

Trees: Enforcement Procedure

1. Background

1.1 The council's general enforcement policy, (GEP), was revised in November 2008 and sets out the procedures and practices that will be followed by the service in all its enforcement activities. The policy has been endorsed by elected members of the council.

1.2 The general enforcement policy is in compliance with government legislation and guidance, and with other procedures and policies of the city council. It specifically refers to the following:

Police and Criminal Evidence Act 1984
Human Rights Act 1998
Data Protection Act 1998
Regulation of Investigatory Powers Act 2000
Director of Public Prosecutions' Code for Crown Prosecutors
Cabinet Office Enforcement Concordat
City Council's Constitution
City Council's Prosecutions Policy and Code
Planning and Development Control Committee Scheme of Delegation

1.3 All services carry out enforcement in accordance with the general enforcement policy, but individual services may produce detailed service specific enforcement policies and procedures for their areas of responsibility, which comply with the general policy. Heads of service are responsible for ensuring that these policies and procedures are monitored and complied with.

1.4 This document sets out the procedures relating to enforcement of legislation for the protection of trees, which is the responsibility of the head of the planning service. This document should be read in conjunction with the general enforcement policy.

2. Introduction

2.1 The Protection of Trees

2.1.1 Trees can be protected under the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999. Guidance on the implementation of the legislation is provided in Tree Preservation Orders, a Guide to the Law and Good Practice, published by the Department of Environment, Transport and the Regions in March 2000 and amended in May 2009 by the Department for Communities and Local Government.

2.1.2 Trees are protected when they are the subject of tree preservation orders or where they stand in designated conservation areas. There are certain exemptions to the protection, (for instance where trees are dead, dying or dangerous), but generally the law provides that it is an offence to cut down, uproot, lop, top, wilfully damage or wilfully destroy a protected tree without authorisation.

2.2 Establishing a new Tree Preservation Order (TPO)

2.2.1 If it is proposed to issue a new TPO, a recommendation to make an order will be made by an appropriate officer in the planning service and approved under delegated powers by the team leader or head of planning.

2.2.2 Where a TPO is recommended, an officer from the council's trees and woodlands section will provide independent on-site verification of the appropriateness of the proposed TPO in writing to the planning officer, in advance of the TPO being formally issued. In the case of an emergency TPO, independent on-site verification will be required as soon as possible after the TPO has been formally issued, in writing to the planning officer. If it is found not to be appropriate, the TPO will be withdrawn.

2.2.3 When a new TPO is made, the council has a duty to inform the owner and/or any occupier of the land, together with adjoining landowners and any persons with an interest in the land, that an order has been made. People affected by the order have a right to object or make comments and have 28 days on receipt of the order to make a representation or objection to the order. The order must be confirmed within six months of being made and can be confirmed with or without modifications. If an objection is received, the TPO will be taken to Planning and Development Control Committee for confirmation. If no objections are received, the TPO can be confirmed under delegated powers by the head of planning or an appropriate team leader.

2.3 Applications to do work to protected trees

2.3.1 In the case of a tree protected by a TPO, an application for consent must be made for works to the tree. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the imposition of any condition that is considered by the applicant to be onerous.

2.3.2 In the case of a tree in a conservation area, six weeks notice must be served on the council of any proposal to carry out works to the tree. During the six weeks, the council may grant consent for the works as notified or make a tree preservation order to prevent any works. No conditions can be imposed on the consent. If the council takes no action, the works may go ahead as notified on the expiry of the six week period.

3.0 Investigation Procedures

3.1 Incidents involving alleged contraventions of tree protection legislation often come to light as a result of complaints from members of the public or others. Cases can also come to light in other ways, for example during the monitoring of building works on development sites or through a programme of TPO checks. Investigations will be carried out in accordance with the general enforcement policy.

3.2 All complaints will be received by or passed to the planning compliance and enforcement team and recorded.

3.3 When complaints are received alleging unauthorised works to protected trees, an initial investigation will normally be carried out within 24 hours by an appropriate officer. This type of breach is categorised as requiring urgent action, based on the criteria for prioritising planning contraventions, approved by the Planning and Development Control Committee in March 2009.

3.4 The initial investigation will consist of a desktop check to establish whether the tree at the location described by the complainant is protected and whether any consent has been granted for its removal or work to it. If the tree is protected and no consent has been granted, a site inspection will be made to view the condition of the tree and any ongoing activity, accompanied by an officer from the trees and woodlands section if appropriate. The Town and Country Planning Act 1990 gives a right to enter land to carry out such investigations and to take samples when necessary.

3.5 Where it appears that unauthorised tree works have been undertaken, notes will be taken during the site inspection to describe the scene in accordance with the requirements of the Police and Criminal Evidence Act 1984. These notes may be used as evidence later. Photographs and samples will be taken as appropriate and a note made of the time and date of the taking of all evidence. In particular, evidence will be taken that might relate to any possible future defence, such as evidence or claims relating to the health or safety of the tree.

3.6 The alleged contravener will be contacted and questioned within 10 working days, or if practicable, at the time of the initial site visit. They will be asked to give their observations on the incident and any relevant background information.

3.7 In the course of questioning, the alleged contravener will be cautioned if the following criteria apply:

- (1) it is suspected that an offence has been committed,
- (2) the person is suspected of committing the offence, and
- (3) it is apparent that the answers to questions will be required as evidence.

The caution will be issued in accordance with the requirements of the Police and Criminal Evidence Act 1984. The alleged contravener will be advised that they are not under arrest, are free to leave at any time and are entitled to legal representation.

3.8 Where appropriate, the alleged contravener will be invited to the council offices to undertake a tape-recorded interview under caution and under the provisions of the Police and Criminal Evidence Act 1984. Complainants and any other witnesses will be requested to provide written statements to be used as evidence in court.

3.9 The alleged contravener will be informed of the outcome of the investigation as soon as practicable and of the proposed course of action.

4.0 Potential Enforcement Powers

4.1 Whenever a tree has been removed in contravention of statutory protection, or because it is dead, dying or dangerous, there is an automatic duty on the landowner to plant a replacement tree of suitable size and species at the same place as soon as they reasonably can, unless that requirement is waived by the local planning authority. The replacement tree is then subject to the same protection as the tree that was lost.

4.2 The council has a range of possible courses of action open to it to deal with cases of unauthorised works to protected trees. The process is set out in the flowchart, attached as Appendix 1. In order of severity, these are:

4.2.1 Take no formal action. This may be accompanied by informal action, such as advising the alleged contravener to ensure that the incident is not repeated.

4.2.2 Negotiate with the person responsible to remedy the problem, including an agreed timescale for work to be completed, taking into account the planting and / or bird nesting seasons. If the work is not carried out satisfactorily, any of the actions outlined below may be started.

4.2.3 Administer a formal caution. This is a formal process where the contravener signs a statement admitting the offence and submitting to the caution. This may be referred to if the same person is ever found guilty of a subsequent offence.

4.2.4 Require the planting of a replacement tree for each tree destroyed, under section 206 of the Town and Country Planning Act 1990. This is normally required additionally if the contravener has been prosecuted or cautioned. More than one tree may be requested, but cannot be insisted on, and only one tree would be automatically protected under the Act. This will include a timescale for work to be completed, taking into account the planting and / or bird nesting seasons.

4.2.5 Serve a tree replacement notice, (TRN), under section 207 of the Town and Country Planning Act 1990. This is a formal procedure which can be used if the landowner does not carry out replacement planting. This must be issued within a period of four years to ensure compliance and will include a timescale for work to be completed, taking into account the planting and / or bird nesting seasons. If the TRN is not complied with, the Council can prosecute the landowner for non-compliance with the TPO. The council would normally expect to pursue a TRN to its conclusion unless there is clear and exceptional justification for a negotiated compromise.

4.2.6 Take default action to plant the required trees. The council may take default action to plant the replacement trees. The cost of the replacement trees is recovered from the landowner or a charge is placed on the land and the cost recovered when the land is sold.

4.2.7 Take prosecution action.

4.3 There are two offences, which apply equally to trees protected by TPO and those standing in conservation areas. Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and liable if convicted to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be “destroyed” for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

4.4 Secondly, anyone who carries out work to a tree that is not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any actions against offences in this category must be brought within six months of the date the offence was committed.

4.5 In order to bring a successful prosecution, the council must be able to prove that:

- (1) the defendant has carried out, or caused, or permitted works to the tree;
- (2) the tree was protected; and
- (3) the works were carried out without the council's consent.

4.6 If the defendant claims that there is any exemption from the protection of the tree, it is for them to prove, on the balance of probabilities, that exemption applies.

5.0 Criteria for deciding the most appropriate action

5.1 Decisions about the course of action to be taken, as set out in section 4 above, in cases of unauthorised works to protected trees must be made in the public interest, and each case must be treated on its own merits.

5.2 A prosecution will only be brought in cases where there is a good chance of securing a conviction. Before any decision is taken, discussions will take place with legal services to determine the strength of the evidence and the possibility of achieving a conviction. This will normally involve the availability of a credible witness to the act and/or an admission under caution from the accused person. Legal services, in determining whether or not to institute proceedings, will be guided by the facts as uncovered through the evidence submitted to it and in accordance with the Council's Prosecution Code.

5.3 In deciding whether to bring a prosecution, regard will be given to the possibility of a defence that an exemption applied to the protection afforded to the tree, for instance that the tree was decayed or that the works were carried out in the interests of safety.

5.4 A prosecution will not normally be brought unless the unauthorised works have resulted in detriment to amenity.

5.5 In most cases, a prosecution will not be brought if consent would have been granted for the works undertaken had it been applied for, or where it is considered that the tree will recover its full health, form and amenity value over a short time-scale or where any detriment to amenity could be put right within a short period of time by replacement planting. In these cases, the advice of the trees and woodlands section will be sought.

5.6 In considering whether to bring a prosecution, regard will be had to previous breaches by the same person or the likelihood of the offence being repeated by them or by someone else in similar circumstances. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised works.

5.7 Whilst ignorance of the law is not an excuse, the attitude and circumstances of the person concerned can be taken into account, including any indication that they were acting in good faith. Individual personal circumstances and any other mitigating factors can be taken into consideration where appropriate.

6. Procedures for Taking Action

6.1 In all cases where it appears that unauthorised works have been carried out to a protected tree, a report will be produced setting out the facts of the case and the background. The process is set out in the flowchart, attached as Appendix 1.

6.2 The report will clearly explain the breach of control and the harm that is being caused and recommend the action to be taken, with input from an officer from the trees and woodlands section as appropriate. The report must specify the action to be taken, the reasons for the action and, where appropriate, the timescale for action and for delegated or committee decision

as appropriate in accordance with the planning and development control scheme of delegation.

6.3 All reports for delegated authority will be checked in accordance with the planning service delegated decision procedure. This includes verification of the recommendation by one or more officers senior to the case officer. The completed report will be checked and countersigned by the case officer and team leader. Where a case may be considered controversial, the completed report will be checked and countersigned by a second senior planner or team leader.

6.4 Where a case is controversial and / or subject to a potential conflict of interest will be referred to the head of planning or director as appropriate for decision.

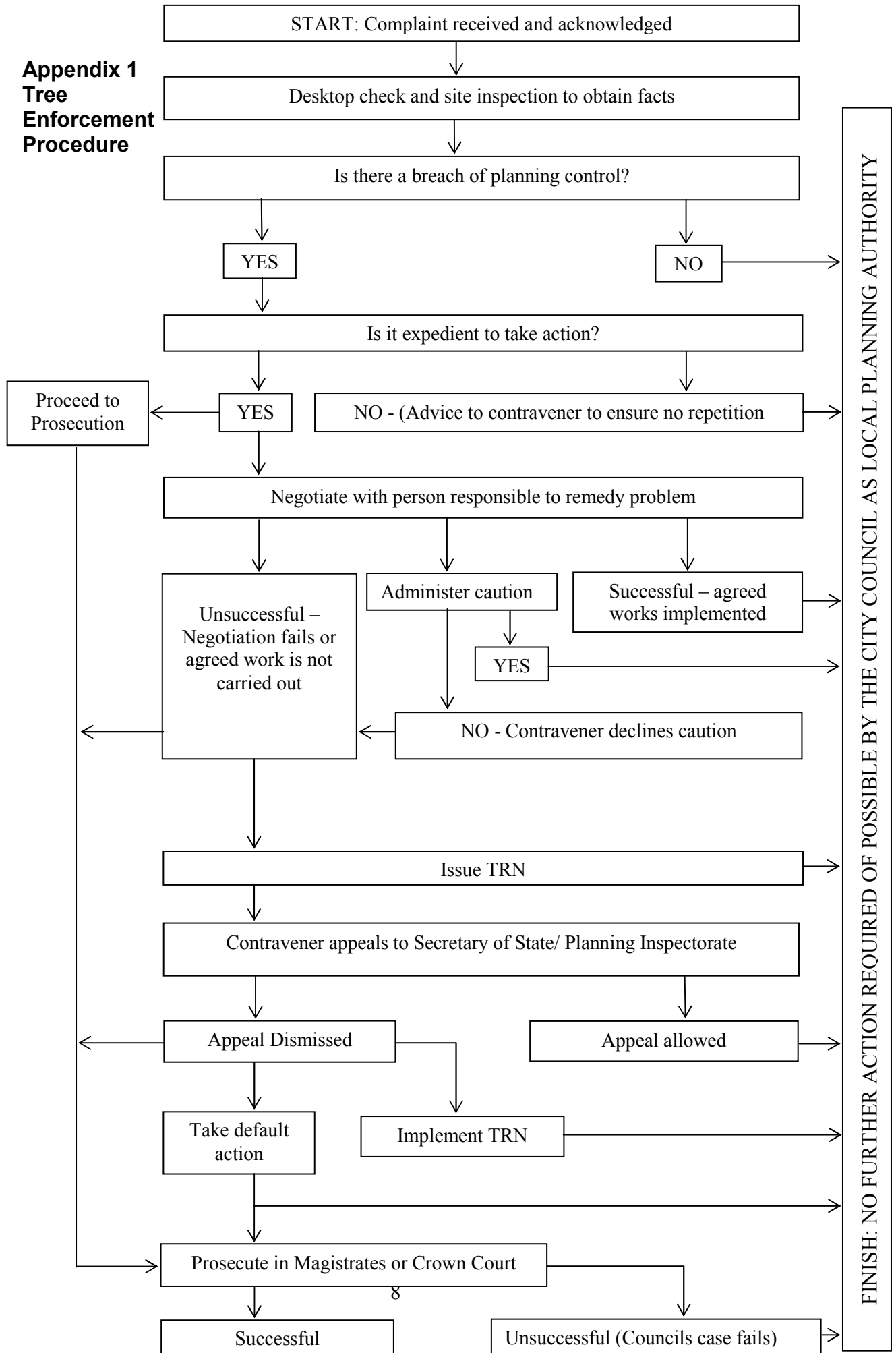
6.5 Formal cautions will normally be issued at the council offices, by a planning or enforcement officer, with guidance from legal services. The contravener will be contacted in writing, given details of the offence and an explanation of the significance of the caution, and requested to submit to the caution. Records will be kept of formal cautions issued and will be referred to in court if the contravener commits a further offence.

6.6 When a decision has been made to issue a formal caution, but the person refuses to submit to the caution, prosecution will be considered.

6.7 A decision to prosecute will be made by legal services, based on the evidence and the council's prosecution policy. The head of planning will normally make the final decision about all other courses of action in accordance with the Planning and Development Control Committee Scheme of Delegation.

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**Appendix 1
Tree
Enforcement
Procedure**



FINISH: NO FURTHER ACTION REQUIRED OF POSSIBLE BY THE CITY COUNCIL AS LOCAL PLANNING AUTHORITY