

Trees

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About Sustrans

Sustrans makes smarter travel choices possible, desirable and inevitable. We're a leading UK charity enabling people to travel by foot, bike or public transport for more of the journeys we make every day. We work with families, communities, policy-makers and partner organisations so that people are able to choose healthier, cleaner and cheaper journeys, with better places and spaces to move through and live in.

It's time we all began making smarter travel choices. Make your move and support Sustrans today.
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Introduction

Sustrans and Railway Paths Ltd (RPL) manage land throughout the UK. Trees and woodlands are present on much of this land and whilst they are often highly valued features, they can be a source of maintenance issues. This Technical Information Note discusses Sustrans responsibilities as tree owners and our policies for dealing with trees and woodlands in relation to new construction, path repairs, complaints from neighbours and maintaining structures.

There are also several pieces of legislation that need to be taken into account before conducting tree work. This TIN describes Felling Licences, Tree Protection Orders, Built Conservation Areas and Wildlife Legislation. Tree inspections, to identify potentially hazardous trees, are detailed in H&S/STD/15: Sustrans Tree and Woodland Inspection Standard.

Sustrans responsibilities as tree owners

Sustrans and Railway Paths Ltd. have a responsibility to ensure that trees on our land do not threaten the safety of people using our land and that they do not damage neighbours properties or our own structures and bridges.

Trees are living organisms that will shed branches and eventually fall. The risk to people is extremely low, and the aesthetic and ecological value of trees is high. We usually aim to retain trees outside the immediate path corridor but have a legal duty of care to make sure our land is reasonably safe. As such Sustrans has a formalised tree inspection process to identify any obviously hazardous trees and reduce the risk appropriately. H&S/STD/15: Sustrans Tree and Woodland Inspection Standard details the inspection process and alternative methods of reducing the risk. If any rapid deterioration in tree health is noted, the person responsible for tree inspections should be informed. This Technical Information Note details our policies and legal considerations for conducting tree works.

It is very important not to lump all trees into one bracket or subject. The diversity is extensive. A considerable quantity of trees on disused railways, especially from track-bed and in cuttings is naturally regenerated scrub woodland of even age structure, of high density and high resilience. In a world apart are mature & landscape trees, of wide age structure, of low density, whether planted or naturally regenerated, which need to be treated as much more valuable and often less resilient.

In order to prevent damage occurring to our own structures, and to allow them to be inspected for damage or faults, vegetation must be managed around those structures. Where trees cause foreseeable damage to neighbouring property (e.g. roots threaten to topple walls etc), then the owner of the tree (i.e. the landowner where the tree trunk grows) must take action to prevent this damage. If a tree grows exactly on a boundary, then it is shared property and both parties have equal rights and responsibilities

Under common law a landowner can cut the branches from a neighbour's trees if they overhang his or her property. The same rule applies to encroaching roots, although should harm occur as a result of this pruning, liability may follow. The cut branches, including any fruit, remain the property of the neighbouring owner, however the owner cannot be forced to deal with them.

The felling of trees is controlled via the need for Felling Licences, the designation of Tree Preservation Orders and Built Conservation Areas and can also be restricted by legislation regarding wildlife protection. These are all discussed in relevant sections below.

Some trees on our land are placed deliberately and form part of the "path design", i.e. they break up long straight sightlines or are a particular feature of the path. Many of our trees are planted or maintained to encourage wildlife. Such trees should be managed so that they continue to provide their function, and should be protected from being cut down. However if they are now causing

problems or making the route feel more enclosed, then their removal or heavy thinning should be properly considered. Trees are not necessarily planted as fixtures, and often their growth rate and final size is grossly underestimated at time of early works.

Trees and neighbours

For some time it has been Sustrans' land management policy that we will do work at our cost on trees that are dangerous, diseased or causing structural problems. All trees are regularly inspected by Sustrans staff in line with the Sustrans Tree Inspection Standard but the condition of trees can change suddenly and rapidly and complaints from the public can help bring this to our attention.

Sustrans will not necessarily conduct work on healthy trees that are just blocking light or for other non-essential reasons. There is no legal right to light and trees are often a valued feature of our routes. In some cases we do suggest that we would be perfectly happy to allow the neighbour to commission a professional tree surgeon to do work at their expense provided that we see and approve their proposals, including detailed method statements prior to work being undertaken.

If this work requires entering Sustrans or RPL land then the neighbour should get written permission from us to do so. We should agree a safe access route with the neighbour through our land and inform her / him of any dangers such as overhead wires. In any case we should confirm to her / him that we take no responsibility for the health and safety of the tree surgeon while working on our land, that they must ensure the welfare of people using our path and that all ecological legislation is observed. There is a Health and Safety standard available covering management of work on our land by neighbours (H&S/STD/13: Work by Others).

Trees by structures and buildings

Sustrans and Railway Paths Ltd are responsible for maintaining more than 1100 structures such as bridges, tunnels and retaining walls. Many buildings, in particular houses, are situated in close proximity to our land. Trees growing on, or very close to structures or buildings can damage the structure directly as their roots or branches grow or by impact if they fall onto any part of the structure. They also obscure other cracks and faults that need to be monitored by the Bridge Engineer. As such it is important that we keep the structures clear of vegetation, including trees.

It is Sustrans policy to keep an area, 3m from all elements of the structure, clear of any vegetation. Saplings and young trees growing from within 5m of any structure or building should be removed to prevent future problems. The removal of semi mature and mature trees growing from between 3m and 5m of the structure should also be considered, particularly if there is existing evidence of damage to the structure. Trees that are removed should be cut low down on the trunk and the stump and roots should remain. A suitable treatment, such as Ecoplugs, should be applied to the stump to prevent any re-growth.

The tree inspections undertaken in line with in H&S/STD/15: Sustrans Tree and Woodland Inspection Standard should also inspect the trees in close proximity to the structure to determine whether they are likely to fall, drop limbs or grow in a direction that might damage the structure. If any rapid deterioration in tree health is noted, the person responsible for tree inspections should be informed.

New construction around trees

Generally, new paths should be routed around the root zones of existing trees where possible. Where a tree preservation order exists or in Built Conservation Area retaining the tree is mandatory unless local planning authority consent has been obtained (these are discussed in more detail in the relevant sections). Where planning permission is needed, most local authorities will require an

arboricultural survey and, if valuable trees are present; a tree protection plan prior to determining the application; however, this is not always the case.

To protect a tree during and after construction you need to keep well out of the root area. This could also limit future root damage to your path. The root system is generally more extensive than the spread of the canopy. As living organisms, trees are highly variable, and difficult to predict, but a healthy tree is thought to be able to withstand the loss of up to 20% of their rooting area without noticeable adverse effects. Current best practice is to consider the root protection area to be 12x the diameter of the trees trunk (measured at 1.5m above the ground); it is, however, difficult to predict where the roots will be as they do not grow in a regular shape as branches do. As well as construction, there should be no storage of materials, ground level changes or vehicular movements in this area to avoid soil compaction which would damage tree roots.

If the tree is not mature and you have the space, consider leaving an even greater buffer zone so that as the tree gets bigger it is less likely to cause root damage to the path or shade the path which would encourage moss and lichen to grow.

If construction or ground level changes do need to go over the root system, it will probably damage the tree. Where the tree or woodland is valuable, measures can be taken to reduce the risk of damage. Construction should follow a no-dig procedure and structural geotextiles can be used to prevent soil and root compaction. The technical team should be contacted for advice on a detailed construction plan. In this way, paths can be constructed very close to trees. Similar techniques can be used to distribute the loading of construction vehicles such that they do not impact adversely on tree root zones.

It is worth noting that using no dig construction and a structural geotextile past trees might also reduce future problems of tree roots damaging the path surfaces (discussed in the next Section).

If the tree is not considered particularly valuable and construction does occur in a normal manner over the root systems, it may be of increased risk of instability in the long-term depending on the extent of the damage and the species, age size and condition of the tree. Carefully consider whether this tree can be retained, often tree removal will be the best solution. The tree-inspection visits will check for dead or dying limbs and ground heave. The Area Manager should take into account significant damage to root systems when determining the inspection frequency required on routes H&S/STD/15: Sustrans Tree and Woodland Inspection Standard. Where major roots (those with a diameter of 100mm or more) or where many roots of a 25mm diameter or more are severed by the new excavation works, the person responsible for undertaking tree safety inspections must be informed to ensure that inspection frequency reflects this increased risk of tree failure. Careful consideration should be given to whether that tree can be retained, it may be better to remove the tree.

Small path surface repairs.

Tree roots growing under paths can cause the path surface to heave, which reduces ride quality and creates a trip hazard. Sustrans have dealt with this in four main ways:

- Tree removal;
- Root pruning;
- Planing of the path surface; or,
- Reconstruction of the section of path affected by the roots.

Where a tree is small and not considered to have high ecological or amenity value, it may simply be worth removing the tree altogether. In this instance Tree Preservation Orders, Built Conservation Areas and wildlife legislation, discussed in relevant sections below will all need to be considered.

Trees are living organisms and are resilient. Therefore undertaking root pruning by hand may sometimes be appropriate to prevent further damage to the path. However, too much root pruning could possibly kill the tree, cause it to decline or make it far more likely to fall over. Most trees roots will be in the top 600mm of soil and how many roots you can cut without damaging the tree depends upon;

- The size of the root you cut: roots of a diameter of 100mm are major structural roots and smaller roots may be important to supply the tree with sufficient water and nutrients;
- The number of roots you cut: more roots cut means more stress and less support for the tree;
- The proximity of cut to the trunk: the closer to the trunk, the greater the proportion of roots lost;
- Species: some tree species generate new roots more easily than others;
- Tree age: old trees are more susceptible to stress;
- Tree condition: trees with poor health already will be less likely to recover
- Tree lean: trees that are already leaning might be more likely to fall.
- Soil type and drainage: trees need more support in shallow soils

Planing of the path surface where the surface has heaved due to root activity removes the undulations from the path surface that are a hazard. In removing this material, the path surface will be thinner over the root and might show the path base. This is generally not a problem and is much cheaper than full path repair, but larger scale path repairs will probably need to be carried out after a few years.

Reconstruction of the section of path affected by the roots is the long-term method to overcome root damage. Depending on the extent of the root damage, it might only be necessary to locally excavate the surface asphalt layer of the path, scrape out some excess path base material and resurface the path. Where tree root damage is more extensive, the whole depth of the path will need reconstructing over the root and structural geotextiles can be used to reduce the risk of future damage. In order to minimise damage to the tree during this repair works the following protocol is recommended;

- A hand held breaker may be used to break through the initial crust of the surfacing. Thereafter the material should be excavated carefully using hand tools only. Care should be taken to try to retain and protect all roots, including mats of small fibrous roots including protecting the bark around the root from damage. If severance is unavoidable, roots should be carefully cut back using a hand saw or secateurs. All roots with a diameter greater than 25mm should be retained.
- Exposed roots should be protected from desiccation and frost. If they are to be left exposed overnight they should be wrapped in dry sacking overnight.
- The backfill under the path should, if possible, include inert granular material mixed with top soil or sharp sand (not builder's sand) around the roots to allow the soil to be compacted for resurfacing without damage to the roots. Elsewhere, where compaction is not required, the excavated soil can be used to backfill any holes and lightly tamped but not compacted.
- As with new path construction, the use of machinery and storage of materials must be minimised under the tree canopy.

Felling licences

A felling licence from the Forestry Commission is required to fell trees if an exemption does not apply. It is an offence to fell trees without a licence, where one is required. Licences can be obtained by following the procedure on the Forestry Commission webpage: <http://www.forestry.gov.uk/forestry/infd-63wqg4>

It is unlikely that Sustrans maintenance work will require a felling licence due to the limited scale of such works. In any calendar quarter we can fell up to 5 cubic metres without licence (as long as no more than 2 cubic metres are sold). This volume applies to each separate land title or land unit.

Other very relevant exemptions, where felling licences are not required, are;

- Tree surgery work such as lopping, pruning and pollarding (or coppicing trees with a diameter of up to 15 cm at 1.3m above ground level);
- Felling fruit trees or trees growing in a garden, orchard, churchyard or designated public open space (Commons Act 1899);
- Felling trees which have a diameter of less than 8 cm, measured at 1.3 m above ground level (or if thinning woodland a 10 cm diameter at this height);
- Felling trees immediately required for a development that has been authorised by full planning permission (Town and Country Planning Act 1990);
- Felling trees necessary for the prevention of danger or abatement of a nuisance (this must be a real not just a perceived danger or nuisance and should be confirmed by a qualified Arboriculturist and/or with legal advice);
- Felling subsequent to a notice served by a Forestry Commission Plant Health Officer or obligation imposed under an Act of Parliament.

Tree Preservation Orders and Built Conservation Areas

A Tree Preservation Order (TPO) is an order made by a local planning authority in respect of trees, groups of trees or woodlands. The principal effect of a tree preservation order is to prohibit cutting down, uprooting, topping, lopping, wilful damage, or wilful destruction of trees without the local planning authority's consent. The cutting of roots, although not expressly covered in the above list, is potentially damaging and so, in the Secretary of State's view, also requires the local planning authority's consent. Within Built Conservation Areas, all trees with a diameter of at least 75mm measured 1.5m from the ground, receive similar protection as those with a TPO and the Local Authority requires six weeks notice should work be proposed to a tree in a Built Conservation Area. Obtaining full planning permission which indicates those trees being felled does obviate the need for obtaining TPO consent.

It is therefore essential to establish whether or not a tree has its own TPO or is in a Built Conservation Area prior to undertaking work on it. Local Planning Authorities should be able to let you know, over the telephone, whether a tree or group of trees are subject to a TPO or situated in a Conservation Area. Copies of TPO are also available at LA offices for public inspection free of charge.

There are certain exemptions where local planning authority consent is not required, e.g. the cutting down or carrying out work on dead or imminently dangerous trees, or trees or parts of trees that have become dangerous. Only the dead, damaged or dangerous parts of trees can be removed. If a whole protected tree needs to be removed, then the owner needs to plant a replacement tree at the same place. It should be noted that dead or dying trees may provide a habitat for protected wildlife and will be subject to wildlife legislation, as discussed in the relevant section below.

In deciding whether trees have become dangerous the Courts adopt the sensible approach of a prudent citizen: by virtue of the state of the trees, their size, their position and such effect as any of those factors have, one can properly conclude that the trees have become dangerous. The Court will look at what is likely to happen, such as injury to a passing pedestrian. If such damage is far off, remote and not immediate the trees do not come within the meaning of the exemption. Anyone proposing to cut down a tree under this exemption is advised to give the local planning authority five days' notice before carrying out the work, except in an emergency.

Another exemption allowing work on a protected tree is to abate a nuisance (as defined in law). For trees under a protection order, the common law right to cut back tree nuisance on a neighbouring property applies only where the overhanging branches or roots are causing actual foreseeable damage, not where they simply annoy a neighbour who wishes to have clear airspace over his

property. Again, it is advised to give the local planning authority five days' notice before carrying out the work.

Pruning fruit trees in accordance with good horticultural practice is permitted even when the fruit tree is protected by a tree protection order.

Proving that the tree/trees meet an exemption is Sustrans responsibility and therefore records and photographs should be kept for evidence.

Sites of Special Scientific Interest

Certain works are restricted in Sites of Special Scientific Interest (or Areas of Special Scientific Interest in Northern Ireland) and will require consent from your statutory body (Natural England/Scottish Natural Heritage/Countryside Council for Wales/Northern Ireland Environment Agency). What works are restricted depend on what the site is designated for. Tree felling might be welcomed in grassland sites, but would be illegal without permission in others. To find out the locations of SSSI, you can check your statutory bodies website. Operations requiring consent in that SSSI are listed on the NE and SNH websites, but in Wales and Northern Ireland you might have to call CCW or the NIEA to find out what operations require consent. The statutory body may produce an SSSI management plan that permits Sustrans to undertake sensible ongoing tree work or other maintenance.

Wildlife Legislation

Trees that are dead, dying or diseased are often valuable for wildlife and should be left in place as much as possible. It is often possible to remove branches overhanging the path, which may cause a threat, while leaving the bulk of the tree in place. Leaving cut wood in a shady spot will also provide a valuable wildlife habitat if the deadwood cannot be left in situ.

Bats and nesting birds both commonly use trees and could be disturbed by work on trees in contravention of current legislation. Bats and their roosting places are legally protected in each of the devolved nations making it an offence to deliberately or recklessly disturb a bat, damage or destroy a resting place (whether or not a bat is in there at the time) or to obstruct access to a roost.

For any European Protected Species; if disturbance or damage etc results from tree works this is considered to result from recklessness, and constitutes an offence. It is therefore important that a tree is inspected for potential to support bats before works go ahead.

Holes, cracks and crevices can all be used by roosting bats, as can less obvious features like peeling bark and thick ivy stems. When a tree is in leaf, or has ivy or other vegetation, these can obscure features that can be used by roosting bats.

If a tree has features that could be used by bats advice should be sought from a bat worker before work commences. In some situations members of local bat groups may pop out for a quick inspection to offer advice on whether a tree may be used by bats, however, in many cases professional surveys may be required to check whether the tree is a bat roost. Discuss your plan with the Sustrans or local ecologist as early as you can.

If a tree is found to be used by bats, a licence from Natural England/Countryside Council for Wales/Scottish Natural Heritage will be required in order to conduct the tree works. A licence will only be issued where the work is required to preserve public health or public safety or other imperative reasons of overriding public interest, and then only where there is no satisfactory alternative and where the action will not be detrimental to conservation status of the species. Provision of alternative roosting areas will be required.

In an emergency situation, where tree works are urgently required to preserve public safety, and the tree has features that could be used by roosting bats, ring the National Bat Helpline for advice on 0845 1300 228 and they will be able to put you in touch with a local bat worker to advise what to do.

Nesting birds are also legally protected. It is illegal to take, damage or destroy the nest of any bird species while that nest is in use or being built. The nesting season is weather dependent, varies throughout the UK and some birds nest throughout the year. The nesting season can generally be considered to extend between March and September inclusive, but as discussed this is a guide only. It is best practice and strongly advisable to conduct tree works outside this generalised season to minimise the risk of disturbing birds.

If tree works are required within the main bird breeding season the tree and surrounding vegetation should first be inspected for nesting birds. It is not sufficient to have a quick look round for big twiggy nests made by pigeons and crows. Many small birds use cracks and holes in trees or make discreet nests in scrub, shrubs and grass near the tree bases or in open area. It will take a couple of hours sitting with binoculars in a discreet location and a very detailed search to determine the presence of nesting birds.

Tree felling or vegetation clearance in the vicinity of a badger sett could cause disturbance to badgers in their sett, in contravention with current legislation. Before tree felling occurs a check should be made of the area within approximately 30 m of the works for holes.

Where a badger sett is present;

- Vegetation clearance within 20 m of the sett should be avoided wherever possible. Only minor shrub/sapling removal using hand tools may be conducted in this zone, as quickly and quietly as possible. Significant vegetation removal should be avoided;
- Trees felled nearby should be felled away from the sett, maintaining a minimum 20 m protection zone around it;
- Machinery should be kept at least 30 m from the sett and prolonged periods of noise and vibration near the sett should be avoided, particularly during the badger breeding season (December to June inclusive); and,
- No fires or chemicals should be used within 20 m of a sett.

Felled timber should also be cleared from badger pathways.

Where more significant work is required within 30 m of a badger sett a licence from Natural England/Countryside Council for Wales/Scottish Natural Heritage will be required. Licences will not be issued for works conducted between December to June inclusive.