

You and Your Trees

A Householders Guide to Protected Trees and Common
Neighbourhood Tree Problems

Supplementary Planning Guidance Note



Falkirk Council
Development Services



Welcome to this supplementary planning guidance note on "You and Your Trees". It is one of a suite of such guides promoting development quality in the built environment and taking forward the Council's commitment to sustainable development as set out in the Development Plan.

Falkirk Council recognises the ecological, landscape, and economic importance of trees and woodlands. They make a positive contribution to our quality of life by enhancing the environment of our towns and villages.

Where the Council has designated Tree Preservation Orders and Conservation Areas trees are protected by law. The aim of this guidance is to explain this legislation and help householders understand their responsibilities as owners of protected trees. It also offers advice on the management of non protected trees and common neighbourhood tree problems.

The Council commends this guidance and hopes that you will share its appreciation of the local tree and woodland resource.

October 2007



1. Introduction

- 1.1 What is the basic issue?
- 1.2 Who is the guidance for?
- 1.3 Which areas are covered?

2. Protected Trees

- 2.1 Tree Preservation Order
- 2.2 Conservation Areas
- 2.3 Planning Conditions
- 2.4 Felling Licences
- 2.5 Sites of Special Scientific Interest

3. Trees within Council Properties

- 3.1 Trees in Council house gardens

4. Neighbourhood Tree Problems

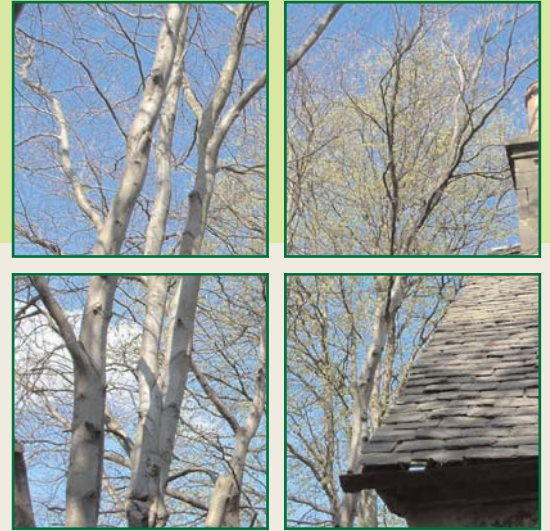
- 4.1 Overhanging branches
- 4.2 Invasive roots
- 4.3 Trees overhanging roads and footpaths
- 4.4 Trees blocking light
- 4.5 Leaves causing a nuisance

5. Tree Surgery and Tree Surgeons

- 5.1 A General Note

6. Further Information

- 6.1 Further Reading
- 6.2 Permissions
- 6.3 Useful Contacts
- 6.4 Checklist



1.1 What is the basic issue?

Trees are an important part of our environment in both town and country. They have a significant impact on environmental quality, contributing to the natural heritage, attractiveness and character of the area. The visual impact of trees is considered just as important as their subtle benefits such as reducing noise, filtering air pollution and providing food and shelter for wildlife.

1.2 Who is the guidance for?

This guidance note is primarily intended to provide advice for householders and residents on some of the common problems associated with neighbourhood trees. It also provides information on the ways in which trees can be protected and safeguarded.

Where a development is proposed the guidance note Trees and Development should also be referred to.

1.3 Which areas are covered?

The primary focus of this guidance note is the urban and suburban residential areas within the Council area. However the advice given will also apply to more rural areas covered by tree preservation orders.

2.1 Protected Trees

Local Planning Authorities have special powers to protect trees by making Tree Preservation Orders, designating Conservation Areas and imposing conditions to retain trees when giving Planning Permission.

Outwith garden ground tree felling may require a felling licence from the Forestry Commission – see useful contacts.

The following section of this booklet provides guidance on tree preservation procedures for tree owners and their neighbours.

2.2 Tree Preservation Orders (TPOs)

What is a TPO and why are they made?

A TPO is made by the Local Planning Authority, under Section 160 of the Town and Country Planning (Scotland) Act 1997, and within the procedures set out in the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 1975-1984. They are made to protect individual trees, groups of trees or woodlands which have particular amenity value, make a significant contribution to the landscape or townscape where they are growing or because there may be a potential threat to the trees. They are retained for public enjoyment. A TPO is not intended to prevent the sound management of trees and woodlands, but to allow the Council to control works which affect them.

What is a tree?

This may sound a rather obvious question, but what constitutes “a tree” is not defined within the Planning Act. In recent legal cases, it has generally been agreed to be “a woody perennial plant which can attain a stature of 6 metres or more on a single stem”.

Which trees are protected?

To become the subject of a TPO trees have to contribute to the amenity and attractiveness of an area and be under threat in some way, usually from development or changes in land ownership. Either individual specimens or groups can be protected in a single Order. The Order is not a guarantee of a tree’s soundness, good health or safety.

There are no limitations on which species of tree can become the subject of a TPO.

Orders are not normally placed on trees on Council owned land.

Protected Trees

Tree Preservation Orders



How does a TPO protect trees?

TPO designation makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destruct (including the roots) the trees without prior permission from the Planning Authority. Carrying out unauthorised work to a protected tree is an offence and can result in a heavy fine of up to £20,000 or for a more serious offence, an unlimited fine. A replacement tree or trees will normally have to be planted to replace trees which were illegally removed or destroyed.

How are TPOs made?

New TPOs can be made at any time by Falkirk Council. Once approved, a Provisional Order is served on the owner of the land which comes into effect immediately; this will lapse after six months unless it is confirmed.

The Order will be served in writing on the owners and anyone else with a legal interest in the land. It is also advertised in the local press. There is then a period of 28 days for objections or other representation to be made in writing to the Council explaining the nature of their concerns.

If no objections are received the Council can then proceed with the formal confirmation of the order. Once confirmed the TPO will remain in effect until it is revoked. Where objections or representations have been made to the Council these will be taken into consideration when the decision is made whether or not to confirm it.

Once confirmed TPOs are recorded by the Keeper of Register of Sasines (Scotland) or in the Land Register of Scotland. They then become legal burdens on the land occupied by present and future owners so that when land is sold on the title is passed on together with the TPO.

Where are the TPOs in Falkirk Council's area?

The Planning & Environment Unit within Development Services holds records of the TPOs in the Falkirk Council area. Each order follows a standard format comprising a map showing the boundary of the area affected, together with a schedule describing the protected trees. A Public Register of TPOs is held by the Planning & Environment Unit at Abbotsford House which can be viewed by anyone during office hours. TPOs are also shown in the Falkirk Local Plan which can be viewed online at www.falkirk.gov.uk

When a member of the public buys a property the official search made before the sale is concluded should reveal the existence of an order.

What are the responsibilities of landowners with TPOs?

The owner of TPO trees is responsible for them, their condition and any damage they may cause.

To carry out any work on them permission must first be gained from Falkirk Council. A Treeworks Consent form, available from the Planning & Environment Unit should be completed and submitted.

The application needs to :

- 🌲 identify the trees to which the application relates
- 🌲 what works you wish to carry out
- 🌲 why these works are proposed
- 🌲 details of replacement planting.

Protected Trees

Tree Preservation Orders

Conservation Areas

Planning Conditions

You may find it useful to consult a tree surgeon or arboriculturalist (tree specialist) to clarify what you want to do before applying. (See section 5 Tree Surgery)

There is no charge for applications and they are normally processed within two weeks of receipt. Applications are welcomed for positive management proposals which will prolong the life and amenity value of TPO trees. You can contact the Planning Officer (Landscape) to discuss your proposed treeworks prior to submitting an application.

If consent is granted there may be conditions attached relating to the replacement of trees or timescale for carrying out the work. Any replacement trees are normally covered by the original TPO. If the applicant objects to the decision made, or to conditions imposed, then an appeal to the Scottish Ministers can be made within 28 days of receipt of the decision.

If you wish to work on TPOs which are dead, dying or dangerous 5 days notice should be given to Falkirk Council, unless the situation is an emergency. In such cases you do not have to apply formally to do tree works. However it is always advisable to collect evidence in the form of photographs of the trees, tree surgeons report and/or an independent witness statement for future reference because what constitutes a danger is a matter of opinion. Only the minimum amount of work necessary to remove a danger can be carried out, e.g. a tree cannot be felled if it would have been sufficient to remove a branch. If the Council found that work was incorrectly carried out, then you may be taken to court and fined.

2.3 Conservation Areas

What are Conservation Areas?

Designated under the Listed Buildings and Conservation Areas (Scotland) Act 1997 these recognise areas of special architectural or historic interest, the character of which it is desirable to preserve or enhance. The designation not only controls building development but also offers trees protection.

What are the limitations on carrying out tree works?

Anyone proposing to do work on trees in a Conservation Area, which are not already covered by a TPO, is required to give Falkirk Council 6 weeks notice of their intention to carry out the works. This applies to healthy trees, (i.e. those which are not dead dying or dangerous) which are greater than 7.5cm in diameter measured 1.5m above the ground. You must not carry out works within the 6 week period without permission – if you do you could be fined in the same way as when contravening the TPO legislation. Conditions may be applied to the consent to do treeworks.

2.4 Planning Conditions

If you live in a house built since the mid - 1970s there may be a planning condition attached to the permission to build the property stating that you will need Local Authority consent to lop, top or fell trees within the development, including garden areas. To check whether this applies to you please contact the Council's Development Control Section Duty Officer on 01324 504748. You will have to make a written request, applying to do the work, if a relevant condition applies.

Protected Trees

Felling Licences

Wildlife and Countryside Act 1981

Sites of Special Scientific Interest (SSSI)



2.5 Felling Licences

A Felling Licence, available from the Forestry Commission, is required to fell trees unless any of the following criteria apply:

- 🌲 You are felling less than 5 cubic metres of timber (about 2 mature trees) in any calendar quarter and are selling less than 2 cubic metres of this.
- 🌲 The trees are within a garden, orchard, churchyard or public open space.
- 🌲 The trees are less than a certain size (8cm in diameter at 1.3 metres above the ground)

Felling Licences are available from the Forestry Commission. (See "Useful Contacts")

2.6 Wildlife and Countryside Act 1981 Nature Conservation (Scotland) Act 2004

Trees can provide an important habitat for many species and larger mature trees may support bat roosts and be used by nesting birds.

It is an offence under the Wildlife & Countryside Act 1981 and the Conservation (Natural Habitats &c.) Regulations 1994, to deliberately disturb a bat roost, or nesting birds.

As bats are European Protected Species it is important that any tree work which may affect them or their roosts is adequately assessed by a recognised bat expert prior to works commencing. For further information contact Scottish Natural Heritage and Scottish Executive (see "Useful Contacts")

2.7 Sites of Special Scientific Interest (SSSI)

Scottish Natural Heritage should be consulted regarding any work to trees within the area of an SSSI. See "Useful Contacts" for details.

3.1 Trees in Council House Gardens

As a Council Tenant you should contact your Area Housing Office if you have a problem with nuisance trees within your garden or adjacent to your home. They will then assess the situation and may order some remedial work by Corporate & Commercial Services. Please note however that if the tree was planted by you, or your family, then it will be your responsibility to carry out any required work.

Neighbourhood Tree Problems

Overhanging Branches

Invasive Roots

Trees Overhanging Roads and Footpaths



4. Neighbourhood Tree Problems

Trees do not recognise or respect boundaries. Branches and roots can easily trespass from neighbouring land onto your land, causing a variety of problems.

The following section explains how to approach situations which occur frequently. This is only meant to be a brief and basic guide; if you are in any doubt about a tree related situation you should seek legal advice.

4.1 Overhanging Branches

Under common law the owner of a hedge or tree adjacent to their property has no obligation to cut it or prune it, however much their neighbour may object. The neighbouring landowner may cut off any branch which overhangs their own boundary, although it is always courteous to ask the owner's permission first.

If the neighbour's tree is protected permission is required for cutting back branches. This is because the tree preservation order or conservation area designation takes precedence over any common law rights.

Any branches which are removed, including the fruit growing on them, should be returned to the owner.

4.2 Invasive Roots

Tree roots can cause damage to paving, lawns and drains and the foundations of buildings or walls. Again, where a neighbour's tree is causing problems, you are within your rights to cut back roots to the boundary of your property, unless it is protected by a TPO or is within a Conservation Area. However, it is always worth remembering that you may be undermining the future stability of the tree, and could therefore yourself be liable for any future damage caused by your actions. Unless you can prove that roots are causing structural problems it is difficult to insist on a tree's removal. A Structural Surveyor or Engineer is the best person to obtain a report from in these circumstances.

If your property is damaged or is likely to be damaged by your neighbour's tree, you can apply to court for an interdict against the owner to prevent further damage. This is obviously a costly legal measure which is not likely to enhance neighbourly relationships – it is always preferable to come to an amicable agreement, discussing the tree problem as soon as it becomes apparent.

4.3 Trees Overhanging Roads and Footpaths

Where trees and large shrubs are interfering with the passage of vehicles or pedestrians along an adopted road or footway the owner of the tree is responsible for them being cut back. The Infrastructure Unit, as the Roads Authority has the power to order a landowner to carry out such clearance, and in extreme cases will do the work itself, reclaiming incurred costs from the owner of the offending tree(s). If an order is made to cut back trees which are protected permission will still be required.

Neighbourhood Tree Problems

Trees Blocking Light

Leaves Causing a Nuisance

4.4 Trees Blocking Light

It has been clearly established in law that if a property owners light is infringed by the erection of a building on adjoining land the owner will be entitled to compensation. The position is less clear in relation to trees blocking light. Although this has not been established in court, the Prescription and Limitation (Scotland) Act 1973 states that a right to light to a window is recognised once it has been enjoyed openly, peaceably and uninterrupted, for 20 years. If this is reduced or interrupted the victim could apply for an interdict restraining further growth and may be entitled to damages.

High hedges are not covered by legislation in Scotland.

4.5 Leaves Causing a Nuisance

Every autumn people complain about the problems caused by leaves falling from trees. Although they may be irritating or cause inconvenience they are rarely, if ever, a "nuisance" in the legal sense. To obtain an interdict stopping their action and claim compensation from the owner of the tree you would have to prove that the leaves have caused a continuing and serious interference to the use and enjoyment of your property.



5. Tree Surgery and Tree Surgeons

The cutting back of deciduous trees is best carried out during their dormant season, between November and March. The form of the tree is easier to see once the leaves have fallen and this also avoids disturbing wildlife.

Any tree surgery carried out on trees can be very dangerous and should only be implemented by properly trained, equipped, skilled and insured arboricultural workers. They should operate to BS 3998:1989 Recommendations for Tree Work, and be in possession of a relevant certificate for tree work.

It is advisable to get at least two quotes for any work you require. If you are in any doubt ask to see, references, proof of insurance, and that they follow Arboriculture and Forestry Advisory Group guidelines.

Unsolicited offers of tree trimming from 'tree surgeons' calling at your door are best avoided. Reputable firms do not generally operate in this way and you may find not only are trees butchered but if they are protected you could face prosecution.

Suitable firms and individuals can be found listed in the Yellow Pages, under "Tree Work" or "Forestry Services".

6. Further Information

This guidance is part of a series of Supplementary Planning Guidance booklets produced by the Planning and Environment Unit.

Other titles available are

House Extensions & Alterations
ShopFronts

Other titles which will be available shortly

Trees & Development
Biodiversity & Development

6.1 Further Reading

Arboricultural Practice Note 3 –

Trees in Dispute

Written by Martin Dobson and Derek Patch
Published by AAIS (Arboricultural, Advisory and Information Service), Alice Holt Lodge, Wrecclesham, Farnham, Surrey, GU10 4LH

6.2 Permissions

Treeworks Consent

This is required where work to tree/s protected by a tree preservation order or which are within a conservation area.

Refer to 2.2



6.3 Useful contacts

For general tree enquiries and information on:

Tree Preservation Orders and trees in Conservation Areas contact;
Planning Officer (Landscape)
Planning and Environment Unit,
Development Services,
Abbotsford House,
David's Loan,
Falkirk
FK2 7YZ
Tel 01324 504950
planenv@falkirk.gov.uk

Planning history relating to trees contact;
Duty Officer
Development Management Unit,
at the address above
dc@falkirk.gov.uk

Trees and roads or footpaths contact;
Design and Infrastructure Services,
at the address above

Trees on Council owned land
Estates Management
Corporate & Commercial Services
Earls Road
Grangemouth
FK3 8XD
Tel 01324 501130
contact.centre@falkirk.gov.uk

Felling Licences contact :
Forestry Commission
Central Scotland Conservancy
Bothwell House
Hamilton Business Park, Caird Park
Hamilton ML3 0QA
Tel: 01698 368530
Fax: 01698 368531
Email:
centralscotland.cons@forestry.gsi.gov.uk

Trees within Sites of Special Scientific Interests (SSSI) contact :
Scottish Natural Heritage
The Beta Centre,
Innovation Park,
University of Stirling,
Stirling
FK9 4NF
Tel 01786 450362
Fax 01786 451974

Information about arboriculturists :

Arboricultural Association
Alice Holt Lodge,
Wrecclesham,
Farnham,
Surrey,
GU10 4LH
admin@trees.org.uk

Licences for work near European Protected Species
Scottish Executive
Environment and Rural Affairs Department
Pentland House
47 Robb's Loan
Edinburgh
EH14 1TY
Tel: 08457 741741 or 0131 556 8400

6.4 Checklist

- 🌲 Is the tree protected by a tree preservation order or within a conservation area ?
- 🌲 Is the tree covered by planning conditions (developments since mid1970s) ?
- 🌲 Has a suitably qualified and insured tree surgeon been engaged to undertake the tree works ?

PROTECTED TREE WORK APPLICATION

For work to trees subject to a Tree Preservation Order or within a Conservation Area.

Town and Country Planning (Scotland) Acts

Please read the notes on the right hand side of this form before completing the relevant sections. If you have any doubts about how to complete any part of the form please contact Development Services, 01324 504950, and ask to speak with the Planning Officer (Landscape).

The completed form should be returned to:

**The Director of Development Services,
Abbotsford House,
David's Loan,
Falkirk,
FK2 7YZ**



Falkirk Council

Application No. _____

Date of Receipt _____

Notes on Completing this form

Enter the personal details of the applicant in the space opposite.

If you are not the owner of the trees please complete section 2.

If you are not the owner of the trees please provide the owners name & address and attach a signed letter from the owner consenting to the proposed works.

If an agent is employed to act on the applicant's behalf, such as a qualified arboriculturalist or tree surgeon, enter the agent's details here.
All correspondence, including the decision notice will be sent to the agent.

Enter opposite the address of the property or give the location of the land to which this application relates.

1 **APPLICANT'S NAME** _____
ADDRESS _____

POSTCODE _____
TELEPHONE _____
FAX _____
E-MAIL _____

2 **OWNERS NAME** _____
ADDRESS _____

POSTCODE _____
TELEPHONE _____
FAX _____
E-MAIL _____

3 **AGENT'S NAME** _____
ADDRESS _____

POSTCODE _____
TELEPHONE _____
FAX _____
E-MAIL _____

4 **SITE DETAILS** _____



5**PROPOSED TREE WORK**

Please fill in the details of the trees to which the application relates (e.g. T1 Ash, T2 Oak) and describe the work you wish to carry out (e.g. crown thin by 20%, crown lift by 20%). If necessary please use additional sheets.

Tree no. on plan below	Species (if known)	Proposed Works	Reason

6**SKETCH PLAN**

Please provide a site plan based on an OS plan of a suitable scale, or in the space below a "birds eye view", showing as accurately as possible the location of the above tree(s) in relation to surrounding properties, walls, roads etc. Each tree should be numbered to correspond with the numbering in the table above.

I confirm that to the best of my knowledge the information in this application is correct;

Signed _____ Date _____
(Applicant/Agent)

هذه الوثيقة متاحة عند الطلب
في اللغات الأخرى في المجتمع.

ਇਹ ਪਰਚਾ ਸਮਾਜ ਦੀਆਂ ਹੋਰ
ਭਾਸ਼ਾਵਾਂ ਵਿਚ ਪੱਛਣ ਤੇ ਮਿਲਦਾ ਹੈ।

此文件設有其他
語文，請向有關
方面索取。

یہ دستاویز دوسری کمیونٹی زبانوں میں مطالبے پر دستیاب ہے۔

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