

10. CONFIRMATION OF TREE PRESERVATION ORDERS WHERE OBJECTIONS AND REPRESENTATIONS ARE RECEIVED (GM)

Purpose of the report

1. To propose a procedure to be followed when a Tree Preservation Order has been made, (using powers delegated to officers) and objection(s) and or representations have been received.

2. **Recommendation**

To approve the procedure as set out in Appendix 1

How does this contribute to our policies and legal obligations?

3. Town and Country Planning Act 1990

Under the Town and Country Planning Act, a National Park Authority may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area (Section 198(1)). There are therefore two criteria: interests of amenity and expediency.

Having made a TPO, a Planning Authority must publish and serve copies on owners and occupiers of land affected by it. There is a 28 day period from the date it is made in which to object. If no objections are made, the Planning Authority may confirm the Order itself and if the Planning Authority remains satisfied that making the TPO is expedient in the interests of amenity, they should confirm it. Where objections or representations have been made, then the Planning Authority must take them into consideration before deciding whether to confirm the Order.

4. The Planning Practice Guidance issued in 6 March 2014 provides the following: Paragraphs (034-040).

“Confirming Tree Preservation Orders

How do local planning authorities confirm Tree Preservation Orders? (para 037)

Authorities can confirm Orders either without modification or with modification, to provide long-term protection. They may also decide not to confirm the Order, which will stop its effect. Authorities cannot confirm an Order unless they have first considered any duly made objections or other representations.

Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decision at this stage in an even-handed and open manner.

5. Is there a time limit for confirming Orders? (para 038)

Authorities can only confirm an Order within a six month period beginning with the date on which the Order was made. If this deadline is missed and an authority still considers protection necessary it will have to make a new Order.

6. Can the authority confirm a modified Order? (para 039)

The authority can decide to confirm an Order in relation to some, but not all, of the trees originally specified in the Order it made.

7. What changes to an Order should not be confirmed by the authority? (para 040)

The authority should not confirm an Order it has modified by adding references to trees, groups of trees or woodlands in the Schedule to the Order or the map to which the Order did not previously apply. Nor should the authority confirm an Order if it has made substantial changes to it, for example by changing an area classification to a woodland classification. To protect additional trees or make other significant changes the authority should consider either varying the Order after it has been confirmed or making a further Order.

8. Can people object to, or comment on, a Tree Preservation Order? (para 034)

People must be given the opportunity to object to, or comment on, a new Tree Preservation Order. Before deciding whether to confirm an Order, the local authority must take into account all duly made objections and representations that have not been withdrawn.

9. Objections and representations are duly made if:

- They are made in writing and:

delivered to, or could reasonably expect to be delivered to, the authority not later than the date specified in the regulation 5 notice.

specify the particular trees, groups of trees or woodlands in question.

in the case of an objection, state the reasons for the objection.

- In a particular case, the authority is satisfied that compliance with the above requirements could not reasonably have been expected.

10. How long should the local authority allow for people to make representations? (para 035)

The authority should ensure that all notified parties are given at least 28 days from the date of the notice to submit their representations.

11. Are the reasons for objecting restricted?(para 036)

Objections to a new Tree Preservation Order can be made on any grounds.”

12. **Government Policy Advice**

In March 2000, the Office of the Deputy Prime Minister issued "Tree Preservation Orders: a Guide to the Law and Good Practice". This is not a definitive statement of the law. It is Government policy advice on the system. This has been superseded by the Planning Practice Guidance quoted above, but the principles set out are sound. With regard to the procedure for considering objections or representations the Guide states:

"Considering Objections and Representations

3.36 *If objections or representations are duly made, the LPA cannot confirm the TPO unless they have first considered them. To consider objections and representations properly it may be necessary for the LPA to carry out a further site visit, which would in any case be appropriate if the LPA had not yet assessed fully the amenity value of the trees or woodlands concerned. Any objection or representation made on technical grounds (for example, that a tree is diseased or dangerous) should be considered by an arboriculturist, preferably with experience of the TPO system.*

3.37 *Discussion between the LPA and any person who makes an objection is encouraged. Discussion can lead to a greater mutual understanding of each side's point of view. This in turn can help clarify the main issues which will have to be considered by the LPA before they decide whether to confirm the TPO. Alternatively, discussions can lead to the withdrawal of objections.*

3.38 *Since LPAs are responsible for making and confirming TPOs, they should consider establishing non-statutory procedures to demonstrate that their decisions at the confirmation stage are taken in an even-handed and open manner. For example, the LPA officer could prepare a report for the committee or sub-committee that will decide whether to confirm the TPO. The report could include details of all objections or representations and the LPA officer's observations on these in the light of any site visit or discussions with people affected by the TPO. A copy of the report could be sent to those people who have made objections and representations, with an invitation to submit any further views before the committee meet to make their decision. The LPA could arrange for members of the committee to visit the site of the trees before making their decision. The visit could be followed by a hearing or inquiry back at the Council offices, where people affected by the TPO and the LPA officer are given a final opportunity to state their case."*

A Planning Authority may decide, in the light of any site visit or objections or representations received that a TPO should be confirmed in respect of some of the specified trees and woodlands, but that other trees or woodlands should be excluded from the confirmed Order."

"Rules" for Considering Objections

The Secretary of State has expressed the view that in confirming TPOs, the Local Planning Authority will be acting in a quasi-judicial capacity. In considering objections to a TPO, the Planning Authority should follow the rules of natural justice.

There are two basic rules of natural justice. The first rule requires the maker of a decision to give prior notice to persons affected by it and for those persons to be able to put their case. The second rule prevents a person from acting if he has an interest or might otherwise be, or give the appearance of being, biased.

In addition, those who take quasi-judicial decisions must take into account the right considerations and not take into account considerations which are irrelevant.

13. The Authority's Scheme of Delegated Powers

The Authority at its meeting on 1 July 2016 delegated its functions in respect of trees to the Planning Committee. In turn, the Planning Committee has delegated to officers the power to make and serve TPOs. However, consideration of objections and in cases where objections are made, the power to confirm, is retained by the Planning

Committee.

Are there any corporate implications members should be concerned about?

14. It is essential that members are satisfied that a fair process has been used in deciding whether a Tree Preservation Order to which Objections or Representations have been received should be confirmed or not.
15. **Financial:** No financial implications are envisaged.
16. **Risk Management:** No significant risks are envisaged in confirming the TPO.
Legal: Generally if works are carried out to trees protected by a Tree Preservation Order, either before or after confirmation, an offence is committed. The offence is one which can be tried before the Magistrates Court or referred to the Crown Court for trial by a jury. A term of Imprisonment and or a fine can be imposed, and a tree replacement Order can be made. If a TPO is not confirmed within 6 months of its being made, it ceases to have effect, and the trees are no longer protected by it.
17. **Sustainability:** The confirmation of a TPO would encourage sustainable woodland management.
18. **Human Rights:** The Human Rights Act 1998 sets out the rights and freedoms of individuals, which includes a right to peaceful enjoyment of their property. The making of a Tree Preservation Order does not in itself remove this right but it does place a restriction on it by requiring consultation with and approval by the Authority before carrying out certain operations (works). In doing so the Authority must balance the interests of the property owner and the wider public interest.
19. **Consultees:** The Authority's Natural Environment Team Manager, Monitoring & Enforcement Manager, Landscape Architect, Conservation Officer and Head of Law have been consulted and support the proposal.

Appendices

Appendix 1 – Proposed Procedure

Report Author, Job Title and Publication Date

Gyl Murphy, Senior Legal Officer (Enforcement), 7 July 2016.