

Decision by Portfolio Holder

Report reference: ENV-001-2009/10
Date of report: 28 September 2009



Portfolio: Environment
Author: Christopher Neilan (Ext 4117) Democratic Services: R Perrin
Subject: Rights to enter land; procedural update applying in particular to TPOs
Decision: To agree an extension to the current powers of entry, as follows:

1. That the Director of Planning & Economic Development be authorised under Sections 214(B), 214(C) and 214(D) of the Town and Country Planning Act 1990 (as amended) to exercise the relevant powers in connection with entry to land for the purposes of making tree preservation orders and their enforcement under the following sections, summarized as follows: -

- Section 214(B):** To enter land to survey it, in connection with making or confirming a TPO; to ascertain whether a relevant offence has been committed, or to serve a relevant notice where there are reasonable grounds to do so or in connection with any other function within S197 to 214 of the Act.
- Section 214(C):** To issue a warrant if admission has been refused or if a refusal is reasonably apprehended or the case is urgent.
- Section 214(D):** Such powers shall extend to taking samples of trees or soil, and for the authorised person to take with them such other persons as may be necessary.

2. That the Director of Planning & Economic Development be further authorised to designate suitably qualified staff within his Directorate to exercise these delegated authorities on his behalf.

ADVISORY NOTICE:	
<i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a prejudicial interest. A Portfolio Holder with a personal interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/do not approve (delete as appropriate) the above decision:	
Comments/further action required:	
Signed:	Date:

Initialled as original copy by
Portfolio Holder:

<i>Personal interest declared by Portfolio Holder/ conflict of interest declared by any other consulted Cabinet Member:</i>	<i>Dispensation granted by Standards Committee: Yes/No or n/a</i>
Office use only: Call-in period begins:	Expiry of Call-in period:

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Democratic Services IMMEDIATELY***

Reason for decision:

To ensure that Officers can use the updated rights of entry added to The Town and Country planning Act 1990 (as amended), in particular in connection with the making and enforcement of TPOs.

Options considered and rejected:

To rely on existing delegated authorities for entry to land. This option has been rejected because there is a lack of clarity in respect of powers in connection with the making of new orders, and the existing arrangements do not take account of changes to the Act.

Background Report:

1. A review of the current powers of entry powers has shown that the council is not using powers available under sections 214 B, C and D of the Act, which were added by the Planning and Compensation Act 1991. These would make available additional powers of entry in relation to the making and enforcement of TPOs.
2. In particular they clarify that rights available to the Director of Planning and Economic Development under other sections of the Act should apply for the specific purpose of the making of new Tree Preservation Orders, and to the taking of samples for the purposes of enforcement. These powers are not explicit in the sections of the Act at present referred to (that is Sections 196-196B Rights of Entry for Enforcement Purposes, and S 324, general Rights of Entry).
3. It is therefore requested that authority be given to respond by extending the Council's Responsibility for Functions schedule in the constitution. The delegation will be to the Director of Planning and Economic Development but it is also recommended that these powers be delegated to suitably qualified members of his staff in the Directorate.

Consultation Undertaken:

Director of Corporate Support services

Resource Implications: None

Legal and Governance Implications: Town and Country Planning Act 1990 (as amended) S 214 B, C & D.

Safer, Cleaner and Greener Implications: Will assist in making of TPOs.

Background Papers: None

Impact Assessments: Disputed access might delay effective tree protection, and lead to the loss of assets. There is no impact on equalities issues.

Key Decision Reference (Y/N): N

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