



DON'T FALL FOWL OF THE WILDLIFE LAW

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November 2002



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ArborEcology

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As the onset of spring and the rising sap means tree pruning has to stop for a while, arborists everywhere look to hedge trimming and felling contracts to provide the work. However, these jobs have their own share of problems, and one that is more often than not, overlooked by many arborists. Clusters of twigs, grass, moss, old bits of string and even plastic bags, which form the nest of birds.

We all at some time or another have felled a conifer or got half way along a dense hedge, only to find a bird's nest with eggs or young fledglings. However, how many of us really consider the consequences of our actions; moving the nest, destroying it or ignoring it completely. I for one have moved nests (to place them below the reduction line) my brother cut the top off his finger, as he tried to avoid a nest with fledglings in it, while trimming the top of some conifers. We have all been there, but how many of us have considered that wild birds, and their nests, are protected by law. I have been working in arboriculture for over fifteen years and it is only in the last five that I have really considered the implications of the legal protection afforded to wildlife under UK Law.

Last year we were working in a back garden in Beckenham SE London, where our client pointed out the nest of a local robin, in an old flowerpot under her cherry tree. I assumed, since it was the first week in March that the birds were just building the nest. It was not in our way so we continued with some tree pruning and planting work. However, half way through the job, I realised that the two parent birds flying around our heads were feeding their fledglings, which were hopping around the garden trying to avoid our activities.

As climate change causes increasingly warmer spring temperatures, many of Britain's birds are nesting earlier in the year, some species like pigeons are even attempting to raise a brood during mild winter months. We found a fledgling pigeon on the nest in November last year. While data used as part of the Government's Climate Change Indicators show that some hedge-nesting birds, such as chaffinch, robin, yellowhammer and blackbird, are nesting 4-17 days earlier than they did 25 years ago. The RSPB advise that work on trees, shrubs and hedges should be limited during the period mid March to early August, while removing a hedge entirely should be avoided completely. While the NFU advise farmers not to flail hedges between March and September.

The Primary legislation affecting wild birds in England, Scotland and Wales is the Wildlife and Countryside Act 1981 (as amended). In January 2001 the Countryside and Rights of Way Act 2000 (CROW) included amendments, which strengthened the law in England and Wales. The basic principle of the Wildlife and Countryside Act 1981 (as amended) is that all wild birds, their nests and eggs, are protected by law and some rare species are afforded special protection. There are certain exemptions to this notably in respect of wildfowl, game birds and various species that may cause damage.

Despite the protection for nest being limited to the time during construction and use, it is important to be aware that nest building starts from the moment the first twig is laid. So consider this; if you see a bird flying along with a twig in its beak and it lands on the branch of a tree, then flies away leaving the twig on the branch, that is legally considered to be a nest. This represents a considerable problem when planning tree felling work or hedge reduction in spring, and an issue that continues to prevail throughout the summer months.

LEGAL DEFINITION AND PROTECTION

A wild bird is defined as 'any bird of a kind which is resident in or a visitor to Great Britain in a wild state. (Game birds however are not included in this definition. They are covered by the Game Acts, which fully protect them during the close season.)

All birds, their nests and eggs, are protected by law and it is therefore an offence, with certain exemptions, to;

- intentionally kill, injure or take any wild bird
- intentionally take, damage or destroy the nest of any wild bird whilst it is in use or being built
- intentionally take or destroy the egg of any wild bird

- have in one's possession or control any wild bird, dead or alive, or any part of a wild bird, which has been taken in contravention of the Wildlife and Countryside Act 1981 (as amended) or the Protection of Birds Act 1954
- have in one's possession or control any egg or part of an egg which has been taken in contravention of the Act
- intentionally (or recklessly, in England and Wales only (CRoW 2000)) disturb any wild bird listed on Schedule 1 while it is nest building, or at (or near) a nest containing eggs or young, or disturb the dependent young of such a bird.

It will be an intentional act if, for example a contractor continues to reduce or remove a hedgerow, tree or shrub, after he/she discovers, or is told that birds are nesting there. The discovery of a nest during the process of work will also prohibit further cutting work within an area or buffer zone around the nest. This could mean leaving a section of hedge unreduced, or not working on part of a tree. However, these, in theory at least, should be avoidable circumstances if adequate investigations are completed prior to starting work, but this is rarely practical.

I include the following paragraphs at the end of my quotations and ask my clients to be vigilant in the period before we start on site. The second paragraph covers the possible use or tree by bats. (For further information please refer to the article in issue 3 of essentialArb) Where Necessary I will make a site visit the day before, which could involve a climbing inspection.

PLEASE NOTE; The Company has a responsibility to comply with a number of Acts of Parliament that affect and may restrict the pruning or felling of hedges, trees & shrubs, at certain times of year.

BIRDS AND BIRD'S NESTS - It is an offence under Section 1 of the Wildlife and Countryside Act 1981 (as amended) to intentionally take, damage or destroy the nest of any wild bird while it is in use of being built. It will be an intentional act if, for example contractors continue to reduce or remove a hedgerow, tree or shrub, after they have been told that birds are nesting there. The discovery of a nest during the process of work will also prohibit further cutting work within an area or buffer zone around the nest. (Please refer to our information leaflet Wild Birds and their Protection by Law in the UK or log onto our web site www.treecraft.co.uk)

BATS AND ROOST SITES - All bats are protected under the Wildlife and Countryside Act (Schedule 5). They are also included in Schedule 2 of the Conservation (Natural Habitats, &c) Regulations 1994, and The Countryside and Rights of Way Act 2001. The Acts and Regulations include provisions making it Illegal to:

- Recklessly or deliberately kill, injure or capture (take) bats.
- Recklessly or deliberately disturb bats (whether in a roost or not)
- Damage, destroy or obstruct access to bat roosts

A Bat roost is interpreted as 'any structure or place which is used for shelter or protection', whether or not bats are present at the time. If proposed work is likely to destroy or disturb bats or their roosts the appropriate Statutory Nature Conservation Organisation (SNCO) MUST be notified and allowed a reasonable time to advise on whether the proposed work should be carried out and, if so, the method to be used.

The above will limit and may prohibit certain tree pruning or felling work during spring and summer. Birds will nest in trees and shrubs between March and August each year, while bats will use roost sites in trees between April and September, depending on weather conditions. Some species may hibernate in large old trees, during the winter months.

There are of course exemptions that allow certain work to continue; in section 4-2 (c) of the Wildlife and Countryside Act 1981 (as amended) it states, that it does not constitute an offence if the act can be shown to be the incidental result of an otherwise lawful operation, and could not reasonably have been avoided. There are also exceptions for incidents where disturbance or destruction of birds or their nests is necessary as a matter of public health and safety; while a similar allowance can be made, where the act is necessary for conservation reasons. These are allowed where the birds involved are included in a recognised list of 13 species (so called pest species) catered for under general nation-wide licence. However, some conditions do apply and it is important to consult the DEFRA to check the coverage of the licence.

In July last year, Julian Cable, of Stamford, Lincolnshire, became the first private individual to receive a conviction for the destruction of a house martin's nest on his house. He was witnessed dislodging the nest with a pole and putting the contents into a skip. Although the fine in this case was quite small, amounting to £250.00, the maximum penalties, in England and Wales, were increased under amendments made within the CRoW Act 2000, up to a fine of £5000.00 or a six-month prison sentence, or both. Fines may be imposed in respect of each bird, nest, egg or skin. If more than one such item is involved then the total fine is determined as if the person had been convicted of a separate offence in respect of each bird, nest, egg or thing.

Also last year a landmark case was brought to court by the Crown Prosecution Service (CPS), where Ashfield District Council became the first local authority to be prosecuted for the destruction of birds' nests and their eggs. The act occurred in May 2001 when a 100 metre section of hedgerow was destroyed by a JCB, as part of some clearance work in Morvern Park, Kirkby-in-Ashfield, Nottinghamshire to make space for a local carnival. The JCB driver and council officers were informed by a local resident that the section of hedge contained a number of dunnoek nests. However, despite holding a site meeting and agreeing to postpone the work the section of hedge was still removed.

Statements were obtained from a number of witnesses, who had seen the site before and afterwards. There was also evidence of destroyed nests and eggs where the hedge had been removed. Section 69 of the Wildlife and Countryside Act 1981 (as amended) provides for corporate liability and, after the CPS took legal advice, Ashfield District Council as well as two officials and the JCB driver were reported for four offences of intentional nest and egg destruction. Pleas to all offences by the Council were accepted at Nottingham Magistrates' Court on 17 December 2001 and it was fined £2,800.00 with £55.00 Costs.

While this legislation may make our life difficult at times, we as professionals can not afford to ignore it. The restrictions that can limit our work are not totally prohibitive, although it may seem it at times, with careful consideration and planning it is possible to work around them. However if we don't, all it will take is for a local resident to report our actions to the Police Wildlife Liaison Officer or RSPB, with adequate evidence and any one of use could be in court with the threat of a fine, not to mention, defending our professional reputation.

Unfortunately, ensuring that we do comply with wildlife legislation can be difficult at times, especially when arboricultural work is so varied. What is important though is that we consider how our work on site is likely to affect the wildlife using the trees we are working on and those that surround them. While I am completing the site risk assessment I also make notes and complete an impact assessment on the local habitat, whether it is a small private back garden or a large private estate. If we evaluate every work situation in this way we can be seen to be acting responsibly and not seen as intentionally or recklessly harming wildlife habitat.

Every case must be treated on it's own merits, as we know every tree is different, and every job or contract we are asked to deal with has it's own share of issues and problems. If you are concerned about a particular situation the RSPB investigations unit are very experienced and can offer some very useful advice. RSPB Investigations Officers, The Royal Society for the Protection of Birds, The Lodge, Sandy, Bedfordshire, SG19 2DL, United Kingdom; tel: +44 (0)1767 680551 (switchboard)

Woodpecker holes are often a good indication of dead or decaying areas of a tree, where the bird has pecked away at the surface to find beetles or grubs feeding off the dead wood. Where it is possible for the woodpecker to excavated deeper to make a large enough hole, they are often used as nest sites, first by the woodpeckers, and then by other birds, while some may be used as roost sites by bats. It is therefore very important to inspect these holes carefully before felling a tree or removing a limb with one in.

WILD BIRDS AND THE CONTROL OF PEST SPECIES UNDER THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

The Wildlife and Countryside Act 1981, used to allow (before it was amended by the Countryside and Rights of Way Act [CRoW] 2000), the killing or taking of a bird included in Part II of Schedule 2. However, amendments that came into force in January 2001 with the CRoW Act 2000, deleted this list from the Act. Those species are now afforded full protection, under the Wildlife and Countryside Act 1981. Control of these species is now under the terms of General Licence held by DEFRA, SERAD AND NAW.

These are only brief details, and copies of the licences can be obtained from the Government department responsible (See List below). Unless otherwise stated the licence permits authorised persons (in some cases anyone) to carry out the licensable act in England, Wales and Scotland.

An authorised person is deemed to be the owner or occupier of any land on which the action takes place or any person authorised by the owner or occupier. It can also be someone authorised in writing by a local authority, a Statutory Nature Conservation Organisation (SNCO), a district fishery board (Scotland) or local fisheries committee, a water authority or any other statutory water undertakers. However, under the Act, such an authorised person has no right of entry on any land.

1) Killing of birds to prevent serious damage to agriculture; permits the killing of taking of certain birds, including the taking, damaging or destruction of their eggs by an authorised person for the purpose of preventing serious damage to livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters. Control is either by shooting, a cage trap or net. This applies to the following species:

Carrion crow	Collared dove	Great black-backed gull
Lesser black-backed gull	Herring gull	Jackdaw
Jay	Maggie	Feral Pigeon
Rook	House sparrow	Starling
Woodpigeon		

Licences by DEFRA, SERAD AND NAW

2) Killing of birds to preserve public health/air safety and to conserve wild birds; permits the killing or taking of certain birds, including the taking, damaging or destruction of their nests or the taking or destruction of their eggs by an authorised person for the purpose of preserving public health or air safety or conserving wild birds. This applies to the same species as noted in 1) above, and licensed by DEFRA, SERAD and NAW



A willow tit entering its nest hole with food. Photo: Forest Research Picture Library

3) Eggs in nest boxes; permits the removal of eggs from nest boxes from 1st August to 31st January, Licences by DEFRA, SERAD and NAW.

Other lawful activities also include;

- Keeping birds in Larsen traps
- Sale of gulls' eggs
- Taking of mallard eggs
- Sale of captive-bred native birds
- Sale of wildfowl
- Sale of dead birds and derivatives
- Exhibition of captive birds
- Veterinary surgery
- Keeping disabled birds
- Killing of birds on airfields
- Keeping captive-bred birds in show cages

But these have less arboricultural, horticultural or agricultural significance.

LICENSING BODIES;

DEFRA

Department for Environment, Food and Rural Affairs
Land Use Division
Nobel House
17 Smith Square
London SW1P 3JR
020-7238-3000

SERAD

Scottish Executive Rural Affairs Department
Victoria Quay
Edinburgh EH6 6QQ
0131-556-8400

NAW

National Assembly for Wales
Cathays Park
Cardiff CF10 3NQ
029-2082-5111

For further information you may wish to visit the arborecology website: www.arborecology.co.uk

Andrew Cowan N.D.Arb. is Director of ArborEcology Ltd. Having worked in Arboriculture since 1986, establishing a contracting business in 1990 (Tree Craft Ltd), he became licensed by English Nature in 2001 and now provides advice on a range of arboricultural and ecological issues.

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