



'Protecting and enhancing England's Trees and Woodlands'

Defra consultation Ancient Tree Forum Response

The Ancient Tree Forum (ATF) has pioneered the conservation of ancient and veteran trees and is the main UK organisation concerned solely with their conservation. The ATF seeks to secure the long-term future of ancient trees through advocacy of no further avoidable loss, good management, the development of a succession of future ancient trees, and seeking to raise awareness and understanding of their value and importance. The ATF campaigns for UK Governments to recognise their international responsibilities towards the amenity, biodiversity and heritage provided by ancient and veteran trees.

The ATF is keen to see communities engaged in understanding the values and management needs of trees and wooded habitats and not just consulted. Through our engagement with threats to ancient and veteran trees we are aware the kind of disputes that arise between residents and the Local authority which is not restricted to street trees. Trees in all urban locations provide many benefits to a great many people and not only residents. Some trees and woods are of more than local value, some are of national importance, but decision makers may be unaware of this and there is no requirement for wider consultation appropriate to their significance. We therefore welcome the opportunity to ensure more is done through consultation to protect and enhance England's trees and woodlands, but especially ancient and veteran trees, parkland and wood pasture recognised in planning policy as irreplaceable habitat and other trees in priority habitats.

We would have liked to see proposals for arbitration in this consultation and more detail about the role of central government in handling disputes and information gathering

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

Yes.

Selectively, but consultation should be extended beyond street trees and include major works as well as felling.

This will require resources and procedures that allow meaningful engagement with real opportunities for influence and some form of arbitration. Consultation should include reasons why the work is being proposed, (as per TPO applications) and if there options available why the one proposed has been chosen including the weight that has been given to costs in selecting the proposed option. This will considerably improve understanding and transparency. Any duty should be set within a wider engagement strategy (which should form part of a Tree Strategy), to help the public respond in an informed manner when consultations arise.

The Ancient Tree Forum recognises the constraints on local authority funding and therefore proposes that to reduce cost and resource allocation, initially the requirement to consult should be limited to trees of special interest agreed through consultation via production of a trees and woodland strategy. Strategies should include trees of national special interest,



where criteria are agreed by national government, but also include trees of more local special interest where criteria are agreed locally to meet local landscape contexts. We would expect criteria to include ancient and veteran trees, other notable trees (eg for cultural or historic reasons) and champions (see Ancient Tree Inventory categories).

The government recognises ancient and other veteran trees and ancient wood pasture and historic parkland as being of special importance in planning policy and these trees and habitats should be identified, recorded and mapped by the Local authority as part of their tree strategy and any loss or harm to them should be wholly exceptional. Similarly, in 'Keepers of Time' policy document just published on 14th February 2019, it is stated that there should be 'no significant or unnecessary loss of known veteran trees'. Resources should be prioritised to their long-term monitoring, care and retention. Local authorities have a significant role in achieving that aim.

Unless ancient and veteran trees are protected by TPOs or Conservation Areas there is currently no requirement to consult or for the owner to provide a notification to the LPA concerning works to them. These are often some of the best loved and valued trees in the community and deserve greater public investment in retention and care.

Felling and major works to other trees - not just street trees - should be subject to **notification**. The detail and the policy for this should also be agreed and set out in a Tree Strategy. This could be an online process and is effectively practiced by some local authorities currently (e.g. Royal Borough of Windsor and Maidenhead.)

Where work to trees is contracted out, no community or stakeholder group should be disenfranchised by the terms of a contract, or prevented from scrutiny of proposals, decisions or work standards of the contractor to ensure transparency and accountability.

We would have liked to see proposals for arbitration in this consultation and more detail about the role of central government in handling disputes and information gathering.

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

No.

The scope of consultation should be widened to include a duty to consult (if as proposed above in Q1 restricted to trees of national special interest and local special interest) on all local government owned land (including where this has been leased or where it is being managed by a third party) e.g. to include parks, cemeteries, schools.

Also, the scope only relates to tree felling and planting, however, trees can be severely damaged by excessive and inappropriate tree works. For trees of special interest, especially those of national interest, the consultation process should apply to all works with potentially significant impacts.

The Ancient Tree Forum considers that local authorities should be aware of trees of special interest, ancient wood pasture, parkland on private land and other priority habitats such as hedgerow trees and traditional orchards and take steps to safeguard them, where necessary, from loss or harm. This could be through incentives/grants as for woodland/agricultural land owners to encourage owners to take care of them.



Where there is a risk of loss, local authorities should use their powers to protect trees through TPOs or designating Conservation Areas.

For a local authority to consult effectively, they will need appropriately skilled and experienced staff who are knowledgeable about trees and how best to manage and conserve their value and their habitats and who are able to work constructively with local stakeholders and communities. Their voice needs to be strong internally within the LPA to provide the community with confidence that their views are being properly considered. However, many local authorities have reduced their tree staff or do not have them at all. Local authorities must be encouraged to recognise the value that such staff bring to the community in conserving the local authorities trees stock, directing owners of privately owned trees to appropriate sources of advice in the management of their trees, protecting trees (applying TPOS where appropriate) especially on development sites and using the duty in the T&CP Act to ensure that every development makes provision for the planting of trees. This will ensure replacement for trees lost and contribute to environmental net gain.

Q3. Do you agree with the government's preferred approach of a closed consultation with trigger point?

No

The Ancient Tree Forum would prefer to see an approach that prioritises resources and reduces burdens on the local authority but ensures the most important trees to the nation and to the local community are identified through separate processes and loss or works to such trees are the focus of consultation.

Such consultation should include a wide stakeholder group and not just the immediate neighbours and in the case of nationally important trees, wood pastures and parkland should involve national organisations such as the ATF.

The ATF's view is that any new system should be fully trialled in a range of local authorities in order to assess the burdens and the effectiveness of consultation and to find ways to make any system as costs and benefit effective as possible.

Consultation/notification of works to protected trees, although non statutory has long been recommended by government and practiced by local authorities. Guidance on scope and good practice procedures to be followed have been published these may provide suitable models together with established procedures for planning applications.

Q4. In what circumstances do you think a tree should be exempt from the duty to consult?

The Ancient Tree Forum's view is that the duty to consult should be more selective according to an agreed restricted cohort of trees and that below agreed thresholds of size, life stage or age, it should not apply. Notification policies could be applied to a different set of thresholds. These thresholds to be determined as part of developing the Tree Strategy for a community but should always include trees and wood pastures and parklands of national importance.

Exemptions should only apply if a tree is assessed according to an appropriate risk assessment framework and which are works urgently necessary to remove an immediate risk of serious harm. Dead or declining ancient or veteran trees which are irreplaceable, according to government policy in relation to planning, should not be exempt if the risk from



their retention, if necessary, by appropriate management, is reasonable. Assessments and decisions should be made by an appropriately qualified and experienced person.

Q5. Do you think it is appropriate that trees of special historic or cultural significance are subject to a more rigorous consultation process?

Yes

The Ancient Tree Forum, as stated above, believes that trees of special significance for historic, cultural **or biodiversity**, are identified through Tree Strategies to include trees and wood pastures and parkland of national value, and that works to or loss of these trees and habitats should be consulted on more widely.

The ATF would encourage and welcome the use of five-year management plans for such trees and habitats to reduce burdens.

Q5. Do you agree with the criteria for designating a tree of special historic or cultural significance?

No

The stated criteria are too limited.

The Ancient Tree Forum, in partnership with the Woodland Trust and the Tree Register of the British Isles, has proposed criteria for identification of trees of national special interest which are wider than the criteria proposed in this consultation. The criteria for designation of a Tree of National Special Interest should be agreed by government in consultation with a specially convened stakeholder group which should include a diverse range of interests eg Wildlife Trust, local history societies, Tree Wardens.

At a local level a similar process could be introduced to identify criteria for identification of trees of local special interest and managed by a local stakeholder group.

The Ancient Tree Forum would wish to be a stakeholder consultee in the identification of criteria and once designated would wish to be consultee for works to Trees of National Special Interest.

Where such trees are identified the LPA should be proactive in their protection either through TPO or Conservation Area designation as threats to trees are often not known in advance -trees are especially vulnerable where there is a development interest. In acknowledgement of their special significance schemes offering incentives for best practice care should be set up.

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

No.

Not directly, but it should not divert resources away from the crucial Tree Officer involvement in assessing/advising on impacts on trees of planning applications, making TPOs as necessary, and ensuring that appropriate conditions are attached to any permissions granted. This will include requiring new trees to be planted as part of environmental net gain.

The community expect there to be a 'tree champion' in the local authority who can fulfil the vital role of protecting and conserving important and valuable trees not in the public domain, and through planning permissions, ensuring trees are provided and planted in addition to those the local authority plants.



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

This should be context and value dependent and should not be fixed. A single consultation on a group of trees such as an avenue might appropriate, e.g. if the trees were of similar age and condition.

Q8. Should a duty on local authorities to report on tree felling and planting be introduced?

Yes

Trees in Towns I and II and the Chainsaw Massacre reports have demonstrated how valuable it is to have information on the state of the urban tree stock and trends in tree management. The Defra Select Committee expressed concern that there were no national statistics on ancient woodland and ancient and other veteran trees lost to development. Government therefore has no mechanism for monitoring the effectiveness of its policies relating to their protection. Reporting losses of these trees from streets will provide information only on a small fraction of the overall losses taking place. In our experience, development is a significantly greater cause of loss of ancient and veteran trees. We regard the collection of this data as a priority.

Local authority owned trees are often a small proportion of trees in the public realm. Government agencies should also have a reporting duty. A holistic approach to reporting at a national level, along with rigorous monitoring and appropriate resource provision, would meet another government manifesto pledge - to leave the environment in a better state. Government would need to provide the framework and resources for this to be achievable

The Ancient Tree Forum would wish to see reporting on works to trees and not just felling and planting especially where works to special trees of local or national value are concerned. This would help build a picture of how well training in the care and management of special trees is being understood and implemented across the country and how ecosystem services/canopy cover is being impacted.

The ATF is concerned about the resources available for any new duties and that they will direct funding away from protection and management of the tree resource. Therefore, the approach must be to focus on what would be most cost effective but to provide worthwhile information. To be meaningful reporting must include qualitative as well as quantitative data.

Some trees and habitats such as ancient wood pasture and parkland are more valuable than younger trees and secondary or recently created habitat. We would like the consultation to include reporting on trees and wooded habitats that provide value beyond their more general ecosystem benefits.

Reporting on tree felling, which should include works to important or special trees, and tree planting raises expectations on local authorities and government to do more although the evidence is that limited budgets and lack of resources preclude it. We would like to see proposals for how such reporting would be used contribute to measuring environmental net gain, to improve livable cities and sustainable tree stocks.



Q9. Which trees would it be useful to report on?

The Ancient Tree Forum would welcome reporting which would highlight the loss and significant works to important trees in the urban environment especially special trees and those of national special interest in the first instance. However, the ATF would wish to see this reporting extended to the whole of the local authority area and not just street trees to provide a comprehensive picture. It would be particularly valuable to have data on ancient and veteran trees and ancient wood pasture which are recognised as being irreplaceable habitat, affected by development.

Equally, reporting on creation of additional pasture woodland and planting of trees to be open grown as future ancient/veteran trees as compensation associated with planning permissions would provide data towards evaluating progress towards assessing the future sustainability of these habitats.

The government should monitor tree management across England with uniform and comparable figures. Data on woodlands has been collected for decades, but data on trees and treed habitats, not included in the past, are equally if not more important, but with different values to society and the environment. Comprehensive data on these trees would provide indicators of many aspects of environmental quality. Such systematic data collection would also help monitor progress towards the government 2020 vision 'that ancient and veteran trees and other native woodlands are adequately protected and sustainably managed and the manifesto pledge - to leave the environment in a better state.

Q10. What information do you think local authorities could gather and hold?

In addition to those listed;

Special tree status: - losses of ancient and veteran trees in particular to evaluate habitat loss and effectiveness of protection policies.

Girth is essential as it would give a guide to losses of different cohorts of tree populations and if it is larger trees being lost.

Size or age class of removed trees and major crown reductions to track canopy cover being removed, loss of carbon sequestration value and to assess whether replacement planting in both number and species of potential equivalent mature size is enough to mitigate for their loss.

Location of tree should be in a format to enable the data to be shared or compared across other platforms eg the Ancient Tree Inventory.

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

It should be presented through a database and mapping accessible to the public on a standardised government model. It should be compatible with existing inventories or council tree or asset management software. Where local authorities don't have automated systems, provision should be made to enable their introduction. Data should be held by central government and presented electronically with mapping of felled/ planted trees. It should be open access to aid public awareness.



Q12.(part 1) Do you agree that Tree and Woodland Strategies help local authorities and the public to manage their trees and woodlands?

Yes

The Ancient Tree Forum agrees that strategies are helpful if they distinguish those trees and habitats of greatest value which includes ancient and other veteran trees, as well as those which are rare or have cultural or historic associations, wood pasture and parkland, traditional hedges and orchards. It is important for Tree Strategies to assess the overall age structure and condition of the tree stock in order to make sustainable tree population proposals. Resources will be needed to help implement them. We are most concerned that there are no indications of where future funding for this work will be generated.

Tree and woodland strategies should have policies not only for local authority owned and managed trees but also for those in the private domain as these are just as important to consider in any holistic strategy. The local authority has powers to engage in a number of ways in controlling or influencing the management of privately-owned trees and this should be seen as an important part of their role and be resourced. As part of the resourcing there should be incentives, assistance for private owners to manage trees of special interest, both national and regional which have been identified as having wider public benefit. This is justified on the same basis as grants/subsidies to the environmental/wider benefits of tree management as in Countryside Stewardship.

Following the development of a Tree and Woodland Strategy, the Ancient Tree Forum would like to see greater use of Conservation Area designations for urban areas with high densities of valuable trees, such as parkland, orchards and hedgerows, especially where this corresponds with development pressure or land identified for development in forward plans. This would be comparable to the Felling Licence system in place for the rural environment and ensure that owners notify the local authority of proposed works to trees and controls pre-emptive felling. As with felling licence there could be agreed thresholds to reduce the burdens, such as for minor works or to trees below a threshold in girth size.

Q12.(part 2) Would best practice guidance be sufficient for local authorities and the public?

No

There should be a national strategy and a template available for local authority adoption. There is a need to ensure support from full council and adequate resourcing if councils are expected to deliver tree strategies. There is also a need to regularly review and update to reflect progress and constraints - requiring government and stakeholder support. Strategies should show ambition and not be overly restricted by budget or capacity concerns that would make them undeliverable, but equally realistic with room for flexibility. Consultation on tree strategies would be an excellent opportunity to engage communities and gather public support trees and their management.

Best practice guidance has been available for some time - but is only followed by those councils who choose to adopt it and have the resources to prepare it, including collecting the essential data which must underpin any strategy. The ATF considers that strategies are key to the better understanding by all of the values and management needs of trees and support for this across all aspects of a Local authorities' activities and influence. Therefore, government should provide all the help needed whether guidance or resources to ensure every local authority has one.



Q13. Do you agree with the suggested content for best practice guidance for Tree and Woodland Strategies?

No.

See answer to Q12(part1)

Also there needs to be significant stakeholder engagement for such significant changes to urban tree management. This should include external experts on trees especially ancient and veteran trees parkland and all types of woodland management, landscape and ecology in addition to in house tree officers and landscape mangers. There is a need to consider wide public engagement of residents, businesses and significant land holders in order to deliver many of the objectives proposed in the ATF suggested duty to consult/notify. In addition to Biodiversity, heritage, cultural and landscape issues are key, but issues such as flooding, air pollution and other ecosystem services should also be considered. Strategies need to consider the landscape and action at landscape scale, not just council owned trees, they should also have a timeline for a review process.

Q14. Do you support these measures?

The ATF is very much in favour of improving the efficacy of enforcement and importantly deterrence as in the case of ancient and veteran trees, ancient wood pasture and ancient woodland and historic parkland, they are now accepted in planning policy (NPPF) as being irreplaceable habitat. Many of these trees and woodland are not protected by TPO and rely for their protection on felling licence controls. It is imperative that the systems of protecting trees are consistent and in harmony so that loopholes or differences cannot be exploited. The TPO legislation, which has much experience of enforcement by Local Authorities, has been improved in response to identified deficiencies and is now more robust, fit for purpose. Comprehensive legislation alone is not sufficient. There needs to be a realistic number of enforcement officers to deliver and monitor illegal felling if the Forestry Commission is to deliver greater protection and offers tried and tested powers which should be available to the Forestry Commission. This is the same for local authorities their enforcement duties with regards to trees

Below are ATF responses to the individual proposals:

1. Giving the Forestry Commission the power to apply to the courts to direct land owners to replant trees on land which has been both illegally felled and where current replanting directions (via Restocking and Enforcement Notices) have been ignored

Applying to the courts can be costly and time consuming. Better to have enforceable penalties (fines) for failure to comply. Also have similar powers as for TPO where local authority can undertake planting and recover costs.

2. Giving the Forestry Commission the power to direct an individual to replant trees on land which they have subsequently sold, subject to the permission of the new landowner.

If illegally felled, then replanting should be a charge on the land, land and /or that the requirement to re-stock runs with the land (as per TPO) so so not subject to new landowners' permission. Otherwise we could see opportunity for land sales



undertaken deliberately to circumvent a requirement and possibly permanently deforest or apply for change of use if no trees on land.

3. Giving the Forestry Commission the power to force the cessation of tree felling in an area while an investigation into illegal felling is taking place.

Yes. This should be equivalent to stop notice in TPO and planning.

4. Create a legal requirement on the owner of land, where illegal felling has taken place, to notify the Forestry Commission if they sell the land. This will simplify the process of tracking who it is who needs to be served with Restocking and Enforcement Notices, directing individuals to replant trees.

No. Better to have powers to search land registry to find new owners' details as they must be recorded on land sales as per the powers local authorities have.

5. New powers to identify and pursue a suspected instigator of illegal felling, where the person suspected of felling illegally is not, and has never been, the legal owner of the land. Historically, felling was generally undertaken by landowners themselves (or people employed by them). The picture now is more complex, particularly in respect of housing developers who retain the services of third parties to manage land on their behalf, and who may commit the illegal felling independently of the developer.

Yes. Under TPO legislation 'any person' who has committed an offence can be prosecuted.

6. Increase fines for illegal felling. The current fine scale stems from a period where profit came from selling timber. Now the major driver of profit from illegal felling lies in the increased land value. As such, the current fining regime does not offer a sufficient deterrent. The current fine is £2,500 or twice the value of the trees felled, whichever is greater

Yes. This should be the same as contraventions of TPO where any benefit that accrues, including increase in value of the land, can be taken into account and fines can be unlimited. They are also criminal offences. Very strong deterrents are needed to prevent this kind of illegal activity given high land values for other uses such as housing.

7. Clarify upon whom the Forestry Commission may serve a Restocking or Enforcement Notice in relation to companies that own the land. The current wording of the Forestry Act 1967 only allows the company secretary to be served a notice, whereas company directors may be more appropriate targets for enforcement measures. Yes

8. Give the Forestry Commission powers to compel the 'owner' to provide information with regard to who else has an interest (leasehold, tenant etc.) in the land. Currently the Forestry Act 1967 only gives powers to compel the 'occupier', or 'any person who... receives rent in respect of the land' to provide this information. While the owner will be listed on HM Land Registry, demonstrating who 'occupies' a woodland is



more challenging. Equally, without being privy to individual's accounts, demonstrating that they receive rent from land is even more so. [Yes](#)

9. Clarify how Enforcement Notices are affected by a change in land ownership. It is currently unclear who is responsible (the previous owner or the new owner) for complying with an Enforcement Notice when the land changes hands during the life of that Notice. This leads to cases of non-compliance and can collapse a criminal case before a prosecution is secured.

[See answer to item 2 above](#)

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

The increase in policy protected status given to specific trees and woods in the NPPF is most welcome but increases their vulnerability to loss or damage e.g. pre-emptive for development which can currently be legal. Felling licence exemptions provide for types of land or activities which can enable important trees and woods to be felled or damaged where the intention is not to practice good beneficial management. TPO's are more comprehensive and effective, but are a reactive legislative tool and those wishing to avoid such controls being applied will not make their intentions known. So, felling licence controls are very important. ATF considers that these controls should be dovetailed and fully integrated with the TPO and Conservation Area controls under Planning legislation now to prevent such work/felling to give effect to government policy. As acknowledged in the introduction the Forestry Act 1967 is over 50 years old and was not designed to regulate the destructive activities occurring now.

This consultation has proposals which seek to give opportunities to comment on La tree work and provide transparency to decision making. Similarly, ATF considers that FC/FE should consult stakeholders on their management proposals (felling and other work) for ancient and veteran trees, and priority habitats such as wood pasture, hedgerow, traditional orchards and ancient woodland and other Trees of National special Interest we recommend for Local authorities.

ATF considers that the following additional amendments to the regulations/ Act should be added to the list in Q14: -

- The 5 cu m exemptions should not apply to ancient and veteran trees as identified in FC/NE Standing Advice 'Ancient woodland, ancient and veteran trees: protecting them from development', priority wood pasture as identified on MAGIC, designated historic parkland and other priority habitats e.g. traditional orchards and hedgerows
- The 5cu m allowance should not apply to small (under 2ha) Ancient woodland and FC should have power to remove 5cu m allowance or put in place alternative means to control felling in small woods including those that have been subdivided and parcelled off as the allowance enables a small woodland to be clear felled in a relatively short time.
- The 'dangerous' exemption should be aligned with the wording in the TPO legislation. i.e.' where works are urgently necessary to remove an immediate risk of serious harm'.
- Felling of dead ancient and veteran trees, as per NPPF, should not be exempt from control.



- Re-stocking requirements should be appropriate to the type of woodland e.g. wood pasture, or spacing requirement e.g. open grown for ancient and veteran trees.
- Where irreplaceable habitat woodlands or trees (NPPF) have been illegally felled, in addition to new tree planting there should be provision for compensation of the kind suggested in FC/NE standing Advice as planting of young trees cannot, by definition, replace them. The appropriate level of compensation would be the highest level in the metrics currently under consideration for environmental net gain. This would be a further disincentive to illegal felling.
- To prosecute evidence of trees and their sizes is required. Removal of the 5cu m exemption would address part of this problem. But where there has been complete removal of trees /stumps and land clearance which is readily done in a short space of time, preventing evidence gathering, the onus should be on the persons undertaking or permitting the work to demonstrate, on the balance of probabilities, that all the tree removals were permitted under relevant exemptions. This is the case for TPO legislation. Alternatively, or in addition, there should be a clear definition that felling of trees includes their destruction/uprooting and aerial/satellite imagery would be sufficient proof of existence of a woodland, individual tree or hedgerow of trees to enable prosecution and requirement for re-stocking.
- FC owned land should be subject to the same provisions as private land and apply to any person carrying out work on that land.

ATF recognises that these additional exemptions would create extra licence applications. A quicker and streamlined means to reduce burdens on both applicant and the FC would be to create similar legislation to Conservation Area legislation in Planning for these. This requires notice (S 211 notices) of controlled works to be given to the regulator and provided the regulator raises no objection, having provided an opportunity for interested parties to comment, after a set time the work can proceed without issuing a formal licence. Failure to give requisite notice is an offence carrying the same penalties as other breaches of licence controls.