

Dangerous Trees –
Advice Note
Local Government
(Miscellaneous Provisions)
Act 1976

Date: October 28th 2020

Dangerous Trees Advice Note

Local Government (Miscellaneous Provisions) Act 1976

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Introduction

1. This advice note sets out the powers and use of powers to deal with dangerous trees under the Local Government (Miscellaneous Provisions) Act 1976
2. Under Section 23 of the act the Council has **discretionary powers** to deal with dangerous trees:
 - a. That are on the complainants land and there is **imminent danger** of them **causing damage** to persons or property or
 - b. That are on land not owned by the complainant but threatening the complainant or their property.
 - c. That are on land not owned by the Council and in such a condition that they are likely to cause damage to persons or property on other land in that area which is owned or occupied by the council
3. Under Section 24 the Council has the power to authorise in writing a person or persons to enter land to ascertain the condition of the tree or to make it safe
4. Nottinghamshire County Council, as Highway Authority, has powers to deal with dangerous trees under the Highways Act 1980. This Advice Note does not cover procedures under this act. To report trees that endanger the public highway please contact the Highway Service (Contact details at end of note).

Scope Advice

5. These powers are discretionary and are intended to be used as a last resort or in emergency situations. This note primarily relates to the use of these powers to resolve issues that relate to **trees which stand within and affect primarily private residential property**
6. The Council will only consider action under these powers:
 - a. In an emergency (e.g. severe storms or severe failure of a tree or part of a tree) and the landowner is unable to arrange for the danger to be adequately controlled.
 - b. Where there is a high probability of a tree causing significant damage or injury to persons or property and the landowner/occupier has failed and is unwilling or unable to take reasonable action to manage the risks or the responsibility for the trees cannot be established.
 - c. Where there is a significant risk of harm to persons or property on Council controlled land

7. Requests for the Council to take action in relation to trees which stand within and affect primarily private residential property:
- a. As such these issues are civil matters between the complainant and the tree owner and the Council would not normally become involved in any way. The tree owner has a duty of care and should manage the trees appropriately.
 - b. It is therefore suggested that you approach the tree owner to discuss your concerns and enquire whether a tree safety inspection has been recently undertaken. If verbal communication is not fruitful, it is suggested that you put your concerns in a letter. It is advised (in the interest of good neighbourly relations) that all communication be calm, polite and respectful. You may also wish to take your own legal advice.
 - c. If you are unable to find out who owns the tree through local enquiries a search with the Land Registry is advised.
 - d. You may also wish to engage a suitably qualified arborist / arboricultural consultant to assess the trees condition on your behalf and recommend works necessary to maintain an acceptable level of risk. The surveyor must seek permission to enter your neighbour's property.
 - e. There is no duty upon the council to assess the trees or intervene in these matters. There are not sufficient resources available for Mansfield District Council officers to advise on the management of privately owned trees or to act as an intermediary in these situations.
 - f. Should the matter remain unresolved and the trees are assessed to pose a significant risk of harm you may wish to seek help from the Council under The Local Government Miscellaneous Provisions Act. However the Council would only act as a matter of last resort or in an emergency. Under these powers the Council can **only undertake tree work that are necessary to reduce the risk of harm to an acceptable level (make safe)**. The Council will normally seek to recover costs from the landowner or place a charge on the land.
 - g. The Council is unlikely to act where physical damage to property is occurring but does not pose a **significant** risk of **imminent harm** to individuals that cannot be reasonably controlled by the complainant.

Request for action under the Miscellaneous Provisions Act

8. If you feel, having read the advice above that it is appropriate for the Council to become involved please contact:

9. In an emergency 01623 463463

Mansfield District

10. In all other cases

Write to: Sean Davies (Arboreal officer), Civic Centre, Chesterfield Road South, Mansfield, NG19 7BH

11. You are advised to provide evidence that all efforts have been made to resolve the matter including:

- a. Dates of conversations, phone calls & copies of correspondence
- b. Evidence that the trees pose a significant risk of harm including an arboricultural report or detailed evidence of your concerns.
- c. In cases where the landowner cannot be traced details of avenues explored including copies of land registry searches
- d. Photographs of the trees that demonstrate your concerns may also assist

Mansfield District Council Procedure

12. The Council will assess the evidence provided and decide whether the case warrants further investigation. An officer may contact you to gain further information but failure to provide sufficient evidence at the outset may result in your request being rejected with no further investigation.

13. You will be informed in writing (e-mail) of this decision.

14. Where further investigation is considered appropriate the Council will arrange for the tree to be inspected to assess its condition and whether enforcement action is appropriate. The Council will contact the tree owner where possible and advise what action it deems necessary.

15. You will be informed in writing of the results of the investigation.

16. Depending upon the severity of the situation the Council may arrange for immediate works to manage the risks.

17. Where the necessary actions are not undertaken by the landowner by agreement, a formal notice under the Act may be served requiring the tree to be made safe.

18. Failure to comply with the notice may lead to the Council undertaking the work and recovering its costs.

To report a dangerous tree on or affecting Mansfield District Council controlled land

19. If the tree is adjacent to, or overhangs a public highway then you should contact:

Nottinghamshire County Council

20. In all other circumstances please contact:

a. Mansfield District Council Parks department

21. Please provide as much information about the tree as possible including:

a. Where it is

b. What it is (if you know the species or type of tree and its approximate size this may assist our assessment)

c. Why you believe it is the Council's tree (this is not always obvious and will help us to direct the enquiry to the correct section)

d. Why you consider the tree to be dangerous

e. Photographs of the tree, its situation and any notable defects may be useful

Further information

National advice on management of tree safety: 'Managing trees for safety'