

Highways Act 1980 Section 154(2)

Procedure:

This procedure is for the Tree & Woodlands and Planning Enforcement teams to deal with dead/dying trees that are a danger to users of the highway.

The Tree & Woodlands team will identify trees that are dead/dying, and in their opinion also represent a danger to users of the highway. This danger may not be immediate, i.e. the tree may not be at risk of falling down in the next few days, but, if left to continue dying/decaying will eventually present such a risk.

Step 1 – Trees & Woodlands Team card drop the house to try and resolve informally within a week or so.

Step 2 – No engagement by the resident, the Tree & Woodlands Team will refer the matter to the Planning Enforcement team. The referral will include a completed report template, which is the Council's evidence, and a map showing the location and/or photo(s) of the tree in question.

Step 3 – A check must be done with Planning Enforcement Team prior to serving notice to establish if the tree is either subject to a Tree Preservation Order (TPO), or is within a Conservation Area, if either (or both) these criteria apply, then the Planning Enforcement team must confirm whether they want the tree to be replaced after removal or not.

Step 4 – Modify the statutory notice based upon Planning's reply. For example, if there is no TPO, and the tree is not within a conservation area, then there is no requirement on the owner to replace the tree, and this section can be removed from the notice. If it is subject to a TPO and Planning require it to be replaced, then choose that section on the template, and so on.

Step 5 – Issue the Notice to the owner, with a copy for info only being sent to the occupiers if the owner lives elsewhere. This is so the occupiers are not surprised if/when the tree contractor attends site to make the tree safe. The Notice gives 28 days, rather than the 14 days quoted in the Act, this is due to an anomaly which affects all Highway Authority enforcement, s316 of the Act entitles people to appeal any Highway Authority notices within 21 days. Clearly, the Council cannot undertake works in default on day 14 when the Owner/Occupier can still appeal until day 21. To ensure no 'postal' or other 'service' issues, allow 28 days, which is ample time to comply. The notes on the Notice must make it clear the costs that the Owner/Occupier may incur if the Council carries out the necessary works in default.

Step 6 - Depends on the owner. The likely scenarios are –

1. Works done within time, (not further action required).

2. Appeal is made to Magistrates' Court – notify Tree & Woodland officer, as they will need to attend court. (This is a civil matter, not criminal.)
3. Works **not** done within 28 days. Take photos for evidence and email the Trees & Woodlands Team to arrange for the remedial works to be undertaken. If the Owner/Occupier contacts the Council asking for a quote from the Council's contractor, refer them back to the Tree & Woodlands Team.

Step 7 – Confirmation is received from the Trees & Woodlands Team of the work being completed. Invoice to be raised for 'all' the costs incurred, if the invoice is unpaid, debt recovery should be made through the small claims court. A copy of the contractor's invoice and photos will need to be included in the file for debt recovery through the small claims court.