



ATO
Association of
Tree Officers



Trees and Telecommunications

In association with



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The Association of Tree Officers (ATO) is a professional organisation representing, supporting and promoting UK Tree Officers at a national and international level and supporting the work of the regional Tree Officers' groups. The ATO working group responsible for compiling this guidance includes representatives from the Municipal Tree Officers Association, London Tree Officers Association, Thames Valley Tree Officers Forum, West Sussex Tree Officers Group and the Arboricultural Association.

The roll-out of 5G and the installation of new telecommunications infrastructure are certain to go ahead, so it is important that the arboricultural profession and the telecommunications industry work positively together to achieve good outcomes for both the operators and trees.

Typical urban location - pruning and RPA impact to be considered.

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The aims of this document are twofold. Firstly, it gives guidance to telecommunications infrastructure companies, local authority planners and Tree Officers on how best to lessen the effects of installing the 5G system (and other telecommunications infrastructure) on trees by emphasising that trees are a material consideration as part of the planning process. This is important in order to ensure that the installation of new telecommunications equipment avoids direct harm to existing trees and minimises future requests for tree pruning or removal at a time when tree retention is of vital importance to help mitigate the impacts of climate change. Secondly, this document provides guidance on processing requests for tree pruning as a result of conflict between existing telecommunications equipment and tree canopies.

We live in a digital age: most people now carry small but powerful electronic devices in their pocket or hand, and we will have other devices/equipment in the future that also require connectivity. At home we have computers and want near-instant access to the internet. The Government says:

It is committed to developing its 5G capabilities and shaping the future of its development. This is part of delivering leading digital infrastructure for the UK, enabling all regions to take advantage of the many opportunities of the digital economy. Now more than ever, digital connectivity is vital to enable people to stay connected and businesses to grow. 5G has the potential to support innovative new services like autonomous vehicles and smart cities, and increase efficiency through smart agriculture, factory robotics and healthcare applications such as remote surgery. It will bring down latency levels reducing delays on video calls. And it will underpin other advances in cutting-edge technologies such as Virtual and Augmented Reality, which will provide an economic benefit through the entertainment sector.'

'Supporting high quality communications infrastructure' is within Chapter 10 (paras 114–118) of The National Planning Policy Framework (NPPF) (2021).



More recent (and future) generations of communications technology – including 4G and 5G – use higher radio frequencies than older equipment because higher frequencies can transfer higher data

volumes. This results in transmission issues in terms of how the signal travels through material (especially leaves, given their water content) and over distance. As trees are a known 'blockage', careful consideration of equipment type and location is required.

Given the low transmitter power for 5G (as for 2G, 3G and 4G), the signals are unlikely to have any physical effect on tree health. Therefore, the main issue will be the absorption of the 5G signals by the foliage, particularly when the canopy is wet after rain. There is concern that there will be an increase in requests for trees to be pruned, 'lopped' or even felled so that signals have a 'line-of-sight' route, although felling would be a last resort, so it is not expected to be an initial request. It is important that all requests for work to trees are assessed properly by all parties to ensure they are required, reasonable and processed in accordance with the regulations.

The siting of base stations and associated cabinets near trees is also a concern because of the potential risk of root damage during foundation excavation works. These foundations tend to be shallow, so the degree of risk will depend on the environment where

the cabinets are being placed (hard surface vs grass area). Equipment may be installed under 'permitted development', through the 'prior approved' process or via a full planning application, and it is important that trees are properly considered through all routes.

The UK has four main mobile network operators (MNOs) – EE, O2, Three and Vodafone. They partner with infrastructure providers who enable mobile connectivity across the UK by deploying, managing and maintaining network infrastructure, hosting MNO telecommunications equipment on their sites, often through sharing agreements. The infrastructure providers include Cellnex, Cornerstone, Mobile Broadband Network Ltd (MBNL) and the Wireless Infrastructure Group.

In developing this guidance, the Tree Officers' working group has had constructive engagement with the mobile phone industry via virtual meetings with Cornerstone, Mobile Broadband Network Ltd and Mobile UK (who represent EE, Three, Virgin Media, O2 and Vodafone) with a view to working together. In addition, legal advice has been provided by Stephanie Hall at Kings Chambers.

**Successful relationship -
RPA and pruning impacts
avoided; equipment screened.**
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Sections 2 and 3 apply to England only. It is hoped to introduce new sections for the other nations and regions in the UK in the future. It is also hoped to include a section from the Arboricultural Association's Utility Arboriculture Group.

This process is outlined in the flow chart in the appendix.

Most telecoms apparatus installed outdoors will fall under the definition of 'development' as set out in the Town & Country Planning Act 1990 (TCPA 1990).

All development requires an application for full planning permission. The Local Planning Authority (LPA) is required under s.38(6) of the Act to determine such applications in accordance with its Development Plan unless material considerations indicate otherwise. Such 'full' applications for telecommunications equipment can be approached in the same way and with the same expectations (in terms of tree information) as any other 'full' application for development, with reference to the LPA's validation checklist.

Some types of development are already granted permission under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and would therefore not require any form of express permission from the LPA, i.e. they are 'permitted development'.

The current Permitted Development Rights (PDRs) in England are set out in Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). The PDRs fall into two main categories: those which fall under the 'prior approval' procedures under Condition A.2 (3) and those which do not. This document aims to guide Tree Officers through the prior approval process for new telecommunications equipment.

Whether or not planning permission is required, all parties should follow the recommendations within the Code of Practice on Wireless Network Development in England, which was updated in March 2022 (the Code of Practice). The Code of Practice provides guidance to Code Operators (referred to as 'operators' throughout the Code of Practice), including the mobile network

operators and wireless infrastructure providers, their agents and contractors, Local Planning Authorities and all other relevant stakeholders, in England on how to carry out their roles and responsibilities when installing wireless network infrastructure. Of particular interest to Tree Officers is paragraph 36, which refers to the need to follow National Joint Utilities Group Volume 4: Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees (NJUG 4), and paragraph 39 which provides guidance on mast positioning in relation to existing trees.

2.1 Permitted Development (PD)

Let us first look at the law and what is PD, i.e. where no prior approval is required:

Under the GPDO (Part 16: Telecommunications), there are relevant 'types' of development – class A, B or C.

Class A:

Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of–

- (a) *the installation, alteration or replacement of any electronic communications apparatus,*
- (b) *the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or*
- (c) *development ancillary to radio equipment housing.*

This PD allowance is subject to the numerous restrictions and limitations in paragraphs A.1 and A.2. For example, prior approval is needed in a Conservation Area unless the works '*consist ... of the construction, installation, alteration or replacement of a telegraph pole, cabinet or line, in connection with the provision of fixed-line broadband*'. In order to fall

outside the requirement for prior approval, the works must fall within the restrictions and conditions set out in Part 16 A.

Class B:

The installation, alteration or replacement on any building or other structure of a height of 15 metres or more of a microwave antenna and any structure intended for the support of a microwave antenna.

This PD allowance is subject to the restrictions and limitations in paragraphs B.1 and B.2. As this class relates to equipment on buildings, it may be less likely to impact trees, but there is still potential conflict in tree-lined streets.

Class C:

The installation, alteration or replacement on any building or other structure of a height of less than 15 metres of a microwave antenna.

This PD allowance is subject to the restrictions and limitations in paragraphs C.1 and C.2. As this class relates to equipment on buildings, it may be less likely to impact trees, but there is still potential conflict in tree-lined streets.

Generally speaking, PD rights do not override a Tree Preservation Order (TPO). So normally a Tree Officer could require a householder to demonstrate how their PD outbuilding, for example, would be constructed without harm to adjacent protected trees.

There is also an expectation that the implementation of PD does not result in the decline of or need to remove a council tree. If it does, the council may choose to seek monetary compensation for the loss of that public asset, e.g. using CAVAT.

However, statutory undertakers are treated differently within the GPDO and The Town and Country Planning (Tree Preservation) (England) Regulations 2012 (2012 Regs). Telecoms operators have additional rights in relation to non-protected trees as set out within the Electronic Communications Code (the Code) contained within Schedule 3A of the Communications Act 2003. This is explained later in this document.

2.2 Prior Approval

Where new equipment does not fall under PD, as described within 2.1, PD rights are subject to the need to obtain 'prior approval'. In simple terms, prior approval can be viewed as a pre-commencement condition for PD. If prior approval is obtained, the pre-commencement condition has been discharged and it benefits from PD rights. The principle of the development is approved under the GPDO; **the only matters that an LPA can consider, through the prior approval process, are siting and appearance.**

Siting is obviously the matter of greatest relevance in relation to trees as the installation of the equipment has the potential to cause direct harm to both above- and below-ground parts of a tree, and its position may result in future pressure to prune if it is sited close to trees whose canopies interfere with the required line of sight.

Under the prior approval process, an LPA has 56 days to make and notify the applicant of its determination on whether prior approval is required as to siting and appearance and to notify the applicant of the decision to give or refuse such approval.

The requirements for a valid application are set out within the GPDO and Town and Country Planning (Development Management Procedure) Order 2015. A longer determination period may be agreed where both the applicant and the LPA do so in writing. Assuming the development meets the conditions and restrictions of this PD right, if no decision is made, or the LPA fails to notify the developer of its decision, within the defined timescale then permission is deemed to have been granted.

The 56-day period starts on the date when the LPA receives a valid application. The period finishes on the day the applicant receives a decision or, if no decision has been made, when 56 days have elapsed from receipt of a valid application by the Local Planning Authority.

Given this timescale, it is really important that Tree Officers are consulted swiftly and that these applications are given due priority so that the planning officer receives any concerns before the end of the 56-day period. If no valid objections are provided by the LPA before the end of the period, it is too late to express concern and any resulting damage or conflicts will have to be tolerated.

Unlike planning permission, prior approvals cannot be granted subject to conditions and therefore all the details required need to be received during the 56-day period – for instance, tree information, methods of working and tree protection measures. The planning officer will need to list these in the decision and the regulations, and then require the development to be carried out in accordance with those details (Paragraph 8(a), Part 16).

The installation of new equipment could cause root loss and damage, construction works may cause damage to Root Protection Areas (as defined by the current BS5837) and the decision on where to

site the equipment may result in future pressure to detrimentally prune or fell trees, so a Tree Officer's response to these applications should be similar to the response to any other planning proposal.

We should expect trees in the locality to be accurately plotted (trunk position, canopy spread, Root Protection Area), their species to be noted and current height given. In addition, the application should provide confirmation that the line of sight of the proposed antennas will not be compromised by adjacent trees **at their mature height**. Effectively, a tree survey and arboricultural impact assessment (AIA) are required. The AIA would be proportionate to the particular

**Inappropriate location –
impact on RPA and pole
conflicting with canopy.
Also excess street clutter.**
© Ian Murat



The Planning Process: New Telecommunications Equipment

development, and if trial holes have been undertaken prior to submission then the outcome of those investigations may be sufficient to demonstrate a lack of impact. If there is insufficient tree information to determine whether the proposal is acceptable, it is reasonable to recommend refusal on grounds of 'failure to demonstrate no harm to adjacent trees of high amenity/subject to a TPO/of heritage value etc. (as applicable)'.

When siting or appearance is considered, the impact on the 'character' of the site can be taken into account. This, however, is generally more a matter for planning to consider, but if there are relevant tree-related issues it is reasonable for the Tree Officer to comment. For example, if the proposal is in a Conservation Area (CA) which can be characterised as having a verdant nature (check the CA appraisal documents), or if there may be an impact on important trees in the CA, and

the proposal could lead to future pressure to prune or fell trees, such works could detrimentally affect the character of the CA. As a result, tree-related comments would be relevant.

The Local Planning Authority will have to weigh up a number of factors in determining the impact on siting and appearance and how trees can both help and hinder these impacts. It may be that masts are proposed, or LPAs desire masts to be located, close to trees in order that the vegetation can visually screen the mast. That solution may generate concerns (as discussed above), but where there are no such concerns, Tree Officers need to help LPAs understand that in some situations allowing a taller mast than would otherwise be agreed so that the antenna sits above the height of the trees (maintaining the signal) could be a solution to avoid future pruning requirements whilst still providing screening benefits.



The question for Tree Officers is, how much control does the council have in resisting or controlling the lopping of council trees or trees which are the subject of a TPO made under Section 198 of the Town and Country Planning Act 1990 (as amended)? The issue raises general planning matters and the rights that an 'electronic communications code operator' (an Operator) has under the Electronic Communications Code (the Code), which is set out in Schedule 3A of the Communications Act 2003.

This process is outlined in the flow chart in the appendix.

3.1 Development and Tree Pruning

3.1.1 Protected trees

All development, whether it is operational development or a material change of use or both, requires either:

- i. express planning permission from the LPA; or
- ii. where such development is not substantial, that permitted development rights are granted by virtue of the Town and Country Planning (General Permitted Development Order) 2015 as amended (the 2015 Order) – GDPO.

In respect of (i), existing trees may be protected by the imposition of conditions, but where long-term protection is considered necessary, the best advice is that the LPA should protect a tree or trees by the making of a TPO. If the TPO is made, confirmed and registered, the tree or trees are fully protected from works (including lopping) unless express written consent is given by the LPA. It is a criminal offence to

carry out unauthorised work on a TPO tree.

The making, confirmation and registration of TPOs is set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (2012 Regs). A raft of exemptions enable works to be carried out to a protected tree or trees without the express consent of the LPA and these are listed in Regulation 14. The exemption that is pertinent to telecoms equipment is that which applies to statutory undertakers who are carrying out their PD rights (which includes Operators exercising their rights under the Code).

If PD pursuant to Part 16 class A, B or C without requiring prior approval applies, the undertaker gains the benefit of Regulation 14(1)(a)(iii)(cc) of the 2012 Regulations and does not require TPO consent if the tree is also on 'operational land'. 'Operational land' is defined in s.263 of the Town and Country Planning Act 1990 in relation to statutory undertakers as follows:

- (a) land which is used for the purpose of carrying on their undertaking; and
- (b) land in which an interest is held for that purpose.

In relation to telecommunications, Regulation 14(1) states:

Nothing in regulation 13 shall prevent–

- (a) *the cutting down, topping, lopping or uprooting of a tree– [...]*
- (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 [now the 2015 Order]*



Caveats

The works:

- must be on 'operational land';
- must be 'necessary' for:
 - safe operation (i.e. not the functionality of the apparatus but necessary for safety);
 - inspection, repair or renewal of sewers, pipes, cables or apparatus.

This means that pruning is not permitted where trees are interfering with a signal or where it would benefit the operation of the apparatus to have the tree removed. In such cases, consent should be sought. Pruning is only permitted in relation to safety or where the operator needs access for inspection, repairs or renewal of the apparatus.

Barney-Smith v Tonbridge and Malling BC [2016]

EWCA Civ 1264 provides assistance on the meaning of 'necessary', i.e. pruning is not permitted if it is possible to carry out the development without undertaking the works to protected trees.

It follows that where the exemptions genuinely apply there is nothing the LPA can do to prevent works to a tree or trees. It is hoped that the statutory undertaker would discuss the proposals with the LPA before carrying out the exempt works and it is therefore prudent to encourage a good working relationship with undertakers.

Similarly, it follows that if, in carrying out the permitted (exempt) pruning, the operator does so in a manner contrary to the Code, i.e. the works are not done in a 'husband-like manner' or cause more than 'minimal damage' or are over and above the 'lop or cut back' allowance, an LPA may then consider prosecution for contravening the TPO if Regulation 14 exemptions have been exceeded, and the tree owner may consider private action for damages.

There are no standard conditions in Part 16 of the GDPO that protect trees threatened by the development, and as we have seen above, there is an exemption for TPO trees under Regulation 14.

3.1.2 Council- or privately-owned trees

The ownership of the trees does not affect grant of planning permission by operation of the GPDO, but the undertaker may also require private consent to undertake development which would damage or

require works to trees owned either by the council or a private party.

The council has a separate right to say no to or require compensation for works done or harm to trees it owns as landowner or highway authority if the works do not also fall within the Operator's Code rights (below). This is in addition to the council's jurisdiction as planning authority to determine whether the works fall within the GPDO.

3.2 Non-development Pruning

The Electronic Communications Code (the Code) is set out in Schedule 3A of the Communications Act 2003 and an Operator is a body which is registered as such under the Act. The relevant land is either land in the freehold ownership of the Operator or it has a lease of 10 years ('land controlled by the Operator'); or in respect of other property, it is 'land which is governed by the Code'. The latter is third-party private land.

Where the development is taking place on land controlled by the Operator, that Operator has a free hand. Where the development is on third-party private land, regardless of any express planning permission or PD rights, there must be an agreement between the Operator and the occupier of the land to carry out the works. If the occupier objects, a court can impose an 'agreement'. This is explained below.

Within Part 1 (Key Concepts), the Operator's Code rights include: 3(i) *to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.*

Paragraph 82 of Part 13**'Rights to lop trees' states:**

- (1) *This paragraph applies where—*
 - (a) *a tree or other vegetation overhangs a street in England and Wales or Northern Ireland or a road in Scotland, and*
 - (b) *the tree or vegetation—*
 - (i) *obstructs, or will or may obstruct, relevant electronic communications apparatus, or*
 - (ii) *interferes with, or will or may interfere with, such apparatus.*
- (2) *In sub-paragraph (1) 'relevant electronic communications apparatus' means*

electronic communications apparatus which—

- (a) *is installed, or about to be installed, on land, and*
 - (b) *is used, or to be used, for the purposes of an operator's network.*
- (3) *The operator may, by notice to the occupier of the land on which the tree or vegetation is growing, require the tree to be lopped or the vegetation to be cut back to prevent the obstruction or interference.*
- (4) *If, within the period of 28 days beginning with the day on which the notice is given, the occupier gives the operator a counter-notice objecting to the lopping of the tree or cutting back of the vegetation, the notice has effect only if confirmed by an order of the court.*
- (5) *Sub-paragraph (6) applies if at any time a notice under sub-paragraph (3) has not been complied with and—*
- (a) *the period of 28 days beginning with the day on which the notice was given has expired without a counter-notice having been given, or*
 - (b) *an order of the court confirming the notice has come into force.*
- (6) *The operator may cause the tree to be lopped or the vegetation to be cut back.*
- (7) *Where the operator lops a tree or cuts back vegetation in exercise of the power in sub-paragraph (6) the operator must do so in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation.*
- (8) *Sub-paragraph (9) applies where—*
- (a) *a notice under sub-paragraph (3) is complied with (either without a counter-notice having been given or after the notice has been confirmed), or*
 - (b) *the operator exercises the power in sub-paragraph (6).*
- (9) *The court must, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or cutting back of the vegetation or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss or damage as it thinks fit.*

In summary:

- The Code applies on operational land and to apparatus on any other land.
- The Code applies to trees and 'other vegetation'.
- If the tree is protected, the Operator also needs TPO consent. However, pruning works are reasonably likely to fall within Regulation 14, but it is worth checking.
- The tree must 'overhang a street' and 'obstruct, or will or may obstruct'/'interferes, or will or may interfere' with apparatus. Obstruction or interference can be anticipated, and it does not have to be occurring at the point the works are undertaken.
- By virtue of paragraph 82(2), the power also applies to apparatus which is 'about to be installed'.
- The power is only to 'lop or cut back', not to fell or otherwise damage the tree.
- The Operator needs to notify the tree owner, which starts a 28-day objection period.
- The Operator needs to carry out work in a 'husband-like manner' and cause 'minimum damage' to the tree or vegetation.

Sub-paragraph 9 above is worth noting in case costs are incurred by a council in carrying out the pruning works or as a result of the works.

The Electronic Communications Code as set out at Schedule 3A of the Communications Act 2003 was amended by Schedule 1 of the Digital Economy Act 2017 ('The electronic communications code'). However, this does not change the rights to lop trees as detailed above.

Statutory undertakers/Operators have wide-ranging powers to develop and thereafter maintain, repair, renew and inspect the apparatus, and the LPA has limited options to intervene.

It is only TPOs that provide limited protection, but Regulation 14 gives wide-ranging exemptions. However, Operators are governed by the Code and it is reasonable for Tree Officers to expect the requirements (as set out in paragraph 82) to be followed.

Barney-Smith v Tonbridge and Malling BC [2016] EWCA Civ 1264

www.bailii.org/ew/cases/EWCA/Civ/2016/1264.html

National Planning Policy Framework (NPPF) 2021

www.gov.uk/guidance/national-planning-policy-framework

Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO)

- Part 16 (UK)

www.legislation.gov.uk/uksi/2015/596/schedule/2/made

The Electronic Communications Code

www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/electronic-code

The Electronic Communications Code took effect under Schedule 3A of the Communications Act 2003

www.legislation.gov.uk/ukpga/2003/21/schedule/3A

Within the Communications Act 2003, Schedule 17 defines who and what the Code applies to

www.legislation.gov.uk/ukpga/2003/21/schedule/17

In relation to TPO trees, the exemptions for 'statutory undertakers' under the **Town and Country Planning (Tree Preservation)(England) Regulations 2012** can be found at

www.legislation.gov.uk/uksi/2012/605/regulation/14/made

With reference to 14 (1) (iii) (cc)), i.e. that allowed under the **Town and Country Planning (General Permitted Development) Order 1995**, Schedule 2 of the GPDO lists those things which are considered to be PD - see Part 24 at

www.legislation.gov.uk/uksi/1995/418/schedule/2

'Development by Telecommunication Code System Operators'. This allows 'statutory undertakers'

to carry out works without planning approval, except those works listed

www.legislation.gov.uk/uksi/1995/418/schedule/2/made

Digital Economy Act 2017

www.legislation.gov.uk/ukpga/2017/30/contents/enacted

Code of Best Practice on Mobile Wireless Network Development in England

(2022: Edition; Published: 07.03.2022):

Code of practice for wireless network development in England - GOV.UK (www.gov.uk)

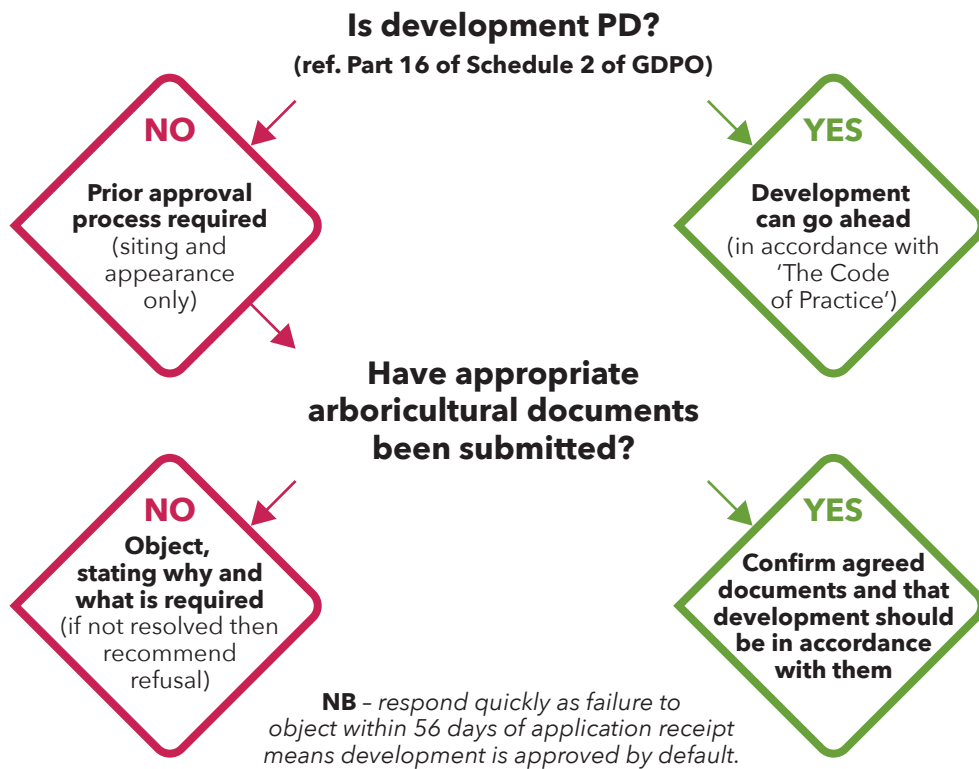
www.gov.uk/government/publications/code-of-practice-for-wireless-network-development-in-england

Benefit of screening of equipment vs. impact of installation and access for maintenance plus likely tree pruning requirements.

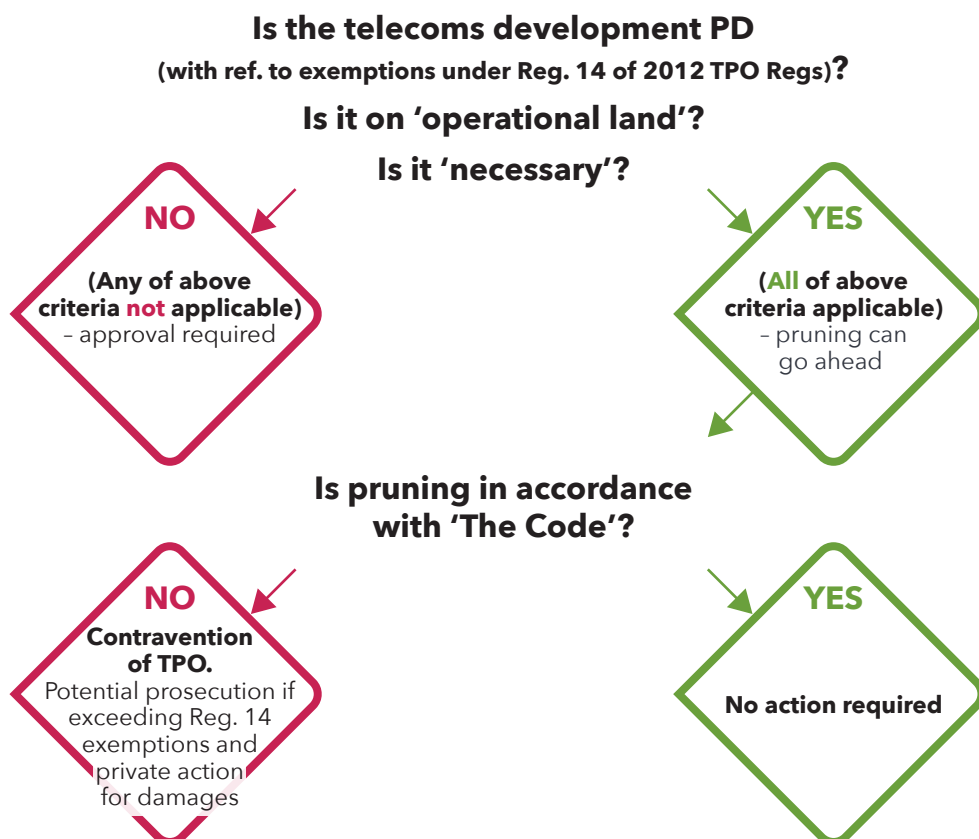
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Development

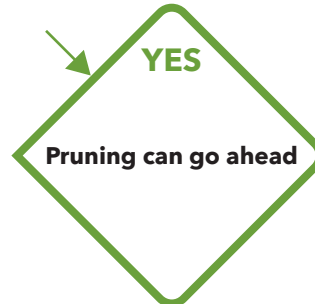
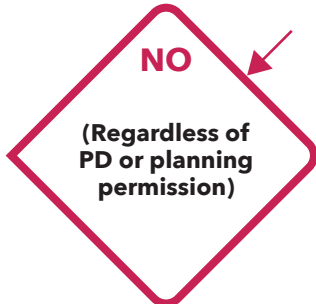


Pruning - TPO Trees



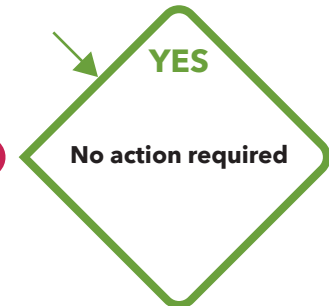
Pruning - Council/private (non-TPO) trees

Is the company an 'operator' and is it 'operational land'?



Agreement required between operator and occupier

Is pruning in accordance with 'The Code'?

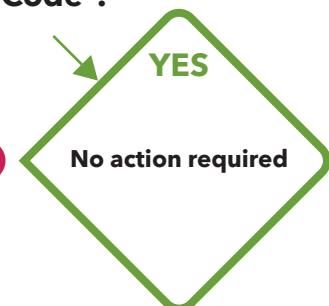


Operator gives Notice of required pruning

Agreed OR 26-day Notice period ends - pruning can be done.

Is it in accordance 'The Code'?

Object by counter-Notice



Loss/damages/expenses incurred

Apply to court for compensation



'The Code of Practice' = Code of practice for wireless network development in England.

'The Code' = Electronic Communications Code, contained within Schedule 3A of the Communications Act 2003.

In accordance with 'The Code' means: The Operator needs to carry out work in a 'husband-like manner' and cause 'minimum damage' to the tree or vegetation. The power is only to 'lop or cut back', not to fell or otherwise damage the tree.



Association of Tree Officers

Arboricultural Services, Green Space, Place Management,
Camden Town Hall, Judd Street, London WC1H 9JE

Email: nc@ato.org.uk Web: www.ato.org.uk

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