

Forestry

WRG Forestry Team go into the legalities of tree-felling

Trees and the Law

WRG Forestry have had a few felling enquiries recently which has prompted - nay spurred - me into scribe mode.

I think now is as good a time as any to remind ourselves of IWA/WRG environmental codes and to touch on the subject of trees and the law. So here goes...

IWA's Technical Restoration Handbook contains a couple of sections relevant to this subject. In the **Legal Aspects of Restoration** section there are details of the various statutory designated areas: more about this later. In the **Wildlife Conservation** section can be found good advice on restoration work and conservation issues. I wouldn't exactly class felling as 'scrub bashing' but the principles are the same and I quote "to avoid disturbance to nesting birds, 'scrub bashing' should not normally be undertaken during the nesting season (April to June)". This is repeated in WRG's Practical Restoration Handbook article 'Vegetation Clearance' and I think Spencer's avoidance period of early March to August is probably nearer the mark, with spring seemingly coming earlier every year.

So let's create a hypothetical case on the old Nitts & Stuffs Canal where a couple of mature *Salix Hypoethica* are causing problems to the over-worked and underpaid working party organiser: seems familiar?

OK so you have a cunning plan to 'remove' these trees so that you can get on with the proper job of restoration during the up-and-coming WRG Summer Solstice Spectacular, but do you know anything about the law relating to trees?

The following section is in no way intended to be the definitive version of tree law it is intended as a brief guide only. I can supply more comprehensive details to those that require them.

English Law is divided into **Common** and **Statute law** and what follows is my attempt to highlight the bits of the law that you are likely to come into contact with.

Common law shouldn't really bother us: it deals with ownership, boundary, public nuisance and trespass issues. If you've planned correctly, you shouldn't come into contact with it.

Statute Law does concern us though. This can be quite heavy going, and again I've only touched on the more common issues.

Town and Country Planning Act 1990 relates to trees protected by a tree preservation order (TPO) and contains the legislation to protect the immediate pruning and felling of trees contained within a Conservation Area. There is a max. penalty of £20,000 per tree if you misbehave!

First port of call then is your Local Planning Authority (LPA) either at local or county level; most by now have their own tree officer who can give you all sorts of advice - and it's free. Here you can ascertain if your canal is in a designated area - for example a conservation area or (please no!) a Site of Special Scientific Interest (SSSI) in which case you will need to speak to English Nature (EN). A map of the work area and grid references will be really helpful to the tree officer.



Martin Ludgate

'I suppose now isn't the best time to ask whether this one has a Tree Preservation Order on it?' WRG FT at work dealing with a tricky tree at Froghall Basin - having checked it with the Tree Officer first!

Six weeks notice is needed by your LPA for work to be undertaken in a conservation area, but there are exemptions. If your tree or trees are protected by a TPO my strong advice is NOT to commence any work without prior consultation and a site visit with the tree officer; again there are exemptions but be warned: £20,000 penalty. You should be able to form a good working relationship with your tree officer: they are there to help. I have a full list of tree officers if you are having difficulty making contact.

Forestry Act 1967 will affect you if you are felling more than 5 cubic metres in any calendar quarter. You will then need a felling licence from the Forestry Commission. Your tree officer can again be helpful, or you can contact WRG FT, or you can do it yourself. Contact your local FC Conservancy or visit www.forestry.gov.uk. Applications can take up to ten weeks and will involve a site visit - and by the way, 5cuM is not a lot of standing timber. Penalties here are a fine of £2,500 or twice the value of the trees, whichever is the highest. Again, there are exemptions. You think it's all over - well it isn't, yet.

Wildlife and Countryside Act 1981 and Countryside Rights of Way Act 2000. This to me is the big one: the law that is catching out more and more people including those who should know better.

It is a safe bet that if you are working in an area close by a right of way some passer-by will ask questions about the work you are undertaking. This subject is worthy of its own article. So get your documentation in order and pay close attention to the next subject.

The first piece of legislation (**WACA**) protects many plants and animals.

Wild birds: their nests and eggs are protected by law and it is therefore an offence to intentionally kill any wild bird, to damage or destroy a nest whilst in use or being built.

CRoW goes further by saying it is an offence to intentionally or **recklessly** disturb any wild bird whilst nest building, or at (or near) a nest containing eggs or young, or disturb the dependent young of such a bird. Beware the word 'reckless' which is well known in law. A simple scenario: your local landowner gives you the OK to fell trees, you notice birds flying in and out of said trees but you carry on felling.

Down comes the tree, and so do several nests, eggs and chicks with seemingly bewildered parents flying above. Is this reckless? Well of course it is, and it carries a fine of up to £5,000 and or a six month prison sentence.

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Sparky tells us how to avoid a £20,000 fine or 6 months in jail

Bats, well I've been called worse. Similar legislation to birds in that the law protects them, their young and their roosts. A roost is interpreted as "any structure or place which is used for shelter or protection" and bats don't need to be in them at the time. It is almost impossible to tell from the ground if bats are roosting in a particular tree, so if in doubt (and remember that R-word 'reckless'), make contact with EN and your local bat group. WRG FT again can help here with names and contacts.

Badgers. The following is a summary of the offences contained within The Protection of Badgers Act 1992. It is an offence to interfere with a sett by damaging or destroying it; obstruct access to, or any entrance of a badger sett; or disturb a badger when it is occupying a sett.

If you want to work on trees which are adjacent to, or likely to affect a badger sett you may need to apply for a licence from EN.

Plants. To summarise very briefly, it is an offence for anyone to "intentionally pick, uproot, destroy any wild plant on Schedule 8-Section 13". This is a long list!

If in doubt contact your local wildlife trust and EN.

The above will limit and may prohibit certain tree pruning or felling work during Spring and Summer. Birds will nest in trees and shrubs between March and August each year, while bats will use roost sites in trees between April and September, depending on weather conditions. Some species may hibernate in large old trees during the winter months.

So when is the ideal time to fell? Probably about October 3rd at 2:37pm although not on the Prunus species or you could end up spreading silver leaf disease...

There is no ideal time, each case is different and with a bit of forethought and good planning even the Nitts and Stuffs will be restored from somewhere to somewhere else eventually.

**Graham 'Sparky' Robinson
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