

# **HAMBLE PARISH COUNCIL**

## **TREES: GUIDANCE FOR RESIDENTS (2018)**

### **INTRODUCTION**

As part of a 2017 review of Tree Management within the Parish, the Parish Council has produced this Guidance on Tree Ownership. It is supported by the Councils Tree Management Policy which is also available on the web site.

It provides Guidance for residents and businesses on the responsibilities of managing trees on their land and will provide information to residents and businesses whose property neighbours land with trees.

Hamble Parish Council is committed to a long-term strategy of planting, protecting, retaining, improving, and developing stocks of trees, hedges and shrubs within the village. Where possible it will seek to continuously improve the quality and quantity of trees within the Parish. Where replacement or new planting is required it will encourage the planting of appropriate native species. Where tree felling is necessary the Council will strive to ensure trees are replaced in an appropriate location nearby. The Council will also endeavour to not to undertake tree works within the main Wildlife Reproduction Period - 1<sup>st</sup> March to 31<sup>st</sup> August. Unless tree work is urgent remedial work should be undertaken during the Autumn & Winter periods.

The Council also wishes to encourage land and property owners within the Parish to adopt a similar approach to the management of trees, which has consideration for wildlife and benefits to community as a whole.

*The Council has a duty of care to ensure that work is not undertaken on protected trees within the village without the appropriate permissions being sought. This includes all trees with Tree Preservation Orders (TPO's) and within the Hamble Conservation Area. The Council will also consider the impacts on trees and related ecosystems of any planning applications placed before it, including residential, commercial, or highways and pathways applications (Traffic Regulation Orders).*

### **TREE MANAGEMENT PRINCIPLES**

A principle of English Common and Statute Law is that land and tree owners have a duty of care to visitors, residents, passers-by, and even trespassers on their land. The Land Owner has a statutory duty of care under the Health and Safety at Work etc. Act 1974 and the Occupiers Liability Acts 1954 and 1984 to ensure so far as is reasonably practicable its trees are safe and not a danger to the public.

### **LIABILITY FOR HAZARDOUS TREES**

The owner and/or occupier of land upon which trees stand is generally liable for any loss or damage resulting from falling branches or from the falling of the tree itself. Whilst the incidence of accidents is low falling branches have resulted in deaths and caused serious road accidents.

Under the Health and Safety at Work etc. Act 1974, all occupiers have responsibilities to ensure the safety of those not in their employment. "Occupier" is generally taken to mean any person occupying or having control of premises, in this case land.

There are clear legal responsibilities to assess risks that arise from trees, and to take suitable and sufficient steps to control such risks.

In addition, occupiers have duties under the Occupiers Liability Act 1984. This states (s2) that the occupier owes a "common law duty of care" to visitors and those who enter his land or premises and this duty of care extends to trespassers. In Scotland there is no such distinction in the law.

## **LIABILITY OF TREE OWNERS**

Occupiers and anyone with responsibility for trees (e.g. a tenant) must take reasonable steps to manage and reduce risk and this includes identifying and inspecting those trees that might cause injury or place property at risk. When hazardous trees are identified suitable remedial action should be taken to reduce risk. It is necessary to have in place suitable and sufficient systems and procedures to ensure risks from trees are identified and controlled.

In addition to existing statutory requirements the Courts expect owners in control of places to which the public has access, such as parks and gardens, to take greater care than those in control of more remote woodland. The Courts expect occupiers to be prepared for children to behave less carefully than adults and thus consideration must be given to whether children might suffer injury from climbing trees which may have weak or damaged branches.

## **INSPECTION OF TREES & RISK ASSESSMENT**

Regular planned inspections should take place which ensure trees are inspected as often as is necessary. Inspections should be undertaken by a suitably experienced and competent person and should result in a risk assessment of each tree.

Inspections are best made in September or early October unless there are indications that checks need to be made immediately e.g. after severe storms. The initial visual inspection may indicate that more detailed examination is required. The inspection should include the entire tree, not just those parts that appear in a poor condition or in danger of falling.

There cannot be specific guidance on the exact nature and frequency of inspections since it is entirely dependent upon risk. There are various sources of guidance on this, and an Arborist will be able to advise on this.

## **TREE WORK PERMISSIONS FOR PROTECTED TREES - Tree Preservation Orders & Conservation Area**

Local Authorities retain control of trees that are covered by Tree Preservation Orders or in a Conservation area. *They will also consider trees on private land that may benefit from having a TPO placed on them and where necessary refer the tree to other local authorities or organisations,*

Any work to Trees on private property which have either a Tree Preservation Order or a located in a Conservation Area will require permission from the Local Planning Authority (LPA) which for Hamble Parish is Eastleigh Borough Council. Application can be made via their web site:

<https://www.eastleigh.gov.uk/sport,-countryside,-parks-culture/tree-services/tree-preservation.aspx>

Their guidance notes can be found at:

[https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance\\_note-works\\_to\\_trees.pdf](https://ecab.planningportal.co.uk/uploads/1app/guidance/guidance_note-works_to_trees.pdf)

EBC Tree Services phone no. is 02380 688422 and email [trees@eastleigh.gov.uk](mailto:trees@eastleigh.gov.uk)

Before you apply it is advisable to discuss your needs with a qualified arborist and preferable to obtain a written report before contacting the LPA. It is then advisable to discuss your proposals with them informally before applying. All Tree Work Applications will come before Hamble Parish Council for comment and having an Arborist report enables quality assessment of the application.

If the Parish Council become aware of any unauthorised work on protected trees they will refer the matter to the appropriate local authority.

## **TREES ON YOUR PROPERTY WITHOUT PROTECTION**

To help protect Britain's forests, a felling license from the **Forestry Commission** is required to fell any tree. It is an offence to fell trees without a license if an **exemption** does not apply. The overall process is described in the Quick Guide and full details are available in the booklet Tree Felling - Getting Permission (PDF 1748kb).

<https://www.forestry.gov.uk/forestry/infd-6dfk86>

### **Exemptions**

Any felling carried out without either a licence or other permission is an offence, unless it is covered by an exemption. Contact your local Forestry Commission office if you are not certain whether the work you wish to undertake is covered by an exemption. If it is not you will need to discuss the proposed work with the Forestry Commission. Certain types of felling do not need permission from the Forestry Commission. The Forestry Act 1967, as amended, and related regulations give these exceptions in full.

<https://www.forestry.gov.uk/forestry/infd-6dfkw6>

## **TREES ON YOUR PROPERTY WITH BRANCHES THAT OVERHANG NEIGHBOURING PROPERTY**

It is well established in law that neighbours have a legal right to trim, only from within their property, overhanging branches, however they must offer to return the cut branches. This can often result in an unbalanced tree, therefore, where a problem exists Tree Owners are strongly advised to liaise with neighbours to avoid the risk of inappropriate action being taken to their tree.

## **TREES ON YOUR PROPERTY THAT OVERHANG PUBLIC HIGHWAYS, PAVEMENTS AND PATHS**

It is advisable to ensure trees and vegetation which overhang public highways, pavements and paths are regularly maintained (out of nesting season) to ensure clearance widths and heights are maintained, otherwise they may be contacted by Local Authorities. Local authorities, including Parish Councils, have certain powers to deal with trees not on their land which overhang the highways, streets or pavements. They can give notice to the owner requiring them to cut or prune the tree. If the owner fails to comply the Authority may carry out the work and charge the owner. (Highways Act). The main roads and streets in Hamble Parish are owned and maintained by Hampshire County Council and/or Eastleigh Borough Council. The Parish Council may from time to time request an owner to cut back vegetation that overhangs a pavement or public right of way that it manages where it is causing a problem to other residents.

## **PROPERTIES WHICH NEIGHBOUR PARISH COUNCIL LAND WITH TREES - OVER HANGING BRANCHES**

Under Common Law, providing the tree is not the subject of a Tree Preservation Order or within a Conservation Area, landowners may prune unprotected trees or hedges overhanging their land as far as their boundary without the consent of the owner of the tree or hedge. They must not trespass on the neighbouring land to carry out the work, and should offer to return the cut material (arising).

Neighbours of Hamble Parish Council are required to contact the Council where they have concerns in such circumstances, before attempting to undertake any work, and a dialogue should take place. If unauthorised works cause instability or lead to the decline or death of the tree, liability will be attached to the person arranging or carrying out the work.

Where neighbours undertake work in isolation this can result in an un-balanced tree which is not a desirable outcome. The Council will work with neighbours to resolve problems associated with overhanging branches as there are often a variety of solutions and the best solution will be sought by the Council for the individual tree in question, which may well have been subject to a recent survey.

## **OTHER CONTROLS ON THE FELLING OF TREES**

There are other controls on tree felling which may need to be taken into account. When you apply for your licence to fell trees you must also ensure that you take account of all other legislation. The following examples deal mainly with the need to get permission to fell trees.

**Hedgerow Regulations.** If trees to be felled are within a hedgerow and it is proposed to remove the hedgerow, permission will also be required under the Hedgerow Regulations 1997.

<https://www.gov.uk/guidance/countryside-hedgerows-regulation-and-management>

**SSSI.** If work is to be carried out that is on or near or may affect a Site of Special Scientific Interest (SSSI), Natural England (NE), must be advised, in writing, so that they can assess the likely effect. A letter of consent may be required from them before any felling is carried out.

<https://www.gov.uk/guidance/protected-areas-sites-of-special-scientific-interest>

**SINC.** If work is to be carried out that is on or near or may affect a Site of Importance for Nature Conservation (SINC) it is advisable to consult Hampshire Biodiversity Information Centre (HBIC).

Email [enquiries.hbic@hants.gov.uk](mailto:enquiries.hbic@hants.gov.uk)

Phone 01962 832320

**Scheduled Ancient Monument.** If work is to be carried out that is on or near or may affect a Scheduled Ancient Monument you must tell English Heritage (EH). A letter of consent may be required from them before any felling is carried out. <http://www.english-heritage.org.uk>

## **INFORMATION ON TREE CROWNING**

**General information** - The common operations described and simply illustrated here show some of your options. An arborist should be able to help in defining the work that will be appropriate for the tree(s) and in line with British Standard 3998 – Recommendations for Tree Work.

Please note that the entire branch system is known as the 'crown'. LPA approval is not required to remove dead branches.

**Crown Thinning** - This reduces the density of the tree's crown without changing the overall shape and size of the tree. Thinning reduces the amount of foliage and allows more light through the canopy or crown. The amount of thinning proposed should be specified as a percentage (%) of the leaf area (usually no more than 30%). Useful for letting more light into gardens and windows

**Crown Lifting** - This means removing lower branches to increase the clearance between the ground and the crown. Identify the branches you wish to remove, or specify a height above ground level to which you wish to "lift" the crown. Useful for allowing more light into gardens • Prevents low branches obstructing paths, drives etc.

**Crown Reduction** - The tree crown is reduced by shortening branches, and so changes the overall size and shape of the tree. Reductions are usually carried out all round the outer parts of the crown to maintain a balanced shape, but seldom should it include cutting through the main stem. The amount of reduction proposed should be stated in terms of the intended height and spread of the tree after pruning (rather than what percentage (%) of the overall crown is to be removed). Partial reduction may be useful for preventing branches contacting buildings, roofs and guttering

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