

Item 7

REPORT TO CABINET

14 February 2008

REPORT OF DEPUTY CHIEF EXECUTIVE

Portfolio: Planning and Development

TREE PRESERVATION ORDERS: IMPROVING PROCEDURES

1 SUMMARY

- 1.1 The Planning White Paper (2007) outlined the Government's proposals for further reform of the planning system to help us respond to the economic, social and environmental challenges that lie ahead. This included making planning processes more efficient and more accessible to people whom use these services. One of the outcomes of the White Paper has been the publication of this document that seeks to improve the procedures concerning Tree Preservation Orders.
- 1.2 The main changes proposed are:
- copies of Tree Preservation Orders would be sent only to the 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 Tree Preservation Orders 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.

2 RECOMMENDATION

- 2.1 That Cabinet endorses the specific consultation responses as set out in Section 3. Appendix 1 provides a technical Officer response to questions posed in the document.

3 IMPROVING PROCEDURES

Extent of consultation following the making or variation of a TPO

- 3.1 At present Councils are required to consult the owners of the land on which the trees stand and any *adjoining* land owners. Consultation with the Parish Council and other community groups is at the discretion of the Local Planning Authority. The Borough Council consults Parish and Town councils as a matter of course.
- 3.2 A Tree Preservation Order is a restriction on land and the way it is used. The Government consider the main purpose of sending out copies of newly made Tree Preservation Orders should be to allow those people whose land will be subject to this restriction to make representations and to have them considered before the local planning authority confirms the Order.
- 3.3 The Government proposes to revert to the pre-1999 position whereby copies of Tree Preservation Orders would be sent only to the owners and occupiers of the land where the trees covered by the Order are situated.
- 3.4 If they so wished, it would remain open to Local Planning Authorities to notify others who might be affected by the Tree Preservation Order. The Government believes, however, this would best be achieved by distributing a short flyer rather than by providing copies of the Order itself.
- 3.5 It is agreed that the Tree Preservation Order is a bulky legal document and that a copy of the legal document should be sent to the owner of the land on which the trees stand. Tree Preservation Orders are served to protect public amenity and are a public resource although they grow on private property. Due to the unique nature of this public amenity, the public should be given an opportunity to contribute to the debate. The preservation of trees should be a community issue and not purely, an often contentious, dispute between local government and private individuals. It is agreed that a short flyer would be appropriate but this must include a plan of the affected trees and a schedule of species and also provide an opportunity to comment on the new Order.

It is recommended that Sedgefield Borough Council;

- **support the streamlining of the notification procedure but express concern at the apparent erosion of public consultation on this matter.**
- **request the Government to clarify the statutory extent to which the public must be consulted on new Tree Preservation Orders.**

Standard application forms for consent to prune or fell protected trees

- 3.6 Whilst the Government have produced a model application form, there is no requirement to use it. As a result, most Councils' have prepared their own forms that reduces the administrative burden placed on applicants. The Government wishes to formalise this arrangement nationally.
- 3.7 The Government propose that:
- all applications to fell or prune trees under a Tree Preservation Order will have to be made on the standard form, regardless of the date of the Tree Preservation Order;

- applications which submit that a tree is unhealthy or unsafe, or implicated in property damage caused by subsidence, will have to include the supporting information specified on the form; and,
- any application, which is not submitted on the standard form, or is incomplete, or fails to include any of the required documentation will be invalid. The Local Planning Authority will have no power to consider the application.

3.8 The use of a standard form is a welcome simplification, particularly for contractors whom may operate across many Council areas. The requirement to provide specified technical evidence to support felling applications is also welcomed and puts the onus on the applicant to prove their case and issuing a refusal. This change of emphasis has the potential to achieve modest financial savings for Councils’.

3.9 However, the Government proposes to require the use of a standard form or “one that is substantially the same” could cause some conflict regarding the interpretation of “substantially the same”. This is regrettable. The use of one standard form is therefore preferred, for the avoidance of doubt.

3.10 The new requirements to provide technical evidence to support felling on grounds of building subsidence, disease or safety, are to be welcomed. However, these reasons for felling are included in the current list of exemptions that do not need to submit an application outlined in the Town and Country Planning Act 1990. This is a paradox and there is a need for further Government clarification.

3.11 The proposed standard form is deficient in some aspects. It is suggested that there should be details of replanting where felling is proposed. Furthermore, the inclusion of a species, location and tree size would be helpful to evaluate mitigation and provide clear and simple parameters for enforcement.

3.12 An unintended consequence of the proposed requirements may be that tree owners are discouraged from making applications because of the consultancy costs to support their case. Felling may be carried out inappropriately under the “dead, dying and dangerous” exemption to save on costs.

It is recommended that Sedgefield Borough Council;

- **support the standardisation of the application procedure and form but express concern at the ambiguity of the phrase “ standard form, or one substantially the same”.**
- **support the proposed details that must be supplied with an application but have reservations about on the wording of the application form and accompanying guidance.**
- **suggest additional requirements for the application form, as set out in paragraph 3.11.**

Appeals

3.13 If a person is aggrieved by a Local Planning Authority’s decision on their application to fell or prune a protected tree, or by their failure to make a decision, they have a right of appeal to the Secretary of State. Similar rights of appeal also apply in relation to notices enforcing replanting requirements, known as tree replacement notices.

- 3.14 Approximately 750 Tree Preservation Order appeals are handled each year by the Government Offices for the Regions. The majority of these are determined on the basis of an exchange of written representations. Only a few are subject to informal hearings. Even those appeals that follow the written route take an average of around 26 weeks from start to decision. The process is, therefore, long-winded and bureaucratic.
- 3.15 The consultation document proposes to introduce a fast track procedure for dealing with Tree Preservation Order appeals. It is suggested that this fast track appeals procedure would offer substantial improvements for all parties and generate significant savings. This is due to the absence of any additional paperwork beyond the original application details. This would be given to the Inspector to visit the site and decide the appeal.
- 3.16 The fast track system is to be welcomed. In the interests of consistency, a competent Inspector with experience of arboriculture issues should deal with all appeals. The Inspector should also deal with matters relating to public amenity and landscape value as well as technical and biological issues.

It is recommended that Sedgefield Borough Council;

- **support the harmonisation of the appeal procedures by transferring TPO appeals to Inspectors.**
- **support the proposal to base the appeal on the original application.**

4 RESOURCE IMPLICATIONS

- 4.1 There are no resource implications associated with this report.

5 CONSULTATIONS

- 5.1 The consultation period closes on 19 February 2008.

6 OTHER MATERIAL CONSIDERATIONS

Links to Corporate Objectives / Values

- 6.1 The implementation of this consultation document will have an impact upon how the Council meets the Aims, Objectives and Key Activities identified in the Corporate Plan 2007-2010.

Legal Implications

- 6.2 The resulting change in Regulations will have an impact upon the Tree Preservation Order decision-making process.

Risk Management

- 6.3 There are no risk management issues attached to this report.

Health and Safety Implications

6.4 No additional implications have been identified.

Sustainability

6.5 Tree Preservation Orders contribute to the achievement of sustainable communities.

Equality and Diversity

6.6 No additional implications have been identified.

Social Inclusion

6.7 No additional implications have been identified.

Procurement

6.8 There are no procurement issues.

7 OVERVIEW AND SCRUTINY IMPLICATIONS

7.1 None

8 LIST OF APPENDICES

Appendix 1 – TPO Procedures Consultation Questions

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Ward(s)

All

Key Decision Validation: This is not a Key Decision as the report relates to a consultation document

Background Papers

HM Government, Tree Preservation Orders: Improving Procedures, November 2007

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Appendix 1 – TPO procedures Consultation Questions

Q1. Should copies of newly made TPOs, or variation Orders, be sent only to owners and occupiers of the land where the trees in question are situated?

No. TPO's are served to protect public amenity and are a public resource although they grow on private property. Due to the unique nature of this public amenity the public should be given an opportunity to contribute to the debate. The preservation of trees should be a community issue and not purely, an often contentious, dispute between local government and private individuals. It is agreed that a short flyer would be appropriate but this must include a plan of the affected trees and a schedule of species and also provide an opportunity to comment on the new Order.

Q2. Are the questions in the application form clearly expressed?

No.

1. The title of the form refers to TPO's only however section 5 refers to Conservation Areas. A separate form is envisaged for conservation area notices so section 5 can be deleted.

2. Section 7 gives examples of suggested reasons for works. The reasons need to be more aligned with what would be acceptable. The use of 'low amenity value' is particularly inappropriate as TPO trees have already been protected because of their high amenity value. Suggestions for wording; Fell – decay fungi at base, Prune – removed decayed limb over garage.

3. Section 9 concerns additional documentation and refers to the 'health and safety of trees' This phrase does not sit easily in the form and should be replaced with 'Condition of tree(s) ;e.g., structural integrity'.

4. It should not be suggested that a 'horticultural advisor' should give advice on protected tree matters.

Q3. Do the questions appear in a logical sequence?

Yes

Q4. Are we asking the right questions? If you think we should be asking other questions, please use the comments box to say why this additional information is required.

Yes

Q5. Do the guidance notes provide sufficient explanation?

No.

1. Reference to Conservation Areas should be deleted.

2. Guidance on question 7 of the application form includes illustrations for specific tree work prescriptions. The illustrations included in Arboricultural Association Guidance Note 5 "European Tree Pruning Guide" should be used as definitive industry standards. Reductions should be specified in metres rather than percentage, for the avoidance of doubt. Guidance Note 5 is more modern and prescriptive than BS 3998 and should be referred to on a par with the British Standard.

Q6. Is there any other information that would be helpful to include as guidance?

Yes. Guidance on acceptable pollarding techniques should be included.

Q7. Should the supporting information to accompany TPO applications be specified, through the form, at the national level? Such requirements would be mandatory and apply to all relevant TPO applications.

Yes. Where trees are to be felled and where more than 30% of the canopy is to be removed.

Q8. Have we got the requirements right?

Yes

Q9. Do these proposals provide local planning authorities, at the outset, with all the information they need to determine an application?

Yes

Q10. Do they provide the right balance between the need for consistency and certainty while allowing some flexibility to respond to the individual circumstances of the case?

Yes

Q12. Are there any other requirements that should be included? If so, please use the comments box to say why this additional information is needed.

Yes. Additional requirements that should be included in the application form are details of replanting where felling is proposed. The inclusion of a species, location and tree size would be helpful to evaluate mitigation and provide clear and simple parameters for enforcement.

Q13. Is this fast track procedure fair and reasonable?

Yes

Q14. Does it strike the right balance between speed and quality of decision?

Yes

Q15. Can the process be further simplified?

No

Q16. Will it work for all types of TPO appeal, including appeals against tree replacement notices?

Yes

Q17. Should decisions on all TPO appeals be taken by Inspectors appointed by the Planning Inspectorate?

Yes

Q18. Are there risks with this approach that have not been identified?

Yes. In the interests of consistency appeals should be dealt with, in all cases, by an arboriculturally competent Inspector. The inspector should also deal with matters relating to public amenity and landscape value as well as technical and biological issues.

Q19. How might we mitigate such risks?

Inspectors should be qualified in arboriculture to at least degree level

Q20. What are the likely effects of any of the changes on you, or the group or business or local planning authority you represent?

Quicker application validation. All pertinent information should be provided at registration giving the LPA the maximum period in which to evaluate the proposal.

Q21. Will there be unintended consequences?

Yes. Tree owners may be discouraged from making applications because of the consultancy costs to support their case. Felling may be carried out inappropriately under the “dead, dying and dangerous” exemption to save on costs.

Q22. Do you have any general comment on the outcomes predicted in the Impact Assessment, in particular the costs and benefits?

The cost to the applicant using the existing system is very small and usually only consists of minor pruning works. The costs to the applicant have been significantly over estimated. Tree surgeons usually do not charge for submitting applications and reports to support applications are very rare. The expected saving are therefore very small. For an applicant, the proposals will mean on average a modest increase in costs.

Q23. As an applicant or local authority, what are the current costs of applying for and processing applications for consent to fell or prune trees?

As an LPA the costs of administration are 30 mins per application and 2 hours of Planning Officer/Tree Officer time

Q24. As an applicant or local authority, how are these costs likely to be affected by the proposal to introduce a standard application form? Where possible, please specify or estimate the costs involved.

The quality of application is likely to be better. There is likely to be 15 min administration cost saving per application.

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