

Business and Environmental Services

Executive Members Briefing Note

22 February 2019

DEFRA Consultation – Trees and Woodlands

Report of the Assistant Director – Highways and Transportation

1.0 Purpose of Report

- 1.1 To seek approval from the Corporate Director, Business and Environmental Services (BES) in consultation with BES Executive Members to respond to DEFRA in regards to their consultation process on Trees and Woodlands

2.0 Background

- 2.1 In its 2017 manifesto (Central) Government committed to placing a duty on local authorities to consult before felling street trees.
- 2.2 As such, on 30 December 2018 DEFRA launched a consultation process to seek views on government's proposals to increase transparency and accountability in the process of felling street trees and to strengthen the Forestry Commission's power to tackle illegal tree felling. The consultation process closes on 28th February 2019
- 2.3 Full information on this consultation can be found at the following website:
<https://consult.defra.gov.uk/forestry/protecting-trees-and-woodlands/>.
- 2.4 DEFRA are seeking a response to a total of fifteen questions in four broad categories, namely:
- Exemptions
 - Reporting
 - Tree and Woodland Strategies
 - Enforcement Measurements

3.0 NYCC Response

- 3.1 North Yorkshire County Council adopted its 'Management of Existing Highway Trees' guidance protocols in October 2013. This document includes a section entitled 'Communication Where Trees Are to Be Felled' which describes a proactive consultation process with regards to tree felling.
- 3.2 A team of officers has been pulled together in order to develop a consolidated NYCC response to the fifteen questions raised. The following technical areas have contributed to the response:
- Asset Management
 - Heritage Services
 - Development Control
 - Highway Operations
- 3.3 Appendix A contains the draft response to DEFRA for approval.

4.0 Financial Implications

4.1 There are no financial implications arising from this report.

5.0 Equalities Implications

5.1 A copy of the 'Record of Decision that Equality Impact Assessment is not required' form is attached as Appendix B.

6.0 Legal Implications

6.1 Trees which are actually on highway land are almost always presumed to be the responsibility of the highway authority, regardless of when they were planted, and regardless of the strict position in law as to ownership. The highway authority has a duty to ensure that trees on highway land do not constitute a danger to those using the highway or adjoining properties. The highway authority must also ensure that trees on highway land do not become a nuisance to the occupiers of adjoining properties, either by virtue of overhanging branches or by roots affecting foundations.

6.2 Section 96 of the Highways Act 1980 gives highway authorities power to plant trees and shrubs in highways maintainable at the public expense and Section 154 of the 1980 Act enables the authority to serve notice on a tree owner requiring them to lop or cut a tree where it is overhanging a highway so as to endanger or obstruct the passage of vehicles, pedestrians or horse-riders or which is obstructing or interfering with the view of drivers of vehicles or the light from a public lamp and, if necessary, carry out the work itself at the owner's expense.

7.0 Recommendation

7.1 It is recommended that the Corporate Director BES in consultation with the BES Executive Members approve the response to the DEFRA questions outlined in Appendix A and that they be uploaded into the DEFRA website as a formal NYCC response.

BARRIE MASON
Assistant Direct Highways and Transportation

Author of Report: Andy Davies

Background Documents: <https://consult.defra.gov.uk/forestry/protecting-trees-and-woodlands/>.

Protecting and enhancing England's trees and woodlands: DEFRA Consultation

Exemptions

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

Yes, as trees in the urban streetscape are generally valued by communities as they contribute to the character of the place and offer public amenity value plus ecosystem benefits.

North Yorkshire County Council has a process in place which includes consultation.

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

Yes.

The duty to consult will ensure transparency and uniformity at both local and national level and a means of auditing by collecting, recording and publishing both tree felling and replanting data. North Yorkshire County Council support the scope that the consultation applies to 'street trees' defined aligning the public highway within the urban environment. However, the definition within the consultation document of 'urban environment' is potentially ambiguous and would benefit from being better defined.

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

No, of the three options described NYCC would prefer "Option A: Full consultation" noting that this is essentially in line with the County Council's existing adopted process as detailed below:

Any highway trees scheduled for felling will be subject to site noticing and notification to the County Council Member and local District Council. In areas with Tree Management Service Level Agreements the District Council may wish to contact their District Council Member in addition to the local County Council Member.

A laminated site notice (see example below) will provide an opportunity for residents and others to contact the County Council if there are any issues of concern. Notices to be fixed using string around the tree trunk or aluminium nails, but in no case iron nails. Dead and dangerous trees subject to disease damage or those which may be insecurely rooted may need to be immediately removed. There may however be debate around those (healthy) trees which are causing, for example, property damage, and these need to be looked at on a case by case basis and arboricultural advice and other expertise will be required.

Any trees within a conservation area or which are included in a Tree Preservation Order will involve appropriate notifications to the local District Council (or National Park) as Planning Authority.

Tree felling is a last resort within NYCC and will generally only be triggered by the exceptions detailed in Q4 below.

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

When (a) Dangerous; (b) Responding to Pest/Disease; (c) Dead (d) Damaging property or highway infrastructure or presenting imminent danger to the integrity/service delivery of statutory undertakers equipment (e) Planning consent having been granted for a development and its associated highways works granted under The Highways Act 1980 section 38/278 agreement.

It should be made clear that felling of trees is a last resort once other tree surgery options have been considered by a qualified arboriculturalist.

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?

Trees with special historic or cultural significance should already be the subject of a Tree Preservation Order. NYCC believes that a four week consultation process is suffice to cover trees with a TPO in place.

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

No, given the above we don't believe it will negatively impact on developments given the legal and adopted processes already in place.

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

In the majority of cases, consultation is likely to refer to individual trees. However, if for example there is a group of trees perhaps comprising more than 3 within a defined area then group consultations may be more appropriate. However, care will have to be taken as to the definition of this 'defined area' to avoid inappropriate group consultation over a wide area for example covering an entire village.

Reporting

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

Yes, local authorities should keep a register of tree felling and associated replanting. Within Two Tier Authority areas the responsibility for keeping this register of street trees within the public highway in urban areas should be established and is more likely to rest with the Local Highway Authority, but often Tree Officers are part of the Local Planning Authority.

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

To ensure transparency and uniformity a Tree Planting / Re-planting register should cover all consultations and the outcome, whether this is to retain a tree following the consultation or agreement has been reached to fell should be recorded.

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

Register could hold details of tree location (co-ordinates and/or map based), type of tree, links to the aboricultural report & delegated decision report, relevant dates and replanting information. Any management reports and assessment of tree ages would be useful to plan investment in replanting significant assets such as avenues. Linkages to tree planting occurring through planning process would be helpful.

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

Local Authorities could utilise their GIS systems and associated data-bases. Alternatively, Central Government may wish to devise a bespoke data-base that would be used nationally to hold/share the information in one agreed format. In addition there are specific software for this purpose

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. Tree and Woodland Strategies developed by Local Authorities would give the public the information required to ensure that local authorities are transparent in their approach and are using best practice guidance.
Q13. Do you agree with the suggested content for best practice guidance for Tree and Woodland Strategies? Please give reasons for your response.
It would be difficult, resource intensive and expensive for larger authorities to register individual trees and thus provide an inventory/valuation of its tree stock. However a strategy would document best practice associated with tree felling and replanting and improve stakeholder involvement and public engagement.
Enforcement measurements
Q14. Do you support these measures?
This would be for the Forestry Commission to further consider, but North Yorkshire County Council are supportive of enforcement measures to prevent illegal tree felling.
Q15. Do you think any other measures are necessary to combat illegal tree felling?
A national contact number to report potential illegal tree felling practices to the Forestry Commission?

Initial equality impact assessment screening form (As of October 2015 this form replaces 'Record of decision not to carry out an EIA')			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	H&T		
Proposal being screened	DEFRA Consultation – Trees and Woodlands		
Officer(s) carrying out screening	Andy Davies		
What are you proposing to do?	To seek Corporate Director, Business and Environmental Services (BES) in consultation with BES Executive Members, approval to respond to DEFRA in regards to their consultation process on Trees and Woodlands		
Why are you proposing this? What are the desired outcomes?	Formally respond to DEFRA in regards to their consultation		
Does the proposal involve a significant commitment or removal of resources? Please give details.	No		
Is there likely to be an adverse impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics? As part of this assessment, please consider the following questions: <ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	

Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No			
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	No.			
Decision (Please tick one option)	EIA not relevant or proportionate:	<input checked="" type="checkbox"/>	Continue to full EIA:	<input type="checkbox"/>
Reason for decision	No impact on protected characteristics			
Signed (Assistant Director or equivalent)	<i>Barrie Mason</i>			
Date	13/02/19			