Swinderby Parish Council

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Email: swinderbyparishcouncil@gmail.com

Tree Management Policy

Executive Summary:
Swinderby Parish Council has developed this policy to guide and influence all decisions affecting the management of trees and hedges within the village. The policy will dictate how the Parish Council manages trees within its jurisdiction and will guide landowners and residents when considering their trees and hedges. Every landowner remains responsible for trees and hedges on their property. Swinderby Parish Council, in enacting this policy, in no way accepts any liability for trees and hedges not on property it owns or manages. If any aspect of this policy conflicts with statutory planning law or any aspect of common law or liability, the law takes precedence.

The aim is to act in partnership with everyone in our community to allow speedy, effective and appropriate management of trees without undue bureaucracy and expense. Additionally, there is a desire to achieve an overall improvement in the understanding of what the Parish Council is doing with regard to trees the Parish Council is responsible for, and that all matters relating to trees are dealt with following fair and regulated procedures.

The Policy:
• Ensures that trees owned or managed by Swinderby Parish Council are adequately protected and cared for.
• Provides a framework for inspection and maintenance of Parish Council tree stock.
• Sets guidelines that the Parish Council will follow when making decisions relating to tree protection, tree inspection and communicating with neighbouring land/property owners.
• Provides details of procedures used when communicating about issues relating to trees.
• Provides a definitive reference guide relating to the legal aspects of boundaries, encroaching trees, hedges and 'right to light' issues.
• Provides information on emergency procedures with regard to potentially dangerous trees.
• Provides answers to frequently asked questions concerning trees and their impact on adjacent property.

The most frequently asked question relating to trees is concern about overhanging branches and leaf fall in the autumn. The Parish Council reminds residents and land owners that pruning may be carried out on unprotected trees (i.e. not subject to a Tree Preservation Order) where they overhang your property, VERTICALLY in line with your boundary.

Where trees are located in public community areas and access is required to carry out pruning as described above, you will require written permission before carrying out such work from the community area.

Full details of the Policy can be found on the Parish Council website (link at the top of this summary) and are available from the Parish Clerk for any resident or landowner to view. Please contact the Parish Clerk to arrange this.

If you are in any doubt as to the rights you may have or actions you are considering taking regarding trees owned or managed by the Parish Council, please contact any one of the Parish Councillors to discuss before proceeding. We will be happy to offer advice.
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The Importance of Trees in the Parish and Village
Our trees are a significant part of the parish and village. They contribute to the appearance of all parts of our community and provide shelter and pleasure. However, unmanaged trees can adversely affect our quality of life in many different ways.
In a well managed environment trees provide shelter and a constantly changing backdrop as well as habitats for wildlife, flora and fauna. Trees provide privacy and can effectively conceal less attractive parts of the built environment.
An abundance of trees is visually attractive and can positively influence property values ensuring the parish remains a desirable place to live, work and visit.
Trees reduce the ‘Greenhouse Effect’ and improve air quality by naturally filtering the air of noxious dust and gases. Trees can provide an effective sound barrier to noise pollution from nearby main roads.

Trees and Modern Living
Most people see trees as beneficial but do not want the adverse effects caused by the lack of tree management. They resent trees that shade the garden, protrude onto the paths and highway, shed leaves, destroy the view, and ruin television and satellite reception.
A common sense approach must be adopted to ensure that all the pleasure and benefits of trees are gained without allowing them to blight the lives of individuals.

Purposes and Aims of the Tree Policy

Trees in the Village
There is a need to identify a long-term strategy for the future of trees in the village. This would include pruning, felling, replacement planting and encouragement of land and property owners to manage trees for their benefit and the community as a whole.

Scope of Policy
The policy will apply to trees owned or managed by Swinderby Parish Council but should be used as a guide for the care of all trees in the parish. The policy will be used as a tool in any consultation and planning process.

Tree Management

Inspection
The Parish Council has a duty of care for trees it owns and those it manages. Trees will be inspected by a qualified tree inspector. An independent inspection is required for Public Liability Insurance, held by the Parish Council, to be effective.

Tree Maintenance
Tree maintenance will be carried out by a working party established by the Parish Council for a particular task. Advice will be sought from qualified Arboreal Contractor(s) subject to the nature of the work. All tree works will be conducted to comply with BS 3998: 2010 Tree Works - Recommendations.

Pruning will be carried out:
- for health and safety reasons e.g. to remove some of the lower branches of a tree located near a pathway or road allowing ease of passage for pedestrians and enable traffic to pass safely
- where it is in line with site-specific management plans.

Tree pruning will be carried out when deemed necessary following an assessment.
When the Parish Council will not undertake tree pruning or removal maintenance:

- in response to natural occurrences that do not pose a health and safety risk, such as falling nuts, bird droppings, falling leaves, or dripping sap
- where trees have a negative impact on television reception
- where the canopy is blocking lighting
- where the tree is blocking views from a residence
- during the nesting season unless the work is for urgent health and safety reasons. Tree work will be avoided between March to August as it is an offence to intentionally damage or destroy the nest of any wild bird while it is in use or being built
- if a tree contains roosting bats unless work is required for urgent health and safety reasons. The advice of Natural England will be sought as it is a criminal offence to recklessly or intentionally disturb bats, or to damage or destroy a bat roost
- trees overhanging an adjacent property unless it poses a health and safety risk
- removal of dead branches, or crown cleaning, from trees located in relatively quiet locations due to the branches’ ecological value. If the dead or diseased branches pose a health and safety risk, or are impacting upon the tree’s health, crown cleaning will be carried out.

Tree Removal
The Parish Council will avoid felling trees unless it is necessary. Tree felling will usually be for health and safety purposes, or to prevent the spread of serious tree diseases and pests. The Parish Council reserve the right to fell trees to prevent overcrowding, to improve habitats, to restore landscapes in line with particular site management or to remove a tree that is inappropriate to its location and has a significantly detrimental impact on the appearance or amenity of a site.

Emergency Procedures
If a tree presenting a hazard is observed by a member of the public and is deemed potentially dangerous and constitutes an emergency, then the appropriate authority should be notified to enable a prompt response to be made.

An emergency would be classed as:

- imminent danger to property or persons
- a blocked road resulting from a fallen tree

Emergency Contact Numbers:

<table>
<thead>
<tr>
<th></th>
<th>Phone Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Kesteven District Council</td>
<td>(01522) 699 699 or 01529 414 155</td>
</tr>
<tr>
<td>NKDC - Out of Hours</td>
<td>(01522) 699 650 or 01529 308 308</td>
</tr>
<tr>
<td>Lincoln County Council</td>
<td>(01522) 552 222</td>
</tr>
</tbody>
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Trees and Boundaries

Overview
There is nothing to prevent any owner planting or growing a tree anywhere on his/her property. Neither is there any restriction upon the size to which the tree may grow.

A tree overhanging a neighbour’s property may be a nuisance and the neighbour is permitted to remove any branch or root that reaches into his/her property beyond the boundary line.

The tree owner has no legal obligation to prune the branches back to the neighbour’s property boundary line.

Cutting back of overhanging branches can be done without notice to the owner but all parts of the tree remain the property of its owner and must be returned to him/her. This common right is invalidated if the tree concerned is subject to a Tree Preservation Order (TPO) or lies within a Conservation Area.

Any work carried out should be to modern tree pruning recommendations. However, this should be flexible to allow a common sense approach to householders to prune sensibly without incurring unacceptable and unnecessary costs.

Trees encroaching over a public thoroughfare that cause obstruction or restrict the view of road users may be regarded as a danger and the Local Authority Highway Service may serve notice on the tree’s owner to address the problem.

The tree owner owes a duty of care to all third parties and is at all times liable for any nuisance or damage his/her tree causes.

Should a tree owner neglect to address a known defect in his/her tree and it causes damage, the tree owner may be held liable for negligence. This duty of care extends even to persons who may trespass onto private land.

Communication
A parishioner, or their agent, wishing to discuss a particular aspect of this policy should contact the Clerk, who will then pass on details to the Parish Council. The Parish Council will formally reply to enquiries and act to bring about an effective resolution within a reasonable timescale.

Arbitration Process
This Policy has been developed to encompass all aspects of English law that are applicable to trees located on or near adjacent property boundaries and the care of such trees in accordance with current ‘best practice’ guidelines and wider consideration for the green environment.

The Parish Council will discuss the Policy content if a parishioner, or their agent, expresses particular concerns relating to their property, its boundaries or other similar concerns. The Parish Council will enter into an arbitration process, should this be necessary, at full cost to the parishioner (or their agent) who requests such.

Adherence to this Policy
Unless confirmed in writing from the Parish Council, no deviation from this policy and its implementation is permitted. Deviations will only be permissible via a formal Parish Council meeting and a majority vote for such deviation obtained.

Any action found to have been carried out contrary to the Policy will be acted upon to include seeking of full compensation through the Small Claims Court and possible prosecution under current English law in force at that time.

Review of this Policy
This Policy will be reviewed annually.
Appendix I

Trees and the Law

Introduction
This appendix gives a brief outline of some of the more common points of the law affecting trees. It is not a definitive guide and is not intended to be used as such. As the law is complex there may be exceptions to the rules. Always seek legal advice if clarification of the law is required.

Who owns Trees?
Trees are the property of the owner of the land on which they grow. When it’s obvious where the tree is growing ownership can be assessed easily. However if a tree is growing adjacent to or spanning boundaries ownership detection can be problematic. To find out who owns the tree, first establish where the boundary line runs and on which side the tree first grew or was planted. Neither of these is easy to find out especially if the tree is mature. Property deeds will sometimes definitely place the trees. Otherwise, an amicable agreement between landowners should be sought. If an amicable agreement is impossible, a court will decide. Remember that all trees are owned by somebody.

Responsibility for maintaining trees
The owner of the tree is responsible for maintaining it in good order. In the case of tenants or leaseholders, it is usually the landlord who is responsible unless the tenancy agreement or lease specifically states otherwise. The responsibility for maintaining a tree does not necessarily require regular action, but if someone is injured or property is damaged because the owner did not maintain it, a liable case, due to negligence, could be brought against the owner.

Trees that overhang boundaries
It is not the responsibility of the tree owner to prevent their trees from overhanging an adjacent property.

Common law provides a 'right' for a landowner to cut back encroaching branches or roots from a neighbour's tree. The individual scenario must be reviewed to ensure that this view of Common Law applies and it should be noted that action under this law brings conditions that must be adhered to.

A frequent problem is the extent and positioning of pruning allowed under this 'right', frequently does not compare with modern tree pruning recommendations and if taken to the letter of the law, may result in a disfigured and potentially dangerous tree. The property owner will not be protected should damage or loss occur. The branches and roots can only be cut back as far as the boundary. Care must be taken when cutting back roots to avoid killing the tree or causing it to fall over. The tree cutter/neighbour has no right to cross the boundary, or trespass on another property, to do this.

Any cut branches and fruit remain the property of the tree owner. Disposal of the prunings or fruit without the owner's permission could be considered theft or criminal damage. It is advisable to ask the owner if they require the branches and/or fruit back. If not then, it is the responsibility of the tree cutter/neighbour to dispose of them. It is not advisable to throw the material back over the fence, as that could lead to a prosecution for fly tipping with penalties of up to £50,000 and/or 12 months imprisonment.

A tree owner who plants a poisonous tree so close to a boundary that its branches grow over the boundary and are eaten by a neighbour's livestock will be liable for damages. However if a neighbour's livestock reach through or over the boundary to eat the leaves, the tree owner will not be liable unless he/she has responsibility to maintain the physical boundary.
Trees which block light and views
The entitlement to light only applies to daylight in general and there is no right to direct sunlight. There is only a right to a particular level of light that is normally less that most people already receive. The law is not very clear as to how trees affect this right as it is complicated by the growth of trees over years and that most trees shed their leaves for part of the year. The law is much clearer if someone were to build a brick wall outside a window. Any case involving of loss of light due to trees must be taken to the Civil Court and proven. If successful, an injunction may be served by the Court requiring the offending trees to be reduced in height or restricted from further growth.

Right to a view in a domestic garden.
If trees obscure a view then you have no right to that view. The same is true if trees are removed and reveal, for example, a building that spoils the view..

Falling leaves and berries
Leaves, flowers, fruit, pollen are seasonal and fall from trees. Many people regard this as a nuisance but whilst this may be troublesome at times it is not legally a nuisance. Nuisance has a specific meaning in law – something unauthorised that is obnoxious or injurious to the community at large or an individual, especially in relation to ownership of property. Liability for leaves, fruit, and pollen falling into a neighbouring property does not lie with the owner of the tree to clear them, as leaf fall is a natural occurring phenomenon. Liability lies with the owner of the property affected to clear the leaves. For a case against the tree owner, both loss/damage and that the damage could have been reasonably prevented will have to be proven. The neighbour to the tree owner might argue that he/she suffered damage as a result of leaves blocking a drain and that it could have been prevented by the tree owner cutting down or pruning the tree. On the other hand, common sense is usually the best option. Is it reasonable to cut down a tree just because leaves fall off it for a short time each year, or is it more reasonable to clear the drain more often?

Dangerous Trees
Common law does not require tree owners to prune or maintain their trees - even if they are dangerous. It just places the liability on them should someone suffer damage if they fail to do so. Prevention is better than allocating blame. Fortunately there is the "Local Government (Miscellaneous Provisions) Act 1976" which enables a local Council (District or County) to insist, by serving a Notice that the owner removes the danger. If the tree owner refuses, the Council can go onto the property and make the tree safe and charge the owner for doing so. For the Council to do this, the tree must be dangerous and there must be an immediate risk to other people or property.

Subsidence
It is the duty of the person claiming to prove beyond reasonable doubt that it is the tree causing the subsidence of soil beneath his/her property. Subsidence is normally only evident in areas of clay soil. The tree will remove water from the particles of soil causing the ground to shrink. Heave, when a tree has been removed and rehydration of soil causes it to swell violently, is a greater risk to a property.

High Hedges
A “high hedge” is defined by the Anti Social Behaviour Act 2003 as a barrier to light or access which is formed wholly or predominantly by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than two metres above ground level. The Act only covers hedges that affect homes that are defined as a dwelling or any associated garden or yard.

There are a number of Government leaflets that cover these aspects of hedging: "The Right Hedge for You", "Over the Garden Hedge", "Hedge Height and Light Loss". (2013)
Tree Protection

As part of the **Town and Country Planning Act 1947** Local Planning Authorities (LPA) were given the power to protect trees and woodlands in the interests of amenity by making **Tree Preservation Orders (TPO)**.

The obligation on the LPA to protect its tree heritage remains as important now as ever. Within the Act there is no absolute definition of the word ‘tree’, but it is generally accepted that the term applies to any plant that would normally be recognised as a tree. A TPO is a legal document and is served upon both the owner of the land on which the tree or trees grow and any third party who may be affected by the tree or trees. After the TPO is served there is a six-month period during which any party upon whom the TPO is served may register an objection. After six months (or 28 days if no objection is received), the TPO will be confirmed by the District/County/City Council, after which there can be no further objection.

The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of a tree without the prior written consent of the LPA. In order to carry out works to a protected tree, a written application must be made to the LPA. A written Consent Notice may be issued, usually with certain conditions relating to the quality of work expected and replanting requirements in the case of felling. If the LPA refuses to consent to the works applied for, the applicant may appeal against the decision to the relevant Central Government Department.

There are trees, cultivated fruit trees for example, which are exempt from protection and others such as those dead or dying that may be felled without written consent. Some exemptions are ambiguous and it is always best to check with the LPA Tree Section if there is any doubt.

All trees growing within a conservation area (CA) and having a stem diameter of more than 7.5cm at 1.5 m above ground level are also deemed to be protected. To carry out works to such trees, the Council requires six weeks written notice of intent. The Council cannot refuse consent to carry out works to a tree in a CA without making a TPO. The six weeks gives the Council the time it needs to decide whether or not to make a TPO. If no decision is made within six weeks the applicant may proceed with the works.

Carrying out works to a protected tree without giving the required notice or without first obtaining written consent is an offence with a penalty of up to £20,000.

**Tree Contractors - Legal Liability of Individuals or their Agents**

A Parishioner, or their Agent, contacting the Parish Council with regard to undertaking work on Parish Council trees, will be made aware of the legal implications surrounding the commissioning of a Tree Contractor who does not possess appropriate qualifications to carry out such work. The absolute minimum requirement for all Tree Contractors is the possession of nationally recognised qualifications from the City & Guilds NPTC (National Proficiency Tests Council) or LANTRA (Land Training-Sector Skills Council) covering the type of work being carried out. Failure to establish competency in the work being carried out leaves the householder/land owner liable to legal claims, from the operative, should an accident occur.

(2014)
Appendix II

Questions and Answers

Tree overhangs my property, what are my rights?

- You may prune unprotected trees and hedges overhanging your land and the roots growing beneath your land up to the boundary.
- You do not need the owner's permission, but you must not trespass onto their land to do this.
- In addition you must offer to return the cut branch wood and any fruit which is attached or has fallen onto your land.
- You do have a duty of care for the tree and may be liable for damages if any work you do, or ask others to do for you, causes the tree to die or become dangerous.
- If the tree is protected, either by a Tree Preservation Order, Woodland Preservation Order or by the fact that it grows in a conservation area, you will need to make formal application to the North Kesteven District Council Tree Officer before carrying out works.

A tree is shading my garden, what are the owner's responsibilities?

For living entities such as trees there is no prescriptive right to light, so there is no requirement for a tree owner to manage their trees unless you bring this forward and win a civil action in the courts.

- You should consult a solicitor to see if you have grounds to proceed with this.
- If successful an injunction may be served by the court requiring the offending trees to be reduced in height or restricting their further growth.

Leaves are dropping onto my pathways and gutters. What are the owner's responsibilities?

None. Leaf fall is regarded as a natural event for which the owner cannot be held responsible. You are responsible for clearing your own pathways, drains and gutters.

A tree is blocking my view. What are my rights?

None. There is no right to a view.

A large tree was planted close to my boundary several years ago. What are my rights?

- There is no law preventing any person planting or growing a tree anywhere on their property. Neither is there any restriction upon the size to which they may grow it.
- However any person who plants a poisonous tree so close to a boundary that its branches grow over that boundary may be held liable for damages if they are eaten by a neighbour's livestock.
- If the neighbour's livestock reach over to the tree owner's side of the boundary to eat the leaves, the tree owner will not be liable unless they have a legal responsibility to maintain the boundary.

I think a tree is dangerous. What can I do?

The definition of 'dangerous' is ambiguous. A tree is not dangerous because it is tall, old or has a wide, spreading crown. Before taking any action you should contact a specialist tree consultant or contractor. Once you are sure of your facts and have these in writing, you should notify the tree owner of your concerns and ask that they address the problem. If they do not and some damage results from this negligence, then you may take action against the tree owner through the courts. It may be possible to obtain an injunction requiring the tree owner to take action to remedy the problem.
What constitutes a dangerous or hazardous tree?
A dangerous tree is one in such poor condition that whole or part of it may collapse at any time. A dangerous tree may or may not be hazardous depending upon where it grows. For example, a tree in a privately owned field is less potentially hazardous than one in a public park.

How does a dangerous tree differ from a defective tree?
Most trees have defects but the vast majority are not dangerous. Defects may include minor dead wood where squirrels have stripped bark or minor decay pockets where bark has been damaged and the tree has suffered bacterial or fungal infection. It is the type and extent of the defect that is important in determining whether or not a tree is dangerous.

Is a tall tree inherently dangerous?
Tall trees are not necessarily dangerous. A tree will grow (within its species limits) as large as the space, light, water, nutrition and oxygen available to it permits. Trees cannot grow too tall - except in human perception.

Are leaning trees dangerous?
Leaning trees are not necessarily dangerous. One of the reasons a tree grows with a lean is because it is in close competition with other plant or buildings and has been forced to grow at an angle to chase the light. In response, the tree lays down denser wood on one side of its trunk. There may be a problem if a previously vertical tree suddenly develops a lean, perhaps as result of storm damage.
Appendix III

Map showing land owned or managed by Swinderby Parish Council

- Playing Field off Station Road.
- Small section of land outside Church House, 88 High Street. (This used to host carved ‘bird seats’, until 2012).
- Play Area off High Street.
Appendix IV

Current Statutory Legislation, Government guidance, British Standards and Awarding Bodies

All of the Parish Council's declarations and decisions will have regard to the following current statutory legislation, Government guidance, British Standards and Awarding Bodies:

- The Town and Country Planning Act 1990 (as amended)
- The Occupiers Liability Act 1984
- The Environment Act 1995
- The Anti Social Behaviour Act 2003
- Natural England 2006+
- Circular 36/1978: Trees and Forestry
- BS 5837: Trees in Relation to Construction 2005
- BS 3998: Tree Work - Recommendations 2010
- City & Guilds NPTC - National arborist proficiency standards
- Sector Skills Council LANTRA - Land based training proficiency standards
- Arboriculture Association – Best Practice and Professional Standards guidance

End of policy