

Works to Protected Trees – Exceptions

Advice note

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Introduction

New regulations came into force on 6 April 2012 that made some alterations to the old dead, dying and dangerous exemptions. This advice note is intended to explain Mid Devon District Council's interpretation of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 in relation to dead and dangerous trees.

It addresses 'exception works' (formerly called exemptions) for protected trees that are subject to a Tree Preservation Order or within a Conservation Area.

Prior to undertaking works to protected trees the normal requirement is that written consent (or 42 days notice in a Conservation Area) is made to Mid Devon District Council's Planning and Regeneration Service. There are a number of exceptions to this rule.

Exceptions include:

- cutting down trees in accordance with one of the Forestry Commission's grant schemes, or where the Commission has granted a felling licence
- cutting down a tree when the whole tree presents an urgent and serious safety risk (see note 2 below)
- pruning part of a tree that presents an urgent and serious safety risk (see note 2 below)
- cutting down a dead tree
- removing dead branches from a living tree
- work which is directly in the way of development that is about to start for which detailed planning permission has been granted (not permitted development)
- in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice
- to prevent or control a legal nuisance (you may find it helpful to check first with a solicitor)
- in line with an obligation under an Act of Parliament
- by or at the request of certain organisations listed in the regulations.

Important note 1: Since 6 April 2012 the felling of a dying tree is no longer an exception to gaining written consent.

Important note 2: The law makes it clear that in terms of exceptions, dangerous means 'immediate risk of serious harm'.

Therefore a risk assessment would address the size of branch or tree (being assessed) and the likelihood of it falling on a vulnerable or valuable target.

Requirements to notify

The 2012 regulations require that:

Prior to pruning or felling a tree that presents an urgent and serious safety risk, written notice (by email or letter) of the proposed works is given to the local planning authority as soon as practicable after the works become necessary.

Prior to felling a dead tree at least 5 days written notice of the proposed works is provided (by email or letter) to the local planning authority.

Mid Devon District Council recommends that:

In all cases that affect dead trees that as much written notice as is practicable is given to the local planning authority, i.e. more than 5 working days where practicable.

In cases that affect dangerous trees (or parts) that a minimum of 5 working days notice will be given unless the magnitude of risk is so great as to make this unreasonable; in these circumstances as much notice as possible should be given in writing after the problems become apparent.

Rarely, circumstances will arise that necessitate the works to be undertaken immediately.

Circumstances when works must be undertaken immediately

- The risk is likely to be very serious and immediate
- In these cases all efforts should be made to contact the Planning and Regeneration Service by phone in order to explain (see contact information at the end of this document)
- Give as much notice as possible
- If works are undertaken without a representative of the Planning and Regeneration Service having agreed that they are exceptions, keep records of dates and conversations etc.,
- Collect sufficient evidence to demonstrate that works were exceptions, e.g retain defective parts on site, take photographs etc.,

The benefits of providing adequate notice

- The Council can corroborate that works are exceptions
- If the Council has not provided corroboration, the onus of proof to demonstrate that the works were exceptions lies with the tree owner and/or contractor

Important note 3: Whether or not adequate notice has been submitted, the work must be an exception. If works are carried out that go beyond those listed in 1-10 above without the written agreement of the Council, the owner/contractor could be liable to prosecution.

How to submit a notice when an exception applies?

A standard form has been produced to help you to provide the necessary information. It is not compulsory to use it but it will help the Council to process the notice quickly and efficiently to everyone's benefit. This form can be downloaded from the application forms page on the Council's website.

Send to the Development Management Planning and Regeneration Service by letter or email (see contact information at the end of this document)

What information must be provided?

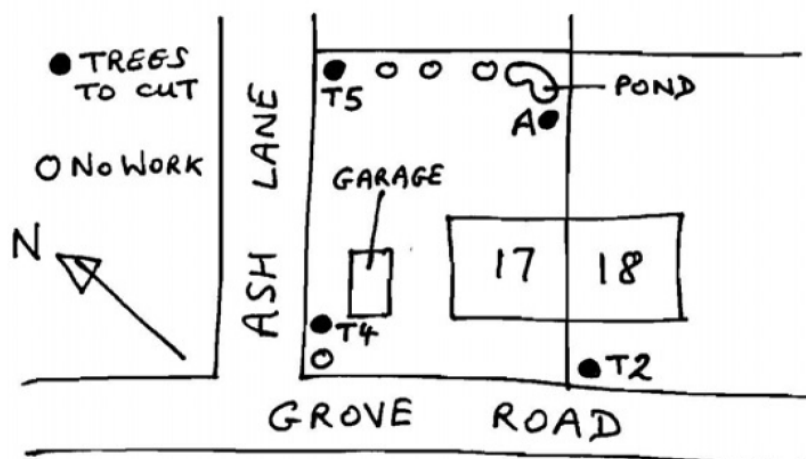
Identify the tree

Provide whatever information is necessary for someone who doesn't know the site to find the tree/trees in question.

- Species/type of tree
- Size
- Location
- Location plan

Location plan – Normally this need not be to scale. A representation of the site, identifying the approximate position of the subject tree/s and other notable trees in relation to identifiable fixed features will usually suffice.

Example of a suitable location plan



Describe the planned works

The works must be specified and clearly identifiable to a person inspecting the tree or engaged to carry out the works, eg:

- Fell dead tree
- Remove split branch on east of tree at height of 5 metres

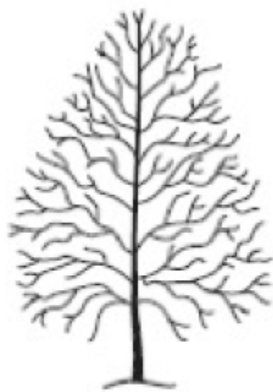
Excepted works are more often than not limited to the felling of dead or dangerous trees or removal of specific dead or dangerous branches, but rarely they might include a crown reduction, crown lift etc.

Annotated photographs can be very useful in identifying works that are difficult to describe. The Council advises that wherever possible a description of the proposed works is supported by annotated pictures – see example:



Common pruning terms and definitions

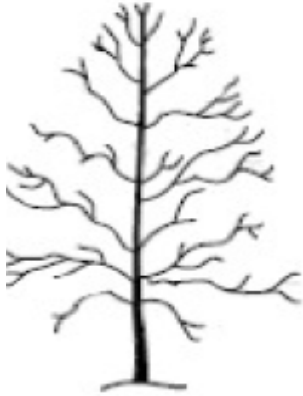
The following is a list of common pruning terms and is replicated from the guidance note for making an application for consent to carry out work to trees subject to a Tree Preservation Order (TPO).



General information - The common operations describe and simply illustrated here show some of your options.

An arborist should be able to help in defining the work that will be appropriate for the tree(s) and in line with British Standard BS 3998 – Recommendations for Tree Work.

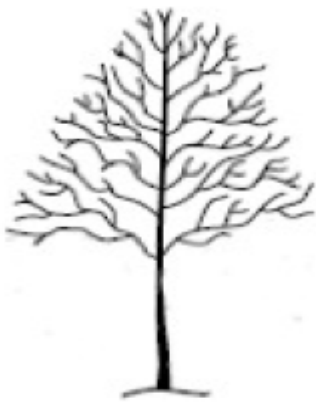
Please note that the entire branch system is known as the 'crown'.



Crown thinning - This reduces the density of the tree's crown without changing the overall shape and size of the tree.

The amount of thinning proposed should be specified as a percentage (%) of the leaf area (usually no more than 30%).

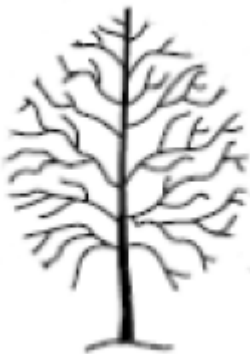
Useful for letting more light into gardens and windows and is unlikely to be to an exception.



Crown lifting - This means removing lower branches to increase the clearance between the ground and the crown.

Identify the branches you wish to remove, or specify a height above ground level to which you wish to "lift" the crown.

Prevents low branches obstructing paths, drives etc.



Crown reduction - The tree crown is reduced by shortening branches, and so changes the overall size and shape of the tree. Reductions are usually carried out all round the outer parts of the crown to maintain a balanced shape, but seldom should it include cutting through the main stem.

The amount of reduction proposed should be stated in terms of the intended height and spread of the tree after pruning (rather than what percentage (%) of the overall crown is to be removed).

Partial reduction may be useful for preventing branches contacting buildings, roofs and guttering branches, and so changes the overall size and shape of the tree.

Describe why the works are an exception

This is very important. Remember that, in terms of 'danger', exception works are those required to mitigate an 'immediate risk of serious harm'.

For example the picture below identifies a collapsed tree that is likely to fall on a busy road risking injury to people or damaging property.

Photographs can be very useful.



Replacement trees

Wherever appropriate, Mid Devon District Council will encourage the planting of suitable trees. They have an important role to play in creating attractive landscapes for future generations and create environments that are conducive to people's health and wellbeing.

When trees are felled in contravention of a Tree Preservation Order/Conservation Area or because the work is an exception the landowner is under a duty to replace them.

This duty is to replace the same species in the same place as soon as is practicable. The Council accepts that replacement is not always necessary; it may be inappropriate to do so because of the situation or the presence of other trees. It might, given the circumstances be appropriate to plant an alternative species, eg plant an Oak to replace a Sycamore.

When responding to a dead and dangerous tree notice the Council will advise what species, size, location and planting time is considered appropriate or when it does away with the duty to replant. However you may wish to propose your preferred option with reasons.

Contact for works to trees and dead and dangerous tree notice:

Cathy Lynch
Tree Officer
Development Management
Mid Devon District Council
Phoenix house
Phoenix Lane
Tiverton
Devon
EX16 6PP

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