

## Guidance

### Duty to Consult on Felling Street Trees

#### Introduction

1. The duty to consult on felling street trees (“Duty to Consult”) has been introduced to ensure local people can express their views over the proposed management of street trees in their locality. The duty will ensure the decision-making process is more transparent and considers the views of local people.
2. There are occasions when street trees may need to be felled. In these occasions the local highway authority may need to obtain a felling licence before felling. Street trees may also be subject to additional statutory controls such as Tree Preservation Orders, where these remain valid and on the public register held by a local planning authority. However, many street trees are not in scope of these other regulations which is why the Duty to Consult was introduced.

#### Trees in Scope

3. This guidance is issued pursuant to [S115 of the Environment Act 2021](#) which inserted S96A into the Highways Act 1980 and local highway authorities must have regard to it when consulting members of the public (“Duty to Consult”) before felling any tree on an urban road (a “street tree”)
4. Urban roads are highways, other than trunk or classified roads, which:
  - are restricted for the purposes of section 81 of the Road Traffic Regulation Act 1984 (30 miles per hour speed limit);
  - are subject to an order made by virtue of section 84(1)(a) of that Act imposing a speed limit not exceeding 40 miles per hour; or
  - are otherwise a street in an urban area.
5. A relevant highway is one that is maintained at public expense by a local highway authority and does not include, bridleways, restricted byways or footpaths as defined in the Highways Act 1980. Only local highway authorities are in scope of the duty – other highway authorities such as Highways England are not included. Trees on highways maintained by other authorities will be managed according to their appropriate guidance.<sup>1</sup>
6. Trees that are on publicly owned or managed land next to or adjacent to a highway, such as parks and council housing estates, and trees that are next to un-adopted roads, are not in scope for this duty. Only trees on or within the boundaries of relevant highway land are in scope.

#### Standards and Requirements of the Consultation Process

7. A public consultation must take place if a local highway authority wishes to fell a street tree that is not exempt from the duty.

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<sup>1</sup> HIGHWAYS AGENCY NETWORK MANAGEMENT MANUAL  
[https://nationalhighways.co.uk/media/fqhghj33s/nmm\\_part\\_3.pdf](https://nationalhighways.co.uk/media/fqhghj33s/nmm_part_3.pdf)

8. In order to ensure that members of the public are aware of the proposed felling, the local highway authority should ensure that:
  - a. A notice is placed on the street tree or trees in question.
  - b. A notice is placed in an appropriate location on the local highway authority website and/or the authority should make available a copy of the notice at its offices.
  - c. The consultation runs for at least 28 days. The consultation period begins from whichever date is last of the notice being placed on the street tree, or online/in an office.
  - d. The local highway authority publishes a response to the consultation, including their decision, as soon as reasonably possible after the close of the consultation period but no later than 28 days prior to felling taking place.
9. A consultation should take place on individual street trees, where there is only one, and a group of trees, where there is more than one street tree due to be felled for the same reason on the same street. A notice should be put on each individual street tree in the group of trees which are the subject of the consultation. Only one online notice and/or paper notice held at the local authority offices is needed listing all relevant street trees.
10. A notice should include as much information as possible and at a minimum:
  - the location of the street tree or trees (if a group of trees);
  - how many street trees this will be applied to (if a group of trees);
  - a brief summary of the reason why the local highway authority proposes to fell the street tree or trees;
  - any engineering or tree management solutions considered by the local highway authority as an alternative to felling the street tree or trees;
  - how the public can respond to the consultation and the dates this is open for; and
  - a replanting proposal if one exists (information on location, number and species of trees should be provided if known)
11. The local highway authority should ensure that both digital and non-digital options for responding to the consultation are made available to the public. The notice should provide relevant instructions on how responses should be provided to ensure all views are captured and considered (this may include an e-mail contact or address to which responses can be sent, preferably to a named individual in the local authority with overall responsibility for the whole process).

### **Having Regard to a Consultation**

12. Local highway authorities, as decision makers over the management of street trees, should ensure they have sufficient evidence to make an appropriate decision regarding felling. During the decision-making process local highway authorities should give consideration and weight as they see fit to all representations and views made by respondents to the consultation. A local highway authority can still decide to fell a street tree if it believes this is required (for example, upon the advice of professional

arboriculturists, or because the cost of retaining the tree could be disproportionate). Whether or not there is opposition to a street tree being felled, local highway authorities should consider engineering and [tree management solutions](#) as an alternative to felling a street tree.

13. The results of the consultation will remain applicable for a period of 2 years following the end of the consultation period. Within the 2 years the local highway authority may fell the street tree or trees in question provided a response to the consultation has been published at least 28 days prior to the felling taking place. After 2 years the results of the consultation will expire and a new consultation must be undertaken if the local highway authority wishes to fell any street tree or trees previously consulted on.

### **Responding to a Consultation**

14. Local highway authorities' response to the consultation should be published on the same website as the original consultation and/or made available at its offices, so that the public can access the results. The response should also be posted on the street tree or trees in question. The response should be published as soon as reasonably possible following the close of the consultation period and no later than 28 days before a street tree is felled, if that is the decision. If there is a decision to fell, the response should remain on the street tree or trees in question and available online/in an office until such time as the street tree or trees are felled.
15. It is up to the local highway authority to ensure that they have time to incorporate a decision to fell into their contracting regime. Local highway authorities must make reasonable efforts to ensure that respondents are made aware of a decision and the reasons the decision has been made before felling takes place and are given the opportunity to complain about the decision, if considered necessary.
16. The response should set out the details of the consultation (a link to the consultation may be provided instead), the results of the consultation (such as the number of responses and sentiment of the majority whether in favour of or against the proposed felling), the local highway authorities' decision and the reason for the decision including the local highway authorities' consideration of the consultation responses and why alternatives to felling were not possible to implement. If relevant it should also include details of any replanting proposal.

### **Complaints**

17. If respondents are unhappy with the Council's decision, they should use the local authority's existing complaints process. There is no obligation on the local authority to retain the street tree until such time as the complaint is determined.
18. If an individual is dissatisfied with the result of a complaint, they may make a final complaint to the Local Government and Social Care Ombudsman if they believe the local highway authority has mismanaged a case and not followed the prescribed process. The Ombudsman service is free of charge and independent of both central and local government to ensure impartiality in decisions.

## Exemptions

19. This duty does not apply to street trees that are:

- a. **of a diameter not exceeding 80mm (measured over the bark, at a point 1.3 metres above ground level).**
- b. **dead.** A dead tree no longer produces leaves or foliage (where it should). The stem's outer bark and cambial tissue layers are dead.
- c. **required to be felled under the Plant Health Act 1967.** Under this Act, statutory plant health notices can be issued that require the owner or manager to eradicate or contain notifiable pests and diseases. This can include felling a tree and failure to comply can result in enforcement action and prosecution. An order must be received under this Act for the removal of the tree/trees for this exemption to apply.
- d. **required to be felled under any enactment on the basis that the tree is dangerous.** In deciding whether a street tree is dangerous, local highway authority tree officers should consider whether the tree represents an immediate or impending risk to persons or property. A tree can be considered dangerous if it is expected to become dangerous prior to the next scheduled inspection.
- e. **required to be felled in order to comply with a duty to make reasonable adjustments in the Equality Act 2010 because the tree is causing an obstruction (see section 20 of that Act).** Under this act, trees can be required to be felled if the authority considers that this is necessary in order to comply with its duties under the act because the tree is causing an obstruction. This exemption does not apply where appropriate and proportionate engineering solutions can remedy the obstruction and felling is not required to meet these duties.
- f. **required to be felled in order to comply with a duty in section 29 of the Equality Act 2010 (prohibitions on discrimination etc in the provision of services) because the tree is causing an obstruction.** Under this act, trees can be required to be felled if the authority considers that this is necessary in order to comply with its duties under the act because the tree is causing an obstruction. This exemption does not apply where appropriate and proportionate engineering solutions can remedy the obstruction and felling is not required to meet these duties.
- g. **required to be felled for the purpose of carrying out development authorised by planning permission granted under section 70, 73, 76D, 77 or 79 of the Town and Country Planning Act 1990.** Provided that the planning permission specifically permits the felling of the street tree or trees in question.
- h. **required to be felled for the purpose of carrying out development authorised by outline planning permission granted under section 92 of the Town and Country Planning Act 1990.** Provided that the planning permission specifically permits the felling of the street tree or trees in question.
- i. **subject to other exemptions.** A Statutory Undertaker undertaking emergency operational works that require the felling of a street tree.

20. Street trees that are causing damage to private property or the highway, but not posing an immediate danger, even where a risk of legal compensation and liability are likely, are not exempt, this includes proposals to remove to comply with section 20 or 29 of the Equality Act 2010, where appropriate and proportionate engineering solutions can remedy the obstruction.

### **Proving that a Street Tree is Exempt**

21. A local highway authority must ensure that it has sufficient evidence to prove that a street tree is exempt from the duty to consult. Non-compliance with the duty to consult could lead to legal challenge, it is up to the local highways authority to ensure it has sufficient evidence to defend against a legal challenge.

22. Evidence of an exemption for each individual street tree should be gathered and retained. Examples of evidence could include, but is not limited to, the following:

- a statutory notice that a tree must be felled (such as a plant health notice);
- photographs of the tree showing the relevant exemption;
- a written description of the reason an exemption applies by a professional (such as a tree officer or arboriculturist); or
- a statutory undertaker notice.

23. Records of the consultation process for non-exempt street trees should also be kept in case a challenge is received. It is up to the local highway authority to ensure that it gathers sufficient evidence.

24. It is good practice for street tree management that local authorities hold individual street tree lifetime records. The Forestry Commission's Felling Licence guidance recommends retaining tree records in case of challenge to felling. Examples of records which could be kept includes, but is not limited to, the following:

- Date of last inspection;
- Date of next scheduled inspection;
- Date the tree was felled;
- Location of tree/s identified on a map;
- Species of tree;
- Size category or trees height and trunk diameter;
- Age (estimated or based on known planting date);
- Condition assessment of roots, trunk and canopy;
- History of previous works to the tree; and
- Surrounding surface type (paving, asphalt, concrete, grass etc).