

BREACH OF A TREE PRESERVATION NOTICE

Planning Act (NI) 2011

126 - (1) If any person, in contravention of a tree preservation order, cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, that person shall be guilty of an offence...

...

(3) If any person contravenes a tree preservation order otherwise than as mentioned in subsection (1), that person shall be guilty of an offence...

Maximum Sentence:

Planning Act (NI) 2011, s.126

(1) Offence under 126(1)

Indictment: Unlimited Fine

Summary: £100,000 Fine

(2) Offence under Article 126(3)

Summary: Level 4 Fine i.e. £2,500

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>		<u>Starting Point</u>	<u>Sentencing Range</u>
Act falling within s126(1)	Offence committed on non-commercial basis	£15,000 Fine	Fine
	Offence committed on commercial basis	£75,000 Fine	Fine
Act falling within s126(3)		Fine	Fine

Examples of Possible Aggravating Factors of Offence

1. Offence committed for financial gain (whether profit or cost-saving).
2. Nature of offence has necessitated tree being cut down.
3. Offence was committed on commercial basis (where offence is an act falling within section 126(3)).
4. The offender was not the owner of the tree.
5. The offender entered property belonging to another.

Examples of Possible Mitigating Factor of Offence

1. Offender had honest belief that tree was not subject to relevant prohibition.

Relevant Cases:

NI Cases:

N/A

English Cases

R v Palmer [1989] 11 Cr App R(S) 407

R v Davey [2013] EWCA Crim 1662

Notes:

1. In determining the amount of any fine to be imposed on a person convicted of an offence under paragraph (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. – s126(2) of the 2011 Act