's or fruit without the owner's permission could be considered theft or criminal damage. It is advisable to ask the owner if they require the branches and/or fruit back. If not then, it is the responsibility of the tree cutter/neighbour to dispose of them. It is not advisable to throw the material back over the fence, as that could lead to a prosecution for fly tipping with penalties of up to £50,000 and/or 12 months imprisonment.

A tree owner who plants a poisonous tree so close to a boundary that its branches grow over the boundary and are eaten by a neighbour's livestock will be liable for damages. However, if a neighbour's livestock reach through or over the boundary to eat the leaves, the tree owner will not be liable unless he/she has responsibility to maintain the physical boundary.

Trees which block light and views

The entitlement to light only applies to daylight in general and there is no right to direct sunlight. There is only a right to a level of light that is normally less than most people already receive. The law is not very clear as to how trees affect this right as it is complicated by the growth of trees over years and that most trees shed their

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leaves for part of the year. The law is much clearer if someone were to build a brick wall outside a window. Any case involving of loss of light due to trees must be taken to the Civil Court and proven. If successful, an injunction may be served by the Court requiring the offending trees to be reduced in height or restricted from further growth.

Right to a view in a domestic garden.

If trees obscure a view, then you have no right to that view. The same is true if trees are removed and reveal, for example, a building that spoils the view.

Falling leaves and berries

Leaves, flowers, fruit, pollen are seasonal and fall from trees. Many people regard this as a nuisance but whilst this may be troublesome at times it is not legally a nuisance. Nuisance has a specific meaning in law – something unauthorised that is obnoxious or injurious to the community at large or an individual, especially in relation to ownership of property.

Liability for leaves, fruit, and pollen falling into a neighbouring property does not lie with the owner of the tree to clear them, as leaf fall is a natural occurring phenomenon. Liability lies with the owner of the property affected to clear the leaves.

For a case against the tree owner, both loss/damage and that the damage could have been reasonably prevented will have to be proven. The neighbour to the tree owner might argue that he/she suffered damage as a result of leaves blocking a drain and that it could have been prevented by the tree owner cutting down or pruning the tree. On the other hand, common sense is usually the best option. Is it reasonable to cut down a tree just because leaves fall off it for a short time each year, or is it more reasonable to clear the drain more often?

Dangerous Trees

Common law does not require tree owners to prune or maintain their trees - even if they are dangerous. It just places the liability on them should someone suffer damage if they fail to do so. Prevention is better than allocating blame. Fortunately, there is the "Local Government (Miscellaneous Provisions) Act 1976" which enables a local Council (District or County) to insist, by serving a Notice that the owner removes the danger. If the tree owner refuses, the Council can go onto the property and make the tree safe and charge the owner for doing so. For the Council to do this, the tree must be dangerous and there must be an immediate risk to other people or property.

Subsidence

It is the duty of the person claiming to prove beyond reasonable doubt that it is the tree causing the subsidence of soil beneath their property. Subsidence is normally only evident in areas of clay soil.

The tree will remove water from the particles of soil causing the ground to shrink. Heave, when a tree has been removed and rehydration of soil causes it to swell violently, is a greater risk to a property.

High Hedges

A "high hedge" is defined by the Anti-Social Behaviour Act 2003 as a barrier to light or access which is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level. The Act only covers hedges that affect homes that are defined as a dwelling or any associated garden or yard.

There are several Government leaflets that cover these aspects of hedging: "The Right Hedge for You", "Over the Garden Hedge", "Hedge Height and Light Loss" (2013).

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Tree Protection

As part of the Town and Country Planning Act 1947 Local Planning Authorities (LPA) were given the power to protect trees and woodlands in the interests of amenity by making Tree Preservation Orders (TPO).

The obligation on the LPA to protect its tree heritage remains as important now as ever. Within the Act there is no absolute definition of the word 'tree', but it is generally accepted that the term applies to any plant that would normally be recognised as a tree. A TPO is a legal document and is served upon both the owner of the land on which the tree or trees grow and any third party who may be affected by the tree or trees. After the TPO is served there is a six-month period during which any party upon whom the TPO is served may register an objection. After six months (or 28 days if no objection is received), the TPO will be confirmed by the District/County/City Council, after which there can be no further objection.

The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of a tree without the prior written consent of the LPA. In order to carry out works to a protected tree, a written application must be made to the LPA. A written Consent Notice may be issued, usually with certain conditions relating to the quality of work expected and replanting requirements in the case of felling. If the LPA refuses to consent to the works applied for, the applicant may appeal against the decision to the relevant Central Government Department.

There are trees, cultivated fruit trees for example, which are exempt from protection and others such as those dead or dying that may be felled without written consent. Some exemptions are ambiguous, and it is always best to check with the LPA Tree Section if there is any doubt.

All trees growing within a conservation area (CA) and having a stem diameter of more than 7.5cm at 1.5m above ground level are also deemed to be protected. To carry out works to such trees, the Council requires six weeks written notice of intent. The Council cannot refuse consent to carry out works to a tree in a CA without making a TPO. The six weeks gives the Council the time it needs to decide whether to make a TPO. If no decision is made within six weeks the applicant may proceed with the works.

Carrying out works to a protected tree without giving the required notice or without first obtaining written consent is an offence with a penalty of up to £20,000.

Tree Contractors - Legal Liability of Individuals or their Agents

A Parishioner, or their Agent, contacting the Parish Council regarding undertaking work on Parish Council trees, will be made aware of the legal implications surrounding the commissioning of a Tree Contractor who does not possess appropriate qualifications to carry out such work. The absolute minimum requirement for all Tree Contractors is the possession of nationally recognised qualifications from the City & Guilds NPTC (National Proficiency Tests Council) or LANTRA (Land Training-Sector Skills Council) covering the type of work being carried out. Failure to establish competency in the work being carried out leaves the householder/landowner liable to legal claims, from the operative, should an accident occur.

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Appendix III - Questions and Answers

A tree overhangs my property, what are my rights?

- You may prune unprotected trees and hedges overhanging your land and the roots growing beneath your land up to the boundary.
- You do not need the owner's permission, but you must not trespass onto their land to do this.
- In addition, you must offer to return the cut branch wood and any fruit which is attached or has fallen onto your land.
- You do have a duty of care for the tree and may be liable for damages if any work you do, or ask others to do for you, causes the tree to die or become dangerous.
- If the tree is protected, either by a Tree Preservation Order, Woodland Preservation Order or by the fact that it grows in a conservation area, you will need to make formal application to
- South Holland District Council Tree Officer before carrying out works.

A tree is shading my garden, what are the owner's responsibilities?

- For living entities such as trees there is no prescriptive right to light, so there is no requirement for a tree owner to manage their trees unless you bring this forward and win a civil action in the courts.
- You should consult a solicitor to see if you have grounds to proceed with this.
- If successful, an injunction may be served by the court requiring the offending trees to be reduced in height or restricting their further growth.

Leaves are dropping onto my pathways and gutters. What are the owner's responsibilities?

- None. Leaf fall is regarded as a natural event for which the owner cannot be held responsible. You are responsible for clearing your own pathways, drains and gutters.

A tree is blocking my view. What are my rights?

- None. There is no right to a view.

A large tree was planted close to my boundary several years ago. What are my rights?

- There is no law preventing any person planting or growing a tree anywhere on their property. Neither is there any restriction upon the size to which they may grow it.
- However, any person who plants a poisonous tree so close to a boundary that its branches grow over that boundary may be held liable for damages if they are eaten by a neighbour's livestock.
- If the neighbour's livestock reach over to the tree owner's side of the boundary to eat the leaves, the tree owner will not be liable unless they have a legal responsibility to maintain the boundary.

I think a tree is dangerous. What can I do?

- The definition of 'dangerous' is ambiguous. A tree is not dangerous because it is tall, old or has a wide, spreading crown. Before taking any action, you should contact a specialist tree consultant or contractor.
- Once you are sure of your facts and have these in writing, you should notify the tree owner of your concerns and ask that they address the problem. If they do not and some damage results from this negligence, then you may take action against the tree owner through the courts. It may be possible to obtain an injunction requiring the tree owner to take action to remedy the problem.

What constitutes a dangerous or hazardous tree?

- A dangerous tree is one in such poor condition that whole or part of it may collapse at any time.
- A dangerous tree may or may not be hazardous depending upon where it grows. For example, a tree in a privately-owned field is less potentially hazardous than one in a public park.

How does a dangerous tree differ from a defective tree?

- Most trees have defects but the vast majority are not dangerous. Defects may include minor dead wood where squirrels have stripped bark or minor decay pockets where bark has been damaged and the tree

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has suffered bacterial or fungal infection. It is the type and extent of the defect that is important in determining whether a tree is dangerous.

Is a tall tree inherently dangerous?

- Tall trees are not necessarily dangerous. A tree will grow (within its species limits) as large as the space, light, water, nutrition and oxygen available to it permits. Trees cannot grow too tall - except in human perception.

Are leaning trees dangerous?

- Leaning trees are not necessarily dangerous. One of the reasons a tree grows with a lean is because it is in close competition with other plant or buildings and has been forced to grow at an angle to chase the light. In response, the tree lays down denser wood on one side of its trunk. There may be a problem if a previously vertical tree suddenly develops a lean, perhaps as result of storm damage.

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Appendix IV - Current Statutory Legislation, Government guidance,

British Standards and Awarding Bodies

All the Parish Council's declarations and decisions will have regard to the following current statutory legislation, Government guidance, British Standards and Awarding Bodies:

- The Town and Country Planning Act 1990 (as amended)
- The Town and Country Planning (Tree Preservation) (England) Regulations 2012
- The Occupiers Liability Act 1984
- The Environment Act 1995
- The Anti-Social Behaviour Act 2003
- Natural England 2006+
- Circular 36/1978: Trees and Forestry
- Tree Preservation Orders: A Guide to the Law and Good Practice (published by the Department for the Environment, Transport and the Regions, March 2000)
- Tree Preservation Orders: A Guide to the Law and Good Practice (Addendum 2009, published by the Department for Communities and Local Government, May 2009)
- BS 5837: Trees in Relation to Construction 2005
- BS 3998: Tree Work - Recommendations 2010
- City & Guilds NPTC - National arborist proficiency standards
- Sector Skills Council LANTRA - Land based training proficiency standards
- Arboriculture Association – Best Practice and Professional Standards guidance

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Appendix V

Land owned or managed by Pinchbeck Parish Council;

- The Glebe Field, Pinchbeck.
- Rotten Row Playing Field, Pinchbeck.
- Leaveslake Drove Playing Field, West Pinchbeck.
- Cherry Holt Lane Cemetery.
- Blue Goyt Lane Cemetery & Field.
- St Mary's Churchyard, Pinchbeck
- Pinchbeck Wood.
- The War Memorial.

All queries outside these areas please contact South Holland District Council Tel; 01775 761161 or via the web site at www.sholland.gov.uk/.