

Duty to Consult on Felling Street Trees

Introduction

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.

Section 96A of the [Highways Act 1980](#) imposes a duty on Local Highway Authorities in England to consult on the removal of some street trees – the ‘duty to consult’. It came into force on 01 December 2023.

Section 96A of the Highways Act 1980 was created as a result of legislation introduced at section 115 of the [Environment Act 2021](#).

Standards and Requirements of the Consultation Process

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

Exemptions

This duty does not apply to street trees that are:

- a. Tree is 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.

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.

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

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.

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.

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

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.

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.