

# Trees and Development



## 1. INTRODUCTION TO TREES AND DEVELOPMENT

This planning guideline is supplementary to local plan natural heritage and environment policies of Fife local plans and supports the Council's aims of:

- retaining trees of landscape, biodiversity or amenity significance;
- encouraging new tree planting wherever appropriate within new development;
- promoting a substantial renewal of Fife Council's woodland resource; and
- effectively managing existing trees and woodland.

This guideline will give clear guidance on what Fife Council as Local Planning Authority will consider in evaluating applications which involve the removal or the retention of existing trees within new development and also to proposed planting as part of a wider landscape scheme.

### Trees are a valuable asset

Trees remain integral to our well-being. This can be the case in and around our towns and cities, where populations and pressure from development are greatest. Scottish Planning Policy (2014) states in paragraph 216 that **ancient semi-natural woodland is an irreplaceable resource and, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value, should be protected from adverse impacts resulting from development. Tree Preservation Orders can be used to protect individual trees and groups of trees considered important for amenity or their cultural or historic interest.**

As they grow, trees absorb carbon dioxide from the atmosphere, and lock up that carbon, reducing the impact of carbon emissions. Trees also absorb airborne pollutants and help precipitate particulates from the local environment. Trees can also help reduce temperature extremes, reducing localised summer temperatures by as much as 3 – 4°C.

Conversely, trees can also reduce local extremes of cold by up to 2 – 3°C.

Woodlands are a priority habitat identified in Fife's Local Biodiversity Action Plan. Street trees and garden trees can form an urban woodland, providing a valuable habitat network for wildlife, and adding to Fife's biodiversity. As part of the implementation of Fife's Core Paths Plan, the Fife Local Biodiversity Action Plan and Fife's Green Space Strategy, Fife Council will safeguard existing trees and woodlands, and seek to increase the area of woodland cover in Fife, in line with the Scottish Forestry Strategy, prepared by Forestry Commission Scotland. This will contribute to the development of a multi-purpose green network, not only supporting biodiversity, but providing opportunities for active travel and recreation for both residents and visitors.

The environmental benefits of trees within the urban environment are already well documented, but they also contribute at a social level as well, playing a vital role in forming the character and identity of an area itself, and providing a positive focus with which communities can engage. Trees are a vital component of natural green space, which has been shown to have a positive impact on physical and mental health at both the individual and the community level. **An urban environment might therefore be seen to be all the poorer without trees.** (The Forestry Commission in the urban environment 2008).

## 2. STATUTORY, NON-STATUTORY AND PLANNING POLICY CONTEXT

### Current legislation

The Town and Country Planning (Scotland) Act 1997 specifically charges Local Planning Authorities with the following duties:

- to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made by the imposition of conditions, for the preservation or planting of trees' (Section 159);and
- to make such (Tree Preservation) Orders under (Section 160) as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

Additionally, section 160 of the 1997 Act makes provision for local planning authorities to safeguard trees or woodlands by means of Tree Preservation Orders (TPOs) where this appears expedient in the interests of amenity. Tree Preservation Orders can provide an effective means of protecting isolated trees, copses of groups or trees associated with buildings.

#### **Roads Scotland Act 1984**

If a tree overhangs the highway or footway, causing a danger by obstructing the passage of vehicles or pedestrians or interfering with sight lines or lights, Fife Council as the highway authority has the power through the Roads Scotland Act 1984 to have any potential problems rectified through appropriate action by the owner or occupier. There are similar provisions for dealing with dead or diseased trees, which are likely to fall on or obstruct any part of the highway or footpath. If the owner fails to comply, then Fife Council may do the work and charge the owner accordingly.

#### **Local Plan Policy**

Each area within Fife has policies in relation to trees. Appendix C provides a selection of policies taken from the Council's core policies, which are Fife wide.

#### **Tree Preservation Orders (TPOs)**

A Tree Preservation Order (TPO) is an order made by a Local Planning Authority in respect of trees or woodlands made under Section 160 of the Town and Country Planning (Scotland) Act 1997. The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the authority's consent. TPOs are generally used when a tree of value or group of trees or woodland is considered to be under threat. A TPO follows a standard format comprising of a map showing the locations of the trees and a schedule that contains descriptions of the trees, groups of trees or woodlands and a written description comprising of

type of tree, size and of their location. The Order may be served by the Local Planning Authority (LPA) on the owner, lessees or occupiers of the land in which the trees are located and advertised in the Edinburgh Gazette and a local newspaper accordingly. A period of 28 days is allowed for anyone wishing to object to the Order to make representations to the LPA. If the LPA receive no representations within the 28 days then the Authority can approve the Order. However, on receipt of representations the Planning Authority will decide whether or not to approve the Order and may institute a local inquiry to assist in determining the issue. Once the Order is confirmed it is recorded in the Register of Sasines placing a legal burden on the land thus protecting the trees for the future.

Should the owner wish to fell, prune or uproot a tree covered by a TPO, the owner (or the applicant) must:

- Apply in writing to Fife Council setting out the tree works they wish to carry out and why, by clearly identifying the tree(s) – if necessary by reference to a tree survey plan and the TPO. Application form available online
- Not carry out any work on a tree until written permission has been given by the LPA.
- Strictly adhere to any work approved and associated conditions imposed by Fife Council in terms of the extent of pruning and type of operation.

Permission from Fife Council as Local Planning Authority is always needed to work on a protected tree except in the following circumstances;

- If it is urgently necessary in the interests of safety
- In line with an obligation under an Act of Parliament
- On statutory undertakers' land
- If the tree is directly in the way of development that is about to start for which detailed planning permission has been granted. Though this is not the case when the tree is protected by a planning condition imposed on the grant of planning permission for the development.

All work carried out must be in accordance with BS 3998:2010-Recommendations for Tree Work

#### **Trees in imminent danger**

The Planning Etc. (Scotland) Act 2006 introduced a section in regard to trees in imminent danger. This is

inserted after 160 of the Town and Country Planning (Scotland) Act 1997.

Essentially, section 160A of the Planning Etc makes provision for trees that are in imminent danger to trees if:

1. it appears to a Local Planning Authority that a tree, group of trees or woodlands in their district and providing for their preservation.
  - a) on land in their district, and
  - b) in respect of which they have made a tree preservation order, may be in imminent danger of being cut down, topped, lopped, uprooted, wilfully damaged or wilfully destroyed and accordingly that it is expedient that a copy of the order should be affixed conspicuously to the tree, group of trees or woodlands in question, a person duly authorised in writing by them may enter the land and so affix such a copy.

### **Rights of Appeal for Tree Preservation Orders**

If the applicant objects to the decision made, or to conditions imposed by Fife Council, an appeal can be made to the Scottish Ministers within 28 days of receipt of the decision.

### **Trees and Conservation Areas**

Trees often contribute significantly to the character of conservation areas. In Fife there are 48 Conservation Areas. It is an offence for any person to cut, lop, top, uproot, wilfully damage or destroy any tree in a conservation area unless six weeks' notice has been given to the Local Planning Authority. This gives Fife Council time to consider making a Tree Preservation Order in appropriate circumstances.

### **Penalties**

Deliberate destruction of a protected tree without permission or in contravention of Conservation Area legislation, or damage in a manner likely to destroy it, can incur a fine up to £20,000 on a conviction in a sheriff court. In determining the amount of the fine, the court will take account of any financial benefits arising from the offence. For other offences fines of up to £2,500 may be awarded.

If a protected tree is felled, in most instances, there is a legal duty to replace it, and we will advise you if this is the case. Failure to comply may result in the Council taking formal enforcement action by serving a tree replacement notice under sections 168 and 174 of the Town and Country Planning (Scotland) Act 1997.

### **3. HOW DO TREES WORK AND HOW CAN THEY BE DAMAGED?**

#### **Trees as living things**

The retention of trees, and other natural features, within new and existing developments provide an immediate enhancement and sense of maturity to the site and its surroundings, raising the quality of the scheme and enhancing property values and marketability. As living things trees can:

- Offset CO2 emissions
- Provide wildlife habitats
- Help moderate the local microclimate
- Increase native British trees
- Enhance the natural Scottish landscape or local townscape
- Absorb airborne pollutants

Where trees are damaged and subsequently decline and die or where inappropriate designs leads to conflict, trees can on occasions become a source of complaint between neighbours. The inclusion and management of trees within the design of a scheme is encouraged within the Council's Creating a Better Fife-Fife Urban Design Guide and Fife Masterplans Handbook.

#### **Avoiding damage to trees**

To avoid damage to trees on development sites, do not dig drains or alter ground levels within the root zone of a tree. Do not store materials, particularly cement, oil or other toxic chemicals under the canopy of a tree against the trunk, light fires near trees, allow any waste to run into the ground beneath the tree canopy, compact the ground by driving vehicles over the root area or damage bark and branches by careless use of machinery.

#### **Damage caused by trees**

Trees can cause direct damage in a variety of ways. For instance, the growth of roots or the base of the trunk can lift or distort structures, pavements, and underground services. Such damage is usually localised and can be avoided by ensuring that there is sufficient distance between trees and structures (or underground services), or by design modification. Since direct damage of this sort can only occur in close proximity to trees, it is not usually a major problem in relation to existing buildings.

Impact or interference from branches or even falling trees can be a more difficult issue since it is

impossible to ensure that any tree will never shed branches or that it is absolutely wind firm. A way to safeguard against this happening is to ensure that development is designed to meet the specifications as set out in British Standard (BS) 5837 2012: **Trees in Relation to Construction – Recommendations** thereby ensuring that development does not impact unnecessarily on existing or proposed trees.

#### 4. PRE-PLANNING APPLICATIONS

There are three main elements to pre-application procedure as set out below:

1. Preliminary meetings with appropriate Development Services staff
2. Design Factors to be addressed
3. Tree Protection Plan

##### 1. Preliminary meetings with appropriate Development Services staff

In the first instance contact should be made with relevant representatives of Fife Council to meet and discuss your proposals before finalising and submitting your planning application submission. Suitable contact points/representatives can be found in Section 6 of this Guideline.

##### 2. Design Factors to be addressed Tree survey including tree schedule

A tree survey should be carried out before the site of the planning application. The survey should be substantially based on British Standard (BS) 5837:2012: **Trees in Relation to Design, Demolition and Construction – Recommendations** and should seek to inform the layout of the site. The tree survey should plot the accurate location of all existing trees, shrubs and hedges, including those on adjacent land which may be affected by; or have an effect on; the development. The tree survey should include the following:

- The type of species, height and trunk diameter (measured at 1.5m above ground level) of each tree;
- The accurate measurement of crown/canopy spread of each tree;
- The age class of each tree with an assessment of potential future growth;
- The condition and vigour of each tree including details of any relevant defects and any necessary or proposed remedial works.
- The removal of any tree.

- Opportunities for additional new planning.

It is important to survey all trees irrespective of the impact the development would have on them, including those the developer may wish to see removed. The tree survey, along with ground condition, levels and utility infrastructure provision, should form the basic “constraints template” prior to siting and layout decisions being considered.

##### Visual impact /design considerations integrating trees into the design

Careful retention of existing trees, hedgerows and shrubs as part of a development can ensure that new buildings will be integrated into a mature landscape, thereby raising the overall quality of the scheme. To maximise such benefits it is essential that existing trees are protected through the design and construction phase until its completion. Taking appropriate measures at the design stage can prevent damage to trees, which can be a source of complaint between neighbours.

In dealing with sites in their entirety, thought should also be given at this stage to the future management of the trees on the site. Ideally, an attempt should be made to retain a balanced tree population, i.e., one containing specimens of varying ages, since this will help to ensure that the tree population on the site can be perpetuated. If the tree population is balanced, individual trees, can later be removed or replaced, when necessary, without major detriment to the overall character or setting of the surrounding area.

##### Trees on adjoining sites

Consideration must be given to existing trees that are located on adjoining site(s). For example, as part of the tree survey, the approximate location on adjacent land of trees which overhang the site or impact visually on the site should be plotted and taken into account. In particular there may on occasion be instances where the roots of existing trees extend into the boundary of the development site. This should be avoided. Consideration must be given to the impact that the proposed development will have on these trees and should be part of the tree survey. The tree survey should in particular plot these trees and record the type of tree and assess its condition and the impact that the development may have. The proposed development may be required to be set back to protect existing trees.

Depending on the characteristics of the site, consideration should also be given to establishing a buffer zone, which is a zone around the tree beyond the protected zone (which should be part of the tree survey) in which inhabited buildings should not be located. The designation of this area should acknowledge future growth of the tree and thus will vary in size. The buffer zone ensures that buildings are not too close to trees which may starve them of sunlight (particularly if the tree is on the southern side of the building) and also means that less debris will fall on to the buildings. This also benefits the tree as it saves them from over zealous pruning as a result of proximity to buildings. Constructions such as sheds without foundations, or driveways may be suitable in this zone.

### Enforcement and monitoring

As a Service Standard the Council will give priority to significant breaches of planning control which include the unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders. If a condition has been imposed seeking to protect trees during and after construction this will be monitored accordingly in order to ensure that this is strictly complied with. Further information can be found in the Council's Planning Enforcement Charter- A guide to enforcing planning controls.

### Notice to initiate commencement

Before development commences on site the person who intends to carry out development for which planning permission has been given by Fife Council must, as soon as practicable after deciding on a date on which to initiate the development and in any event before commencing the development, give notice to Fife Council as to that date in writing. The notice to the Council must include the following:

- the full name and address of the person intending to carry out the development.
- state if that person is the owner of the land to which the development relates and if that person is not the owner provide the full name and address of the owner.
- where a person is, or is to be, appointed to oversee the carrying out of the development on site, include the name of that person and details of how that person may be contacted;
- include the date of issue and reference number of the notice of the decision to grant planning permission for such development.

- The provision of this "site start" information will be helpful in alerting staff to the development activity early.

### Distances between trees and new development

Trees should not be planted closer to structures than the distances as set out in **BS5837 (2012) Trees in Relation to Design, Demolition and Construction – Recommendations**. **Figure 1** below shows how protective barriers should be placed in relation to trees.

### 3. Tree Protection Plan

During development trees that have been identified as part of the Tree Protection Plan for retention should be protected by using a Construction Exclusion Zone by erecting suitable fencing or barriers before work commences on site and maintaining these throughout the construction phase.

Once the layout proposals have been finalised, fencing and other protective measures should be shown on a **Tree Protection Plan**.

The Tree Protection Plan should be in the form set out in **Section 5 of BS5837** and include details such as the following:

- The finalised site layout.
- The trees selected for retention, removal or pruning (the latter must be to BS 3998:1989).
- The precise location of fencing and other protective measures to provide a Construction Exclusion Zone (no less than that recommended in of BS5837;2012.)
- The type of fencing (which shall be in accordance with Figure 2 of BS5837; 2012 unless agreed otherwise).
- Details and locations of existing and proposed access points, structures, services, changes in existing ground levels or surface materials (temporary or permanent) and any operation which unavoidably has to take place within the Construction Exclusion Zone with the measures to be taken to prevent or reduce potential damage to trees.
- That the protective fencing shown will be erected prior to any development.
- Commencing on site to the satisfaction of Fife Council and not be taken down or altered without its written agreement.
- That the fencing will display signs to clearly identify the area enclosed as a Construction Exclusion Zone with no unauthorised access.

- The developer, prior to work commencing, will nominate and advise Fife Council of the person who will act on his behalf and be responsible for ensuring the implementation of the Tree Protection Plan.
- Areas of structural or proposed landscaping to be protected from construction operations to prevent soil structure being damaged or polluted.

## 5. HEDGES

You do not need permission from the Planning Authority to plant a hedge and recent legislation can, in some instances, restrict the height.

The objective of the Act is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property and where the issue has not been able to be resolved amicably between neighbours. It does so by giving home owners and occupiers a right to apply to a local authority for a high hedge notice and empowers local authorities to make and enforce decisions in relation to high hedges in their local area.

In dealing with applications, local authorities should act as independent and impartial adjudicators and should seek to strike a balance between the competing rights of neighbours to enjoy their respective properties and the rights of the community in general. Decisions on what action should be taken are for local authorities to make because individual circumstances will differ and any action needed to resolve the dispute should take account of the facts and circumstances of each individual case.

### Summary

This guideline will improve procedures and standards by which trees are protected within Fife by closely following the British Standard 5837: 2012

Appendix A - Applicants Checklist

Appendix B - Householder Applicant's Checklist

Appendix C - Fife Council Core Policies (Adopted/Emerging)

Abbreviations

Planning Customer Guideline (PCG)  
 Scottish Planning Policy (SPP)  
 Tree Preservation Orders (TPOs)

For specific advice about tree protection and works to protected trees please email  
**development.central@fife.gov.uk**

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## APPENDIX A

Please use the following checklist to assess what specific tree matters you should consider in preparing your planning application and to return it to show what information you are submitting in support of your planning application.

### Applicants checklist

**Is a Tree Survey Required?** If no, please provide a brief explanation as to why not.

If yes, undertake Tree Survey- using the BS 5837:2012: Trees in Relation to Design, Demolition & Construction tree categorisation method provide a copy of tree method. Using the BS5837 tree categorisation method, does the survey identify trees suitable for retention?

If not, provide a copy of the tree survey and an explanation stating why not.

If yes, the following should be undertaken:

- Prepare a Tree Constraints Plan.
- Prepare Initial design.
- Carry out an Arboricultural Implications Assessment to consider site design issues.
- Prepare the final design.
- Prepare a Tree Protection Plan.

Please note that definitions of Tree Protection Plan, Arboricultural Implications Assessment can be found in **BS 5837 2012: Trees in Relation to Design, Demolition & Construction – Recommendations**.

Details accompanying this planning application (Tick which is applicable).

- (No Tree Survey required) Please provide brief explanation
- Tree survey & categorisation
- Tree Constraints Plan
- Tree Protection Plan
- Additional tree protection method statements

## APPENDIX B

Please use the following checklist to identify the information you should provide and the matters you should address in preparing your application.

### Householder applicant's checklist

Show on the planning application plans any tree within the proposed development site or any trees that would overhang it.

The tree species (preferably known), the position of the trunk and extent of the branch spread must be indicated.

The case officer will then assess if more detailed information is required.

Will the proposed development be overhung by a tree canopy or be within 1/2 the height of any tree. If no, no tree survey is required.

If yes, the following should be taken into account:

- Show position of trunk and branch spread on application drawings and provide tree species if known.
- Attach a copy of this page to application.



## Appendix C

### Adopted Local Plan (2012) policies:-

Policy Number	Policy
Policy E4 Development Quality - Design	<p>Development proposals must provide an assessment of the potential impact on natural heritage, biodiversity, trees and landscape and include proposals for the enhancement of natural heritage and access assets, as detailed in Fife's Designing Places Supplementary Guidance</p> <p>Development proposals will only be supported where they protect or enhance natural heritage and access assets including: Woodlands (including native and other long established woods), and trees and hedgerows that have a landscape, amenity, or nature conservation value;</p> <p>Supplementary Guidance for Policy 13 states that new development should be kept out with the 2/3<sup>rd</sup> of the falling distance of a tree. It should comply with British Standard 5837 2010.</p> <p>Fife Plan Policy 13 (3) The Scottish Government's Control of Woodland Removal Policy(1) includes a presumption in favour of protecting woodland and will be referred to in applying this policy. Woodland removal should only be permitted where it would achieve significant and clearly defined additional public benefits. Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting.</p>
Policy E24 Tree Preservation Orders	<p>Tree Preservation Orders will be designated where a tree or group of <b>trees</b> has an important amenity value, particularly where under possible threat. Support will not be given for works to a tree or woodland protected by a Tree Preservation Order unless it is demonstrated that:</p> <ol style="list-style-type: none"> <li>a) the health and appearance of the tree will not be impaired and <ul style="list-style-type: none"> <li>• the works are necessary for its continued retention and consistent with good arboriculture practice; or</li> <li>• in the case of a woodland, the proposed works are consistent with the principles of sound woodland management and good arboriculture practice;</li> </ul> </li> <li>b) the tree is dead, diseased or dangerous, in which case felling may be necessary.</li> </ol> <p>Where felling is necessary under the terms of this policy, appropriate replacement planting will be required.</p>
Policy E25 Trees on Development Sites	<p>Where development is proposed on a site where trees are present, consideration will be given to whether, and in what form, development should be supported, having regard to the desirability of retaining and protecting mature and semi-mature trees, and other examples likely to become attractive in amenity terms, or of a rare species. Trees, woodlands, and hedgerows that have a landscape, amenity and/or nature conservation value will be protected from development. When submitting a proposal for development for a site where trees are present, the developer shall be required to:</p> <ol style="list-style-type: none"> <li>a. submit a comprehensive tree survey;</li> <li>b. identify on site any affected trees; and</li> <li>c. submit for agreement a programme of works, details of tree protection and landscaping proposals, including any appropriate tree planting.</li> </ol>

**FIFEplan Proposed Local Development Plan (Pre-Examination Edit, June 2015) policy:-**

*(which has some material weight in considering proposals prior to the Development Plans formal Adoption)*

Policy Number	Policy
Fife Plan Policy 13	<p>New development must make a positive contribution to its immediate environment in terms of the quality of the development. This will be achieved through the application of the following principles which the Council will take into account in assessing planning applications. New development is required to:</p> <ul style="list-style-type: none"><li>a) demonstrate well a. thought out design, and high standards of architecture in terms of form, scale, layout, detailing, and choice of materials;</li><li>b) make best use of site attributes – particularly landform, <b>trees</b>, and natural and built heritage features;</li><li>c) provide open space which should include individual areas for equipped play, sport, and general recreation appropriate to the scale and nature of the development and secure the long - term maintenance of public and common areas;</li><li>d) provide safe and convenient access for pedestrians, cyclists and people with disabilities or impaired mobility, including safe routes to school, links to the core path network and for sustainable modes of transport;</li><li>e) protect personal privacy and amenity; and</li><li>f) enhance community safety.</li></ul> <p>The application of innovative design solutions will be supported. To raise and maintain design standards throughout Fife, all development proposals must comply with the principles as described in the Fife Urban Design Guide.</p> <p>For larger, prominent or sensitive sites, Fife Council will prepare development briefs and masterplans. Developers may also be required to prepare development briefs, masterplans, or design statements and these will be subject to agreement or approval of the Council and must comply with the Fife Masterplans Handbook. Subsequent development will require to conform to the approved guidance.</p>