

## “Protecting and enhancing England’s trees and woodlands” Defra Consultation

London Tree Officers Association (LTOA) response

JCP | January 2019

### Duty to consult

*Q1. Should a duty for local authorities to consult on the felling of street trees be introduced? Please give reasons for your response.*

NO.

1.1 A duty to consult is not necessary or desirable. Street trees have traditionally been protected by the tree officers who manage them, on behalf of their communities, for the benefit of all. Problems only seem to arise when the tree officer function is removed from a council and that protection is lost. Tree officers are accountable to the democratically-elected members and serve as custodians of the urban forest. Central government should concentrate on supporting and properly resourcing tree officers rather than creating a significant new administrative burden.

1.2 The proposal for a duty to consult appears to be a disproportionate response to the situation which has developed in Sheffield. This case has been presented in such a way as to give the impression that the normal state of affairs is for councils to seek to remove trees and for residents to have to act to protect them. In our experience the exact opposite is true. Far more common is for residents to demand that trees be removed to mitigate perceived problems – such as blocked light or interrupted television reception – and that it is council tree officers who try to protect them; balancing individual interests with the overall public benefit.

1.3 By imposing additional duties on tree officers their workload will increase significantly; day-to-day tree management will undoubtedly suffer as valuable time and resources are diverted away from essential activities. This will, in time, lead to the deterioration of the urban forest as a whole and – somewhat ironically – the removal of many more street trees.

1.4 Those trees requiring removal on safety grounds but which don’t constitute an ‘immediate’ risk according to the proposed exemption definitions will become the subject of a potentially lengthy consultation process which will create an increased risk to the general public.

1.5 The proposed duty to consult would undermine the professional opinion of qualified, experienced tree officers who make evidence-based decisions and are held responsible for their actions should something go wrong. When considering tree safety, the opinion of an arboriculturist should be given more weight than the opinion of a layperson. If a tree officer recommends removing a tree on safety grounds, their decision is overturned by a community vote and then that tree fails, causing damage to people or property – who will be found liable?

1.6 If some kind of duty to consult is to be introduced then it should not apply to individual street tree removals but to a ‘tree removal policy’ which Local Authorities could produce and which would describe the reasons why that authority would or would not remove street trees. This policy could be subject to public consultation prior to adoption, and once implemented the Local Authority would be required to work within that agreed framework.

1.7 It is worth considering under what legal framework would the duty to consult apply, and how it would be enforced. It can reasonably be expected that many situations will arise where a tree is removed under an exemption which is later challenged by some members of the community. Who would arbitrate in these circumstances and what would the penalty be for a tree officer who was deemed to have miscategorised a tree, even if they are being falsely accused of doing so?

1.8 If a duty to consult is to be imposed then it should be trialled in a few Local Authorities prior to being rolled out across the country. This trial should be undertaken in a variety of different councils; those with lots of resources and those with very few, large and small, rural and urban. Such a trial would enable a full review of the effectiveness of this policy in the real world and could prevent the significant problems which will emerge in the future if it is implemented without due care and consideration.

*Q2. Do you agree with the proposed scope of the duty to consult? Please give reasons for your response.*

NO.

2.1 The scope as defined in the consultation document does not provide an adequate definition of 'street tree'. More work needs to be done on this definition and we would be pleased to participate in the production of more appropriate wording. There are also concerns over the precise meaning of 'urban' in this context.

2.2 Whilst there is no suggestion that the scope should be expanded to include other trees in the urban environment it does seem unusual that there is no mention of public trees in parks or housing land etc. and no reference to the trees on private land which in many cities make up more than half of the urban forest.

2.3 It is worth considering the potential for unintended consequences as a result of this proposal. In time there will likely be pressure to expand the scope beyond street trees to all public trees, and perhaps even private trees. And not necessarily just for removals – will there be pressure to start consulting on pruning works, such as pollarding?

*Q3. Do you agree with the government's preferred approach of a closed consultation with trigger point? Please give reasons for your response.*

NO.

3.1 The selection of one hundred metres squared, or 10,000m<sup>2</sup> (as opposed to one hundred square metres, 100m<sup>2</sup>, incorrectly stated in the consultation document) seems to be rather arbitrary. In some cases this will mean hundreds of residents are consulted; in others no residents at all. One alternative would be to follow a similar system to that imposed in the planning system, where consultation is limited to immediately adjacent properties only.

3.2 By posting a notice on the tree as well as sending letters to residents within the agreed area there is no control over the number of people who have been exposed to the consultation. The views of the residents are likely to be outweighed by the views of those who don't live within "close proximity" but just outside it, or who have walked past the tree during the consultation period, or have been told about the proposed removal by a friend and invited to contribute. It can be expected that in some cases local action groups will emerge who will coordinate

objections to all proposed removals within a given Local Authority or area. The proposed system is disproportionate and unworkable.

3.3 There are concerns around the fact that few people can be expected to contribute to any consultation in support of tree removal – it is likely that the only people to participate will be objectors. The silent majority of potentially thousands of people who don't object to the removal could be outweighed by the objections of a very vocal minority who do. This means that the move onto the next stage – full public consultation – is the probable outcome of the majority of proposed removals. The current proposal is unrepresentative and undemocratic.

3.4 Letters would have to be based on residential units rather than individuals because the number of people occupying each property would not be known. There is therefore no way of being sure if everyone occupying a property has had the opportunity to participate in the consultation, or if one occupant is speaking for a wider group.

3.5 The four-week consultation period will lead to increased risk for the general public. A tree which has been identified for removal on safety grounds but which does not qualify for an exemption as 'immediately dangerous' will be subject to consultation, slowing the process of making the situation safe. An unsafe or dying tree which ordinarily might be removed within seven days may remain in situ for a month or longer.

3.6 None of the three options are desirable and the difference between an 'open' and 'closed' consultation seems very slim. If some form of community engagement is to be adopted then a more appropriate method would be for Local Authorities to affix a notification to trees which are going to be removed which would inform the general public why the tree is going to be removed, along with contact details should a member of the public wish to find out more. This would achieve the aim of public engagement but would considerably reduce the burden on the tree officers when going about their essential work.

*Q4. In what circumstances do you think a tree should be exempt from the duty to consult? Please give reasons for your response.*

4.1 If the duty to consult is going to be implemented then it is critical that the exemptions properly cover those trees which require exemption. This is currently not the case and the 'dangerous' and 'dead' exemptions are inadequate. Good tree management means removing trees before they become dead or imminently dangerous, not afterwards. This response assesses the proposed exemptions and recommends three additional exemptions for consideration.

4.2 Dangerous. Circumstances in which a street tree has to be removed 'immediately' are extremely rare; tree officers seek to remove street trees before they get to this stage. However, the inclusion of 'dangerous' as defined in the proposal is reasonable provided additional exemptions are added as per below.

4.3 Pest and diseases. There is no objection to the proposal that statutory notices to remove trees in order to control pests and diseases such as Chalara or canker stain of plane should be exempt from the duty to consult.

4.4 Dead. No objection to the inclusion of this category, although as per 'dangerous' most tree officers will seek to remove street trees before they are fully dead rather than waiting for them to die.

4.5 Damaging. The wording of this exemption conflates more than one kind of damage and needs to be clarified. In situations where a tree must be removed in order for a utility supplier to repair their equipment, such as where there is a burst water main immediately beneath a tree, this tree removal must be exempt from public consultation. However, in situations where it is alleged that a street tree is causing damage to footways or carriageways by, for example, lifting slabs, any proposals to remove these trees should not be exempt.

4.6 Young trees. The definition of a young tree as one which has been planted within the last 15 years is unlikely to work in practice; a more appropriate measure of 'young' would be stem size. Setting this definition as trees with a stem diameter of 15cm or less would bring this definition into line with other tree-related legislation. The majority of young trees are removed because they are dead or dying. If 'limited safe life expectancy' is included as an exemption, as we believe is critical to the success of the duty to consult, then there is no objection to young trees not being on the exemption list as proposed by the government. However, if 'limited safe life expectancy' is not included as an exemption then removal of 'young' trees should be exempt.

4.7 Limited safe life expectancy. This is proposed as an additional exemption. Responsible street tree management means removing trees before they become dead or immediately dangerous. Any legislation which encourages tree officers to wait until their trees are immediately dangerous or dead before removing is irresponsible in the extreme. An exemption must be introduced whereby the relevant arboricultural expert working on behalf of the Local Authority – ideally a tree officer – must be able to remove those trees which are dying or in irreversible decline without entering into public consultation.

4.8 Subsidence. This is proposed as an additional exemption. Those trees which are deemed, on the balance of probability, to be the cause of subsidence damage should not be subject to public consultation prior to removal. To do so would create significant financial risk to Local Authorities which might be forced to pay for underpinning rather than removing the tree. It could also lead to conflict between members of the community.

4.9 Planning. This is proposed as an additional exemption. Those street trees which have been agreed for removal as part of a planning application which has been granted full planning permission should be exempt from the duty to consult. The removal of these trees should have been included in the planning consultation in which local residents would have been invited to contribute and where public notices would have been issued; inclusion within the duty to consult would be unnecessary repetition.

*Q5. Do you think it is appropriate that trees of special historic or cultural significance are subject to a more rigorous consultation process? Do you agree with the criteria for designating a tree of special historic or cultural significance? Are there any other categories which should be included?*

NO.

5.1 This is an unnecessary category for inclusion. There are not many street trees which would qualify under the proposed definitions of 'significance' but it can be expected that some communities might claim these special circumstances when trying to prevent tree removal. Who would arbitrate in the event of a dispute between Local Authority and local community when it comes to the 'significant' designation?

5.2 If this category is to be included then additional clarity is required around what constitutes a tree of historic or cultural significance, and it is essential that the same exemptions to consultation would apply to these trees as to any other.

Q6. *Do you think that the duty to consult will have any negative impacts on development?*

YES.

6.1 In its current form the duty to consult would have a detrimental impact on sustainable development. Many tree officers currently spend valuable time scrutinising planning applications and proposing and enforcing conditions to ensure trees are retained and planted as part of development. The additional burden created by the duty to consult would mean that tree officers would have less time to spend on existing activities and will have to prioritise the administration duties associated with the proposed statutory requirement to consult. Compromises will have to be made.

6.2 Another direct impact on development is the fact that the imposition of a duty to consult on the removal of street trees for development purposes would create a repetition of the consultation which should already have taken place as part of the planning process. Residents wishing to prevent development would have an additional method through which to attempt to do so; by objecting to the associated street tree removal as well as the development itself.

Q7. *Should consultations be done on an individual basis or in groups of trees where, for example, trees are planted in the same location?*

A YES/NO answer is not possible for this question.

7.1 Consultations should be undertaken for groups of trees where the trees involved form an obvious group. For example, when proposing to remove three consecutive street trees in an avenue it would make sense to treat this as one consultation rather than three separate ones.

### **Duty to report**

Q8. *Should a duty on local authorities to report on tree felling and planting be introduced? Please explain the reasons for your answer.*

NO.

8.1 Whilst it is reasonable to expect Local Authorities to record and report on those trees for which they are directly responsible (i.e. public trees), it is not felt that this needs to be a statutory duty. There is already nothing to stop central Government requesting this information from Local Authorities every year – using the Freedom of Information Act if the information is not forthcoming – without creating an additional statutory obligation.

8.2 Local Authorities should not be required to report on those tree removals for which they are ‘indirectly’ responsible, i.e. privately-owned trees removed as part of planning applications. Information relating to trees removed and planted as part of planning applications is not always readily available to Local Authorities and few have the resources to properly engage in monitoring and enforcement.

8.3 The way in which such data would be used must be agreed and strong caveats must be provided. A straight comparison between the number of trees removed and the number of trees planted by any one Local Authority is not the best measure of good or bad practice. This information should not be used to create league tables where some councils are named and shamed for not planting enough or removing too many trees. Tree numbers must be considered in the wider context alongside measures such as quality of management and canopy cover.

*Q9. Which trees would it be useful to report on? Please explain the reason for your answer.*

9.1 Only street trees should be reported on; this would be consistent with the emphasis on street trees found elsewhere in the government proposals and will avoid the kind of confusion that can be created when trees removed as part of good woodland management, for example, are included in the removal figures.

*Q10. What information do you think local authorities could gather and hold? Please explain the reasons for your answer.*

10.1 Tree numbers and reasons for removal should be gathered and held. In order to ensure consistency a list of potential reasons for removal should be clearly defined and made available for Local Authorities to use.

10.2 It may be appropriate for some Local Authorities to record and report additional information such as species, size or age range of those trees which have been removed. However, this should not require a statutory obligation.

10.3 If a duty to report is to be created then central government must ensure that those Local Authorities which currently don't record this information are provided with adequate resources to cover the costs of purchasing an appropriate tree database system etc.

*Q11. How could local authorities present this information? Should national government play a role in collating and managing information?*

11.1 National government should play a coordinating role in this process. Local Authorities should be able to submit their figures to central government on an annual basis; central government will then be able to process the figures and use as appropriate.

11.2 If an online portal is to be used then it would have to be designed and administered in such a way that reduced the burden on tree officers as far as is reasonably practicable.

11.3 Reporting should be limited to once a year.

### **Tree and woodland strategies**

*Q12. Do you agree that Tree and Woodland Strategies help local authorities and the public to manage their trees and woodlands? Would best practice guidance be sufficient for local authorities and the public? Please give reasons for your response.*

YES.

12.1 Tree and woodland strategies can be useful tools for managing the urban forest but they won't fix anything by themselves. Unless tree officers are properly supported and resourced in

order to be able to deliver and implement the aims and objectives of a tree strategy then the document will be meaningless.

12.2 It is critical that if such guidance goes ahead then tree officers are at the centre of – or, ideally, leading – its production. It would not be appropriate to hand this job over to arboricultural consultants, landscape architects or other groups which have never actually had responsibility for managing an urban tree population.

12.3 It should be noted that a whole strategy is not always required – in some circumstances a tree policy, or series of policies, might be more appropriate. A two-page policy can be more accessible and carry more weight with communities than a 75-page tree strategy.

*Q13. Do you agree with the suggested content for best practice guidance for Tree and Woodland Strategies? Please give reasons for your response.*

YES.

13.1 The content is reasonable provided tree officers are the ones to lead on the production of the best practice guidance. However, it should not be assumed that every heading listed in the proposed content would be appropriate for every Local Authority; one size does not necessarily fit all and any guidance produced should not be prescriptive. As mentioned previously a tree policy can sometimes be more appropriate than a tree strategy.

#### **Forestry enforcement**

*Q14. Do you support these measures?*

N/A.

14.1 This matter is outside the scope of our knowledge and experience and it would therefore be inappropriate to comment.

*Q15. Do you think any other measures are necessary to combat illegal tree felling?*

N/A

15.1 This matter is outside the scope of our knowledge and experience and it would therefore be inappropriate to comment.

**For further information about this response please contact the LTOA Executive Officer at:**

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