

# PROPOSED CHANGES TO TREE PRESERVATION ORDER PROCEDURES

Report By: Conservation Manager

## 1 Wards Affected

County-wide

## 2 Purpose

- 2.1 To consider and respond to Department of Communities and Local Government (CLG) consultation upon proposals to change Tree Preservation Order (TPO) procedures.

## 3 Financial Implications

- 3.1 The proposed changes may result in minor savings in some areas of work, in other areas they may marginally increase pressure on staff resources dependent on the extent to which the public request pre-application advice and the ability to bring forward changes in working practices through the application of new technology.
- 3.2 In researching the effects that the changes might have, attention has been drawn to the need to establish a programme for the review of TPOs; particularly Orders containing 'Area' designations and those made prior to March 1975 and this may have resource implications for the service. This will need to be the subject of a separate report.

## 4 Background

- 4.1 As part of the process for reforming the planning system the Department for Communities and Local Government is looking to change the Tree Preservation Order system in order to remove some complexities and streamline procedures. They wish to introduce a single set of rules to apply to all TPOs.
- 4.2 Presently TPOs may include different provisions and be subject to different rules depending upon when they were made. TPOs are presently made using a long and complex 'Model Order'. CLG intend to replace this with a slimmer, simpler document. This will require changes to the Town and Country Planning Act 1990 and the issuing of new regulations. These are unlikely to be in place before 2009. However CLG believes that, through revision of existing regulations (1999), some improvements can be implemented in the shorter term to reduce bureaucracy, improve speed and quality of decisions, and introduce greater clarity. It is consulting now upon these short-term improvements and would expect them to be implemented during 2008.
- 4.3 The proposals include:
- Copies of TPOs should only be sent to owners and occupiers of the land where the trees are situated;

- Applications to prune or fell protected trees would have to be submitted on a standard form prescribed by the Secretary of State;
- Appeals against local planning authority decisions in relation to TPOs would be determined on the basis of the information and evidence considered by the authority, together with a visit to the site; and
- Inspectors appointed by the Planning inspectorate would take decisions on appeals.

#### NOTIFICATION OF TPO TO OWNERS

- 4.4 Regulations presently require all occupants and owners of neighbouring properties to be served with a copy of a new TPO as well as the property directly affected. This often requires multiple copies of the lengthy TPO documentation to be sent to the same address and to many properties, some of which may be a significant distance from the protected trees where, for example, the property has an extensive curtilage. The proposal is simply to serve the Order on those people whose land will be subject to the restrictions. The local planning authority would use their discretion as to whether they wished to notify neighbours and the local community where, for example, trees overhang their property. This could be done through a short flyer rather than the lengthy legal document. A significant advantage of this approach would be to reduce the volume of paperwork generated when reviewing old and 'Area' Orders (alluded to in para. 3.2)

#### STANDARD APPLICATION FORM

- 4.5 Although many local planning authorities have devised forms to seek the information needed to determine an application, there is no requirement for them to be used. Even where they are used, applications are often vague and additional information needs to be requested. The information and evidence submitted in support of proposed tree works is particularly critical where the reason for making the application suggests the tree is unhealthy or unsafe, or trees are implicated in subsidence related property damage. The introduction of a national standard application form is proposed for tree applications, along with the full range of forms for planning permission and other consents.
- 4.6 Where works are proposed for health and safety reasons or a tree is implicated in subsidence damage, it is proposed that the application must be accompanied by reports from relevant experts. It should be noted that the proposals do not include the removal of the current exemption from protection of trees considered to be dead, dying or dangerous. This exemption only relates to circumstances where the hazard is present and immediate. If work is carried out on a protected tree under this exemption the burden of proof to show, on the balance of probabilities, that the tree was dead, dying or dangerous would remain with the defendant. The proposed standard application form and accompanying guidance notes do not clearly explain this exemption or differentiate between 'health and safety' and 'immediate hazard'.
- 4.7 Owners wishing to carry out works to non -TPO trees within conservation areas can also use the application form, although this will remain optional.

## APPEALS

- 4.8 Currently the Secretary of State, through the Regional Office, determines appeals, including those against notices enforcing replanting. It is proposed that the Planning Inspectorate now deal with them and that the process be speeded up, through appeals being determined upon the basis of information submitted at the time of the application, any comments received and reports prepared by local planning authority officers dealing with the matter. Rigid timescales will also be set.

## IMPLICATIONS

- 4.9 The proposed changes should improve the efficiency of the system. The present requirement to serve Orders on all affected parties is excessive especially as it is rare to receive comments from neighbours. The 'flier' approach using less bureaucratic language should prove more informative to residents of neighbouring properties. The proposal to use a standard application form with requirements to support tree works proposed on health and safety grounds and in subsidence cases is particularly welcome, subject to greater clarification of exemptions in cases of immediate hazard. Changes to the appeal system have been long overdue and, although may increase time spent by officers in recording the findings of their site visits, this should be assisted through new document management procedures under investigation. A review of the Council's internal systems for handling tree matters is underway and should take CLG's proposed changes into account.
- 4.10 When legislation time permits CLG also propose to replace the present lengthy and complex model form of TPO by a slimmer version and to introduce a single set of rules applying to all TPOs. This principally relates to changes made to the model order in 1975 and again in 1999. The legal indefensibility of 'Area' Orders has also been highlighted in recent cases and since the production of government guidance in 2000 the 'Area' designation has generally been considered a 'stop-gap' only, that should be reviewed and amended at confirmation or through modification. The Council has 97 such orders (c20% of orders) containing 200 'Areas', the majority having been made by the predecessor authorities. It is now becoming critical that a programme for their review is considered. This issue will need to be addressed as part of the systems review.

## RECOMMENDATION

**THAT the Committee support the proposed changes to the Tree Preservation Order procedures recommended by the Department for Communities and Local Government, subject to further clarification and guidance relating to submission of supporting evidence in connection with 'health and safety' related applications.**

### Background papers

**Tree Preservation Orders: Improving Procedures – Consultation Paper (Communities and Local Government)**

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Further information on the subject of this report is available from Chris Botwright on 01432 260133