

Rudby Parish Council Protocol for Proposed Tree or Hedgerow Work

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1 Scope of this protocol

Trees and countryside hedgerows are important assets in maintaining and enhancing biodiversity. Parishioners may be aware of the work carried out by 'Trees for Tomorrow' and other groups within the Parish to increase our stock and variety of trees as ways in which our community contributes to support for the environment.

Rudby Parish Council (RPC) as a statutory consultee is routinely asked by Hambleton District Council (HDC), our Local Planning Authority (LPA), to comment on prior notifications for proposed work to trees in the Conservation Area, on applications for proposed works to trees subject to individual, group, or area Tree Preservation Orders (TPO), and on Hedgerow Removal Notices for hedgerows which fall within the scope of the Hedgerows Regulations¹.

Tree works or hedgerow removal² are also sometimes involved in development applications, and the protocol also gives guidance for those situations. A granted planning approval for development which permits the removal of trees or hedges overrides any other form of protection. Some trees have protection from conditions on prior development approvals requiring new planting or retention and replacement of trees, but these are not easily identified.

As a consultee, a Parish Council can make a recommendation to its LPA on what they would like to happen, but the decision is always made by the LPA which is not obliged to follow recommendations made by a Parish Council.

RPC will assess each case on its own merits in line with national and local policy, but as part of its commitment to the environment will also consider its broad objective that consultation submissions will generally seek to encourage HDC to make decisions which protect and enhance the character, natural environment, and biodiversity of the Parish.

RPC has developed and adopted this protocol as an aid to achieving this objective using a transparent and consistent framework.

This protocol was adopted by a resolution at a Rudby Parish Council meeting on 08/03/2021.

¹ Domestic / residential hedges are outside the scope of the Hedgerow Regulations.

² Felling of large trees which are not in a residential setting may also require a felling licence issued by the Forestry Commission.

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2 National Policy Considerations

2.1 How is Conservation Area tree work managed by the prior notification process?

A **prior notification** to their LPA should be made by anyone³ wishing to carry out pruning or felling work on trees above a certain size⁴ in a Conservation Area that do not have a TPO. The purpose of the prior notification procedure is so that an LPA has an opportunity to decide whether the tree(s) should be protected before work starts. This is only for tree works in a Conservation Area and there is no equivalent procedure for trees elsewhere. Key features of the procedure are:

The LPA can only do one of 3 things:

1. Do nothing, in which case the work described on the **prior notification** is automatically approved after 6 weeks.
2. Approve the work described before the 6 weeks expire, in which case the work is authorised as soon as the decision notice has been issued.
3. Make a TPO to prevent or control the scope of the proposed work via the TPO.

The LPA cannot:

1. Modify the scope of work of a **prior notification** unless it makes a TPO and then controls work through the TPO.
2. Impose conditions on the approval of the **prior notification** e.g. for replacement planting.

Therefore, in response to a **prior notification** a parish council can only do one of 3 things:

1. Make no recommendation and leave the decision entirely to the LPA.
2. Recommend that the LPA approve the work as described.
3. Recommend that the LPA consider making a TPO (to prevent or modify the work).

³ There are exemptions for 'permitted works', such as pruning around power lines by utility companies who have powers under the [Electricity Act 1989 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1989/29/schedule/4/paragraph/9), Schedule 4 Paragraph 9.

⁴ Trees that have a trunk diameter of more than 75mm when measured at 1.5m from ground level (or more than 100mm if reducing the number of trees to benefit the growth of other trees).

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2.2 What should happen if an LPA is requested to consider making a TPO?

An LPA should make a TPO if it appears to them to be '**expedient** in the interests of **amenity** to make provision for the preservation of trees or woodlands in their area'.

When deciding whether a TPO is appropriate, authorities are advised to take into consideration what '**amenity**' means in practice, what to take into account when assessing **amenity** value, what '**expedient**' means in practice, what trees can be protected and how they can be identified.

The guidance set out below on how to interpret these terms is taken from [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/tree-preservation-orders-and-trees-in-conservation-areas). Government guidance is also given on how to assess **amenity value**.

"Although some trees or woodlands may merit protection on **amenity** grounds it may not be **expedient** to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

It may be **expedient** to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the **amenity** of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases, the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of **amenity**, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant **amenity value**. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution."

"**Amenity** is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order, they should be able to show that protection would bring a reasonable degree of public benefit in the present or future."

It is important to note that if RPC respond to a **prior notification** or a **planning application** by recommending that HDC considers making a TPO, this is only a request to invoke the structured decision process that assesses the amenity value of the tree and whether it is worth of protection. If the tree is not worthy of protection an order will not be made.

If an LPA decides to make a TPO, the order is provisional until it is confirmed through a consultation process where the landowner and various other parties must be consulted.

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2.3 How is tree work managed under the TPO process?

A TPO can be for a single tree or for a group of trees, or for all trees within a defined area. Anyone wishing to prune or fell a tree subject to a TPO must apply to their LPA for consent to carry out the proposed work unless one of the various exemptions or emergency procedures applies e.g. for dead or dangerous trees. Full details of the procedures and exemptions are available on www.gov.uk⁵

For an application for work on a tree subject to a TPO, the LPA can:

1. Grant consent unconditionally.
2. Grant consent subject to conditions e.g. replacement planting.
3. Refuse consent.

Therefore, in response to this type of application a parish council can do one of 4 things:

1. Make no recommendation and leave the decision entirely to the LPA.
2. Recommend that the LPA grant consent unconditionally.
3. Recommend that the LPA grant consent subject to conditions.
4. Recommend that the LPA refuse consent.

⁵ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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2.4 How is hedgerow work managed under The Hedgerows Regulations?

A countryside hedgerow is a boundary line of bushes which can include trees. They provide important habitat, especially where the associated fields are arable land or are 'improved' grassland both of which have very poor biodiversity. Due to their linear nature, they act as wildlife corridors for foraging species and for species 'commuting' to new territories.

Landowners must notify the Local Planning Authority before removing any hedgerow which is subject to [The Hedgerows Regulations 1997 \(legislation.gov.uk\)](https://www.legislation.gov.uk). In summary a hedgerow is subject to the regulations, meaning it cannot be removed without permission, if it meets the following criteria for **length** and **location**:

Length:

- more than 20m long with gaps of 20m or less in its length
- less than 20m long, but meets another hedge at each end

Location (Land Use):

- land used for agriculture or forestry
- land used for breeding or keeping horses, ponies or donkeys
- common land
- a village green
- a site of special scientific interest
- a protected European site such as a special area of conservation or special protection area
- a local or national nature reserve
- land belonging to the state

A hedgerow is not protected and is not subject to The Hedgerow Regulations if it is in, or marks the boundary of, a private garden.

A hedgerow is **important**, and is protected, if it is at least 30 years old and meets at least one of these criteria:-

- marks all or part of a parish boundary that existed before 1850
- contains an archaeological feature such as a scheduled monument
- is completely or partly in or next to an archaeological site listed on a Historic Environment Record (HER), (formerly a Sites and Monuments Record)
- marks the boundary of an estate or manor or looks to be related to any building or other feature that's part of the estate or manor that existed before 1600
- is part of a field system or looks to be related to any building or other feature associated with the field system that existed before 1845 - you can check the County Records Office for this information
- contains protected species listed in the Wildlife and Countryside Act 1981
- contains species that are endangered, vulnerable and rare and identified in the British Red Data books
- includes woody species and associated features as specified in Schedule 1, Part II Criteria, paragraph 7(1) of the Hedgerow Regulations - the number of woody species needed to meet the criteria is one less in northern counties. (Rudby Parish is in a 'northern county')

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Determining whether a hedge satisfies the importance criteria will normally require a field survey by an expert at an appropriate time of year.

Once the LPA has acknowledged a hedgerow removal notice, it has 42 days to respond. In that time, they will consult the relevant parish council. A parish council might ask for more time to consider the proposal. The LPA will issue either:

- a hedgerow retention notice - if the hedge is protected and must be kept (this is unlikely unless the hedgerow meets the importance criteria),
- a written notice giving permission to remove it in the way proposed.

The applicant has up to 2 years from the date of the written notice to remove the hedgerow or can remove the hedgerow if they do not hear back from the LPA within the 42 day period.

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3 RPC's protocol for responding to tree or hedgerow consultations.

3.1 How will RPC deal with a prior notification of pruning work?

RPC's decision-making process starts from a premise that **pruning** of trees within the Conservation Area from time to time is a necessary management practice for safety and other reasons.

RPC will normally recommend approval of **pruning work** unless there is good reason to believe that the scope of work is unnecessary, is excessive, or is likely to be harmful to the health of the tree(s).
If RPC decide it is unable to recommend approval of **pruning work**, it will normally recommend that HDC consider making a TPO to control the work.

Proposals for extensive pruning work are more likely to be supported by RPC if accompanied by a professional arborists report⁶ explaining why the work is required and why it is not expected to be harmful to the health of the tree.

3.2 How will RPC deal with a prior notification for tree felling?

By definition, the tree(s) concerned must be in the Conservation Area, and RPC's decision-making process starts from a premise that the felling of trees within the Conservation Area is harmful to the character of the Conservation Area and is not in the public interest unless justified on safety, disease, or other exceptional grounds.

The Parish Council will normally recommend that HDC consider making a TPO unless exceptional grounds justifying the proposed **felling** exist.

Proposals for felling are more likely to be supported by RPC if accompanied by:

- a professional arborists report providing an expert opinion that the tree is unsafe, diseased, approaching the end of its life, or needs to be felled for some other appropriate reason.
- a voluntary commitment⁷ to carry out replacement planting of tree(s)⁸ near the felled tree.

3.3 How will RPC deal with an application for TPO pruning work?

A tree subject to a TPO, which will not necessarily be within the Conservation Area, by definition, has amenity value and it is in the public interest to protect amenity. As for the prior notification procedure, RPC's decision-making process starts from a premise that **pruning** of trees from time to time is a necessary management practice for safety and other reasons. RPC's presumption is that **pruning work** is justified unless there is good reason to believe the scope of work is unnecessary, is excessive, or is likely to be harmful to the health of the tree(s).

RPC will normally recommend that HDC consent to the work. Only when there is a good reason to do so, will RPC recommend that HDC apply conditions to limiting the scope of work or refuse consent.

Proposals for extensive work are more likely to be supported by RPC if accompanied by a professional arborists report explaining why extensive work is necessary and why it is not expected to be harmful to the health of the tree.

⁶ Arborist's reports are not a mandatory or statutory requirement, but are helpful for sound decision making.

⁷ This cannot be conditioned under the prior notification procedure and is reliant on good faith for delivery.

⁸ The number and species of replacements is context dependent in a residential setting. Native broad leaf, like-for-like, or other forms of replacement planting may be appropriate. The Environment Agency recommend that five (5) replacement trees are planted for each mature tree felled – this will not always be practical.

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3.4 How will RPC deal with an application for TPO felling work?

A tree subject to a TPO will not necessarily be within the Conservation Area but, by definition, has amenity value and it is in the public interest to protect amenity. RPC's decision-making process starts from a premise that felling of a protected tree is only justified in exceptional circumstances.

RPC will normally recommend refusal of consent to **fell** a tree which is subject to a TPO unless exceptional circumstances are demonstrated.

Proposals to fell a tree subject to a TPO are more likely to be supported by RPC if accompanied by:

- a professional arborists report providing an expert opinion that the tree is unsafe, diseased, approaching the end of its life, or needs to be felled for some other appropriate reason.
- a proposal⁹ from the applicant for replacement planting of tree(s) near the tree to be felled.

RPC will normally recommend that replacement planting is conditioned¹⁰ in any consent.

3.5 How will RPC deal with consultation on making of a TPO?

Whether the TPO process has been initiated at RPC's request or for other reasons, RPC will make its decision on whether to support or to oppose the making of the TPO based on the information which is available at the time when it is consulted. In particular, even where the TPO process has been invoked at RPC's request, the decision is not pre-determined by RPC's prior involvement since new information is likely to be available.

When consulted, RPC will decide whether to support or oppose the TPO after considering:

- RPC's presumption in favour of retaining and increasing tree cover in the Parish.
- The criteria for TPOs set out in government guidance,
- Submissions made on the planning portal or made directly to RPC:
 - by or on behalf of the applicant
 - by statutory consultees or other relevant bodies
 - expert reports
 - by members of the parish community

⁹ Replacement planting can be conditioned when there is a TPO, but it is not an automatic requirement as there may be circumstances where it is not achievable.

¹⁰ The LPA has enforcement powers and can serve a Tree Replacement Notice if a landowner fails to carry out replacement planting which has been conditioned.

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3.6 How will RPC deal with consultation on a hedgerow removal notice?

RPC will make a 'desktop' review using evidence available on free public online sources such as [Google Maps](#) or [Old-Maps - the online repository of historic maps \(old-maps.co.uk\)](#) to determine whether the hedgerow:

1. appears to meet the length and location criteria for protected status, and
2. is likely to meet the age (30+ years old) importance criteria.

It is reasonably likely that old hedgerows in this area will meet the importance criteria set out in Schedule 1, Part II Criteria, paragraph 7(1) of the Hedgerow Regulations. RPC will therefore recommend that an ecological survey is carried out before determination unless

1. an ecological survey has already been carried out, or
2. is unnecessary because there is strong evidence that the hedgerow is important for some other reason (e.g. a statutory consultee has confirmed it meets the historic criteria).

RPC will decide whether to recommend that HDC issue a hedgerow retention notice after considering:

- RPC's presumption in favour of retaining important hedgerows in the Parish,
- The criteria set out in the Hedgerow Regulations or other government guidance,
- Submissions made on the planning portal or made directly to RPC:
 - by or on behalf of the applicant
 - by statutory consultees or other relevant bodies
 - expert reports
 - by members of the parish community

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3.7 How will RPC deal with tree felling in development proposals?

Mature trees are significant biodiversity assets. Retention of all mature trees on a development site (if possible) is RPC's preferred design solution, followed by minimum losses with replacement planting (if practical). National planning policy has a presumption in favour of development, but also has a requirement that development should deliver net biodiversity gains.

RPC recognise that some developments cannot proceed without trees being removed, and that loss of trees is only one of many issues which need to be considered in the planning balance.

When considering applications for development which involve tree works, RPC will consider any adverse impacts on trees and whether any proposed losses could reasonably be avoided, and whether replacement planting delivering net biodiversity gain¹¹ is proposed as mitigation of losses.

RPC will normally address impacts on trees in its submission as a statutory consultee, and it will normally recommend conditions requiring replacement planting are included in any approval.

3.8 How will RPC deal with hedgerow removal in development proposals?

Mature native species hedgerows (whether within the scope of the Hedgerow Regulations or not) are significant biodiversity assets. Retention of existing hedgerows on a development site if possible is RPC's preferred design solution, followed by minimum losses with replacement planting (if practical). National planning policy has a presumption in favour of development, but also has a requirement that development should deliver net biodiversity gains.

RPC recognise that some developments cannot proceed without some hedgerow being removed (e.g. to create an access), and that loss of hedgerow is only one of many issues which need to be considered in the planning balance.

When considering applications for development which involve hedgerow removal, RPC will consider whether any proposed losses could reasonably be avoided, if it is unavoidable whether the removal is kept to the minimum necessary, and whether replacement planting delivering net biodiversity gain is proposed as mitigation.

RPC will normally address impacts on hedgerows in its submission as a statutory consultee, and it will normally recommend conditions requiring mitigation are included in any approval.

¹¹ HDC's emerging Local Plan and the emerging Parish Neighbourhood Plan are expected to including policies requiring use of metrics to quantify net biodiversity gain from proposals.

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4 What can RPC do about unauthorised work?

RPC has no powers of its own to investigate unauthorised work or to enforce any of the controls on tree or hedgerow work.

If RPC, or any member of the public, suspects unauthorised work is taking place the only available action is to report the incident to HDC's planning enforcement team who do have powers of investigation and enforcement.