

14. PROTECTING TREES IN THE NATIONAL PARK – THE USE OF TREE PRESERVATION ORDERS (JRS)

At the Planning Committee in July 2015 it was agreed that the Director of Planning would bring a report to Committee to explain the Authority's practice on the options available to the Authority for protecting trees, particularly where development is proposed. This report sets out the approach that is currently taken and provides Members with a summary of the Tree Preservation Order process.

In practice there are three situations in which a tree or group of trees would have some protection from felling or other significant works, such as topping, lopping and pruning. These are:

- Where there is a Tree Preservation Order (TPO)
- Where the tree is within a designated Conservation Area
- Where there is a specific planning condition which has taken effect following the commencement of a development. There may also be occasions when there is a section 106 agreement which has a similar restriction, but these are not widely used for this purpose.

In addition, the felling of over a certain volume of timber requires a licence from the Forestry Commission (FC) and the felling of trees within Sites of Special Scientific Interest (SSSIs) requires Natural England (NE) consent. NE or FC consent will also generally be needed for trees on land within agri-environment or woodland grant schemes. These are not dealt within this report.

What is a Tree Preservation Order?

This is set out in more detail in the Government's National Planning Practice Guidance (see: <http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general>), so what follows is a summary of the relevant parts of that guidance.

A Tree Preservation Order is an order made by a local planning authority to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions.

Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected.

What are the relevant laws?

The primary legislation on Tree Preservation Orders is in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 introduced a single set of procedures for all trees covered by tree preservation orders.

Local planning authorities can make a Tree Preservation Order 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'. Amenity is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

What might a local authority take into account when assessing amenity value?

When considering whether trees should be protected by an Order, authorities are advised to assess the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility: The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact: Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including size and form; future potential as an amenity; rarity, cultural or historic value; contribution to, and relationship with, the landscape; and contribution to the character or appearance of a conservation area.

Other factors: Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change, but these factors alone would not warrant making an Order.

What does 'expedient' mean in practice?

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural management. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order.

What trees can be protected?

An Order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species. Orders covering a woodland will protect the all trees and saplings within the identified area, including those planted or growing naturally after the Order was made.

How are Tree Preservation Orders made?

If a local planning authority makes an Order, it will serve notice on people with an interest in the land, inviting representations about any of the trees covered by the Order. A copy of the Order will also be made available for public inspection. Following consideration of any objections and comments the authorities can decide whether or not to confirm the Order.

The Order must specify the trees or woodlands as being within four categories (individual, area, group and woodland). Any combination of these categories may be used in a single Order. The Order must also include, or have annexed to it, a map giving a clear indication of the position of the protected trees, groups of trees or woodlands. The legislation does not require authorities to describe the trees in the Order with full scientific names or plot them on the map with pinpoint accuracy. But authorities should bear in mind that successful prosecutions for contravening Orders will be difficult where Orders do not show clearly which trees are meant to be protected

The group category should be used to protect groups of trees where the individual category would not be appropriate and the group's overall impact and quality merits protection. The

woodland category's purpose is to safeguard a woodland as a whole. The advice makes it clear that a woodland category TPO should not hinder beneficial woodland management. Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission.

The National Park Authority's Tree Officer spends a significant amount of his time providing advice to land owners on the proper management and maintenance of trees and woodlands. A scheme for charging for this advice is currently being considered

When does a Tree Preservation Order come into effect?

An Order comes into effect on the day the authority makes it. This provisional effect lasts for six months, unless the authority first either confirms the Order to provide long-term protection or decides not to confirm it. Before deciding whether to confirm an Order, the local authority must take into account all 'duly made' objections and representations. If an Order is not confirmed after 6 months it will cease to have effect.

Is there a right of appeal against made or confirmed Tree Preservation Orders?

The legislation provides no right of appeal to the Secretary of State against an authority either making or confirming an Order. There is, however, a right of appeal to the Secretary of State following an application to carry out work on trees protected by an Order that is refused, granted subject to conditions, or not determined. The validity of an Order cannot be challenged except by way of application to the High Court on a point of law.

How is an application made to carry out work on trees protected by a Tree Preservation Order?

Apart from limited exceptions, permission must be sought from the local planning authority by submitting a standard application form. Anyone wanting to cut down, top, lop or uproot trees subject to an Order must first apply authority for its consent unless the proposed work is exempt through an exception. Where an exception applies the authority's consent to carry out works is not needed, but notice of those works may need to be given to the Authority.

What are the exceptions relating to trees subject to an Order?

An exception may exempt landowners or their agents from the normal requirement to seek the local planning authority's consent before carrying out work on trees subject to an Order. These exceptions include certain work, including work on the following: on dead trees and branches; on dangerous trees and branches; to comply with an Act of Parliament; to prevent or abate a nuisance; necessary to implement a planning permission; on fruit trees; by or for statutory undertakers; for highway operations; by the Environment Agency and drainage bodies; and for national security purposes.

The Authority's consent is needed for carrying out work on diseased and/or dying trees unless some other exemption applies. One example is work urgently necessary to remove an immediate risk of serious harm. Another example is where government authorities require the destruction of particular trees to tackle a serious plant disease.

The Authority's consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. However, the Authority's consent is required for work on trees subject to an Order if:

- development under a planning permission has not been commenced within the relevant time limit and has expired;
- only outline planning permission has been granted; and
- it is not necessary to carry out works on protected trees in order to implement a full planning permission

Applications for consent under an Order may be granted unconditionally, subject to conditions, or refused. There is a right of appeal against the decision.

The Use of TPOs in the Peak District National Park

The Authority does not make extensive use of TPOs; there are currently 88 in place in the National Park, most of them having been made many years ago. The approach taken by the Authority has been to use TPOs as a method of last resort, preferring to work with land owners by providing advice on tree management and conservation. Officers in both the Planning and Conservation teams consider that our advisory work is more effective in generating a sympathetic attitude from tree owners, is less resource-intensive and will provide a source of income through paid-for advice in future.

Conservation Areas

Trees within Conservation Areas also benefit from some protection against felling, topping or lopping. There are currently 109 Conservation Areas in the National Park; these are largely focussed on villages, but some (notably Edale and Eyam) cover large areas of countryside beyond the village boundary.

If a tree in a Conservation Area is not already covered by a TPO, written notice must be given to the Authority of any proposed work at least six weeks before the work starts. This is a Section 211 notice and it gives the Authority an opportunity to consider protecting the tree with a TPO. Normal TPO procedures apply if a tree in a Conservation Area is already protected by a TPO.

There are some exemptions to this requirement. Consent is not required for works to a tree in a Conservation Area if it is less than 7.5 centimetres in diameter, measured 1.5 metres above the ground (or 10 centimetres if thinning to help the growth of other trees).

Use of Planning Conditions

Planning conditions are frequently used by the Authority as a means of securing the retention of existing trees on sites during development and for a period following completion of the development. If there is a planning condition on a permission, this only comes into effect once the permission has been lawfully commenced. Following this any work to a protected tree must be in accordance with the condition or as otherwise agreed with the Authority. Failure to comply with the condition can lead to the service of a Breach of Condition Notice, against which there is no right of appeal and which is subject to prosecution in the Magistrates' court.

The difficulty which can arise with a reliance on this approach is that a developer may remove or otherwise top, lop or prune a tree which is covered by a condition before the planning permission is implemented. If the tree is not protected by other means (a TPO or being located in a Conservation Area), then the Authority would have no control over this work and a tree or trees which were considered to be worthy of retention could be removed or damaged.

Whilst this is a risk, in practice there have been no occasions in recent years where this has actually happened in the National Park. In those cases where trees on a site have been identified as being worthy of retention officers have worked with the applicant or their agent to agree a scheme for retention and management. If officers were to become aware that an important tree that was not otherwise protected was under threat because of a proposed development, the use of a Tree Preservation Order would be considered, but officers do not recommend the use of TPOs as standard/routine measure in all cases where the retention of trees is desirable.

Having regard to the advice in the NPPG, the Authority needs to consider whether it is expedient to serve an Order (see above). It is also necessary to consider the resources that would be required to serve a TPO in all those cases where a condition requiring the retention of trees is currently used. Whilst the TPO process can be made as efficient as possible, it would usually be

necessary for the Tree Officer to inspect the tree or trees in question and for an order to be drafted and issued by the Legal Team. Any order could be subject to appeal. Given the current level of resources in these teams (the Authority now has two part-time Tree Officers) and the future limitations on resources and budgets, this approach would not be sustainable. Consequently, officers consider that Tree Preservation Orders should be used as a means of last resort when there is a clear threat to a tree or trees which are of amenity value and that the current approach of providing advice to land owners has been effective and an efficient use of limited resources.

Finally, in response to Members' interest in this subject, the Member Planning Training sessions on 25 September and 18 October will include a presentation from and discussion with Dave Frost, the Authority's Tree Officer.

RECOMMENDATION: That the report be noted

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil