

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING DEVELOPMENT CONTROL COMMITTEE - 20 JUNE 2006

A PROCEDURE FOR DECIDING FORMAL OBJECTIONS TO TREE PRESERVATION ORDERS

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1. Introduction

- 1.1 Local Planning Authorities have the power to make Tree Preservation Orders (TPOs or Orders) under Sections 198,199 and 201 of the Town and Country Planning Act 1990 in order to protect trees which are important in their local communities. The scope and purpose of TPOs are outlined in Annex 1.
- 1.2 The statutory processes for making a TPO include notifying the affected landowners and allowing 28 days for persons to object in writing to the making of the Order. Experience in other Authorities has shown that the majority of the objections are resolved through negotiation by officers. Some however are not, and this Authority must have a mechanism for considering those objections before deciding whether or not to confirm the Order with or without amendments. There is no external mechanism to appeal against the confirmation of the Order by the issuing Authority.
- 1.3 This report outlines some important issues relating to the making of TPOs and recommends the creation of a Tree Preservation Order Objection Panel consisting of 5 members with at least 3 members to form a quorum; and procedures to allow objectors to the making of a Tree Preservation Order to make their case fully in a public forum where all the issues can be heard and assessed by persons other than those involved in the decision to make the Order in the first place.

2. Background

- 2.1 TPO legislation is supported by guidance issued by the Department for Communities and Local Government, (formerly the Office of the Deputy Prime Minister) on 17 April 2000 called "*Tree Preservation Orders A Guide to the Law and Good Practice*". This is commonly referred to as the "Blue Book".
- 2.2 When an Order is made it immediately protects the specified tree or trees. The owners and occupiers of the land on which the tree or trees are situated, together with all the owners and occupiers of the neighbouring properties, are served with a copy of the Order. Other

parties told about the Order include the relevant District or Borough Council Land Charges section, the relevant Town or Parish Council and Authority Members. The Authority may also choose to publicise the Order more widely.

- 2.3 The Order includes a schedule specifying the protected trees, and must also state the reasons for protecting the trees. This will relate to their amenity value.
- 2.4 The procedures allow any person who wishes to make representations to the Authority, in writing, within 28 days of service.
- 2.5 Where an objection is made to the Order, in the first instance, the Tree Officers will negotiate with the objector to see if it can be resolved. If it cannot be resolved then the Authority needs to have a fair and transparent procedure for deciding whether the Order should be confirmed.
- 2.6 The Order, when first made, has a life of 6 months. Within that period of 6 months the Authority should decide whether or not to confirm the Order, with or without amendment. An Order ceases to be enforceable after 6 months unless it is subsequently confirmed, when it then becomes enforceable again

3 THE ROLE OF TREE PRESERVATION ORDER OBJECTION PANEL

- 3.1 While objectors may have objected on any grounds, the decision about whether the Order should be confirmed may only take account of strictly limited criteria.
- 3.2 The only issues before Members of the Panel, in considering whether or not to confirm the Order, will be the amenity value of the tree or trees, and the expediency of making the Order.
- 3.3 Amenity value is not defined in the Act, but there is guidance in the Blue Book. The guidance says:
 - TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
 - There must be a reasonable degree of public benefit. The trees, or part of them, should therefore normally be visible from a public place, such as a road or a footpath. Other trees may however also be included, if there is justification.
 - The benefit may be present or future.
 - The value of the tree or trees may be from their intrinsic beauty; for their contribution to the landscape; or the role they play in hiding an eyesore or future development.

- The value of trees may be enhanced if they are scarce.
- Other factors, such as their importance as a wildlife habitat, may be taken into account, but would not, alone, be sufficient to justify a TPO.

3.4 It is not appropriate to protect a tree that is dead, dying or dangerous. As a general rule, the officers will only consider protecting a tree where they are satisfied that it has a safe life expectancy in excess of 10 years.

3.5 Expediency is not defined in Act, but some guidance is given in the Blue Book. In essence, the guidance says:

- It is not expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.
- It may be expedient to make a TPO if the local authority believes there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. It may be a general risk from development pressures.
- A precautionary TPO may also be considered appropriate to protect selected trees in advance, as it is not always possible to know about changes in property ownership and intentions to fell.

3.6 Some issues that may not be taken into account include the question of whether or not the protected tree may influence the outcome of a planning application is not relevant to deciding confirmation. If an Order is in place on an application site, it is a material consideration in determining the application. That is however an issue that may be addressed solely through the development control process.

3.7 The principle of whether or not the landowner wishes a TPO to be imposed is also not relevant. The test is the public amenity value of the trees.

3.8 Tree Preservation Order Objection Panel Members will be requested to form a view, based on the evidence before them, of the amenity value of the trees, and the expediency of confirming the TPO. Members will have visited the site immediately prior to the formal hearing, to allow them to acquaint themselves with the characteristics of the tree or trees within the context of the surrounding landscape.

4.0 FINANCIAL IMPLICATIONS.

4.1 There are some administrative costs associated with the process of serving and confirming the TPO. There are more significant costs associated with the need to respond to any subsequent applications to do works, often described as lopping, topping or felling. The officers

will visit each application site and may discuss proposals with applicants before deciding works to the trees.

- 4.2 The Authority does not become liable for any of the costs of maintaining the trees. That remains the responsibility of the trees' owners.
- 4.3 The Authority does not automatically become liable for any damage that may be caused by the protected trees. The only situation in which the Authority may become liable is where consent has been sought, through a Tree Work Application, to do works to the tree and is refused, and the consequent damage caused by the tree could, reasonably, have been foreseen.

5.0 HUMAN RIGHTS ACT IMPLICATIONS

- 5.1 The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy his possessions but it is capable of justification under Article 1 of the First Protocol as being in the public interest (the amenity value of the tree) and subject to the conditions provided for by law (Town and Country Planning Act 1990) and by the general principles of international law.
- 5.2 In so far as the trees are on or serve private residential property the making or confirmation of a Tree Preservation Order could interfere with the right of a person to respect for his family life and his home but is capable of justification as being in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8).

6.0 RECOMMENDATION:

- (i) That Members approve the creation of Tree Preservation Order Objection Panel to convene a public meeting to decide whether a Tree Preservation Order should be confirmed with, or without, amendment following a written objection and in cases where officers have not been able to negotiate a withdrawal of such an objection within six months of the making of the order.**
- (ii) Membership of the Panel comprise the Chairman and Deputy Chairman of the Planning Development Control Committee plus three other Members appointed by this Committee.**
- (iii) A training session for Members of the Panel be held prior to the first Meeting to consider an objection to a TPO.**

A PROCEDURE FOR DECIDING FORMAL OBJECTIONS TO TREE PRESERVATION ORDERS

1 CRITERIA FOR MAKING A TREE PRESERVATION ORDER

A local planning authority may make an 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”.

2 TYPES OF TREE PRESERVATION ORDER

The Tree Preservation Order may specify one or more individual trees, groups of trees, woodlands or, more rarely, refer to an area of land.

As a general rule, an individually specified tree must meet the criteria for protection in its own right.

A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The value of the group as a whole may be greater than that of the individual trees.

A woodland order would be imposed over a more significant area of trees, which it is not practical, or indeed perhaps even desirable, to survey or specify. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. In general terms a woodland will be a significant area of trees that will not be interspersed with buildings.

An area designation covers all the trees, of whatever species, within a designated area of land, and these may well be interspersed among a number of domestic curtilages and around buildings. An area order may well be introduced, as a holding measure, until proper survey work can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individuals or groups of trees.

3 THE EFFECT OF THE ORDER.

Once the TPO has been made, it is an offence to do any works to the protected tree or trees without first gaining consent from the Authority. This is done through a Tree Work Application. There is no fee charged for making a Tree Work Application.

If consent is refused, the applicant has the right of appeal to the Secretary of State.