

# **RUSHMOOR BOROUGH COUNCIL**

## **TREE ENFORCEMENT POLICY**

### **1. Introduction**

#### **Purpose**

1.1 This document sets out Rushmoor Borough Council's policy for protecting trees and explains how enforcement action against unauthorised works to protected trees will be carried out. This Policy accords with the Council's procedures and standards of service and with current legislation and guidance. As with other enforcement issues, tree enforcement matters are dealt with in accordance with both the Enforcement Concordat and the Council's Planning Enforcement Charter. This policy takes effect subject to the Council's Corporate Enforcement Policy.

#### **Tree enforcement issues**

1.2 This policy explains why and how we will enforce against:

- unauthorised works carried out upon, and damage to or felling of trees that are protected by Tree Preservation Orders;
- unauthorised works carried out upon, and damage to or felling of trees that are situated within Conservation Areas; and,
- any breach of planning conditions relating to tree retention and protection.

### **2. Tree preservation orders and conservation areas**

#### **The legislation**

2.1 Trees are protected when they are made the subject of Tree Preservation Orders or when trees are situated within Conservation Areas (subject to certain exemptions). In general, it is an offence to cut down, uproot, lop, top, wilfully damage or wilfully destroy a protected tree without the consent of the local planning authority. Trees on development sites are protected through the use of planning conditions.

#### **Tree Preservation Orders**

2.2 In the case of trees protected by a Tree Preservation Order, the consent of the Council is generally required for any works on the trees following submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against a refusal of consent or to the terms of a condition.

#### **Conservation Areas**

2.3 Where trees are in a Conservation Area, six weeks' notice must be given to Rushmoor Borough Council (the Council) of any proposal to carry out works on the trees. During this six week period, the Council may either raise no

objection to the works or make a Tree Preservation Order to prevent those works being carried out. If the Council takes no action within six weeks, the works may go ahead as notified.

### **Offences:**

2.4 Two offences apply to trees protected by Tree Preservation Orders and those within Conservation Areas.

- Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in such a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000 or to an unlimited fine in the Crown Court. 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.
- Secondly, anyone who carries out works on a tree which are not likely to destroy it, is liable if convicted in the Magistrates Court to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

2.5 In addition to directly carrying out unauthorised works on protected trees, it is an offence to cause or permit such works.

2.6 In order to bring a successful prosecution, the Council must be able to prove that:

- the defendant has carried out, or caused, or permitted works on the tree;
- the tree was protected;
- the works were carried out without the Council's consent; and
- the works were not exempt works.

2.7 If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove that the exemption applies.

2.8 Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Council). The replacement tree is then subject to the same protection as the tree that was lost. If the landowner fails to comply with this requirement, the Council may serve a Tree Replacement Notice within a period of four years to ensure compliance. There are rights of appeal against Tree Replacement Notices.

### **Procedures for investigating complaints**

2.9 The Council may become aware of incidents involving contraventions of the tree protection legislation as a result of complaints received or when carrying out routine monitoring of works on development sites.

2.10 When alleged cases of unauthorised works on a tree come to the attention of the Council, an initial investigation will be carried out as soon as possible.

The initial investigation will consist of a check to establish whether the tree is protected, whether any consent has been granted, and a site visit. In cases where it appears that protected trees are being removed and in other instances where there may be a significant impact on public amenity, every effort will be made to undertake a site visit as a matter of urgency. The legislation gives the Council a right to enter land to carry out such investigations.

- 2.11 Where it appears that unauthorised tree works have been undertaken, notes and photographs will be taken during the site visit which may be used as evidence later.
- 2.12 Any suspected offender will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). He or she will be asked to give his/her comments or observations on the incident and any relevant background information. If it appears that an offence has been committed, and that answers to preliminary questions on site may be required to be produced as evidence, he may be cautioned. Any such caution will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspected offender will be advised that he/she is not under arrest, is free to leave at any time and is entitled to legal representation. A record of questions put to suspected offenders, and replies given thereto will be kept by interviewing officers.
- 2.13 Where appropriate, the suspected offender will be invited to the Council offices to undertake a tape-recorded interview under caution in accordance with the provisions of the Police and Criminal Evidence Act 1984. The investigating officer will make a judgment during the initial site visit as to whether cautioning and formal questioning is appropriate at that stage. The Council may write to the suspected offender, seeking detailed information regarding the incident. If a satisfactory response is received, the matter may not be pursued to formal interview under caution.
- 2.14 The identity of any complainant will be kept confidential and not disclosed to the alleged offender as far as practicable. However, it will be made clear to the complainant that if the case comes to court he/she will be required to give evidence under oath and in that case would not be entitled to confidentiality.
- 2.15 Complainants will be kept informed of the course of the investigation and its outcome. They and other witnesses will be contacted as appropriate and requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary.
- 2.16 Suspected offenders will be given the opportunity to give their version of events during the course of investigations.

### **Options for action**

- 2.17 The Council can pursue a range of actions to deal with cases of unauthorised works on protected trees. These include:
- prosecution,

- administering a formal caution. This is a formal process whereby the offender signs a statement admitting the offence and submitting to the caution. A caution may be referred to at the sentencing stage if the same person is found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another, similar offence.
- requiring, under section 206 of the Town and Country Planning Act 1990, the planting of a replacement tree for each tree destroyed;
- serving under section 207 of the same Act, a replanting direction. This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting;
- not taking any formal action. This may be accompanied by informal action, such as advising the alleged offender to ensure that the incident is not repeated.

### **Selection of appropriate action**

- 2.18 Decisions as to what action to take in cases of unauthorised works on trees will be taken in the public interest, with each case being considered on its own merits.
- 2.19 A prosecution will not normally be brought unless the unauthorised works to the tree has resulted in a loss of public amenity.
- 2.20 Nor will a prosecution be brought if consent would have been granted (or no objection raised) for the works undertaken if it had been applied for.
- 2.21 In considering whether to bring a prosecution, regard will be had to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised works and whether the perpetrator has been prosecuted, cautioned or warned for similar offences in the past.
- 2.22 Whilst ignorance of the law is no excuse, the attitude and circumstances of the offender will be taken into account, including any expression of regret, helpfulness and co-operation with the investigation and any indication that the perpetrator was acting in good faith. Individual personal circumstances and any other mitigating factors will be taken into consideration where appropriate.
- 2.23 Two tests will be applied in cases where a prosecution appears likely consideration of which will be undertaken by the Solicitor to the Council:
- The Evidential Test -  
an offender will not be prosecuted unless there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction.
  - The Public Interest Test:  
a prosecution will only be brought where it is in the public interest.

- 2.24 Formal cautions may be administered in cases where a prosecution can properly be brought, but where such action is not considered appropriate in the circumstances of the case. However, persons who have previously received a formal caution will normally be prosecuted.
- 2.25 The planting of replacement trees will always be required irrespective of whether the perpetrator has been prosecuted or cautioned.

### **Procedures for taking action**

- 2.26 Tree enforcement issues will be dealt with by the Council's Arboricultural Officer, in consultation with the Head of Planning Services and the Solicitor to the Council.
- 2.27 In cases where it appears that unauthorised works have been carried out on protected trees without consent, a formal Authority to Prosecute will be prepared recommending the action to be taken and giving reasons for the decision to prosecute. In accordance with the Council's Constitution, the decision on whether to prosecute will normally be taken by the Head of Planning Services in conjunction with the Solicitor to the Council.
- 2.28 If a prosecution is undertaken, the outcome of the case will be reported to the next available meeting of the Council's Development Control Committee.
- 2.29 Formal cautions will normally be administered at the Council offices. The offender will be contacted in writing and requested to submit to the caution. Details of the offence will be provided in the letter, along with an explanation of the significance of the caution. Records will be kept of formal cautions issued and these will be referred to in court if the offender commits a further offence.
- 2.30 When a decision has been made to offer a formal caution, but the offender refuses to accept the caution, a prosecution will normally be brought.
- 2.31 Where suspected offenders are invited to the Council offices for a tape recorded interview under caution, the Code of Practice under the Police and Criminal Evidence Act 1984 will be adhered to.
- 2.32 When replacement planting is required, monitoring will be carried out to ensure compliance.

## **3. Planning conditions**

### **Use of planning conditions relating to trees**

- 3.1 In granting planning consent for sites where trees are to be retained, the Council will typically use conditions relating to tree retention and protection.
- 3.2 The Council will expect all conditions relating to trees to be complied with in full, and will use its enforcement powers to seek compliance where necessary.

- 3.3 Tree-related conditions generally require that the works are formally specified in writing prior to commencement on site (including demolition). These conditions should then be fully adhered to.

### **Dealing with breaches of planning control**

- 3.4 Breaches of planning control occur either where conditions have not been formally specified prior to works commencing, or where the specified conditions are not complied with after works have commenced.
- 3.5 The primary means for dealing with breaches of tree-related conditions is the Temporary Stop Notice. The purpose is to stop further works on site until such time as conditions have been satisfactorily complied with and details for tree protection have been agreed. The Temporary Stop Notice may be served on any of the following, a person carrying out the works on the land, a person who is an occupier of the land and a person with an interest in the land and a copy of the notice must be displayed on the land.
- 3.6 If tree-related conditions are not being complied with, and it is not possible to resolve the outstanding issues on site, a Temporary Stop Notice will be considered. Temporary Stop Notices come into effect immediately for a period of up to 28 days.
- 3.7 Contravention of a Temporary Stop Notice is an offence. A person found guilty is liable, if convicted in a Magistrates Court, to a fine of up to £20,000, or to an unlimited fine in the Crown Court.
- 3.8 Should a breach of planning control lead to damage to, removal of or unauthorised works to protected trees, action may also be taken as detailed in Section 2 of this document.

### **Decisions upon action**

- 3.9 The nature of breaches of tree related conditions is such that a decision often needs to be made quickly on site. Each case will be dealt with on its own merits and the Council's Arboricultural Officer will make a proper assessment of the situation prior to making a decision on how to proceed.
- 3.10 A Temporary Stop Notice will be considered if the following applies:
- a clear and demonstrable breach of planning control relating to trees has occurred
  - trees are being damaged or are likely to be damaged if works continue, and the matter can not be resolved immediately on site.

## **4. Contact details for Rushmoor Borough Council's Arboricultural Officer**

- 4.1 The Arboricultural Officer can be contacted on 01252 398737.

## **5. Guidance/information**

- 5.1 Government guidance on Tree Preservation Orders (including enforcement issues/penalties) is contained the following publications

- Tree Preservation Orders - A Guide to the Law and Good Practice' dated March 2000 (and addendum May 2009). This is available for download from the website of the Department for Communities & Local Government.
- Information on planning enforcement (including circular 02/05 covering the use of Temporary Stop Notices) is also available on the website of the Department for Communities & Local Government.

## **6. Date**

6.1 This Policy was agreed by Rushmoor Borough Council on 13th March 2012