

MEETING REPORT

Meeting: Assets Committee, 2nd September 2024
Agenda item: AS24/009
Report subject: Town Council trees and neighbouring private land
Report author: K Elliott-Turner, Town Clerk

PROPOSAL

To consider taking a view on whether we wish to introduce a policy regarding works to Town Council trees, by neighbouring private landowners. If felt necessary, the Town Clerk will draft a policy for consideration.

Background

From time to time, we are approached by residents with a request for the Town Council to carry out tree works on council owned trees, which overhang neighbouring private properties.

All Town Council owned trees are inspected as part of our regular Quantified Tree Risk Assessments (QTRA), and where works are identified as being required, these are carried out by ITC instructed contractors.

Legal standing

There is no requirement in law to prevent trees spreading over a boundary, and there is no obligation for landowners to prune trees that grow on their property.

However, if branches encroach on to neighbouring land or property they are legally regarded as a nuisance. The owner of the neighbouring land has the legal right to 'abate the nuisance' by cutting the branches encroaching onto their property.

There is a common law legal right to remove branches that cross into your property from a neighbour's property or a public road. However:

- you may only do this from your own property
- you can only trim up to your property boundary - if you do more than this, your neighbour could take you to court for damaging their property
- if you do need to cross the boundary, you must get your neighbour's permission
- the work you carry out must not make the tree unsafe
- if you lean a ladder against the tree trunk, you must get your neighbour's permission if the tree is on a privately owned property
- if the tree is on a privately owned property, you must ask the tree's owner if they want the branches you've removed back as they are technically their property
- if they do not want them back, it's your responsibility to get rid of them - do not place them on your neighbour's land
- you must check the tree is not protected before any work is started - if the tree is in a conservation area or has a protection order, you will need permission before you carry out any work

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- You have no legal right to access, cut, or remove any part of a tree that does not overhang your property.¹

Arboricultural advice

Advice has been provided by South Hams District Council's (SHDC) Senior Arboricultural Officer. As noted, a property owner is permitted to cut back branches of a neighbouring tree which overhang their property (offering them back to the landowner). It is suggested that the Town Council's response is that it does not require these cuttings to be returned. Basic pruning of overhanging growth can be carried out by the property owner themselves. If employing the services of a contractor for pruning, the tree surgeon will only be able to prune from the private property side of the boundary.

Where tree works require use of a contractor, this should be by instruction and cost to the property owner and not the Town Council, as long as the tree inspections are up to date and any works identified by the inspection which are required on the particular tree have been carried out.

Although the land we own is public open space, residents nor their contractors can enter the land to carry out works to trees without Town Council consent.

SHDC permit the resident to undertake works with contractors who are members of the Arboricultural Association list of approved contractors <https://www.trees.org.uk/Find-a-professional> (Arb-approved) and they require the scope of works to be sent to use for review prior to commencement so that they can attach any conditions felt necessary, or to allow time to contact the Senior Arboricultural Officer if the works are felt excessive and where a TPO might be required to moderate them.

Using these pre-vetted contractors improves quality of work and liability insurance is guaranteed to be in place.

SHDC advise that we are able to insist that residents use Arb-approved contractors if they need access from our land, citing public safety, protection of visual amenity, public liability and insuring no damage to council assets or land.

Where a contractor feels that the work can be carried out from the private land only, we cannot insist that Arb-approved contractors are required, although for the protection of the landowner it is suggested that they do use them. When any work requires a contractor, whether accessing via Town Council land or not, it is suggested that a copy of the scope of works, together with the contractor's information is provided to the Town Council for review.

¹ <https://www.gateshead.gov.uk/>