

Warning to South Yorkshire Police and Amey

Rights of Householders, regarding access to private land and the airspace above

Under English Common Law a landowner owns the airspace above his/her land unless express exclusions apply. There is no automatic right to access private land or the airspace above it and therefore the oversail of any object is deemed a trespass and governed by the law of property. The landowners rights extend to such a height that is necessary for the ordinary enjoyment of the land and the structures on it.

Where it is necessary to access the airspace above private land in order to fell a tree, permission should be sought in the form of an oversail licence to mitigate the trespass. The contractor should seek agreement of both Landlords and tenants.

If no authority to oversail private land has been obtained the land owner can seek an injunction to prevent the work. The land owner does not have to demonstrate damage, merely that property rights are being violated.

Case law: Oversailing

Anchor Brewhouse Developments Ltd v Berkeley House Docks (Docklands Developments) Ltd (1987) 2 E.G.L.R.173

An injunction was granted to prevent the developers crane from oversailing Anchors land.

If SCC, Amey, its subcontractors Acorn, supported by the actions of SYP continue to press on with the current planned tree fellings, land owners may seek damages.

Case Law: Damages

Aggravated damages may be sought if the manner of those trespassing is high handed, insulting or oppressive, Horsford v Bird (2006) UKPC3.

In circumstances where contractors need to enter the airspace above private land and an oversailing licence has not been sought and agreed, we assert that the felling is illegal. As such residents and protesters demonstrating on private land cannot be arrested or issued an arrest warning.

If South Yorkshire Police continue to issue such warnings or make further arrests on private premises under these circumstances this may used as evidence of persistent wrongdoing by the Police.

I and my friends are also deeply concerned that the police force on whom we depend have been drawn into a dispute between citizens and a large international company. This is especially worrying when the contract between Amey and Sheffield City Council is highly secret, making it impossible to understand whether the tree fellings are lawful or within the legal conditions of the contract.

We advise South Yorkshire Police to seek evidence from Amey that their felling work is lawful in terms of the SCC/Amey Contract, in terms of all relevant regulations for environmental protection, and that reasons given to Sheffield City Council and the public are truthful and not simply a 'front' for reasons hidden by contract secrecy.

Professor Chris Rust

27 Ladysmith Avenue
Sheffield, S7 1SF

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