

# Planning Communication



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Audience: All Planners and Planning managers  
Category: Regulatory, Quality & Governance

## Regulatory guidance and considerations when Tree Cutting/Lopping is identified

### 1 Introduction

Openreach continues to rapidly expand their FTTP footprint across the UK, which means installing more apparatus in new locations. We also need to maintain the existing network to ensure customers receive the best service possible. As we do so there may be a requirement to cut and lop tree branches, prune bushes and hedges.

Trees often play an important part in the communities in which they are located, whether this be lining a street or providing habitats for birds and wildlife and sometimes they can be protected by law. Therefore, quality engagement and basic regulatory understanding is key, and will avoid unnecessary complaints and objections if you carry out due diligence BEFORE deciding to lop branches etc.

This document outlines advice and guidance on Openreach's policy on how to approach this matter and key considerations when undertaking surveys and planning tasks.

### 2 Identify if the tree sits on private land.

If the tree is located on private land, then we must always engage the landowner or occupier for permission before we take any action. Failure to do so could result in a claim for criminal damage and can also be damaging to the Openreach Brand.

To help identify the landowner or occupier please utilise the relevant Land Registry system to confirm if the location shows a private landowner and if in doubt consult the local Authority who may help with land identification.

There is an OFCOM notice [Para 82\(3\)](#) (Appendix C) can be used to get written permission from land owner (see part 5).

### 3 Identify if the tree is located in a Conservation Area or is protected by a Tree Preservation Order (TPO)?

Before conducting any tree lopping work we must also identify if the trees are located in a Conservation Area or are protected by a TPO. The rules for cutting trees in these categories differs across England, Scotland, Wales and Northern Ireland (see part 4 for full details).

Conservation areas exist to manage and protect the special architectural and historic interest of a place and are designated by the Council as the local planning authority. Similarly a TPO is an order made by a local planning authority to protect specific trees, groups of trees or woodlands.

You can usually find this information from engaging the landowner, checking the Local Authority Website or contacting the Local Planning Authority. The DEFRA website [Magic Maps](#) can also be used to identify these categories.

TPO's may also be identified by checking the Land Registry documents, as a charge is usually installed on the land on which the trees are standing.

Don't make assumptions, always check as sometimes the tree may not look important to you but it could have legal protections.

### 4 Lopping any Trees in Conservation Areas or with TPO's.

These are subject to Town and Country Planning regulations. Town and Country Planning regulations are devolved to each national parliament and therefore differ across England, Scotland, Wales and Northern Ireland. In all cases if the tree stump is on private land then the permission of the land owner (see part 5) is required in addition to the guidance below.

To help the following advice for each country is as follows:

#### **England**

The Town and Country Planning (Tree Preservation) (England) Regulations 2012, Part 3 outlines "Exceptions" for Trees with Tree Preservation Order's and in Conservation Areas for statutory undertakers.

The exception allows for cutting, topping and lopping of a tree on the grounds that:

- (iii) by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary
- (aa) in the interests of the safe operation of the undertaking;
- (bb) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker;
- (cc) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995(3);

Therefore **we can** cut, top or lop trees without the local authorities' prior consent for trees in both Conservation Areas and with TPO's, to enable us to carry out our work.

## **Scotland**

The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 2010, Regulation 8 outlines "Exceptions" for Trees in Conservation Areas for statutory undertakers.

Conservation Areas - we can proceed to top or lop trees without the local authorities' prior consent for the purposes of our work.

Tree's with a TPO – written notice (see appendix A) must be provided to the local planning authority as soon as proposed operations are identified so they are aware of our intended work. Should they have an objection they will engage the person on the notice to discuss further.

## **Wales**

The Town and Country Planning (Trees) Regulations 1999, unlike England there has been no publication of an amendment for Wales which reflects any exemptions for Statutory Undertakers when undertaking Tree works in Conservation Areas or with TPO's. Likewise the advice from Natural Resources for Wales state that Trees in Conservation Areas are also subject to protection as if a TPO is in place.

Therefore we **must apply** to the Local Authority (see appendix A) for permissions to carry out work. The authority has six weeks in which to respond and work should not commence until the Department has commented, or the six weeks has expired, whichever takes place first. You can engage with the Local Authority during this time period to ask for an earlier start if the works are urgent.

## **Northern Ireland**

The Northern Ireland Planning Act (Northern Ireland) 2020 and The Planning (Trees) Regulations (Northern Ireland) 2015 apply here.

Regulations in Northern Ireland do not show any exemptions for Statutory Undertakers. Likewise the advice from the Dept of the Environment state that Trees in conservation areas are also subject to protection as if a TPO is in place.

Therefore, like Wales, we **must apply** to the Local Authority (see appendix A) for permissions to carry out work. The Authority has six weeks in which to respond and work should not commence until the Department has commented, or the six weeks has expired, whichever takes place first. As in Wales we can engage and request an early start.

## **5 Lopping Trees that sit on Private Property?**

If a tree or other vegetation overhangs a street and obstructs or interferes with the working of any apparatus (or would obstruct or interfere with apparatus that is about to be installed), we need to conduct engagement with the landowner before removing branches.

In many cases simply speaking to the landowner to gain consent will be sufficient. If the landowner has no objection, document this by asking them to sign a "Permission to Work" form (see appendix B) to be stored in the job pack as evidence and proceed as normal.

If the landowner objects to us lopping the branches, advise them that as the owner or occupier of the land, they have a legal responsibility to ensure the public highway, immediately adjacent to the property is not obstructed. We are willing to lop the offending branches to allow us to maintain/install our apparatus, at our expense to enable our works to continue.

If you're still met with an objection despite positive engagement or are not able to engage/speak to the landowner or occupier, we can give notice under Paragraph 82(3) of Part 13, Schedule 3A of the Communications Act 2003 ([appendix C](#)).

The 3 common outcomes once a notice has been issued are:

- The landowner or occupier may simply agree to the request. If so, you should obtain a signed permission to work and attach to the job pack and progress the works.
- The landowner or occupier may choose to do nothing and once the notice period of 28 days has passed we may proceed with our works. Include a copy of the notice we served in the job pack.
- The landowner or occupier issues a counter notice, pursuant to Paragraph 82(4) to object our request within 28 days. We can then only proceed if we have obtained an order from the Court or Tribunal and you will need to seek advice from Openreach's legal team. We would suggest that you contact [regs.advice@openreach.co.uk](mailto:regs.advice@openreach.co.uk) should this occur with the relevant details. This can be costly and time consuming, therefore if there is an alternative solution, it should be considered before following this action.

To note : Whilst we are following government guidelines and Openreach policies for working during Covid 19, we can agree with the landowner to sign the agreement and note that this was done on their behalf as a result of Covid 19 and arrange to send them a copy by email if requested.

## **6 Trees located in Publicly Maintained Highway or Local Authority Land, not in a Conservation Area or have a TPO?**

Where the tree is located on publicly maintained or adopted highway and not in a conservation area or has a TPO, it is usually the responsibility of the Local Authority to maintain them. They do this to meet the required standards as outlined in the Highways Act 1980. This ensures that items such as the road and footpath including traffic signals, street lights and some road signs are clear and unobstructed.

There is no statutory requirement for authorities to lop trees for our apparatus. Therefore, for trees in these locations, we may lop and trim vegetation, assuming we do so in a professional manner, and with minimal damage to the tree and in accordance with correct Health & Safety and Environmental waste requirements.

## **7 Protecting wildlife, Nesting Birds and other environmental considerations**

The bird nesting season according to Natural England begins on March 1st and runs through to July 31st. This however is a guideline and it can be assumed that birds will nest both before and after this time period.

It is advised that any work carried out to trees, hedges or vegetation should not be implemented during this season, but sometimes this is neither practical nor possible. It is our responsibility to ensure that work to trees and vegetation carried out within this period avoids any negative impact on wildlife. Failure to do so may see us breaching The Wildlife and Countryside Act 1981.

Before any work a thorough visual survey needs to be carried out, to ensure there are no nesting birds present or that the intended work will not disturb any birds nesting near to the work site.

Other environmental considerations we should be aware of are;

- Protecting rare or endangered plants or bushes.
- Trees can be protected by species and as such fall under the remit of the Conservation of Habitats & Species Regulations 2017. These require special consent in collaboration with Natural England (or other devolved governed body).
- Bats and other animals may roost in the trees and again advice should be sought prior to conducting works with Local Planning Authority or Natural England (equivalent body in Scotland, Wales or Northern Ireland).
- Disposal of any tree cuttings should adhere to Openreach's Environmental waste policy

Should you have concerns over any of these or other issues not listed contact the Local Planning Authority. Many authorities employee Tree or Woodland Officers (Arboricultural Officer) who can be engaged prior to any works taking place for additional advice.

## **8 This is what we must do.**

1. Never assume that we can simply proceed with our works without consequence or under Permitted Development Rights.
2. Complete a thorough site Survey of the area you are working in and engage with all relevant parties.
3. Correctly identify the landowner/occupier and document consent.
4. Ensure you know if you are working in a Conservation Area or if the Tree(s) are protected before authorising any works. Engage & use [Magic](#)
5. Engage the local planning authority for advice and guidance before starting work if there is any concern around the location, environment or protections.
6. For more information or support, visit the [Net Regs website](#) or email [regs.advice@openreach.co.uk](mailto:regs.advice@openreach.co.uk) for further help and support.

## 9 Appendix

- A) [Blank Tree Request form](#)
- B) [PERMISSION TO WORK AT CUSTOMER SITE](#)
- C) [Para 82 Statutory Notice](#)

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## 11 Registration

The following link enables you to register for and check your current registration to receive Planning and Policy Communications and Briefings:

### **Registration for Planning Communications and Policy Briefings:**

[Registration link](#)

## 12 Supporting links

[Network Policy Website](#)

[Network Policy Briefings & Planning Communications](#)

[Registration for Policy Briefings and Planning Communications](#)

[Openreach Acronyms & Glossary of Terms](#)

[Network Policy Workplace Group](#)