



Policy Guidance Note:
TP10 Dangerous Trees

January 2015



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Introduction

The purpose of this document is to outline how East Lindsey District Council will respond to reports of 'a Dangerous Tree'. This should provide a more efficient, consistent and clear response to serious events and ensure that our response is in accordance with current legislation, guidance and wider Council policies. The document helps deliver the Council's policy (Trees East Lindsey: Part One), and specifically policy TP 10 below:

TP 10: Owners of trees that are immediately dangerous will be asked to make them safe. In the event of failure to carry out work we will ensure that the public and valuable property is protected.

Legislative background

All landowners with trees have a legal 'duty of care' to ensure their trees are maintained in a safe condition. Failure to do so can result in substantial costs for damages if the responsible person is found in court to be negligent. The Health & Safety Executive (HSE) may also prosecute offenders.

The Council has adopted policies and guidance notes for regular inspection and maintenance of its own tree stock (see Policy Guidance Note: CT1 'Tree Risk Management'). We believe that this will reduce the chance of trees becoming dangerous and that timely work can reduce overall maintenance costs. We encourage other owners to do the same.

Investigating reports of dangerous trees

Most reports of dangerous trees fall into one of the following four ownership categories. Therefore it is important to ascertain the land (location) that the trees are growing on and try to determine ownership – if the owner is known the enquiry should be referred to them:

- **On Private Land (gardens/businesses/farmland) – The Private Owner** (householder/farmer/business). Many complaints of dangerous trees are in fact neighbour disputes and the Council does not have the resources or powers to intervene where common law, e.g. overhanging branches is concerned (but see below). If the enquiry does not appear to relate to the immediate safety of a tree the enquirer will be advised to contact the private owner directly.
- **On Highways (road verges, pavements etc.) – Lincolnshire County Council** as Highway Authority.
- **Ex. Council House Stock (open spaces, verges and gardens) – New Linx Housing Trust**, part of the Waterloo Housing Group.
- **Council land (parks, foreshore, open spaces etc.) – East Lindsey District Council**, (Neighbourhoods Service).

Trees on private land

These are generally the responsibility of the owners, who are expected to pay for any necessary work. Occasionally there may be reasons why owners do not take action to make dangerous trees safe, e.g. owners may refuse, may be unable to pay, or may not be traceable within the time available. In these cases, if a formal written request is made by a person affected, the District Council may use its discretionary powers under the Local Government (Miscellaneous Provisions) Act 1976, Section 23 & 24 Dangerous Trees, to take the minimum action necessary to remove an immediate danger. However, this can only be done as a 'last resort'. The Council has powers to recoup the costs of the work plus administrative costs.

Occasionally boundary trees may be in two ownerships and neighbours should agree any necessary works and to share costs where possible.

Trees overhanging the road and other highways

The Lincolnshire County Council is the 'Highway Authority' and manages its trees on its own land. It also has powers under the Highways Act 1980 to require adjoining owners of land to keep their trees and hedges clear of the road. This can include signs and paths and for visibility on junctions and bends. Usually in the first instance, it will write to owners to request that the necessary work is undertaken and giving a date by which it should be done.

Trees frequently overhang roads from private property without causing a problem provided the following separation is maintained:

- 2.5 metres vertical clearance over footpaths and cycleways.
- 5.2 metres vertical clearance over most roads.

Tree protection

If a tree within a Conservation Area or protected by a Tree Preservation Order becomes dangerous, the tree owner may be advised that an exemption applies under regulation 14(1)(c) of the Town & Country (Tree Preservation) (England) Regulations 2012, so as not to hinder work to make dangerous trees safe. However, this only applies *'to the extent that such works are urgently necessary to remove an immediate risk of serious harm'*. For example, trees should not be felled if they can be made safe by other lesser works e.g. pruning.

If the above applies, then written notice of the proposed work must be given to the Council as soon as practicable after the work becomes necessary. If proceeding under this exemption, owners are advised to obtain a report from a tree surgeon and to keep a photographic record to avoid possible prosecution.

Taking action under the Miscellaneous Provisions Act 1976

Anyone requesting that a 'Dangerous tree' is made safe under this provision must make this in writing to the Council. When making a request it is important to provide as much of the following information as possible:

1. Accurate information regarding the location of the tree and the owner's/tenant's name, address and telephone number, if known.
2. If not initially known, make enquiries to supply details of the above if possible.
3. Information regarding the tree's condition:
 - (i) Size/No. of trees, large branch or small branch etc?
 - (ii) The exact position of any fallen parts e.g. Are branches on structures, paths or road?
 - (iii) Any other visible defects e.g. split, cavities?
 - (iv) The extent of any damage, or if the dangerous part failed what would it damage?

The Council's Arboricultural Officer or another member of the Neighbourhoods Service will make an initial assessment of the need for, and urgency of a site inspection based on the information supplied, but in all cases the Council will aim to inspect the tree within five working days of receipt of a valid request.

The Council uses specialist Tree Management Software to manage its own tree stock and this will also be used to assess the safety of a tree subject of a request under this procedure. This system allows the calculation of numerical value for the 'Risk of Harm' (ROH) posed by a tree, using the Quantified Tree Risk Assessment method (QTRA Ltd).

Only trees with a ROH categorised as 'Dangerous' within this system will be considered eligible for action following a request. This equates to a ROH of 1/1000 or greater and would have a corresponding works priority of 'Immediate Safety' in the Council Tree system.

Telephone and other requests relating to 'dangerous trees' will also be dealt with in accordance with the above process, but would still need to be followed by a written request before the Council could consider taking any necessary action.

For written requests, the Council will follow the guidelines of the National Association of Tree Officers Practice note No.1. (method statement for site inspections). The legislation confers a right to enter land to carry out such

Other situations where trees are unsafe

investigations and the relevant Council officers are authorised in its use, including to take other officers/individuals with them as necessary (e.g. for safe working or other reasons).

If following the Council's assessment of the tree, the request is turned down, there is a right of appeal to the Neighbourhoods Manager who will review the information available and respond formally.

When proceeding under this Act, if time allows, the Council will try to find the owner of the tree and allow sufficient time for the owner to take any necessary action, serving a formal notice if necessary. If all else fails, or there is insufficient time to allow the owner to be traced/contacted, the Council can carry out sufficient work to make the tree safe (the minimum works).

When works have been carried out, the Council can recoup the costs of the works plus an administration fee. If the owner is untraceable or uncontactable a land charge will be entered against the property for future payment.

The Council is also able to use these powers to make trees safe or require that trees are made safe on land it doesn't own, where it considers those trees are likely to cause damage to people or property on Council land.

The public can also request that work be carried out to trees (dangerous or otherwise) on Council property through the Council's website, where further information and advice is available. A written response will be made to any formal written request for work.

Emergency situations may arise similar to the storms of 1987 and 2001 when many trees fell or were damaged across the District. The Council will use its staff resources to assist with clearance of the highway and removal of any dangerous trees as considered necessary. The officers for emergency planning are detailed on the Council's website.



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