

NORTH KESTEVEN DISTRICT COUNCIL

Tree Policy 2017 – 2022

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EXECUTIVE SUMMARY

This Tree Policy provides guidance to officers, businesses and the general public on the Council's approach to tree management and tree protection.

The Council's primary objective is to achieve an overall improvement in the standards and continuity of tree care. The Council also aims to ensure that privately owned trees with high amenity value are protected from unnecessary damage or felling.

This Policy will:

- Ensure that trees within the North Kesteven District Council area are adequately protected, managed and cared for and supported by new planting.
- Ensure that the quantity, quality and biological diversity of trees is sustained and enriched for the benefit of residents and visitors to the District.
- Provide a framework for decisions made by the Council in relation to the inspection and maintenance of its own tree stock
- Set guidelines that the Council will follow when making decisions relating to tree protection and Tree Preservation Orders

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

- 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 Hedgerow Regulations 1997
- BS 5837: Trees in Relation to Construction (2012)
- BS 3998: Tree Work – Recommendations (2010)
- National Tree Safety Group: Common Sense Risk Management of Trees (2011)
- Planning Practice Guidance: Tree Preservation Orders and Trees in Conservation Areas (2014)

Part 1: Management of the trees in North Kesteven

Trees contribute to the District's attractive landscape, contribute to residents' quality of life and offer a sense of wellbeing. An abundance of trees is visually attractive, and can positively influence property values ensuring the District remains a desirable place to live, work and visit.

Thoughtful planting of trees can also enhance community wellbeing in other ways. Trees provide shade from the sun, and help to reduce the effects of wind, noise and flooding. Trees also act as natural air filters, absorbing pollutants including smoke and dust particulates. They release oxygen for us to breathe, and also absorb carbon monoxide thereby reducing the District's carbon footprint. Trees also provide valuable and varied habitats for other living organisms and in doing so preserve biodiversity and local ecological importance.

1 Trees in North Kesteven

The Council's tree function is responsible for ensuring that tree cover within the District is preserved and maintained. This is a statutory function, and is the responsibility of Development, Economic and Cultural Services. The Trees team currently consists of two officers; a Tree Officer and an Arboricultural Technician. This function is managed by the Council's Compliance and Enforcement Team Leader.

The Council's Trees team is responsible for the following areas of work:

- Determination of applications for works to trees subject of a tree preservation order (TPO)
- Processing of notifications for works to trees within the District's conservation areas
- Making new TPOs
- Revoking TPOs
- Inspecting the Council's tree stock and arranging necessary maintenance

1.1 Tree protection

The Council has a statutory duty as the Local Planning Authority to take steps to protect trees that make an important contribution to the amenity of the District. Whilst the Council is responsible for maintenance of its own tree stock, the majority of trees in the District are privately owned. The protection and preservation of privately owned trees is explored in Part 2 of this Policy.

1.2 Council owned trees

The Council is responsible for the ownership and maintenance of approximately 5,500 trees, located on Council owned open spaces, estates and woodlands. This figure is gradually increasing in line with additional planting and replanting. Council owned trees are maintained as part of a rolling three year pro active inspection programme. Reactive inspections are also undertaken, with additional maintenance undertaken as and when it is required.

2 Management of Council owned trees

The management of Council owned trees can be divided into four key areas. This is not an exhaustive list; however the majority of the Council's tree stock can be placed into the following categories.

2.1 Location of Council owned trees

2.1.1 Trees in public open spaces.

These are generally the most significant trees managed by the Council, as they have the greatest influence on the appearance of our communities. Trees in public open spaces make an important contribution to the local environment, and the wider landscape.

Trees located in public open spaces are inspected as part of a rolling three year pro active inspection and maintenance programme. Each public open space containing trees will be assessed every three years, and a schedule of works undertaken as required subject to the trees' condition. Potential works may include pruning, felling or replanting to maintain continuity of tree cover.

2.1.2 Trees on NKDC Housing land.

These are found in communal areas on Council housing estates or in the vicinity of residential properties owned and managed by the Council. Each area will be assessed every three years, and a schedule of required works sent to the Council's Housing and Property Services team for approval. Works may include pruning, felling or replanting to maintain continuity of tree cover. Trees in the gardens of Council owned properties are the responsibility of the tenant(s). These trees will normally only be inspected by the Tree Officer at the request of the Housing Department.

2.1.3 Woodlands

The Council owns and maintains several small woodland copses throughout the District. These areas are maintained primarily for landscape and nature conservation, and natural regeneration is encouraged. Pro active maintenance is required for woodland copses to maximise their sustainability, biodiversity, education and landscape value. Works are also necessary to ensure these areas remain accessible and can be enjoyed by all.

Future management of woodlands will be incorporated into the council's three year inspection and maintenance programme. Each woodland will be assessed every three years, and a schedule of works undertaken as required subject to its condition. Potential works may include pruning, felling or replanting to maintain continuity of tree cover.

Certain areas and woodlands are excluded from this Policy, including Tunman Wood, Millenium Green and the various 'Stepping Out Walks' provided by the Council in partnership with other land owners. Maintenance of these areas is the responsibility of other departments and organisations. Any queries that relate to these areas and woodlands should be directed to the Council's Development, Economic and Cultural Services division.

2.1.4 Closed Churchyards.

The Council currently maintains four closed churchyards, which are no longer used for burial. Closed churchyard trees will be incorporated into the council's three year inspection and maintenance programme. Each tree will be assessed every three years, and a schedule of works undertaken as required subject to its condition. Potential works may include pruning, felling or replanting to maintain continuity of tree cover. As part of this programme the Council will ensure that historical structures in these closed churchyards are protected from damage by trees as far as is practicable.

2.2 Inspections and maintenance

Council owned trees are maintained as part of a rolling three year pro active inspection programme. Reactive inspections are also undertaken, with additional maintenance as it is required.

The Council's inspection and maintenance programme comprises three elements:

- Proactive management
- Reactive management
- Planting and aftercare

Routine Inspections are always undertaken by suitably qualified staff.

Since 2008 the Council has managed its tree inspection and maintenance programme using 'Arbortrack'. Arbortrack is a GIS based system that enables the Council to effectively store and update data on trees within its control, including details of their condition, species, asset value, and age and maintenance history. The system enables the Council to:

- Identify areas in the District that would benefit from increased tree planting or greater species variation
- Efficiently monitor individual trees that may be causing concern (eg. those trees that may have suffered damage)
- Assess common species-related ailments or defects, to ensure tree species are located in the most appropriate areas
- Effectively manage risk and prioritise maintenance works
- Produce work schedules and plans for contractors and calculate the costs incurred
- Organise the Council's rolling inspection and maintenance programme
- Suitably defend itself against litigation and insurance claims by providing evidence of pro active tree management
- Reduce mileage and improve efficiency within the service by enabling officers to plan site inspections more effectively
- Reduce the number of requests for service received by the department

2.2.1 Pro active inspections and maintenance

North Kesteven District has been sectioned into three geographical areas, and each third has a similar level of tree cover and population generating a similar number of requests for service. The inspection and maintenance programme prioritises each section annually over a three year period. Following inspection, any tree(s) that present an imminent danger to the safety of the public or property will be dealt with as a matter of urgency. Such urgent works will likely include felling or remedial pruning to alleviate any hazard(s). Non urgent works will be prioritised according to the professional judgement of the Council's qualified officers.

In addition to the standard three year inspection and maintenance programme, the Council will undertake further inspections on certain trees, such as trees identified as requiring special attention. These additional inspections will be carried out at a frequency identified as appropriate following a risk assessment of their condition.

2.2.2 Reactive inspections and maintenance

In addition to pro active inspections and maintenance, the Council also receives requests for service relating to the condition of trees in the District. Despite the existence of a pro active inspection and maintenance programme, it is inevitable that the Council will continue to receive requests for reactive works to trees.

Of the enquiries received, many are a result of the conflict between the natural growth and development of trees and the lifestyle expectations of residents. These conflicts can be difficult to resolve to the satisfaction of both the Council and residents.

The Council aims to resolve such queries as quickly as possible. An inspection will be prioritised and undertaken in accordance with the level of harm perceived, and following inspection complainants will be contacted to advise of the Council's intended course of action. Where remedial works are required, the council's appointed contractor will undertake these works within an agreed timetable.

When assessing necessary works there will always be a presumption against the removal of trees that are healthy, unless the basis for their removal has a clear and overriding legal, arboricultural, or ecological justification and no alternative management practice can be undertaken. Similarly, the Council will ensure that pruning or other maintenance to trees is undertaken in a way that benefits the health of the tree(s). Careful judgement will be given to each request, and all requests will be assessed based on the trees' amenity and wildlife value and any other relevant criteria. Where any requested works are considered to not benefit the health, future development or conservation of the tree or assist in abating a statutory nuisance, such works will only be carried out in extenuating circumstances.

2.2.3 Risk management

Under the Occupiers Liability Act 1984, the Council has a Duty of Care to "take reasonable care" to maintain its trees and woodlands in a reasonably safe condition.

The purpose of the pro active three year inspection and maintenance programme is to:

- Minimise the risk of tree-related injury or death or damage to property within the District
- Reduce opportunities for civil and criminal proceedings to be taken against the Council.

This will be achieved by the Council maintaining a comprehensive record of all tree inspections and resulting maintenance, providing evidence of the Council's compliance with its duty of care.

3 Common problems associated with trees

People often live in close proximity to trees, particularly in urban areas. These trees may be located within the curtilage of residential properties, on commercial premises or public land managed by the Council. Some trees can be particularly inconvenient if located close to dwellings. This can cause conflict if a tree is considered important to the local environment.

Common problems associated with trees include:

- Overhanging branches
- Excessive shade/loss of light
- Leaf/fruit fall
- Sticky deposits on property
- Physical obstruction
- Damage to property (eg. root penetration)

Most of these problems can be resolved by careful pruning when a tree is established. However, problems can occur due to inappropriate species having been planted, and in these instances there may be justification for trees to be removed. Tree problems may occasionally

have to remain unresolved if a tree is of particular environmental or historic importance, as the benefit of retaining a tree or restricting certain maintenance may outweigh householders' concerns.

NB. This section relates only to trees owned by the Council, and does not restrict the actions of owners of trees located on private property provided that the tree(s) in question are not protected as described in section 2. The Council encourages property owners to consider undertaking remedial works to trees only when it is absolutely necessary, and suggests that the principles in this section are applied.

3.1 Examples of significant damage caused by trees

This section sets out how the Council will respond to problems arising from its own trees

3.1.1 Structural damage

A very common concern for homeowners is the potential for structural damage caused through soil moisture extraction by tree roots. This type of damage will only occur in areas where the soil type comprises heavy, shrinkable clay. This soil type is prone to fluctuations in volume due to changes in soil moisture. Most residential areas in North Kesteven are built on non shrinkable soils, and trees and tree roots are unlikely to cause damage to buildings.

There has been much public concern regarding tree roots and their effect on building foundations in recent years, however much of this is unsubstantiated. Lightly loaded structures such as garden walls, driveways and patios may be affected but damage to heavily loaded structures such as houses is rare. This section also applies to structural collapse affecting drains and sewers.

Cases of alleged direct root damage will be investigated on an individual basis, with a balance being struck between the actual nuisance experienced and the trees benefit to the wider community. Removal of a tree may not necessarily be an acceptable solution when alternative options such as root pruning and installation of a root barrier may be more appropriate. Incidences of proven claims made to the Council due to tree root damage remains low.

Incidents involving structural damage can be very complex, and the council will not undertake works to trees without strong evidence. Where a particular tree is alleged to be causing damage to property, owners will be expected to provide:

- A report on alleged damage to the building
- A plan and profile of the property foundations
- A plan of the site showing the location of the building in relation to all trees and significant vegetation in the vicinity
- A trial pit cross section to underside of foundation depth plus a bore hole through the base of the trial pit to a minimum depth of 3m
- Root identification from beneath the underside of foundation.

For higher value trees the council may require further information such as:

- Soil moisture content readings
- Liquid limit test results
- Plastic limit test results
- Soil plasticity calculations
- A control borehole and point of subsidence borehole results
- Oedometer or suction test results
- Shear vane test results
- CCTV and hydraulic testing of privately owned drains

- Level monitoring results
- Particle size distribution analysis on a soil sample.

3.1.2 Instability/uprooting of trees

Although trees are naturally able to withstand most stormy weather conditions, a small proportion can suffer failure, either through the loss of branches or complete uprooting of the tree. Unusual events such as the 1987 and 1990 storms caused extensive damage to trees in South Eastern parts of the UK. Fortunately these events are comparatively rare, and should not cause tree owners, including the Council, to take unnecessary pre-emptive action. In respect of Council owned trees, our rolling three year pro active inspection programme ensures that trees identified as being susceptible to failure can be appropriately addressed. This approach minimises the likelihood of damage to property, and reduces the amount of reactive works to trees in the District thereby ensuring resources are targetted effectively.

3.2 Other common problems caused by trees

This section of the Policy outlines a variety of common tree problems, and sets out how the Council will respond to these problems. The Council will seek to avoid unnecessary works that would adversely affect tree health, however all requests made to the Council will be assessed on their own merits.

3.2.1 Leaves, seeds and fruit

The Council will not carry out works to trees to control the fall of leaves, seeds or fruit. These are natural events in the lives of trees that are not considered to be a nuisance. Leaf, seed and/or fruit fall cannot be controlled without damage to the trees' health and appearance.

This paragraph excludes NKDC Housing Land. The Council may, only in extenuating circumstances, undertake such works to trees on NKDC Housing Land where it is deemed essential to protect the health and safety of its tenants to meet its duties as a social landlord. In these circumstances, the Council will undertake compensatory tree planting if appropriate and where budgetary constraints permit.

3.2.2 Honeydew

Honeydew is a sugary fluid excreted by sap feeding insects such as aphids, and creates a sticky coating on leaves and stems. This is a natural occurrence and is not considered to be a nuisance. The Council will therefore not undertake any remedial works to alleviate the effects of honeydew.

3.2.3 Ivy

Contrary to popular belief, ivy is not a parasite. However, dense covering of ivy on trees can prevent thorough inspection of a tree, and very heavy ivy cover may restrict a tree's capacity for photosynthesis if large areas of their canopy are covered. Ivy can also add extra weight to branches, and may cause branches to break.

Ivy is a haven for a variety of wildlife including as insects, birds and some small mammals, and provides food and shelter. The effects of Ivy will be assessed on a case by case basis, taking into account conservation benefits of the Ivy versus any adverse affects caused by its retention.

3.2.4 Roosting birds

Roosting birds are a natural occurrence that cannot be actively controlled by trees pruning. Pruning or felling trees that are home to roosting birds will not normally be considered as a way of resolving this problem.

3.2.5 Overhanging branches

The Council is not normally obliged to remove branches that are overhanging properties. Trees located close to and/or growing over walls and fences will be assessed on a case by case basis. Property owners are entitled to prune branches overhanging their property, however the Council recommends that advice is sought prior to carrying out any tree works to ensure tree health is not compromised.

3.2.6 Obstruction of street lights and road signs

The council will ensure that its own trees do not obscure road signs or prevent street lighting from illuminating the highway. The Council will not routinely take action to improve illumination on private property.

3.2.7 Obstruction of a public highway, public right of way, or access to property or footpath

The council will provide adequate clearance for traffic within the trees' canopy. In most circumstances this will involve a minimum clearance of 2.5m over footpaths, and a minimum clearance of 5.2m over the highway used by vehicular traffic. If obstruction cannot be resolved by pruning or other reasonable measures, removal of the tree will be considered.

3.2.8 Size of trees

The council will not normally carry out works to trees purely on the basis that they are perceived to be too large or too tall.

3.2.9 Loss of natural light/excessive shade

The council will not normally carry out works to reduce the effects of loss of natural light or excessive shade. In most circumstances these problems cannot be resolved without adversely affecting tree health. Individual cases will be assessed on their own merits, taking into account the tree species, size, and proximity to habitable rooms in a property. In most circumstances the Council will not "top" trees to reduce the effects of excess shade or loss of natural light.

3.2.10 Obstruction of view

There is no right in law to a view, and loss of view is not considered to be a nuisance. The Council will not undertake works to improve the view from a property.

3.2.11 Security/fear of crime

Concerns that trees provide access and/or cover for criminal acts, vandalism or harassment will be treated sympathetically and seriously. In these circumstances pruning or selective thinning of a tree may alleviate this problem. Works may only be taken after giving full consideration to the benefit of any works and impacts on tree health and amenity.

3.2.12 Television/radio reception

Tree owners have no legal obligation to carry out remedial works to address poor television or radio reception. A television licence is a permit to operate a television receiver; it does not guarantee or represent entitlement to any reception and as such is not considered to be a nuisance.

However, the Council is aware of the difficulties that may arise due to lack of television reception, and will consider requests to prune trees to improve reception where it is satisfied that:

- Efforts to find an engineering solution have been unsuccessful
- The work required is consistent with good arboricultural practice, and will not unduly affect the trees health, amenity, future development or conservation value
- The work required can be carried out within current budgetary constraints.

3.2.13 CCTV

Pruning of trees adjacent to CCTV cameras or within their field of view will only be considered where it will not cause significant harm to tree health and amenity and only where specific funding for such works is provided. Where new cameras are to be installed it is advisable that those responsible for installation involve the councils Arboricultural Officer at an early stage.

3.2.14 Interference with telephone cables or power cables

Where Council owned trees are reported to be affecting telephone cables or power cables, residents will be advised to contact their service provider in the first instance. The Council will work with the service provider to verify and resolve the problem.

3.2.15 Drain Blockage

Tree roots may exploit existing faults in drains and sewers. By ensuring drains are in good repair and are watertight, blockage of drains by tree roots is unlikely to occur. The Council will consider any request for tree works that relate to drain blockages on its own merits. In some circumstances the Council will not consider removal of a tree or its roots, and property owners will be responsible for any necessary repairs. Where trees are believed to have caused structural collapse of a drain or sewer, residents should follow the advice outlined in section 3.1.1 of this Policy.

3.2.16 Pests and disease

Pests and disease are a constant threat to trees and woodland cover. In recent years certain diseases affecting trees have become more prevalent within the District. The Council will take account of new and existing pests and diseases as part of its inspection and maintenance programme, and will manage its own tree stock accordingly. Trees affected by pests or disease will not necessarily need to be felled, and often good tree management will ensure that problems are kept under control. However if it is considered necessary to fell a tree then appropriate action will be taken. This may include replanting of new trees depending on the nature and scale of the problem.

The Council will also advise householders of current best practice in relation to the management of trees affected by pests and disease. Residents are encouraged to contact the Trees team if they have concerns about trees affected by pests or disease.

3.3 Prioritisation of enquiries

In most cases enquiries regarding the condition of Council owned trees will be resolved by discussing the alleged problem with the complainant. However, some concerns will require further investigation. In these circumstances the Council will aim to undertake a site visit to assess the tree(s) within 3 working days. In rare cases where a tree has or may be likely to pose an imminent danger to public health or to property, or where damage or harm has taken place, the Council will aim to undertake a site visit within 24 hours.

4 Tree planting and aftercare

Areas of Council owned land within the District will be replenished with new tree planting, where trees have previously been lost and where budgetary constraints allow this to take place. Areas which historically have not contained trees may be subject of new tree planting following agreement with nearby residents. Sites containing scheduled monuments may only be subject of new or replacement planting following consultation with both the District Archaeologist and

English Heritage. Any areas monitored by CCTV cameras will also be subject to consultation with Lincolnshire Police, the Council's Community Safety department, and any property owners that may be affected prior to planting any new or replacement trees.

Where it is identified that new trees are required, the following factors will be taken into consideration:

4.1 Species

Any tree species used for planting will in the majority of cases be the same or similar to the species already in situ. Different species will only be used if the original species are:

- Unavailable for the Council to purchase
- Unsuited for the location
- Prone to pest attack and/or disease

4.2 Aftercare

All newly planted trees require aftercare including:

- Watering in dry weather
- Regular checks and adjustment of stakes or ties

To ensure good quality, affordable aftercare, the maximum number of trees planted per year will be limited. In areas where there may be a risk of vandalism, new trees will be protected using guards. Trees growing on grass verges will have strimmer guards in place where appropriate.

5 Contract management

Maintenance of all Council owned trees is undertaken by an approved contractor. Contractors will be reviewed every two to three years to ensure the Council is achieving the best quality works at the most competitive price.

All tree maintenance is closely managed by the council's Tree Officer and Arboricultural Technician. Conditions within the Council's maintenance contract ensure that the contractor and employees hold suitable qualifications, and that all work is carried out in accordance with statutory and regulatory requirements, and with accepted industry good practice. This ensures that the highest possible standards of tree work are maintained, in addition to rigorous health and safety requirements. Officers are entirely responsible for the issuing and monitoring of works under the contract, and the contractor is not permitted to undertake any additional works. This is essential to maintain the high standard of tree work undertaken on Council land. Officers monitor the performance of the contractor by assessing all completed work and undertaking site audits of ongoing works to ensure that all health and safety requirements are being met.

Part 2: Protection and preservation of privately owned trees

The Council, as Local Planning Authority is responsible for ensuring that trees with high amenity value are protected and preserved. Trees make a significant contribution to the District's attractive landscape, and also contribute to the quality of life of residents. Protecting

and preserving these valuable trees ensures that North Kesteven remains a desirable place to live, work and visit.

The Council has a duty to ensure that trees with high amenity value are protected from unnecessary damage or felling. The primary legislation that relates to tree preservation is the Town and Country Planning Act 1990 (as amended). This legislation enables the Council to make a 'Tree Preservation Order' to protect trees with high amenity value. Trees in conservation areas are already protected by this legislation, and works to most trees in these areas cannot be undertaken without giving prior notification to the Council.

6 General advice to tree owners

The majority of both urban and rural trees are privately owned and the quality of private tree care is variable. The Council routinely provides tree owners with advice, and considers this to be a very important part of its service.

There are unfortunately many unqualified people willing to offer tree care advice, which is often inaccurate and could have serious consequences for the tree and its owner. Arboriculture is an established technical discipline where qualifications at various levels are available. Tree owners should be aware that tree research is regularly updated; the Council therefore recommends tree owners to take advice only from professionals who are 'up to date' in tree care. Professional contractors will usually do this by being a member of an appropriate professional body, such as the Arboricultural Association.

The Council is also concerned that tree owners often employ tree surgeons with limited technical knowledge or abilities, resulting in poor quality work that can cause irreversible harm to trees. The Arboricultural Association produces a list of recommended contractors and consultants that tree owners may find useful. It is recommended that tree owners use reputable companies that are capable of working in accordance with the relevant British Standards.

The Council is unable to give detailed advice regarding the safety of privately owned trees.

7 Dangerous trees

Where a tree located on private land is found to be in such condition that it is an imminent danger to people or property, the Council has powers to carry out any necessary emergency works and to reclaim any costs incurred from the owner of the land where the tree is situated. Works may extend to felling of the tree where this is absolutely necessary.

Where a tree on private land is considered likely to pose a danger to people or property, the Council has powers to serve notice on the owner of the tree to require them to carry out any necessary works to make the tree safe. If the required works are not carried out within the time period specified by the notice, the Council has powers to carry out the works in default and reclaim from the owner any costs incurred in doing so.

These powers are provided to the Council under section 23 Local Government (Miscellaneous Provisions) Act 1976.

8 Making a Tree Preservation Order (TPO)

TPOs can cover single trees, groups of trees and woodlands, and can be on public or private land. There are currently approximately 800 TPOs in North Kesteven, and many of these trees are within the curtilage of residential properties. Whilst these trees have high amenity value and should be preserved, these trees can present problems for their owners. The purpose of the tree preservation regime is to balance the interests of tree owners with the interests of the community, to ensure that these trees are not felled or damaged unnecessarily.

TPOs ensure that the Council has sufficient control over the fate of the most important trees in the District, and also minimise the likelihood of inappropriate works being carried out. TPOs also ensure that, where appropriate, trees are replaced at the end of their life. It is important that property owners are aware whether trees in their ownership are subject of a TPO, as works should not be carried out to these trees without first obtaining written consent from the Council.

- The primary legislation that relates to tree preservation is the Town and Country Planning Act 1990 (as amended). Tree preservation is also governed by Planning Practice Guidance: Tree Preservation Orders and Trees in Conservation Areas (2014).

8.1 Expediency and amenity

The Town and Country Planning Act provides the Council with powers to make a TPO where it considers it 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

The term 'amenity' is not defined in the Act; however guidance from Central Government states that TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. Where a tree is identified as having a high amenity value, the Council may make a TPO to protect it if such a TPO does not already exist. When assessing amenity, guidance suggests that certain factors should be considered. The Council adheres to this guidance when making a TPO:

8.1.1 Visibility

Trees worthy of protection should be of public benefit, therefore the trees, or at least part of them, should normally be visible from a public place, such as a road or footpath. The extent to which the trees or woodlands can be seen by the general public will inform the Council's assessment of whether its impact on the local environment is significant. If they cannot be seen or are just barely visible from a public place, a TPO might only be justified in exceptional circumstances

8.1.2 Individual impact

The fact that a tree is publicly visible will not itself be sufficient to warrant a TPO. The Council should also assess the tree's particular importance by reference to its size and form, its future potential as an amenity, taking into account any special factors such as its rarity or its contribution to the character or appearance of a conservation area.

8.1.3 Wider impact

The significance of the trees in their local surroundings should also be assessed, taking into account how suitable they are to their particular setting, as well as the presence of other trees in the vicinity.

8.1.4 Trees that are at risk

Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO. This may apply where the tree is already subject to regular careful maintenance. However, it may be expedient to make a TPO if the Council believes there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for this risk to be immediate; the protection of selected trees by a precautionary TPO might sometimes be considered expedient if the Council believes the tree will be at risk in the future. This may apply to some development sites. A TPO will not be made in respect of a tree that is already dead, dying or dangerous.

8.2 Confirming a TPO

A TPO is valid from the date it is made, and must be 'confirmed' within 6 months in order to remain valid and enforceable. To confirm a TPO, the Council must consult with owners and occupiers of the land to which the TPO relates, and also the owners and occupiers of any adjoining land. As an additional measure, the Council also chooses to consult the relevant Town or Parish Council, and with local Ward Members. All parties who wish to comment or object must do so within 21 days of notification. Currently if no objections are made, the TPO will be confirmed by delegated decision. In the event that objections are received, the matter is referred to the Council's Planning Committee who will decide whether or not the TPO should be confirmed. Where a TPO is confirmed, it is recorded on the Council's Land Charges register. TPO records are also available for the public to view.

The Council does not have a duty to inspect trees subject of tree preservation orders. However, to coincide with improvements to the Council's Land Charges records, a review of all TPOs is currently taking place to ensure that all of the Council's tree preservation records are accurate.

8.3 Appeals

There is no right to appeal to the Secretary of State against the making or confirmation of a TPO by the Council. However, any persons aggrieved by the Council's decision to make or confirm a TPO may apply to the High Court for a Judicial Review if they believe that the TPO should not have been made, or if they believe the Council did not follow the correct procedure when making or confirming the TPO.

9 TPO Applications

Where a tree is subject to a TPO, the ability to undertake works or to fell the tree is very limited. Maintenance of protected trees is the responsibility of their respective owners. Where tree owners wish to undertake works to trees subject of a TPO, they must not do so without having first received consent from the Council. The Council receives between 250 and 400 applications each year from people who wish to carry out work to protected trees.

Any person can apply to carry out works to a tree subject of a TPO. For instance, a person can apply to carry out work on trees which are situated in a neighbour's garden if branches are overhanging their property. However, an applicant who is not the owner of the trees will be

advised to consult with the owner before making an application; the applicant will also be advised to notify the owner as soon as the application has been submitted.

Applications for works to trees subject of a TPO are free of charge, and applications may be submitted in hard copy format or via the Council's Planning Portal. Application forms are available to download from the Council's website.

TPO applications are required by law to be determined within 8 weeks of the date they are validated. The Council's Tree Officer will visit the site as part of the application process, before issuing a decision on the application.

9.1 Pre application and advice

Residents are advised to seek the advice of a qualified tree surgeon or arborist or to discuss the proposal informally with the Council before making a TPO application. It is also very important that the application sets out clearly what work is proposed. This should be straightforward if the proposal is to fell a tree, as long as the tree is clearly identifiable. However if the proposal is to prune a tree, the application should clarify exactly what work is envisaged. A proposal simply to 'top' the tree or to 'lop' or 'cut back' some branches will be too vague as it fails to describe the extent of the work. If applications are too vague, they cannot be validated and as such the application cannot be processed. The Council's Tree Officer will be able to offer advice on completing the application forms, and will also offer advice in relation to the nature of the works proposed.

Some works to protected trees may be exempt from consent or notification, such as:

9.1.1 Trees which are already dead, or pose an imminent risk of serious harm

If a tree is dead or poses an imminent risk of serious harm, the onus will be on the applicant to prove that this is the case. The applicant is required by law to give written notice of these works either before they take place, or as soon as is practicable after the event. Removal of dead wood only from an otherwise healthy tree is considered to be covered by this exemption. Trees that are diseased or affected by pests are not exempt from requiring consent or prior notification; however the Council will give full consideration to the nature and extent of the problem when an application or notification is received. Residents who are concerned about pests or disease are advised to contact the Council's Trees team, or to seek professional advice from a qualified arborist or tree surgeon.

9.1.2 Trees requiring works/removal in order to abate a statutory nuisance

Where a tree needs to be removed in order to abate or prevent a statutory nuisance, the Council recommends that the applicant seeks advice from the Tree Officer, or from a suitably qualified legal advisor. Statutory nuisances can be complex issues, therefore applicants who undertake works to trees in these circumstances need to be certain that they meet the necessary criteria to qualify for this exception.

9.1.3 Trees that require removal to implement a full planning permission

In these circumstances the planning permission must be a 'full' permission, granted by the Council. Where full planning permission has been granted the Council will have already assessed the tree, and where necessary will have requested measures be implemented to protect it. This exception does not apply to outline planning permission, nor does it apply to development carried out within the scope of 'permitted development'.

9.1.4 Trees requiring works/removal in relation to works required by an Act of Parliament

Where a tree owner is legally obliged to carry out work in accordance with an Act of Parliament, consent from the Council will not be required. In most cases this will apply to trees

that overhang a public highway where the owner has an obligation to ensure the highway is clear and passable by traffic. Consent is also not required for some works carried out by statutory undertakers.

9.1.5 Pruning of fruit trees

This exception will apply where a tree is being pruned in accordance with good horticultural practice. Where more extensive works are required the tree must be being cultivated for the production of fruit, and be growing in a commercial orchard or garden in order to qualify for this exception.

9.1.6 Works to trees in accordance with a Forestry Commission grant scheme or felling licence

In these circumstances the Council may wish to see proof that this exception applies in order that it may be satisfied no consent is required.

9.1.7 Other exceptions

The following exceptions also apply to works to trees subject of a TPO:

- Works that are urgently necessary in the interest of national security
- Certain works carried out by or at the request of the Environment Agency
- Certain works carried out by or at the request of a Drainage Body

With the exception of 8.1.1 above, in all cases tree owners and/or contractors are required to notify the Council of their intention to carry out any excepted works at least 5 days prior to the works being carried out. In some cases there may also be additional requirements for trees that are removed to be replaced.

9.2 Publicity

The Council has a legal duty to keep a register of all applications for TPO consent. These records must be made available to the public at all reasonable hours. The Council's records are available for inspection at the Council Offices at Kesteven Street, Sleaford, and via the Council's Planning Online service. The register should include details of every application made and the Council's decision.

There is no legal requirement to publicise applications more widely, or to consult with local residents. However, the Council considers it good practice to consult with occupiers of adjoining land for each TPO application. For each application, the Council will also consult with the relevant local Ward Members, and with the Town or Parish Council.

9.3 Determination

When considering a TPO application the Council will:

- Assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and
- Consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

The Council will also consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions. In general terms, it follows that the higher the amenity value of the tree or woodland and the greater the impact of the application on the

amenity of the area, the stronger the reasons needed before consent is granted. On the other hand, if the amenity value of the tree or woodland is low and the impact of the application in amenity terms is likely to be negligible, consent might be granted even if the Council believes there is no particular arboricultural need for the work.

In deciding an application the Council is not required to have regard to its Development Plan.

Where an application relates to trees in a conservation area, the Council is required to pay special attention to the need to preserve or enhance the character or appearance of that area.

When determining a TPO application, the Council can refuse consent, grant an unconditional consent, or grant consent subject to conditions. Where consent is granted with conditions, this could include the requirement to replant trees if the application relates to the original tree being felled.

The Council can, if it is considered necessary, grant consent for less work than was originally applied for; however the Council cannot grant consent for works that differ substantially from the works applied for.

Where consent is granted, the consent will expire after two years. If the works granted are not carried out within this period, the applicant will be required to submit another application if they still intend to carry out the works.

9.4 Appeals

Where a TPO application is refused or partly refused, the applicant has a right to appeal against the decision to the Secretary of State. The applicant also has a right to appeal against any conditions attached to TPO consent. The Planning Inspectorate determines TPO appeals on behalf of the Secretary of State.

10 Trees in Conservation Areas

North Kesteven has a substantial number of trees in conservation areas, and most trees in conservation areas are protected by the provisions of the Town and Country Planning Act 1990. In order for a tree in a conservation area to benefit from this protected status, it must be of a sufficient size to warrant protection. Currently all trees with a trunk diameter of at least 7.5 centimetres, when measured from 1 metre above ground level will benefit from this protection. These trees cannot be pruned or felled without first submitting a notification to the Council. The notification procedure is required to ensure that the intended works can be properly assessed, and any potential loss of amenity arising from the works can be minimised.

The notification procedure is different to an application, in that the Council cannot refuse consent for the proposed works. The Council in these circumstances can either approve the proposed works, or prevent the works from taking place by making a TPO. Notifications to the Council must be determined within 6 weeks from the date of validation; should the 6 week deadline expire and the Council has failed to respond, the applicant is permitted to carry out the proposed works without penalty.

Where the Council considers a TPO should be made, this is carried out in accordance with section 8 of this Policy.

Some works to trees in conservation areas will not require prior notification. Where exceptions apply to certain works to TPO trees, these exceptions also apply to trees in conservation areas. These exceptions are explained in section 9 of this Policy. Before carrying out the works residents are advised to seek the advice of a qualified tree surgeon or arborist, or to discuss the proposal informally with the Council.

11 Protected hedgerows

Rural hedgerows are an essential feature within our countryside, and have been progressively lost to due to changes in agricultural practice. Provisions within the Hedgerow Regulations 1997, and the Environment Act 1995 have enabled certain hedgerows to be protected. Subject to certain criteria, owners of hedgerows must give notice in writing to the Council before a hedgerow can be removed. Failure to comply with these requirements is a criminal offence, punishable on summary conviction to a fine of up to £5,000, or an unlimited fine following conviction in a Crown Court. The qualifying criteria for hedgerows are complex and consequently are being considered for review by Central Government. The current criteria relate to the value of hedgerows from an archaeological, historical, landscape or wildlife perspective. The regulations do not apply to hedges adjoining gardens.

The Council recommends owners of hedgerows to seek advice prior to their removal.

12 Unlawful works to protected trees

To undertake most works to trees subject of a TPO without first obtaining written consent from the Council is a criminal offence, punishable on conviction to a fine of up to £20,000. It is also a criminal offence to fail to comply with a consent granted by the Council. Carrying out works to most trees in conservation areas is also a criminal offence, and carries the same penalties as unauthorised works to trees subject of a TPO.

The Council is committed to protecting trees in the District, and will invoke its enforcement powers in respect of TPOs and unauthorised works to established trees in Conservation Areas. Enforcement of tree legislation will be pursued in accordance with the Council's Corporate Enforcement Policy.

The Council may also take action in relation to breaches of tree protection conditions contained within a planning permission. In these circumstances the Council will have regard to this Policy, its Planning Enforcement Policy and its Corporate Enforcement Policy.

13 Trees on development sites

The Council's Tree Officer is consulted on all full planning applications in order to ensure that where appropriate, when granting planning permission the Council makes adequate provision for the preservation or planting of trees by imposing conditions.

One of the most common threats against trees, and therefore a common reason for making a TPO is the proposed development of land upon which trees are growing. It is common for plans to be submitted showing a relationship between trees and buildings which is totally unsuitable. Schemes are frequently amended to ensure that significant trees are properly retained, usually by working with the applicant to reach a mutually acceptable solution.

Some developers are quick to assume that all trees on a site will have to be retained, and consequently often view trees as a problem rather than an asset. Unfortunately, this can result in trees being removed from sites before a planning application is made. To help to minimise this, the Council provides pre-application advice and guidance for developers and other applicants.

For new development, tree protection and maintenance requirements are considered in accordance with the saved policies the North Kesteven Local Plan. It is common practice for the Council to impose tree protection conditions and/or planting conditions as part of any planning permission. For trees to be retained successfully within a development site, it is vital that they are properly protected from direct and indirect damage. Protection zones should be large enough to ensure that no disturbance occurs within the rooting area of the tree; distances can vary according to local ground conditions, tree species and tree health. Guidance for tree protection within development sites can be found within British Standard 5837 (2012).

Failure to comply with tree protection conditions imposed on a planning permission is a breach of planning control. Enforcement of such breaches may be resolved by way planning enforcement action. Enforcement of breaches of planning control is undertaken by the Council's Planning Enforcement Officers, and is carried out in accordance with the Council's Planning Enforcement and Corporate Enforcement Policies.

14 Legal Status of this Policy

This Policy was approved by the Council's Executive Board on 12 April 2012, and was most recently reviewed for accuracy on 14 December 2015.

This Policy is intended to provide guidance for officers, businesses, consumers and the public. It does not affect the discretion of the Council to take legal proceedings where this is considered to be in the public interest.

15 How to obtain a copy of this Policy or make comments

This Policy is available on the Council's website at:

www.n-kesteven.gov.uk

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us by:

- e-mail: customer_services@n-kesteven.gov.uk
- telephone: 01529 414155

- in writing to the Compliance and Enforcement Team, C/o Development, Economic and Cultural Services, Kesteven Street, Sleaford, Lincs, NG34 7EF

16 Review of this Policy

This Policy was most recently reviewed on 5th December 2017, and will be reviewed annually.