

Enforcement of Unauthorised Works to Trees Report:

Appendix 1 – Planning Local Enforcement Plan

The Planning Local Enforcement Plan was adopted at TECC Committee in September 2022. Here is a link to the document:

[Planning local enforcement plan \(brighton-hove.gov.uk\)](https://www.brighton-hove.gov.uk/planning-local-enforcement-plan)

Appendix 2 – Policy Background

National Policy

National Policy and legislation relate to trees in three different ways:

- Consideration of trees as a result of planning applications and subsequent enforcement of any breaches
- Making and enforcing Tree Preservation Orders (TPOs)
- Protected Trees in a Conservation Area

It can be the case that trees are considered and protected in these three different ways as they are separate regimes under the umbrella of the Town and Country Planning Act 1990.

National Planning Policy Framework (NPPF), Trees and Development Sites

The National Planning Policy Framework does not cover issues around Tree Preservation Orders and focuses on trees related to development that require planning permission from the Local Planning Authority. National planning policy states “Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible.”

This policy is captured in legislation: Section 197 of the Town and Country Planning Act 1990 imposes a duty for planning permission to make appropriate provision for the protection of trees. Further the Natural Environment and Rural Communities (NERC) Act 2006 s40 imposes a duty to conserve biodiversity.

Local Policy (for the determination of planning applications)

City Plan Part 2 Policy DM22 Landscape Design and Trees states that development proposals will be required to retain, improve and wherever possible provide, appropriate landscape elements/ landscaping, trees and planting as part of the development including taking account the need for the retention of existing trees and hedgerows with details provided of appropriate protection during construction. It is further stated:

“Where removal of a tree is unavoidable, for example by reason of it being severely diseased or dangerous:

- (i) the provision of plans is required that clearly identify the location and species of all those to be lost and all those to be retained; and
- (ii) replacement trees along with appropriate associated planting space and works of a type, size and location to the satisfaction of the council for any tree felled”

In terms of trees the subject of a TPO or if situated within a conservation area it is stated that “works to a protected tree will be permitted only where they do not damage the amenity value and health of the tree and/or are the minimum consistent with good arboricultural practice”. “The felling of a protected tree will only be permitted where it is severely diseased or dangerous, or, it is necessary to accommodate development of national importance which cannot be located elsewhere; and, a replacement tree is provided of a type, size and location to the satisfaction of the council.”

Policy DM26 concerning development in a conservation area states that particular regard will be had to the retention of trees and gardens where these are integral to the significance of the area.

Planning Enforcement Policy:

An updated Enforcement Policy for planning enforcement was approved at TECC committee in September 2022.

The purpose of the Local Enforcement Plan is to manage enforcement proactively, in a way that is appropriate to the area. Based on the number of complaints received as well as the historic cases the Plan sought to:

- focus resources and prioritise planning enforcement cases where it is expedient to take enforcement action and where it is in the public interest to prosecute criminal offences;
- manage customer expectations, and provide good customer service
- apply a consistent approach, negotiate a solution or where it is expedient to take action to remedy a breach or prosecute a criminal offence
- treat all customers, including complainants and contraveners, in a fair and inclusive manner and make decisions taking into account all relevant factors and circumstances.

A breach of condition relating to a planning application is a matter that would fall within the remit of the planning enforcement team and the Local Enforcement Plan covers this type of work.

Unauthorised works relating to TPOs not connected to a planning application fall under the remit of the Arboriculture Team. There is currently no local enforcement policy concerning tree enforcement beyond that dealt within the Planning Local Enforcement Plan concerning breaches of planning control and any contravention of subsequent notices. However, the National Planning Practice Guidance states

When faced with what they believe are unauthorised works to protected trees, local authorities may:

- do nothing – but only if justified by the particular circumstances;
- negotiate with the owner to remedy the works to the satisfaction of the authority;
- consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution;
- seek an injunction to stop on-going works and prevent anticipated breaches; or
- consider whether the tests for commencing a prosecution are met.

The guidance further states

“Negotiation may enable the authority to ensure that remedial works to repair, or reduce the impact of, unauthorised works to a protected tree are carried out. The authority should also take into account the legal duty to replace trees. Prosecutions cannot require remedial works to the tree but will, where appropriate, both punish offenders and deter potential offenders. The authority should consider whether there is a realistic prospect of a conviction and whether it is in the public interest to prosecute. It should also consider whether it is in the public interest to prosecute some or all of the individuals implicated in the offence.”

