Trees and the law in plain English – what we all need to know

Chair: **Sarah Dodd**, Founder and CEO, Tree Law

Tree risk and safety – exploring the psychology of how risk can be perceived and the likelihood of it occurring
Ana Farewell, Environmental Psychologist, Maplesky

Understanding the protection for trees in conservation areas versus TPOs
Sarah Dodd, Founder and CEO, Tree Law

Resolving conflicts – trees, hedges and neighbours
Charles Mynors, Lawyer; author The Law of Trees, Forests and Hedges

Knowledge Partners: AA, ICF, IHE,LI, UDG

SUMMARY

This session focused principally on tree law in England and Wales.

Note: the 'chat' was very busy and we have tried as far as possible to group questions and comments together.

QUESTIONS, COMMENTS AND SPECIFIC REFERENCES

Ana outlined the ways in which humans can be irrational and so the critical question is how to frame risk to get a rational response given peoples' cognitive bias?

Questions and comments included:

- Is loss aversion what inhibits changed behaviours when it comes to climate change?

- I am finding the effects on family principle are having a negative effect on tree planting in schools to deliver living classrooms. The PGL death has scared Governors- when I asked how many children have been run over on the way to school and asking have you banned walking to school.
    - 5.5 average deaths from trees pa, versus 1695 deaths on the roads pa, is a useful comparison
    - So ,the comparison with cars is really useful - we accept the risks from cars for a lot of reasons, not all of them good, but it proves we can accept risk if we as a society want to

- We are struggling to persuade certain Town Councillors to plant more trees in open spaces. There is a reaction from them which is saying the safety issue going forward will cost the council money in maintenance and safely issues going forward...
    - Perhaps emphasising the risk of heatstroke vs, the risk of falling boughs and shifting the discussion to a balance of risk? I find frequently the risks from trees are considered but not the risks of removing/failing to plant them

- Do you think the family-threat principle could be extended to community?

- I've been dealing with the aftermath of the recent wildfires in Stourbridge and the perception of risk has been a recuring theme

- What do we think about insurance company's view of risk? How could we influence them?

- Don't forget Lorraine Calcott's presentation a few months ago about the benefits of infrared light from tree leaves and how this is beneficial for mitochondrial health of everyone, especially children. It also protects their eyes from screen use etc. Its worrying we are trying to protect anyone from nature, madness

Sarah outlined the complexities of tree protection.

- Do trees associated with the setting of a listed building (as described in the building listing and not in a conservation area) have indirect protection?
    - From Charles: Works to a tree that forms part of the setting of a LB does not, just for that reason, require consent - unless it has a TPO. If it is protected by a TPO, the works will need consent; if it is in a CA, the works will need to be notified - and in either case the effect of the works will be a material consideration
    - I understood that trees might have some degree of protection if the trees/landscaping are specifically mentioned in the list description. No?

- Do local authorities have a statutory duty to issue and manage TPOs? Asking as I was told there is a get out clause and a local authority in England can ignore TPO designation requests by the community
    - we have a problem with "expediency" - trees not being recognised as at risk until it's too late
    - They have a duty to protect trees in connection with development, which can include serving TPOs to enhance conditions granted with planning permission. But otherwise, no duty to serve TPOs.

- Tree officer refused to consider my request for a TPO because the tree is in a Conservation Area. He said it gave the same level of protection. Same bloke put a TPO on neighbours' tree (in the CA) when she asked to fell it.
    - Same as above comment, I tried to get a TPO on ancient yew in a Cons Area - I was told this was not necessary as the same protection applied as inside CA. the PC then instructed a local tree surgeon to cut out all the dead wood in the ancient yew (c900 yrs old). Eventually we managed to prevent this... but it was a real struggle

- We recently carried out a quick check on houses for sale in CAs in our LA area - VERY few house particulars mentioned that the houses for sale were in a CA. So how do people know they live in a CA?

    - Most councils should have a simple online search, usually called something like find my nearest and it comes up with pretty much everything of interest about that property including if it is in a conservation area etc. that's the easiest way, otherwise it would be on their interactive mapping . . . I'd probably also hope that their solicitor should notice it in the checks they run before they buy the property

- Are replacement trees required by a TPO consent automatically subject to the same TPO protection?

- Replacement trees cannot be enforced in conservation areas

    - There's a section 213 duty to replant trees removed from CAs because they were dead, dying or dangerous
    - it can be for exemption removals or enforcement after removal without permission
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- Who is responsible for checking whether a tree has protection - the owner or the contractor?
    - Both?
    - the contractor primarily is the one actually cutting (committing the offence) but in a magistrate's court they relied on a defence that the developer had told them there was no TPO. The decision was 2/3 'fault' to the contractor and 1/3 to the developer.

- Does the group designation have to specify the species and number of each tree, i.e., 4 sycamore and 2 Yew trees?

- What else can we do to protect very special trees?

- More and more LPAs are adding their data to the Govt's central data portal/map - including TPO and con areas - so hopefully easier to check in future and a standard data format Map of planning data for England | Planning Data
    - LPA has power but no duty to make a TPO, but there is a duty to consider exercising the power. Nor any timescale

- A recent FOI request to a borough council revealed that over 5 years it had 70+ s211 Notices but only created 1 TPO. What are s211 Notices for?
    - s.211 notifications/applications are usually published on the website of an LPA - as if they were a planning application. Most LPA websites can enable notifications of new "applications" for a specific area or type - so anyone interested in local trees (e.g. Tree Wardens etc) can get auto notifications.
    - To apply to work on a tree in a conservation area. If the tree is not considered worthy of protection via TPO, the local authority cannot refuse the requested work
    - What can local community do? The problem is Planning authority not just the land owner. Recent case locally: A wooded town-centre plot was cleared and land regraded - within a conservation area and the National Landscape (AONB), close to a Scheduled Monument and Grade I listed site. Land owner submitted

PIP for a dwelling on site whilst appealing to enforcement notice. The Planning authority so far refused to confirm if section 211 notice was submitted and repeats no trees were lost.
    - An s211 Notice is publicised in the same manner as a TPO application, so the community is consulted

- So, if they have a duty to consider TPOing can the community ask for proof that they did this? And if they say e.g., they used TEMPO to make the decision but the community can't understand how the tree got a low score, what can anyone do to follow up/get some accountability?

- As a planner, a situation I have come across is that the LPA refuses an application because of the impact on unprotected trees, but does not serve a TPO - with the result that the trees get felled and another application then submitted. Are you doing any outreach to LPA planners to help them understand this?
    - Under Schedule 7A to the Town and Country Planning Act 1990, inserted by the Environment Act 2021, where habitat has been cleared or degraded on or after 30 January 2020 otherwise than in accordance with planning permission, its pre-development biodiversity value is taken as the value immediately before the degradation. That earlier baseline must be established on evidence: where the evidence is insufficient, the value must be taken to be the highest reasonably supported by the available evidence (Paragraph 036, Reference ID 74 036-20240214). - so critical to collate and record this evidence have it on file for LPA. In my case LPA failed to take note of Street View in Google Maps evidence

- What about Registered Parks and gardens that contain trees?
    - From Charles: Same answer as LB - being in a registered park does not give legal protection. But LPA can make TPO to protect such trees - and effect on registered park will be material in considering whether to allow works

- In a conservation area in Sheffield (UK), the roots of elderly, large, mature horse chestnut at a boundary between properties were damaged, when a neighbour decided to excavate close to the tree to do permitted development. The neighbour doing the works had not realised that tree roots would be present and did not understand that severing roots would be harmful to the protected tree. The tree is highly visible from the adjacent public highway but the local authority neglected to take any action at any stage. Is there any legal requirement for a local authority planner to consult with an arboriculturist when he becomes aware that there are large trees close to works proposed in a conservation area, even if planning permission is not required?

- There's a section 213 duty to replant trees removed from CAs because they were dead, dying or dangerous

- What are the protections around ancient woodland and regrown ancient woodland? Am I right that councils will not generally place a TPO on trees within their ownership?
    - From Sarah: Generally, they don't although I know of a London borough where everything is TPO'd and I am also dealing with others who TPO their trees in certain situations to allow them to use their private criminal prosecution powers if someone does work to them

- Despite Government guidance to only use Area Orders as temporary measure and to review Orders containing Area category TPOs, some LPAs continue to confirm new Orders which include an Area category element and appear to ignore formal objections to the inclusion of Area category TPOs. Given that the LPA is both judge and jury when determining confirmation of a TPO, how can we ensure objections are fairly assessed? The LPAs are very reluctant to engage in constructive dialogue as part of the determination process?

- Interesting research and final report by The Tree Council - hopefully one day DEFRA may update Tree Protection Regs... Valuing and Protecting Important Trees Outside Woodlands - The Tree Council. https://treecouncil.org.uk/science-and-research/valuing-and-protecting-important-trees-outside-woodlands/

- In my experience even very blatant protected tree offences are difficult if not impossible to enforce because of the burden of evidence, to prove that the works weren't necessary, or who they were carried out by etc. I also have some suspicion about the affordability of the fines for particularly wealthy people or developers. It seems like it would be much more effective to be able to issue a fixed penalty notice to whoever had the chainsaw in their hand at the time the site is visited for enforcement reasons, as a more effective deterrent could be to serve a financial impact on those who would otherwise profit from the work. Does anyone know of any LAs doing something like this? Is there any other legal precedent or reasonable route to getting there, if it were supported across the industry?
    - There have been some cases where those that have removed the trees have been prosecuted under the proceeds of crime act. If the land value has been increased through the tree removal, they can be prosecuted and fined for that amount.
    - From Sarah: When considering sentencing, affordability is a consideration. That should mean the 'limitless' nature of the fines should be able to bite where the person who is guilty is particularly wealthy

Charles provided a comprehensive overview and details of some of the critical issues when it comes to tree conflicts.

- The Rights of Light Act 1959 builds on the Prescription Act his Act and provides a framework for addressing disputes over light obstruction. It means that a notice can be served on the property owner, preventing the creation of a physical obstruction (such as a tall fence or a building) that prevents a neighbouring property receiving light. This notice is registered as a local land charge which will show up on a local search.
  In theory a case could be made for large trees blocking light However, trees are rarely implicated because they grow slowly, and it is difficult to be precise about when the loss of light occurred.
  It's a common misconception that a homeowner can acquire a right of light in their garden. But the law provides no such right regarding land not built on. You may however have express rights to light created by your property deeds. If so, the official copy of your title from the Land Registry will confirm that.
    - Also, your deeds may contain mutually enforceable covenants restricting both you and your neighbour from planting trees or high hedges.

- Why is shallow foundation depth as per the nhbc, not a defense?

  - From Sarah: Often it relates to properties which are old and predate NHBC guidance. Where it's newer additions to properties which don't adhere to guidance on building near trees, shallow foundations could be a defence. Its very case specific
  - "Heave is not always an issue - see Martin Dobson's...":
    I often cite Martin's 'heave, not all it's cracked up to be' session
  - I think that Sarah has posted recently elsewhere about root barriers being an alternative to felling or underpinning. There is new tech in the form of copper coatings to the barrier, with apparently varying efficacy

- What if cutting the roots on your side leads to destabilising the tree?
  - You'd be responsible for the damage
  - From Sarah: Your common law right to abate should only be exercised reasonably so if it destabilises then it's on you

- Is it correct that abatement of nuisance can be done on TPO or trees in conservation area? and that this may not require application to LPA?
  - From Sarah: Great Q Andrea - yes abatement of a nuisance is an exemption however I would caution against relying on this. That is because, in my opinion, the required legal nuisance isn't such until it's determined by a Judge

- What about the value of the tree to enhance the overfall environment for which the loss of the tree would represent a loss in value?
  - CAVAT
  - But how do you get compensation for the loss as demonstrated by the CAVAT value?
  - From Sarah: Past Court decisions set out how to value the loss of a tree. It's sadly not as straight forward as saying it will be the CAVAT value.
  - So, is there any way an owner or community can recoup the lost value of felling a tree?
    - From Sarah: we have a blog covering off the question of the value of damages in civil and criminal cases - Tree valuation: what have the civil & criminal courts said? | Tree Law - Legal tree experts
  - Thanks, Sarah, for directing me to your blog post https://www.treelaw.co.uk/tree-valuation-what-have-the-civil-criminal-courts-said/ about tree valuations and how they can be used to calculate damages in cases where trees have been felled illegally. Are these valuations ever used to determine appropriate compensation before the tree is felled? Or in decision making about felling trees?

- Please confirm. Did you say that a neighbour could just decide to cut back all overhanging branches from my tree, even if I did not want him to? No illness, damage or other good reason...?
  - But if the neighbour caused long term damage, or de-stabilised the tree, they could be liable
  - From Sarah: short answer is yes as long as it's reasonable exercise of their common law right to abate

- Does anyone know of any good flexible mortars for building repairs?
  - I could find a recommendation from someone if you want to email me - sarahdodd@treelaw.co.uk

    - Traditional lime mortar composition =1 part lime to 3 parts sand + water
- How can we encourage event management plans for trees, particularly when damage to soils/roots only manifests some years later?
    - Local authorities should have a risk management strategy related to their trees

- So, if a consultant goes to inspect a tree, and says its fine, and then it does fail from a defect that wasn't spotted. Is the consultant then liable?
    - From Sarah: It depends on whether it should reasonably have been spotted. This will be fact specific
    - What is a reasonable height? And is there any argument for one neighbour wanting the boundary neat and other wants it natural

- Sarah, is it an offence to remove a tree under an exception if you have not served a 5-Day Notice to the LPA, even if the works qualify?
    - This is different in Eng and Wales. I think it's a question of inferences, i.e., if you don't serve a 5-day notice in England then it's hard to show the evidence that the exemption applied. That's my off-the-cuff thought

- From Sarah: I foresee interesting cases involving sudden branch drop cropping up increasingly. This summer was a big year for SBD and more focused questions on how to manage that risk started to be discussed
    - Even more than most tree hazards, it's almost by definition - sudden - extremely difficult to predict and therefore assess and act against any risk?
    - Most branches fall during high wind or loading, local risk assessments are also important, we all know the phrase 'beware the oak it draws the stroke'

- If a private tree falls onto the Highway and the owner can prove they have had their tree inspected does this mean the local authority are responsible for the costs incurred to remove the tree
    - No, the LPA may do work to remove the danger under the Highway Act but usually then expect the costs of doing the work to be paid by the tree owner

- Can a tree be regarded a nuisance due to height and overshadowing when it doesn't cross over the boundary? Does the overshadowed party have any right to ask for the height to be reduced on neighbour's land side?
    - Important to note that high hedge cases in England relate only to evergreen (coniferous) trees whereas in Scotland, any species can make up the composition of a high hedge.

- Could Charles comment further on the meaning of 'important' in the 1997 Hedgerow Regulations if prosecutions are rare?
    - We have prosecuted people for the removal of a hedge covered by the Hedgerow Regulations. Once a hedge has been removed, it cannot be proven one way or the other, whether it was important or not. In the eyes of the law, the hedge that has been removed is considered important, whether it was or not.

- So, there is still exemption to work on trees to abate a nuisance for TPO/TCON - to cut back to your boundary line without application? And if this is the case the LPA would be unable to consider the work of cutting back to the boundary line of a neighbour's tree to be something that could be enforced?

- Rights for Trees – Lewes Town Council
    - We are trying to get Rivers, Trees, Nature recognised as having rights - this should come with a "no blame" clause - as if we give them rights someone will try and sue them!
    - Lewes has passed a 'motion' on this point. I am looking into how strong this will be in law
    - University of Southern California law professor Christopher D. Stone published the landmark 1972 essay “Should Trees Have Standing? Toward Legal Rights for Natural Objects” in the Southern California Law Review.
    -
- A Barrister for the Earth: Ten Cases of Hope for Our Future (eBook) | Faber

Churchyards: We have been asked to remind everyone of the laws on Faculty Jurisdiction in Church of England churchyards.
Basically, if work is planned on trees in a churchyard, permission for this must be obtained from the appropriate diocese (rather like applying to work on a TPO tree). This is best done by the PCC (Parochial Church Council), who should know how to apply for these permissions. Both contactors and local authorities managing a churchyard are liable to be sanctioned if they go ahead without permission. If anyone wants to know more you may contact Nigel Cooper (nigel.cooper@elydiocese.org), who has alerted us to this.

- This comes under the Ecclesiastical Jurisdiction and Care of Churches Measure 2018
- “Promoting good tree care It is important for archdeacons to encourage parishes to value and care for their trees. This can be done through general announcements on occasions such as Visitations, provision of training, individual conversations about trees, and also through low-key checks over such documents as Risk Management Policies, Statements of Significance and records of tree inspections.”
  Source:https://www.churchofengland.org/sites/default/files/2018-11/CCB_Advice-on-trees- for-Archdeacons.pdf

- “The environment is God’s gift to everyone.
  And we have a responsibility towards each other to protect it. We cannot think of ourselves as isolated from others or from creation.
  Our impact on the planet is reducing biodiversity, changing the climate, and polluting the earth.”
  Source: https://www.churchofengland.org/about/environment-and-climate-change/why-you-should-act

- Church of England - 'Always talk to your Diocesan Advisory Committee (DAC) first': https://www.churchofengland.org/resources/churchcare/making-changes-your-building-and-churchyard/talk-your-dac-about-permissions

- A Church of England tree recently mutilated in Wadsley, Sheffield (UK): https://drive.google.com/drive/folders/1-qPliPSXkTZ2MSPiEqTKWVmrcUPeFbAH?usp=sharing

GENERAL REFERENCES - with thanks to DL

SAVING STREET TREES
https://ianswalkonthewildside.wordpress.com/2026/08/09/grey-squirrel-and-muntjac-deer/comment-page-1/#comment-7770

Hoyle v Hampshire County Council:
https://validtreerisk.com/tree-risk-management-&-tree-risk-assessment-news/12779230

Section 211 (1A) of the Town and Country Planning Act 1990 disapplies the Trees regulations from an 'order granting development consent'. Quote:
"SUBSECTION (1) DOES NOT APPLY SO FAR AS THE ACT IN QUESTION IS AUTHORISED BY AN ORDER GRANTING DEVELOPMENT CONSENT or by infrastructure consent order]."
See: https://www.legislation.gov.uk/ukpga/1990/8/section/21

Commenting on Regulation 14 (1) (a) (vii) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012 (the part between parentheses, before first use of the word 'or'), Mynors et al (2023) advise
" ...it does not authorise tree works solely... to carry out development permitted only by A DEVELOPMENT ORDER (commonly referred to as 'PERMITTED DEVELOPMENT')."
Source: The Law of Trees, Forests and Hedges (page 612, paragraph 22-58)
Regulation 14: https://www.legislation.gov.uk/uksi/2012/605/regulation/14/madet?

Regulation 14 (1) (a) (vii) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012:

"Exceptions
14.—(1) Nothing in regulation 13 shall prevent—
(a) the cutting down, topping, lopping or uprooting of a tree—
...(Vii) so far as such work is necessary to implement a planning permission (OTHER THAN an outline planning permission or, without prejudice to paragraph (iii)(cc), A PERMISSION GRANTED by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Town and Country Planning Act 1990 (control over development), OR DEEMED TO HAVE BEEN GRANTED (whether for the purposes of that Part or otherwise)
Source: https://www.legislation.gov.uk/uksi/2012/605/regulation/14/made

That means that in a conservation area, works associated with permitted development that could or will affect trees without a TPO would require the usual six weeks notification to the local authority.

'Tree Preservation Orders and trees in conservation areas:
"What information should be in a section 211 notice?
A section 211 notice must describe the work proposed and include sufficient particulars to identify the tree or trees. Where a number of trees or operations are involved, it should make clear what work is proposed to which tree. A notice must include the date it is submitted. A plan is not mandatory but can be helpful."
Paragraph: 125 Reference ID: 36-125-20140306:
https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#Section-211-notices

A few things to consider for inclusion in a tree strategy, to help all stakeholders:
https://www.whatdotheyknow.com/request/permitted_development_a_request#outgoing-2059824
https://www.whatdotheyknow.com/request/permitted_development_affecting#incoming-3421833

Google Notebook LM – an AI generated a podcast (radio show) summarising National Tree Safety Guidance (2025): https://1drv.ms/u/c/cf774754b345ce1a/EdYwfdtcqAFOvhW04-FlfDgBbqKOFs4ZuPuEtlMOVKUPxQ