

## **TREE PRESERVATION ORDERS**

### **RECOMMENDATION**

**That the report be received.**

#### **1. Background**

1.1 Further to the request made by the Planning Committee at its meeting of 15 November 2011, the following is a brief summary of the legislative framework relating to Tree Preservation Orders (TPOs) and of the related purposes of making and administering TPOs in relation to planning and development control matters. The report focuses on the making of Tree Preservation Orders, the role of the Planning Committee and the relationship between the making of Tree Preservation Orders and planning permission.

#### **2. Tree Preservation Orders**

2.1 Local Planning Authorities – in the case of the Borough, that means the Borough Council – have specific powers to protect trees by making Tree Preservation Orders (TPOs), although the Forestry Commission is responsible for the control of felling generally. Special provisions also apply to trees within Conservation Areas. A TPO is an Order made by a local planning authority, which in general makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission.

2.2 A local planning authority can make a TPO if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees and woodlands in their area'.

2.3 Although the term 'amenity' is not defined, the Secretary of State's view is that:

- TPOs should be used to protect trees and woodlands if their removal would have a significant impact on the environment and its enjoyment by the public.
- Planning authorities should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed.
- The trees, or at least part of them, should normally be visible from a public place although exceptionally the inclusion of other trees may be justified.
- The benefit may be present or future.
- Trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore or future development.
- The value of trees may be enhanced by their scarcity, and
- The value of a group of trees or woodland may be collective only.

2.4 Authorities are encouraged to use a structured way of assessing the amenity value of trees taking into account the key criteria of 'visibility', 'individual impact' and 'wider impact'. This practice is followed by your officers.

2.5 Guidance goes on to indicate that although a tree may merit protection on amenity grounds, it may not be expedient to make it the subject of a TPO. For example, it is unlikely to be expedient to make a TPO in respect of trees, which are under good arboricultural or silvicultural management. Conversely, it may be expedient to make a TPO if the Authority believes that there is a risk of the tree being cut down or pruned in ways, which would have a significant impact on the amenity of the area. Such risk may not necessarily be an immediate one. Account can be taken of general development pressures or the Authority may have some other reason to believe that trees are at risk. However, changes in ownership and intentions to fell trees are not always known in advance and so the protection of selected trees by a precautionary TPO might sometimes be considered to be expedient.

2.6 TPOs can protect all types of trees, including hedgerow trees, but not hedges, bushes or shrubs. The Order can cover anything from a single tree to woodlands. Any species can be protected, but no species is automatically protected by a TPO.

- 2.7 Anyone can request that trees be protected by contacting their local planning authority giving details of the trees, and the reasons why they think the trees should be protected. The local planning authority may 'make' a TPO, which comes into effect immediately and remains in force for up to six months. Under the scheme of delegation that function within the Borough Council is carried out by the Executive Director (Operational Services)
- 2.8 Long-term protection is provided when the planning authority 'confirm' the TPO. The decision on whether or not to confirm a Tree Preservation Order is made by the Planning Committee. Once a TPO is made the owner remains responsible for the trees, their condition, and any damage they may cause. However, the planning authority's permission is required before carrying out work on them, unless they are dying, dead or dangerous.
- 2.9 The local planning authority writes to the owner and other interested parties when an Order is made, enclosing a copy of the Order, and providing a consultation period of usually 28 days for objections/support for a TPO. Comments received are required to be taken into account by the Planning Committee when deciding whether or not to confirm a TPO.
- 2.10 In order to carry out work on a protected tree, permission must be sought from the local planning authority. There are exemptions to the requirement to apply for consent to carry out works, which are:-
- (1) Cutting down trees in accordance with one of the Forestry Commission's grant schemes, or where the Commission has granted a felling licence;
  - (2) Cutting down or pruning a tree:
    - which is dying, dead or dangerous;
    - in line with an obligation under an Act of Parliament;
    - at the request of certain organisations specified in the Order;
    - which is directly in the way of development that is about to start for which detailed planning permission has been granted;
    - in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice;
    - to prevent or control a legal nuisance.
- 2.11 If an application is refused by the local planning authority or if an applicant is not happy with the conditions applied to a permission, an appeal can be lodged with the Secretary of State in writing within 28 days of receiving the decision. Appeals are normally decided based on the information available to the planning authority when they made their decision and a site visit. The Secretary of State may allow or dismiss the appeal, or vary the original decision.
- 2.12 If consent is refused – or granted with conditions – compensation can be sought from the local planning authority for any loss or damage, which results. A claim cannot be made where, under the terms of the Order, the Planning Authority has issued a certificate saying either:
- that the refusal or condition is in the interests of good forestry, or
  - that the trees or woodland have an outstanding or special amenity value.
- 2.13 An appeal to the Secretary of State can be lodged against such a certificate. Local planning authorities are only able to issue these certificates under TPOs which were made before 2 August 1999.
- 2.14 Trees within Conservation Areas are protected and six weeks' notice is required to the local planning authority before carrying out work on trees, which are located in a Conservation Area but are not yet the subject of a TPO. This gives the Authority an opportunity to consider whether an Order should be made to protect the trees.

### 3. **Trees and Development**

- 3.1 Trees on development sites are assessed for their amenity value as well as for, but not exclusively, the following:

- Size and position and overall future growth in relation to buildings.
- Whether trees can be sufficiently protected during the development operations.
- Whether trees can withstand proposed changes to site conditions.

- 3.2 The local planning authority should decide in each case whether trees that might be affected by a development should be safeguarded by using a planning condition or TPO or both. The issued Guidance is that in the Secretary of State's view; however, it is not reasonable to use conditions as a means of securing the long-term protection of trees when TPOs are available for this purpose.
- 3.3 Planning conditions can be used, where appropriate, to secure the planting and establishment of new trees. A condition may also provide for the protection of the planting area during development operations, maintenance of the trees during the first few years (the number of which should be specified) and the replacement of any trees which are removed or die within that time. A TPO may be used to protect trees, which are planted pursuant to conditions. The Order will take effect once they are planted. A developer can only cut down or cut back protected trees if they are directly in the way of development which is about to start, for which they have detailed planting permission. They cannot carry out tree work if they only have outline planning permission. If the development does not require planning permission, application must be made to the local planning authority for permission under the TPO in the normal way.
- 3.4 The existence of a TPO does not prevent planning permission being granted. However, a local planning authority will consider the risk to protected trees when deciding planning applications. Once detailed planning permission is granted, any felling may be carried out which is directly required to enable the development to go ahead.

#### 4. **Summary**

- 4.1 Local planning authorities have specific powers to protect trees by making tree preservation orders. Special provisions also apply to trees within Conservation Areas designated by local planning authorities. A TPO protects trees, which make a significant impact on their local surroundings. Trees on development sites can be protected by TPOs or by conditions attached to the planning permission, or both. A TPO does not prevent planning permission being granted.
- 4.2 A further report on Tree Preservation Orders has been requested by the Cleaner, Greener and Safer Communities Overview and Scrutiny Committee and this will be discussed with the Chair of the Committee for prioritisation in the work programme. Training on Tree Preservation Orders and tree related planning issues could also be incorporated into the programme of training for Planning Committee members when the content of the training topics is discussed with the Chairman.