

Neighbour's Trees - Advice to Households



The tree officers at AVDC deal with many tree enquiries every year. This leaflet is written for the benefit of tree owners and the general public and hopefully answers some of the most common questions asked. It is for guidance only and should **not be taken as a statement of the law**. This leaflet explains what you can do about common tree issues and some things you may need to accept and tolerate.

Legal advice should be obtained through a solicitor or lawyer if you are unsure of your legal rights or obligations.

Technical reports and advice should be obtained from qualified insurers, engineers or arboricultural consultants.

At the end of the leaflet section 17 contains a list of further sources of advice.



High Street rooftop view in Aylesbury 2009

Trees near homes

So, you've found the house of your dreams.... but what about the garden? Did you notice the trees? They may be in the garden or growing on land beyond the boundary of your new property. Consider how those lovely trees will look when in full leaf during a violent gale or will those trees shelter your home? Will the new garden be cool and shady on hot summer days? Will all those fallen leaves become free garden compost or yet another chore each autumn? Will the beautiful view across the valley or towards that ugly factory be obscured by future tree growth?

1. Trees and the Law

Trees may be either legally protected by Conservation Areas (CA) or by Tree Preservation Orders (TPO). Trees that are subject to a TPO are shown on the Order plan either individually (a circle), as a group (a dashed line), as a woodland (a solid line), or enclosed within an area (a line of continuous dots; these dots do not indicate individual trees). Your house will not necessarily appear on the plan if it was built after the Order was made. Although there may be no trees on your property, protected trees growing on adjoining land may also affect it.

Your property may be situated within or on a CA boundary or a neighbouring property may fall within a CA. A similar level of legal protection applies to trees within or on a CA boundary as trees subject to TPO status.

Unlawful work is a criminal offence and can result in heavy fines and replanting duties. Other forms of protection or constraints can be Planning Conditions, Sites of Special Scientific Interest and Felling Licences. Before cutting any live part of a tree you should check with your Local Planning Authority whether any consent is needed.

Habitats, wildlife and some hedges are also legally protected. Bats and their roosts, whether bats are present or not, are protected with a potential fine of £5000 per bat for destruction, damage, obstruction or disturbance of a roost. All nesting birds are also legally protected against disturbance whilst building and occupying the nest. It is not always possible for the untrained eye to determine if bats or birds are present, so advice should be taken with trees that have a reasonable likelihood of bats or nesting birds being present. If you require further guidance you can contact the AVDC Biodiversity Officers on 01296 427972.

Works near watercourses may need consent from the Environment Agency or Drainage Boards.

2. Legal responsibilities and who pays for any tree work

Land owners are expected by the courts to show a 'Duty of Care' to control real risks to anyone entering/using their premises, neighbours and the wider public. Failure to do so can make tree owners vulnerable to legal action.

Prudent owners should inspect their trees, keep accurate records, and carry out remedial work where necessary. Land owners may also have to carry out certain tree works in order to comply with directives from government bodies, utility services or safety considerations. All works must be paid for by the home/landowner but this can also be worth considering as an investment in your property. By investing in your trees

you could be directly improving your property and the appearance of the surrounding urban landscape. It has been shown that having mature trees in your property can potentially increase its resale value by providing a pleasant setting in which to live.

Tree work can be dangerous and requires long training, specialist equipment, skill and insurance cover. Always use competent, fully insured contractors. The Arboricultural Association maintains lists of suitable companies which can be found on their website.

3. Dangerous trees

If you think a tree is dangerous, firstly make the land owner aware of the situation by reporting it to them directly. If the tree is a threat to the general public, and the legal owner does not take action, AVDC have some discretionary powers to make dangerous trees safe. However, these powers are limited and advice would be sought from our legal department and tree officer first.

Please Note: A tree is not necessarily considered dangerous due to its height, spread, or its close proximity to a house.

Report hazards near power lines to the supply company and hazards to roads / paths to Buckinghamshire County Council.

4. Nuisance trees (cases serious enough to result in law suits) is a term used in a legal sense and not interpreted in its ordinary everyday sense

Courts and Local Authorities can be expected to take seriously the following issues regarding trees whether subject to a legal constraint, privately owned or situated on AVDC land. Law suits are expensive and you are not guaranteed a victory:

- **Danger** – injury, collapse, poisoning, traffic impacts, storm damage, trip hazards, electrical hazards, air traffic security.
- **Damage to property** – Subsidence, cracked drives, debris, impacts, lightning strikes.
- **Financial loss** – shaded commercial crops for example.

5. Minor inconveniences

The law does not concern itself with small inconveniences and you are not in a very strong position to compel neighbours to do tree work for minor benefits. The following examples of inconvenience are unlikely to be resolved by courts or by Local Authorities or by other agencies even though some households find such issues intolerable:

- Apprehensions you feel due to tree height or it swaying in the wind
- Shade (see **15. High Evergreen Hedges**).
- Sticky 'honey-dew' on cars / furniture
- Loss of views / screening / shelter
- Leaf / fruit / seed fall and small debris
- Pollen allergies
- Bird droppings
- Harmless insects or those with low risk and seasonal impacts
- Overhanging branches

- TV signal interference
- Children playing in trees

These inconveniences are normal consequences of living within the vicinity of trees and are not sufficient reason for felling or pruning. However, it may be worth discussing this issue with your neighbour and certainly worthwhile having the trees professionally inspected to ascertain if there are any serious defects which require work.

6. Trees over boundaries

It is not an offence to allow a branch or root to cross into someone else's land. However, if you suffer real injury, damage or financial loss as a result of this then you may be in a strong position to compel the tree owner to control, reduce or eliminate the problem. Always speak to your neighbour first to try and resolve issues in a friendly way.

If your building appears to be affected by subsidence or you think injury or damage might occur you should contact the AVDC tree officers to ascertain whether any legal constraints exist. You should consider contacting your insurance company who may seek independent professional advice from a related specialist (arboriculturalist, structural engineer, lawyer etc).

Landowners and tenants have 'Common Law' rights to cut back any branch or root which enters or overhangs their land. Speak to your neighbour so they understand **why, what** and **when** you are cutting their trees. Material you cut off is not your property so you should check with your neighbour whether they want it returned and placed carefully on their land or disposed off. It is advised that this matter is discussed with the legal owner prior to carrying out any proposed works. Please remember that you must not cut at a point beyond your own land and never work on, or over, your neighbour's land unless you have their consent. Do not throw material over the boundary as this can cause injury or damage and antagonise your neighbour.

If your work causes a tree to become unstable or die you may be held liable for injury or damage caused directly or indirectly by your works. Only competent contractors should be employed to carry out tree work.

7. Highways and footways

If you consider a tree is dangerous to a road or public path you should report it to Buckinghamshire County Council (BCC) and to the landowner, if known. Any obstruction or hazard on other public rights of way should also be reported to BCC. Please note that BCC does not normally own the land that the right of way crosses and their priority is to allow safe public access along the path. They will not normally carry out works to remove minor inconveniences to households from trees growing in those pathways.

8. Waterways

Trees/branches that have fallen across or blocking waterways should be reported to the Environment Agency (EA), and to the land owner if known, who have responsibilities for ensuring the flow of water is not impeded.

Some types of work involving heavy machinery may need consent from the EA when working within 9m of the top of the bank.

9. Helping your neighbour manage their trees

Cooperation and respect between neighbours is an important social aspect in tree management that helps improve quality of life for both parties and may even reduce expenses if costs are shared. Avoid confrontations which might aggravate situations; mediation can resolve disputes. Groups can often be more successful than an individual acting alone.

10. Improving the environment

Wildlife habitats can benefit from being left in a natural condition. Rotting logs and dead branches make ideal homes for local wildlife in woodlands. Dead trees left standing provide excellent habitats for woodpeckers, beetles, fungi, bats and other wildlife.

Avoid dumping garden refuse onto neighbouring land. Grass clippings take a considerable amount of time to decompose and may be harmful to local wildlife. Garden refuse being left on neighbouring land can escalate and create issues of unpleasant smells or obstructions of your own land and fences. Composting and green waste schemes are available to help with garden waste.

Planting trees improves our world but make sure you choose a species appropriate to the setting. Avoid planting too close to structures or where afternoon shade will spoil a neighbour's enjoyment of sunshine. Large tree species will need a large area to safely grow and mature. General advice on species choice and planting is available free in the form of leaflets from many Local Authorities.

11. Ownership of land

If you need to identify who owns land where a tree stands you should start by checking your own deeds and making local enquiries. If this does not reveal the owner of land you should then contact AVDC, and possibly BCC, to ascertain if they are responsible for the land. If this still does not reveal who the landowner is you may need to contact the Leicester District Land Registry where a small charge would be made for a land search. The results of the search may reveal the land as being 'unregistered', which means the owner is unknown. This does not mean that it belongs to nobody.

Please do not cultivate or enclose land that does not belong to you unless you have the owner's consent. You must not hinder future maintenance, emergency access, public amenities or underground pipes. Enclosure and trespass onto neighbouring land may be a breach of Planning Regulations.

12. Insurance

Check whether or not your current or new insurance cover includes damage from trees. Tree owners will probably need between £2,000,000 and £5,000,000 cover in case of a big claim.

13. Subsidence (cracks in buildings)

Do not begin by assuming the damage to buildings or structures is caused by trees – several other factors may be the cause of damage. In all cases of subsidence, investigation of the facts is the key to identifying likely cause/s so that you can reach cost effective solutions. Trees take up ground water and depending on climate conditions can sometimes cause clay soils to shrink to an extent that may affect a structure. If you suspect there is a risk you should consider seeking professional advice from a structural engineer or/and approved tree consultant for guidance. You may also consider contacting your insurance company.

14. Direct damage to property

Collapse of a tree/branch can result in serious structural damage but risks can be minimised by periodic inspections and remedial work.

Branches touching buildings ought to be cut back to give 2-3 meters clearance.

In high risk locations guttering can be netted with chicken wire or similar to stop leaf fall blocking downpipes.

During hot summers Limes, Sycamore and Birch drop sticky honey-dew which can spoil exposed furniture and paintwork if not cleaned. Avoid parking open topped cars beneath such trees and cover cars or garden furniture to avoid the sticky drops or wash the drops off with fresh water.

15. High Evergreen Hedges

In extreme cases high hedge disputes can spoil reasonable enjoyment of a garden and home. Following discussions with your neighbour and a mediation service complainants may involve the Local Authority as a last resort. A fee of £350 is charged to attempt resolution with a neighbour under current high hedge legislation. Local Authorities supply free information on how the regulations apply so that you can determine whether it is practical to pay this fee before you submit an application.

The regulations do not apply to trees or deciduous hedges nor to hedges up to 2m high . The Local Authority may intervene to reduce hedge height if required by the legislation, but not its width or length.

16. Resolving problems

Try these solutions; beginning with the light-hearted and moving progressively on towards the more expensive options:

- a. **Enjoying the benefits of trees** is one way of balancing the pros and cons of living near trees and having a happier life. Shade keeps your skin younger and is enjoyable on very hot sunny days.
- b. **Toleration** helps everyone get along even if neighbours do things you don't like. Be creative and turn problems into advantages. For example; grow shade tolerant plants beneath a neighbour's tree to increase variety in your garden.
- c. **Diplomacy** The only way to extinguish an enemy is to make them your ally. Most problems seem to be perpetuated by a breakdown in communication between neighbours. Ask the neighbour to come and see the problem from your garden and discuss issues before making demands on them. If this fails you might want to offer to share costs or even pay the whole cost. This should be a sincere offer and be aware that land owners who manage hundreds of boundary trees will be adverse to sharing ongoing costs or setting expensive precedents.
- d. **Insurance** You may want to buy insurance against the incidents you foresee. If the worst then happens at least you will be covered.
- e. **Mediation** A neutral third party can sometimes find common ground between two opposing points of view.
- f. **Abatement of a nuisance** You can cut back branches or roots trespassing into your land (see 'Trees over Boundaries' above). Tree Preservation Orders and Conservation Area regulations can still apply so get advice from the Local Authority tree officer.
- g. **Council Advice** General advice can be given about High Hedges and hazardous trees plus many other aspects of tree management. In a few cases the LA may be able to take action to resolve hazards or disputes. Please note that the Council will not take sides in a dispute, nor will it provide technical reports for private landowners, but we do supply a wide variety of information leaflets. Official complaints need to be submitted in writing by either fax, letter or email.
- h. **Law suits** This leaflet is **not** intended as a substitute for legal advice. If you are seriously contemplating suing a neighbour you should buy professional legal advice from your lawyer.
- i. **Move house** This may not be practicable or desirable, however it is one option and may need to be considered. It is also worth considering the presence of trees adjacent to any property you intend to move into. What the potential future size of the tree(s) will be or what impact they may have on the property. If you really don't like the trees - don't buy the property. Do not assume that you can move in and then prune or fell the trees. Houses outside leafy neighbourhoods are often cheaper.
- j. **If none of the above are practical solutions** you may have to accept the situation.

17. Useful contacts for further advice

Arboricultural Association: Telephone 01794 368717 www.trees.org.uk
 Aylesbury Vale District Council: Telephone 01296 585858
www.aylesburyvaledc.gov.uk

Buckinghamshire County Council Highways: Telephone 0845 2302882

British Standards Institute: Telephone: 020 8996 9001 www.bsigroup.com

Citizens Advice Bureau: Telephone 0870 126 4056 www.citizensadvice.org.uk

Electricity companies:

- East Midlands – Central Networks 0800 0586090
- London – EDF Energy 0800 0280247
- Southern Electric S&SE 0845 7708090

Environment Agency: Telephone 0845 933 3111 www.environment-agency.gov.uk

Forestry Commission: Telephone 01296 696543

Mediation Buckinghamshire: Telephone 01494 520821 www.mediationbucks.org.uk

Royal Institute of Chartered Surveyors: Telephone 0870 333 1600 www.rics.org

The Leicester District Land Registry: Telephone 01162 654001

Tree helpline: The Tree Advice Trust: Telephone 09065 161147 (calls cost £1.50/minute)

18. Further reading

British Standard 3998: Recommendations for Tree Work.
(revision expected during 2010)

The Arboriculturalist's Companion: N D G James. ISBN 0-634-16774-9

The Hedgerow Regulations 1997: A guide to the law and good practice. ISBN 1 85112 037 8

The Law of Trees, Forests and Hedgerows: Charles Mynors. ISBN 0-421-59040-8
(revision expected during 2010)

Tree Preservation Orders, A guide to the Law and Good Practice. ISBN 1-85112-361-X
(revision expected during 2010)

A range of free leaflets are available on general aspects of tree maintenance from Aylesbury Vale District Council and from the Arboricultural Association website.

If you discover any of the information in this leaflet is incorrect please inform the Council's tree officers by telephone 01296 585858 or by email Trees@aylesburyvaledc.gov.uk. If you consider aspects of advice is missing from this leaflet, please tell us about it.

Every effort has been made to ensure that the information listed is correct. The publisher cannot accept any responsibility for inaccuracies, omissions or errors.