

Protected trees:

a guide to tree preservation procedures



Introduction

Local planning authorities have specific powers to protect trees by making tree preservation orders (TPOs), although the Forestry Commission is responsible for the control of felling generally.

Special provisions also apply to trees within conservation areas designated by local planning authorities.

This leaflet is written for the benefit of tree owners, the general public and amenity groups, and answers some of the most common questions about tree preservation procedures. It is for guidance only and is not a statement of the law. You should consult a solicitor if you are unsure of your legal rights or obligations.

1 What is a tree preservation order (TPO)?

It is an order made by a local planning authority (eg London boroughs, district or unitary councils, national park authorities and sometimes county councils) which in general makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission.

2. What is the purpose of a TPO?

To protect trees which make a significant impact on their local surroundings. This is particularly important where trees are in immediate danger.

3. What type and species of trees can be covered by a TPO?

All types, including hedgerow trees, but not hedges, bushes or shrubs. The order can cover anything from a single tree to woodlands. Any species can be protected, but no species is automatically protected by a TPO.

4. How can I find out if a tree is covered by a TPO?

Contact your local planning authority. Details of orders are also available for inspection at their offices.

An official search of the local land charges register can also be made before you purchase a property. This should reveal the existence of a TPO (or whether your property is in a conservation area). Make sure your solicitor tells you if any trees are protected.

5. If I see work being carried out on a protected tree, how can I find out if the owner has permission?

Check with your local planning authority. It has a register of applications and decisions which you can look at.

6. There are trees which I think should be protected by a TPO. What can I do?

Contact your local planning authority giving details of the trees, and the reasons why you think the trees should be protected.

However, if the Forestry Commission has given aid under a forestry grant scheme, a TPO can only be made with the Commission's permission.

7. Does a TPO come into effect immediately?

The local planning authority may make a TPO which comes into effect immediately and remains in force for up to six months. Long-term protection is provided when the planning authority confirm the TPO.

8. How will I know when a local planning authority makes a TPO?

It will write to the owner and other interested parties, enclosing a copy of the order.

9. How can I object to or express support for a new TPO?

If you or anyone else wants to object to or support an order, write to the local planning authority within the period they allow (usually 28 days) saying why and giving details of the relevant trees.

The planning authority will take these comments into account when it decides whether to confirm the order. When the planning authority confirms the order it can modify it, for example by excluding some of the trees.

10. Does the local planning authority then become responsible for looking after the trees?

No. The owner remains responsible for the trees, their condition and any damage they may cause. But the planning authority's permission is required before carrying out work on them, unless they are dying, dead or dangerous (but see question 13).

The planning authority may be able to offer help and advice on how the trees should be managed.

11. Do I need a Forestry Commission felling licence to cut down trees covered by a TPO?

Whether or not a TPO is in force you must first apply to the Forestry Commission for a felling licence if you want to cut down trees containing more than five cubic metres of wood in any calendar quarter. There are exceptions to this rule which are set out in the Forestry Act 1967 and Regulations made under that Act. For example, you do not need a licence for felling trees in gardens.

If a licence is required and the trees are covered by a TPO, the Forestry Commission will deal with your application in consultation with the local planning authority. Where the Commission proposes to grant a licence it will first give notice to the local planning authority. In such cases the planning authority has the right to object to the proposal and if it does so the application will be referred to the Secretary of State for Communities and Local Government who will make a final decision.

Applicants should note that the Commission almost always requires felled trees to be restocked and does not normally grant licences to change woodland to agricultural use.

12. What if I want to work on a protected tree but don't need a felling licence?

You must seek permission from the local planning authority by submitting a standard application form available from them or the Planning Portal website (www.planningportal.gov.uk). It is important that you specify the work you wish to carry out clearly, provide information to support your case (such as professional advice on the health of the tree or, in cases of alleged subsidence, professional evidence on the soil, the structure affected and the tree).

You may find it helpful to consult an arborist (tree surgeon) or arboricultural consultant to help you clarify what you need to do.

Further guidance on the selection of an appropriate tree expert can be found at www.tree-care.info/findanarb.

13. Do I always need the planning authority's permission to work on a protected tree?

Yes, except for:

- 1) cutting down trees in accordance with one of the Forestry Commission's grant schemes, or where the Commission has granted a felling licence (see question 11);
- 2) cutting down or pruning a tree:
 - which is dying, dead or dangerous;
 - in line with an obligation under an Act of Parliament;
 - at the request of certain organisations specified in the order;
 - which is directly in the way of development that is about to start for which detailed planning permission has been granted (see questions 22 and 23);

- in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice;
- to prevent or control a legal nuisance (you may find it helpful to check first with a solicitor).

If you are in any doubt, check with your local planning authority.

14. If I don't need the planning authority's or Forestry Commission's permission, do I still have to inform them of any work I intend to carry out?

Except in an emergency you are advised to give your local planning authority at least five days' notice before you cut down a protected tree which is dying, dead or dangerous. This is in your interests – you could be prosecuted if the authority thinks you have carried out unauthorised work. It could also decide that you do not have to plant a replacement tree. You must remember, however, that you will remain responsible for your trees and any damage they may cause.

15. When will I have to plant a replacement tree?

You will have to replant:

- 1) if you cut down or destroy a protected tree:
 - in breach of an order, or
 - because the tree is dying, dead or dangerous (except in woodlands);
- 2) if the planning authority gives you permission to cut down a protected tree but makes replanting a condition of its consent;
- 3) in most cases where the Forestry Commission grants a felling licence.

Local planning authorities have legal powers to ensure that you plant a replacement tree when required.

16. What happens if I carry out work on a protected tree without permission?

If you deliberately destroy a tree, or damage it in a manner likely to destroy it, you could be fined up to £20,000 if convicted in the magistrate's court. In determining the amount of the fine, the court will take account of any financial benefit arising from the offence. For other offences you could be fined up to £2,500.

You will normally have to plant a replacement tree if the tree was cut down or destroyed.

17. What if my application to carry out work on a protected tree is refused, or I object to the conditions imposed by the planning authority?

You can appeal to the Secretary of State for Communities and Local Government in writing within 28 days of receiving the decision. The planning authority should give you the address.

Appeals are normally decided on the basis of the information available to the planning authority when they made their decision and a site visit.

The Secretary of State may allow or dismiss the appeal, or vary the original decision.

18. Can I get any compensation if my application to carry out work on trees/woodland protected by a TPO is refused or conditions are imposed?

If consent is refused – or granted with conditions – you can seek compensation from your local planning authority for any loss or damage which results. However you cannot make a claim where, under the terms of the order, the planning authority has issued a certificate saying either:

- that the refusal or condition is in the interests of good forestry, or
- that the trees or woodland have an outstanding or special amenity value.

You can appeal to the Secretary of State against such a certificate. Local planning authorities are able to issue these certificates under TPOs which were made before 2 August 1999.

Where a felling licence application has been refused by the Forestry Commission (see question 11) you may get compensation from the Commission under the relevant forestry legislation.

Replanting of woodland: You can also seek compensation from the local planning authority where, on giving permission to cut down protected woodland, it has required replacement planting. But such compensation is only available if the Forestry Commission will not give a grant for the replanting on the grounds that it would not be in accordance with good forestry practice.

19. How do I go about claiming compensation under a tree preservation order?

Write to your local planning authority within 12 months of its decision, or that of the Secretary of State if you appealed.

20. Are trees protected in a conservation area?

Yes. You have to give your local planning authority six weeks' notice before carrying out work on trees which are located in a conservation area but are not yet the subject of a tree preservation order. This gives the authority an opportunity to consider whether an order should be made to protect the trees.

Enforcement action may be taken by the planning authority where the six weeks notice is not given (see question 16).

You do not need to give notice if you want to work on trees 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). The exceptions in question 13 and the advice in question 14 also apply. If in doubt, check with your local planning authority.

21. How are trees on development sites affected?

Trees on development sites can be protected by tree preservation orders or by conditions attached to the planning permission, or both. Planning conditions may also require you to plant trees which may be covered by a tree preservation order. The order will take effect once they are planted.

22. Can I carry out work on protected trees which are in the way of proposed development?

You can only cut down or cut back protected trees if they are directly in the way of development which is about to start, for which you have detailed planning permission. You cannot carry out tree work if you have outline planning permission. Check first with your local planning authority. It may prosecute you if it thinks you have cut down trees or cut them back excessively.

If the development does not require planning permission (for example, putting up a garden shed) you must apply to your local planning authority for permission under the tree preservation order in the normal way.

23. Can I stop planning permission being granted – or prevent approved development being carried out – by getting a tree preservation order imposed on trees on the site?

No. A tree preservation order does not prevent planning permission being granted. But a local planning authority will consider the risk to protected trees when deciding planning applications.

Once detailed planning permission is granted, any felling may be carried out which is directly required to enable the development to go ahead.

Further information

You can find out more about tree preservation orders in the following:

- Town and Country Planning Act 1990 (in particular sections 197-214 as amended)
- The Planning and Compensation Act 1991 (section 23)
- Forestry Act 1967 (as amended)
- The Town and Country Planning (Trees) Regulations 1999 (Statutory Instrument No.1892)
- The Town and Country Planning (Trees)(Amendment)(England) Regulations 2008 (Statutory Instrument No.2260)

These are all available through The Stationery Office (telephone 0870 600 5522 or visit www.opsi.gov.uk) and may be seen at some main libraries.

More detailed guidance can be found in the publication *Tree Preservation Orders: A Guide to the Law and Good Practice* (telephone 0870 122 6236 (price £8) or visit www.communities.gov.uk/treesandhedges).

You may also find it helpful to obtain a copy of the Forestry Commission's booklet *Tree Felling – getting permission* (telephone 0870 121 4180 or visit www.forestry.gov.uk/england).

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