

DAMAGING A TREE IN A CONSERVATION AREA

Planning Act (NI) 2011

- 122 - (1) Where it appears to a council that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its district, it may for that purpose make an order (in this Act referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and in particular, provision may be made by any such order—
 (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees except with the consent of the council, and for enabling the council to give its consent subject to conditions;
- 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...
- 127 - (1) Subject to the provisions of this section and section 128, any person who, in relation to a tree to which this section applies, does any act which might by virtue of section 122(1)(a) be prohibited by a tree preservation order shall be guilty of an offence...
 (4) Section 126 shall apply to an offence under this section as it applies to a contravention of a tree preservation order.

Maximum Sentence:

Planning Act (NI) 2011 s126(1)

Offence under s126(1):

Indictment: Unlimited Fine

Summary: £100,000 Fine

Planning Act (NI) 2011 s126(1)

Offence under s126(3):

Summary: Level 4 Fine i.e £2,500

Planning Act (NI) 2011 s127(4)

Offence under s127(1):

Indictment: Unlimited Fine

Summary: £100,000 Fine

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
Act falling within s127(1)	Offence committed on non-commercial basis	£15,000 Fine	Fine
	Offence committed on commercial basis	£75,000 Fine	Fine

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Offence committed for financial gain (whether profit or cost saving). 2. Nature of offence has necessitated tree being cut down. 3. Offence 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. 	<ol style="list-style-type: none"> 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: