

## **Peterborough City Council Guideline with respect to Tree works and cutting of Shrubs Hedges in the Bird nesting season (1<sup>st</sup> March - 31<sup>st</sup> August).**

### **1.0 Introduction**

#### **1.1 Summary**

Concerns were raised in the past from the public and Councillors regarding the cutting of council hedges, trees and shrubs during the summer months and the possible effects that this may have on nesting birds. In response to this much management of these features has stopped during the bird nesting season, however this has probably gone beyond what is required to comply with the legal requirements with respect to nesting birds. Most recently the perceived under management of shrubs, hedges and trees in the bird nesting season has led to concerns from the public with respect to visibility, security and visual amenity issues and some pressure being brought to bear to remove some of these features altogether.

It is recognised that bird populations in urban areas are declining due to number of factors and causes. Therefore the Council should be aiming to support nesting birds and play its part to help reduce this decline. To do this it is important that hedges, shrubs and trees are retained so that nesting and feeding habitat is available. However to do this the City Council has to be able to manage these assets professionally and within the law.

This guideline has been produced to give a clear line with respect to what works could reasonably be undertaken during the bird nesting season and what approach should be taken to ensure that reasonable steps have been taken to comply with legal and basic good practice requirements with respect to nesting birds. Beyond this it is necessary to try to strike a balance between ideal management and other competing requirements such as appearance and visibility. For example while it would be ideal for wildlife for hedges to be left uncut until they had borne fruit this is often incompatible with other user pressures such as the use of cycle paths.

It is appropriate that a specific approach is developed for the management of the City Councils hedges shrubs and trees, as the adherence to general best practice would often not be relevant to the specific urban situations the City Council finds itself operating within. The approach outlined in this document aims to outline a specific best practice approach for nesting birds which is applicable to Peterborough City Councils area and management operations. This approach acknowledges the urban bias and competing pressures upon many of these management operations and seeks to give an appropriate and reasonable approach for works in the bird nesting season.

This document sets out the current situation, existing legislation and lists recommendations for the future to act as a Council Policy. If adopted this would be distilled into the single page/simplified guidance for the everyday use of PCC contractors and employees contained at the end of this Appendix.

## 1.2 Legal protection of birds

The main legislation relating to nesting birds is the Wildlife & Countryside Act of 1981. This Act protects all birds from intentional killing and injury and also makes it an offence to intentionally damage or destroy the nest of a wild bird when it is in use or being built.

There is an additional protection within the act for birds which are specifically listed on schedule 1 of the act. It is an offence to intentionally or recklessly disturb a schedule 1 bird while it is building a nest or is in, on or near a nest containing eggs or young. It is also an offence to disturb the dependant young of a schedule 1 bird. Recklessness is often defined as taking a deliberate unacceptable risk or failing to notice or consider an obvious risk.

The Wildlife and Countryside Act (4(2)c) however makes it clear that an offence shall not have been committed if the action was the incidental result of a lawful operation and could not reasonably be avoided. This protocol aims to lay out procedures which adhere to this principle.

## 1.3 The legal protection of birds in the context of the management of the City Councils Trees, hedges and shrubs

There are four species listed on schedule 1 which it is not beyond the realms of possibility could be found within the City Councils woodland/treebelts. These are:

- Barn Owl
- Goshawk
- Red Kite
- Hobby

These species are not however reasonably likely to be found in street trees. Other schedule 1 species such as kingfisher and marsh harrier are present in the Peterborough area but simply won't be found in the Councils trees and none of the species listed on this schedule are assessed as likely to be found in the Councils hedges or shrubs. Therefore schedule 1 species are only dealt with in connection with tree works.

Therefore in practice to comply with this legal requirement the City Council should aim to:

- **For hedges and shrubs:** avoid killing and injury of all birds and the damaging or destruction of their nests.
- **For trees:** avoid killing and injury of all birds and the damaging or destruction of their nests. In addition for non street trees to avoid the disturbance or undertaking works which risk the disturbance of adult schedule 1 birds at their nests or their young.

However in either case work required to preserve health and safety is not legally restricted even if nesting birds (including schedule 1 birds) are present. In such cases, while every care should be taken to avoid and minimise harm, any killing and injury of birds and/or the damaging or destruction of nests would be an incidental result of a lawful operation which could not reasonably have been avoided and therefore exempt under section 4(2)C of the Wildlife and Countryside Act.

#### 1.4 Best practice and birds

Trees, hedges and shrubs are likely to contain nesting birds between 1 March and 31 August and should be assumed to do so unless either it can clearly be seen that nesting birds are not present or a survey has concluded that nesting birds are not present.

Nature Conservation best practice would recommend that as general good practice above and beyond lawful requirements that hedgerows should not be cut during the nesting season. The main nesting period is considered to be between the beginning of March and the end of July and occasionally running into August, although some species such as Barn Owl will commonly breed outside of this period. Common birds such as the blackbird, sparrow, thrush, robin, bullfinch and the spotted flycatcher amongst others often seek nesting sites in hedges and hedgerow trees.

The Royal Society for the Protection of Birds also recommends that 'ideally' hedge cutting should be left until the end of winter to leave any seeds, berries and the like on hedges as food for birds and wildlife.

#### 1.5 The Practicalities of compliance with best practice

Ideally the City Council would be able to work to best practice guidelines for both wildlife, horticulture and desire to achieve visual amenity and visibility. Unfortunately these do not always sufficiently overlap for this to be realistically achievable. For example in many cases when a hedge has been planted space has only been allowed for regular tight cutting and not for a full years growth to be put on. Changing this cutting regime to allow hedge growth to become longer can therefore inevitably give rise to conflict with neighbouring features such as footpaths.

This is particularly the case in the urban environment and for example wildlife guidelines on hedgerow cutting are often more applicable to the management of rural farmland hedges where the many conflicting urban pressures upon these resources are not an issue. For example if the management of urban hedges were to strictly follow best practice conservation guidelines this would equate to hedge cutting only during January February. This is likely to be impractical in relation to hedges within the existing Peterborough urban environment, for example for reasons of:

- Sound horticultural practice and visual amenity.
- Maintaining health and safety in relation to the use of footpaths and cycle paths, sight lines on roads or within play areas. (It is estimated that over 30% of the council's formal hedges adjoin roads, footpaths or cycleways). For road verges particular issues are highway junction visibility, forward visibility and sign and street light visibility.
- Maintaining visibility to assist with crime reduction and perception of public safety.
- Removing vegetation which has grown across windows blocking out light from homes and places of work.

Therefore while an initial consideration suggests it would be ideal from a wildlife perspective if all management were carried out in strict accordance with general conservation best practice guidelines; this is not the only factor which has relevance to the management of these features. If management were carried out in strict accordance with general wildlife best practice this would result in overwhelming pressure is likely to be brought to bear to remove a significant proportion of these

features from the urban environment. On balance this would be far more detrimental to the conservation of urban bird populations than the loss of food sources which would result from management strictly in accordance with general conservation guidelines.

It is therefore appropriate that a specific approach needs to be developed for the management of the City Councils hedges shrubs and trees, as adherence to general best practice is often not relevant to the specific urban situations the City Council finds itself operating within. The approach outlined in this document therefore aims to outline a specific best practice approach for nesting birds which is applicable to Peterborough City Councils area. This approach acknowledges the urban bias and competing pressures upon many of these management operations and seeks to give an appropriate and reasonable approach for works in the bird nesting season.

### **1.6 Practicalities of compliance with the proposed new guideline**

The following sections set out specific guidance with the aim of giving a clear approach with respect to how to observe the legal requirements and appropriate best practice specific to the maintenance of the City Councils Trees, Hedges and Shrubs. This must include sufficient detail for the approach to be clear to expert scrutiny by wildlife specialists and also robustly underpin a very simplified 1 page guidance note to be issued to contactors.

Where a hedge, shrub or tree has been left uncut due to the presence of nesting birds and a complaint or request is received then the enquirer should be made aware of this guideline and the requirements under UK Law with respect to birds and their nests as well as the City Councils desire to retain these features in the urban environment and comply with its duty with respect to biodiversity under the Natural Environment and Rural Communities Act to have regard to biodiversity (nature conservation) in carrying out its functions.

It is recommended that if adopted a copy of the simplified guidance note outlined at the end of this appendix should be issued to all operatives involved with hedge, shrub and tree works. Where appropriate this should be preceded by appropriate training in the use of the guidance note. It is intended that a copy could then be kept in contractors' vehicles in an easily accessible location to act as a ready form of reference when carrying out works or responding to a question from a member of the public.

## 2.0 Hedge and Shrub cutting during the Bird nesting season 1<sup>st</sup> March to 31<sup>st</sup> August

The guideline below covers hedge cutting during the bird nesting season. Prior to hedge and shrub cutting between 1<sup>st</sup> March and 31<sup>st</sup> August the assessment outlined below should be carried out.

Specially protected species under Schedule 1 of the Wildlife and Countryside act are not reasonably likely to be found in Hedges and Shrubs in the Peterborough Urban Area. Therefore for hedges and shrubs the legal requirement is to avoid killing and injury of all birds and the damaging or destruction of their nests. This is unless damage or destruction would be the incidental result of a lawful operation that could not reasonably be avoided, such as works required for reasons of preserving health and safety. This is the aim of the approach outlined in sections 2 and 3 of this protocol.

### 2.1 Cutting of Permanent hedge and shrub growth versus routine trimming

The permanent growth of a hedge or shrub is distinct from new growth which has been put on in that year/growing season and would be subject to annual cutting back. The removal of permanent growth might for example include removing a section of hedge to create an access or complete removal of shrubs in advance of replanting.

The permanent growth of a hedge or shrub is structurally much better for birds to be able to construct nests and therefore the chances of encountering nesting birds and having to avoid them is much increased. Therefore ideally works to the permanent growth of hedges and shrubs should be programmed to take place between 1st September - 28<sup>th</sup> February, outside of the bird nesting season. However where this is not possible works may still be able to proceed providing that the approach outlined below is employed.

### 2.2 Recommended approach

It is unlikely that nests will be damaged when undertaking routine trimming providing that these are carried out in a controlled way by skilled operators. Dependant on the circumstances one of three different approaches will be appropriate:

Circumstances	Approach
The material to be cut <b>can</b> be clearly seen to be clear of nesting birds by a simple assessment as outlined below in 2.4.	Work should proceed. The operator should however continue to observe for nests as they carry out trimming, but only if safe to do so bearing in mind the requirement for the safe use of the machinery and tools being used and stop if they identify one in the path of their cut. If this were to happen a record should be made (see section 4) and the simple assessment outlined in section 2.4 should be repeated. If this then identifies that a detailed assessment (section 2.5) is required this should be carried out.

	<p>If the presence of all possible nests has already been identified then the more detailed assessment can be missed out. The procedure outlined in the last two rows of the table should be employed.</p>
<p>The material to be cut <b>cannot</b> be clearly seen to be clear of nesting birds by a simple assessment as outlined below in 2.4.</p>	<p>The more detailed assessment set out in 2.5 should be carried out. If stages 1 and 2 of this detailed assessment both fail to identify any evidence that nesting birds are present then works may proceed with care. If works are required for reasons of health and safety only the second part of this procedure should be employed.</p> <p>The operator should however continue to observe for nests as they carry out trimming and stop if they identify one in the path of their cut. If this were to happen a record should be made (see section 4) and the detailed assessment should be repeated.</p> <p>If the presence of nesting birds is identified by the detailed assessment then the procedure outlined in the next two rows of this table should be employed.</p>
<p>Work is <b>not</b> required to maintain health and safety <b>and</b> nesting birds have been identified which would be affected by the works.</p>	<p>Works should either be delayed until after the bird nesting season or only that part of the works implemented which would not involve the destruction of nests (providing that this would not result in the creation of a dangerous feature).</p>
<p>Work <b>is</b> required to maintain health and safety.</p>	<p>The work <b>must</b> be carried out regardless of if nesting birds are present. Only the works to address the health and safety issue should be carried out. The operator should inspect the hedge/shrub in advance and make every effort to minimise damage to any nests where this is sensibly possible. A record should be kept of any nest encountered (see section 4).</p>

### 2.3 Method of cutting during the bird nesting season (1<sup>st</sup> March - 31<sup>st</sup> August)

To achieve any of the approaches above work needs to proceed in a carefully and accurately controlled way that allows the operator to continue to observe while cutting is underway. Therefore it is important that as works are carried out using a hand held hedge cutting tool such as a reciprocating petrol hedge trimmer. The use of a tractor mounted flail would be insufficiently accurate and prevent the operator from observing for nests as work progresses.

## **2.4 Simple assessment of if nesting birds are present**

This should be a relatively quick inspection on foot of the length of hedge/area of shrub to be cut and could be combined with the operators own initial inspection of the working area prior to commencing works:

- The operator should walk the length of hedge/around the shrub to be cut and determine if the material they intend to remove can clearly be seen to be free of nesting birds.
- Depending on the time of year/density of growth this may involve some stopping and possibly manoeuvring to achieve a view through denser vegetation.

The new spindly side and top growth on a hedge or shrub is particularly easy to assess in this way. However the dividing line between permanent growth and new growth on a hedge can make a good nesting site and particular care should be taken in this respect.

Areas of dense growth that cannot be seen to be clear of nests should either be left uncut or the next level of inspection should be used as outlined in 2.5 to try to establish if nesting birds are present.

## **2.5 Detailed assessment of if nesting birds are present**

Birds have to make many trips to and from a nest, first to build it and then to feed chicks when they have hatched. It is possible to use this to find nest sites/the area of likely nests. This will however be less effective in identifying nests where eggs are yet to hatch and activity is much less, therefore a second stage is also required.

A two staged more detailed assessment should be used to determine if nesting birds are present or absent. If works are required for reasons of health and safety only the second stage should be employed. The aim would then be to minimise impact to any nests when carrying out essential works which must be implemented.

### **Stage 1:**

- 15 minutes of observation of the section of hedge/shrub to be cut looking and listening for birds coming and going to a nesting site.
- If walls or fences are not in the way it is best to try to achieve an all round observation of a hedge or shrub to avoid the possibility that a bird might come and go from the opposite side unobserved.
- This might be done by two operatives observing one from each side. Or as a lesser option one operative could observe from one side for 15 minutes and then the other.
- Observations should be carried out by standing well back from the shrub/hedge being surveyed as birds are naturally less likely to break cover/return by that route that has a person standing right next to it.
- If a likely nest site is identified then works should avoid the area and any vegetation that cannot be seen to be clear on 2 metres either side for each nest.
- For those areas where no likely nest site has been identified then stage 2 of the detailed assessment should be carried out.

### **Stage 2:**

- If no birds are seen by standing back and observing then vegetation should be carefully parted and moved aside to make a careful physical inspection for bird nests. Birds that had been silent may give an alarm call if this gets close to them so the operative should be careful to listen as well as look when doing this. If a nest is identified the operative should withdraw.
- Providing that this does not identify a nest then work should proceed in a controlled way using a hand held hedge cutting tool such as a petrol hedge trimmer. The use of a tractor mounted flail would be insufficiently accurate and too difficult for the operator to observe.
- The operator should continue to observe for nests as they carry out works and stop if one is identified for example in the path of their cut. If this were to happen a note should be made (see section 4) and the detailed assessment should be repeated.
- If a nest site is identified then works should avoid the area and any vegetation that cannot be seen to be clear on 2 metres either side for each nest.



### **3.0 Tree works during the Bird nesting season 1<sup>st</sup> March to 31<sup>st</sup> August**

#### **3.1 Introduction**

The guideline below covers tree works during the bird nesting season. Prior to tree works in the period between 1<sup>st</sup> March and 31<sup>st</sup> August the assessment outlined below should be carried out.

Trees may contain features such as cavities and splits which provide ideal conditions for bats and some birds which are protected from disturbance as outlined in 1.2 and 4.6. This includes barn owl, red kite, goshawk and hobby. This is however not reasonably likely to be the case for street trees as they are not normally allowed to develop these features and are not situated in habitats which are attractive to these specially protected birds.

Therefore for City Council trees and woodland the legal requirement is to avoid killing and injury of all birds and the damaging or destruction of their nests. In addition for non street trees to avoid the disturbance or undertaking works which risk the disturbance of adult schedule 1 birds at their nests, or their young.

This is unless it can be demonstrated that this is the incidental result of a lawful operation that could not reasonably be avoided. Which is the aim of the approach outlined throughout this protocol.

#### **3.2 Application of the protocol for trees**

The guideline below covers the implementation of tree works to mature/established trees during the bird nesting season.

It is most appropriate for areas of dense cover of often younger tree planting or grown out hedge and shrub features to be approached using the guideline for cutting permanent growth of hedges and shrubs. This approach may also be applicable to edge coppicing work. A judgement will need to be made when programming edge coppice works with respect to if it will be most efficient for this to be programmed outside of the bird nesting season to avoid encountering bird nesting constraints which would otherwise be inevitable. Alternatively edge coppice work might be programmed for the early part of the bird nesting season when nesting birds are less likely to be encountered and the operator will find it easier to make an inspection and identify if nesting birds are present.

#### **3.3 Getting to the tree and carrying out the work**

The City Councils tree stock includes a wide variety of different situations from ancient woodland to street trees. In some situations there may be no vegetation under the tree, such as with many street trees. In others tree works may be a require to the removal of lower growing vegetation near a tree/trees to which works are planned. This might range from the under storey of woodland species found in more natural situations to more formal hedge and shrub type planting and may for example be required to:

- Create a safe access to the tree to carry out works.
- Create a safe working area in which to carry out works.

- Include the area in to which tree sections will be lowered.

Therefore while nesting birds may be absent from the tree itself they may be using vegetation at its base or which might otherwise be affected by the implementation of works. Therefore any hedge/shrub material which would need to be removed in order to carry out tree works should be treated in the same way for the routine and permanent cutting of these features above outlined in section 2.

### **3.4 Vegetation growing up a tree**

Trees may also have ivy or other climbers bridging the gap between the under storey and the tree itself. This will need a sensible approach depending on the situation on the ground. In some situations it may be approached in the same way as outlined for shrubs and hedges: for example if it only extends a limited way up a tree and/or the tree is yet to come properly into leaf and can easily be observed from the ground. In other situations such as where there is dense ivy growth right into the crown which cannot be well observed from the ground it may be best to treat it as part of the tree itself, or a combination of the two approaches.

Clearly a sensible approach will also need to be taken with respect to any physical inspection of vegetation growing up a tree as if the use of a ladder/climbing is required this will need to very much be considered along with the tree rather than any underlying shrubs.

### **3.5 The tree itself**

As trees are significantly different structures to hedges and shrubs and works often remove growth that has taken many years to accumulate a slightly different approach is required. This cannot sensibly differentiate between routine trimming and more in depth works. However some distinction can be made between street trees and woodland/tree belts and the probability of nesting birds generally and schedule 1 birds specifically being present.

Given the variety of tree types, situations and works which might be carried out a greater degree of judgement is needed to be exercised by the operator; however they will be a tree specialist/arborist so this is not inappropriate. Trees also are often much easier to assess than hedges and shrubs:

- The growth is often less dense and therefore easier to see into, this is particularly the case where the tree is not part of a woodland/tree belt, for example street trees.
- They often come into leaf later in the year and so can be more easily inspected much later into the nesting season.
- Because of the lower density of growth in a mature canopy the types of birds which favour hedges are replaced by other species such as crows which build larger more obvious nests.

Having said this trees may contain features such as cavities and splits which provide ideal conditions for bats and some birds which are protected from disturbance as outlined in 1.2 and 4.4. This includes barn owl, red kite, goshawk and hobby. This is however not reasonably likely to be the case for street trees as they are not normally allowed to develop these features and are not situated in habitats which are attractive to these specially protected birds. Where non street trees do have these features a special approach is required as outlined below.

### 3.6 Tree and woodland works in the bird nesting season: Schedule 1 (specially protected) birds

For tree works in the Peterborough area there are four species with special protection which it is in the realms of possibility might be encountered. These species are not however reasonably likely to be present in street trees.

This special protection extends to an offence of disturbing them on or near the nest. However no offence will have been committed provided that any disturbance or damage were the incidental result of a lawful operation that could not reasonably be avoided. An example of this type of work would be that which is required to maintain health and safety such as where a tree has become unstable or a limb is hanging off and to delay works would be unacceptable.

These four species and their nesting habits are outlined below.

Bird species	Nesting habits
Barn Owl	Will nest in trees if a suitable (large e.g. 100mm or more) cavity is present in a limb or trunk, barn owls may also nest much earlier and later than is generally the case therefore cavities in trees should be treated in this way at all times of year.
Red kite	Will nest on a main fork or a limb high in a tree typically 12-20m above the ground. The nest is constructed from dead twigs and lined with grass and sheep's wool. Prior to egg laying kites will decorate the nest with paper, rags, crisp packets, carrier bags, even clothing. New material is added to the nest throughout the breeding season, and a nest that has been in use for a number of seasons can grow to a considerable size. Old buzzard or crow nests can also be used by kites.
Hobby	Will nest in old crow's nests near the top of tall trees near farmland which provide a good vantage point. Isolated trees near farmland and wetland or tall trees within a small copse or woodland edge are likely to be used.
Goshawk	The Goshawk will tend to build its own nest close to the main trunk in the top third of a tree. It favours dense mature woodland and relies on radiating branches to construct its nest.

It is also worthy of note that the evidence outlined above only identifies a chance that a schedule 1 bird could be present rather than definite presence.

There is an offence of disturbing these nests or the birds if they are even near the nest, therefore even if a nest would not be removed by works an offence may still be committed by carrying out operations in the same tree or nearby. Therefore if the sorts of nests or cavities outlined above are identified then work should stop and further specialist advice sought, unless it would be unsafe to do so, or the works are required for reasons of maintaining health and safety.

For example if to delay works would endanger public health and safety then works must proceed. In such instances the works and any damage or disturbance would be classified as the incidental result of a lawful operation that could not reasonably be avoided and so would be covered by the defence provided by section 4(2) c of the Wildlife and Countryside Act.

However only the works required to address the health and safety issue should take place and the operator should inspect the tree in advance and make every effort to minimise damage to any nests where this is sensibly possible. A record should be kept of any nests encountered and how disturbance and damage was kept to a minimum (see section 4).

### 3.7 Tree works in the bird nesting season: recommended approach if there is no evidence that schedule 1 birds might be present

#### 3.7.1 Recommended approach

Where works are carried out in the bird nesting season the following approach has been designed with the aim of ensuring that reasonable measures have been taken to avoid damaging or destroying bird nests, unless there are overriding reasons such as health and safety which would be exempt.

Circumstances	Approach
<p>The tree and the material to be cut <b>can</b> be clearly seen to be clear of nesting birds by a simple assessment as outlined for routine works (see 3.7.3).</p>	<p>Work can proceed. The operator should however continue to observe for nests as they carry out works and if they identify a nest which would be impacted by their work stop <b>if safe to do so</b>. A record should be made and the simple assessment should be repeated and a more detailed assessment carried out if then identified as necessary.</p> <p>If the presence of all possible nests has already been identified then the more detailed assessment can be missed out. The procedure outlined in the last two rows of the table should be employed.</p>
<p>The tree and material to be cut <b>cannot</b> be clearly seen to be clear of nesting birds by a simple assessment as for routine works (see 3.7.3).</p>	<p>The more detailed assessment set out in section 3.7.4 should be carried out. If both stages 1 and 2 fail to identify any evidence that nesting birds are present then works may proceed. If works are required for reasons of health and safety only the second part of this procedure should be employed.</p> <p>The operator should however continue to observe for nests as they carry out works and if they identify a nest which would be impacted by their work stop <b>if safe to do so</b>. If this were to happen a record should be made and the detailed assessment should be repeated.</p> <p>If the presence of nesting birds is identified by the detailed assessment then the procedure outlined in the next two lines of this table should be employed.</p>
<p>Nesting birds have been identified which would be affected by the works. The work is <b>not</b> required to maintain health and safety.</p>	<p>Works should either be delayed until after the bird nesting season or only that part of the tree works implemented which would not involve the destruction of nests</p>

	(providing that this would not result in leaving the tree in a dangerous state).
Nesting birds have been identified which would be affected by the works. The work <b>is</b> required to maintain health and safety.	The work <b>must</b> be carried out regardless of if nesting birds are present. Only the work to address the health and safety issue should be carried out and the operator should inspect the tree in advance (as outlined in 3.7.3 and stage 2 of 3.7.4) and make every effort to minimise damage to any nests where this is sensibly possible. A record should be made of any nest encountered (see section 4) and how damage was kept to a minimum.

### 3.7.2 Health and safety of the operator

Following this guideline is designed to ensure that reasonable efforts have been carried out to ensure that nesting birds are not impacted by tree works and that where this is unavoidable, for example for reasons of maintaining health and safety, that any damage or disturbance would be the incidental result of a lawful operation that could not reasonably be avoided, and therefore covered by the defence given in the Wildlife and Countryside Act.

However in carrying out this assessment and subsequent works it is imperative that the operator does not do anything to compromise their own health and safety or that of others. Therefore if an operator is for example half way through cutting a limb and notices a nest they should only stop if it is safe to do so, and may indeed need to continue the cut to its completion. It must for example be acknowledged that:

- Once overall works to a tree have been commenced they will often need to be completed in order to avoid leaving a tree in a dangerous condition from work which is only partially complete.
- When a cut has been commenced to a specific tree limb it will have to be completed in order to avoid leaving it in a dangerous condition from work which is only partially complete.
- It would be the operator's paramount responsibility to ensure works are carried out in line with all health and safety guidelines of equipment use and to follow the correct policy and procedures in completing the task required

### 3.7.3 Simple assessment of if nesting birds are present

This should be a relatively quick inspection on foot from the ground and could be combined with the operators own initial inspection of the tree prior to commencing works:

- The operator should look at the tree from all sides and determine if it is clear of nests. Particular attention should be paid to:
  - The material they intend to remove and the part of the tree in which they will work, and if this can clearly be seen to be free of nesting birds.
  - The route the arborist will take into the tree.

- Any holes and cavities which might be present and which may be suitable for bird nesting or use by bats.
- Depending on the time of year/density of growth this may involve some stopping and possibly manoeuvring to achieve a view through denser vegetation, the use of binoculars may also be useful in this respect.

If it can clearly be seen that the working area is clear of nesting birds, works may proceed. The operator should however continue to observe for nests as they carry out works and if they identify a nest which would be impacted by their work stop **if safe to do so**. A record should be made and the simple assessment should be repeated. A more detailed assessment should be carried out if subsequently identified as necessary.

Areas of dense growth that cannot be seen to be clear of nests should either be left uncut or the next level of inspection should be used as outlined below to try to establish if nesting birds are present.

If features such as splits cracks or cavities are observed then specialist advice should be sought with respect to the likelihood of these being used as a bat roost.

#### **3.7.4 Detailed assessment of if nesting birds are present**

Birds have to make many trips to and from a nest, first to build it and then to feed chicks when they have hatched. It is possible to use this to find nest sites/the area of likely nests. This will however be less effective in identifying nests where eggs are yet to hatch and activity is much less, therefore a second stage is also required.

A two staged more detailed assessment should be used to determine if nesting birds are present or absent. If works are required for reasons of health and safety only the second stage should be employed:

##### **Stage 1:**

- 15 minutes of observation of the tree should be made looking and listening for birds coming and going to a nesting site. This might be targeted at the areas of the tree to which works are required or those parts of the tree which cannot be seen to be clear by a simple walk round assessment.
- If walls or fences are not in the way it is best to try to achieve an all round observation to avoid the possibility that a bird might come and go from the opposite side unobserved.
- This might be done by two operatives observing one from each side. Or as a lesser option one operative could observe from one side for 15 minutes and then the other.
- Observations should be carried out if possible by standing well back from the tree being surveyed as birds are naturally less likely to break cover/return by a route that has a person standing right next to it.
- If a likely nest site is identified then works should avoid the area and any vegetation that cannot be seen to be clear within 2 metres for each nest. It may be appropriate to consider at this point if the remainder of works can be achieved in a safe way and if these will leave the tree in an unstable state. Limbs containing nests should also not be removed, even if the cut would be made at more than 2 metres from the nest!
- For those areas where no likely nest site has as yet been identified then stage 2 of the detailed assessment should be carried out.

**Stage 2:**

- If no birds are seen by standing back and observing then a physical inspection can be made which might involve the use of ladders/climbing if appropriate. Vegetation should be carefully parted and moved aside to make a careful physical inspection for bird nests. Holes and cavities should be carefully inspected with the use of a torch. Birds that had been silent may give an alarm call if this gets close to them so the operative should be careful to listen as well as look when doing this. If a nest is identified the operative should withdraw.
- Providing that this further inspection does not identify a nest then work should proceed in a controlled way.
- If a nest is discovered in the course of the works the operator should stop if safe to do so. If this were to happen a note should be made as per section 4 and the detailed assessment repeated.



#### **4. Record keeping when nests are found**

A record should be kept of hedge, shrub and tree works carried out during the bird nesting season when nests that are in use are found. The record should include:

- The type of work including dates and times.
- The details of any enquiry/complaint which has drawn the works to the Council attention
- The location of the nest, what level of assessment had been carried out and how it was found.
- The condition of the nest for example, empty or with eggs. Adult bird present/scared off. Eggs warm or cold (this should only be checked if the adult bird is not present).
- If a nest was found while carrying out health and safety works, the health and safety justification as well as measures taken to minimise damage to nests should be included.
- For non health and safety works the action taken when the nest was found should be recorded.

This record should be lodged with the relevant line manager and also copied to the City Councils Wildlife Officer for the purpose of monitoring the need for revisions to this guidance.

#### **5. Specialist advice and Further Information**

Specialist advice can be sought from:

- Peterborough City Council Wildlife Officer: 01733 453400
- Peterborough City Council Natural Environment Team Leader: 01733 453465
- Natural England: 01733 405850
- RSPB: 01767 693690

Further information on the bird species listed here can be obtained from the RSPB website: [www.rspb.org.uk](http://www.rspb.org.uk)

## 6.0 Conclusion

All birds and their nests are protected. There are four species which might be found in the within the City Councils woodland/treebelts which receive additional protection. These are:

- Barn Owl
- Goshawk
- Red Kite
- Hobby

These species are not however reasonably likely to be found in street trees. Other specially protected species such as kingfisher and marsh harrier are present in the Peterborough area but simply won't be found in the Councils trees. None of the species which receive special protection are likely to be found in the Councils hedges or shrubs.

Therefore in practice to comply with legal requirements with respect to nesting birds the City Council should aim to:

- **For hedges and shrubs:** avoid killing and injury of all birds and the damaging or destruction of their nests.
- **For trees:** avoid killing and injury of all birds and the damaging or destruction of their nests. In addition for non street trees to avoid the disturbance or undertaking works which risk the disturbance of adult schedule 1 birds at their nests or their young.

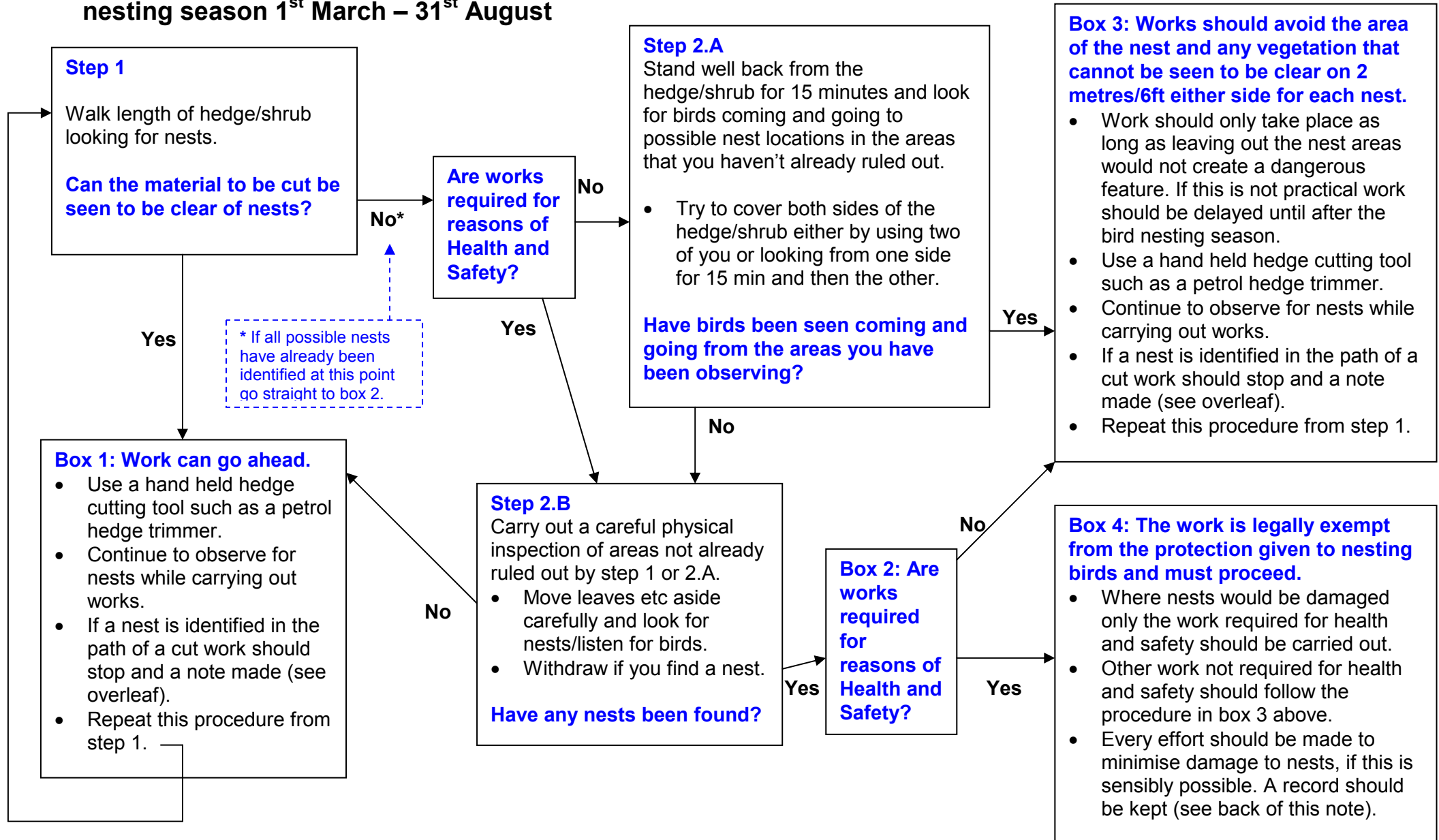
In both cases works required to preserve health and safety are not legally restricted even if nesting birds (including those which are specially protected) are present. In such cases, while every care should be taken to avoid and minimise harm, any killing and injury of birds and/or the damaging or destruction of nests would be an incidental result of a lawful operation which could not reasonably have been avoided and therefore exempt under section 4(2) C of the Wildlife and Countryside Act.

In practice this means that:

- If the tree, shrub or hedge can be seen to be clear of nesting birds then there is no restriction and works may proceed.
- If the tree, shrub or hedge cannot be seen to be clear of nesting birds then a more detailed assessment can be carried out, first by observing and then by physically looking for nests. If this concludes that no nests are present then work may proceed.
- If the presence of nests is identified and works are not required to maintain health and safety then works will need to be delayed until nesting activity has ceased.
- If the presence of nests is identified and works are required to maintain health and safety then the works must proceed. This is allowed for in the legislation that protects nesting birds.

### 7.1 Suggested Guidance for Issue to Officers and Contract Staff: Hedge and shrub cutting in the bird nesting season 1<sup>st</sup> March – 31<sup>st</sup> August

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## Record keeping when nests are found

A record should be kept of hedge, shrub and tree works carried out during the bird nesting season when nests that are in use are found. The record should include:

- The type of work including dates and times.
- The details of any enquiry/complaint which has drawn the works to the Council attention
- The location of the nest, what level of assessment had been carried out and how it was found.
- The condition of the nest for example, empty or with eggs. Adult bird present/scared off. Eggs warm or cold (this should only be checked if the adult bird is not present).
- If a nest was found while carrying out health and safety works, the health and safety justification as well as measures taken to minimise damage to nests should be included.
- For non health and safety works the action taken when the nest was found should be recorded.

This record should be lodged with the relevant line manager and also copied to the City Councils Wildlife Officer for the purpose of monitoring the need for revisions to this guidance.

## Specialist advice and Further Information

Specialist advice can be sought from:

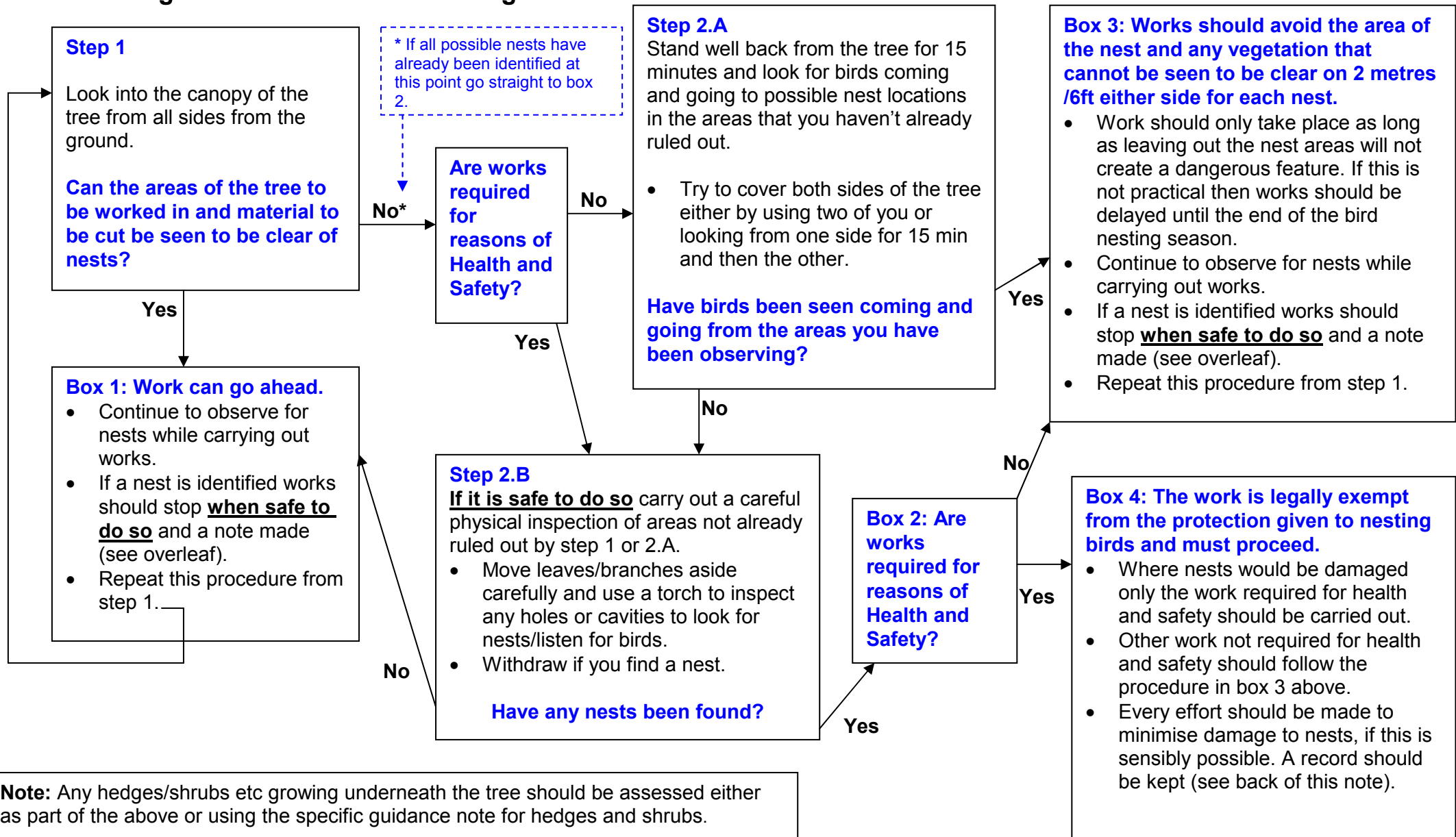
- Peterborough City Council Wildlife Officer: 01733 453400
- Peterborough City Council Natural Environment Team Leader: 01733 453465
- Natural England: 01733 405850
- RSPB: 01767 693690

Further information on birds can be obtained from the RSPB website:

[www.rspb.org.uk](http://www.rspb.org.uk)

### 7.2 Suggested Guidance for Issue to Officers and Contract Staff: Works to Street Trees in the bird nesting season 1<sup>st</sup> March – 31<sup>st</sup> August

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## Record keeping when nests are found

A record should be kept of hedge, shrub and tree works carried out during the bird nesting season when nests that are in use are found. The record should include:

- The type of work including dates and times.
- The details of any enquiry/complaint which has drawn the works to the Council attention
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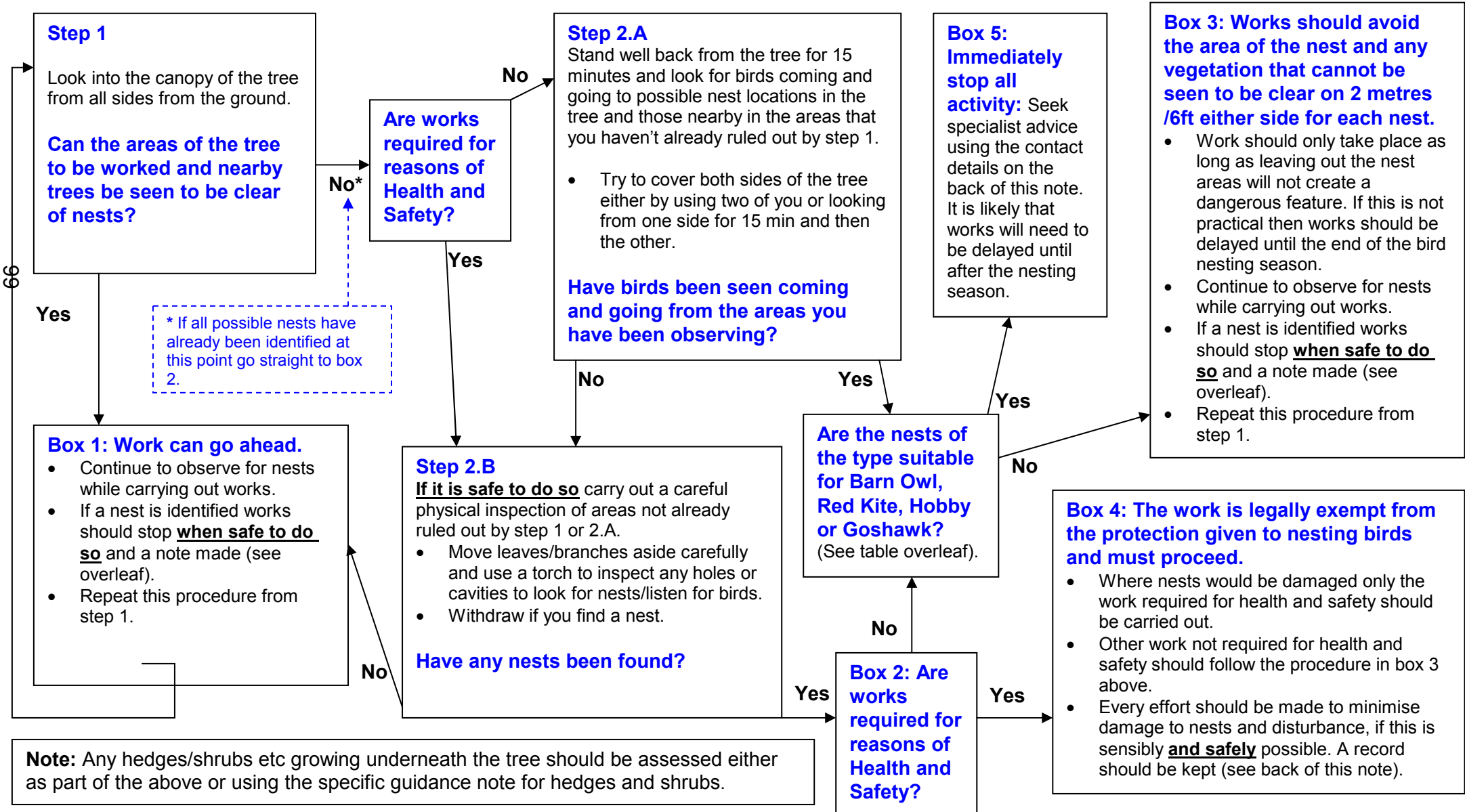
## Specialist advice and Further Information

Specialist advice can be sought from:

- Peterborough City Council Wildlife Officer: 01733 453400
- Peterborough City Council Natural Environment Team Leader: 01733 453465
- Natural England: 01733 405850
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Further information on birds can be obtained from the RSPB website:  
[www.rspb.org.uk](http://www.rspb.org.uk)

### 7.3 Suggested Guidance for Issue to Officers and Contract Staff: Works to woodlands, shelterbelts and non street trees in the bird nesting season 1<sup>st</sup> March – 31<sup>st</sup> August



## Record keeping when nests are found

A record should be kept of hedge, shrub and tree works carried out during the bird nesting season when nests that are in use are found. The record should include:

- The type of work including dates and times.
- The details of any enquiry/complaint which has drawn the works to the Council attention
- The location of the nest, what level of assessment had been carried out and how it was found.
- The condition of the nest for example, empty or with eggs. Adult bird present/scared off. Eggs warm or cold (this should only be checked if the adult bird is not present).
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### Specialist advice and Further Information

Specialist advice can be sought from:

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- Peterborough City Council Natural Environment Team Leader: 01733 453465
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Further information on birds can be obtained from the RSPB website: [www.rspb.org.uk](http://www.rspb.org.uk)

## Specially protected birds which could nest in non street trees in Peterborough

Bird species	Nesting habits
Barn Owl	Will nest in trees if a suitable (large e.g. 100mm or more) cavity is present in a limb or trunk, barn owls may also nest much earlier and later than is generally the case therefore cavities in trees should be treated in this way at all times of year.
Red kite	Will nest on a main fork or a limb high in a tree typically 12-20m above the ground. The nest is constructed from dead twigs and lined with grass and sheep's wool. Prior to egg laying kites will decorate the nest with paper, rags, crisp packets, carrier bags, even clothing. New material is added to the nest throughout the breeding season, and a nest that has been in use for a number of seasons can grow to a considerable size. Old buzzard or crow nests can also be used by kites.
Hobby	Will nest in old crow's nests near the top of tall trees near farmland which provide a good vantage point. Isolated trees near farmland and wetland or tall trees within a small copse or woodland edge are likely to be used.
Goshawk	The Goshawk will tend to build its own nest close to the main trunk in the top third of a tree. It favours dense mature woodland and relies on radiating branches to construct its nest.