

# **Report to Planning Services**

**Date of meeting: 2 December 2010**

**Subject: Tree Preservation orders: Proposals for Streamlining - Consultation**

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## **Recommendations/Decisions Required:**

To agree responses to the consultation: A draft set of responses for consideration is contained at appendix 1.

## **Report:**

Introduction: The Government is consulting on a proposal to consolidate legislation and streamline the Tree Preservation Order (TPO) system; the consultation closes on 20<sup>th</sup> December 2010.

The key measures outlines are:

1. the creation of a unified system for all TPOs;
2. to shorten and simplify the model TPO order.

It is suggested that the changes are broadly positive and to be welcomed although there are some areas of concern, which are set out below.

## **The Main Changes**

The main changes proposed are to:

1. simplify all existing TPOs by bringing them into line with a new model order;
2. make a new, shorter and easier to understand model order for new TPOs, comprising only a list of trees and a map;
3. give all new TPOs immediate effect;
4. reduce the required publicity for new TPO's and in particular to reduce the number of land owners on whom orders must be served;
5. clarify the exemptions that apply to applications for works to a protected tree;
6. adopt a single system for the duration of consents;
7. increase local flexibility to provide consents for regular works to protected trees;
8. Bring compensation provisions into line with the 1999 regulations, scrapping protective certificates for special or outstanding trees.

The new regulations are expected to be brought into effect in 2011.

## **Discussion**

As will be seen from the attached draft consultation response the majority of the proposals are considered to be beneficial. The chief benefit is considered to be that new orders will be much easier for the public to understand and easier to administer. There will be some saving in the time taken to make an order and the opportunity for error will be reduced. The simplification of the basic TPO document, and the proposed reduction of the need to consult all adjacent land owners, are both particularly welcome reforms.

There are, however, concerns in some areas. In relation to the draft replies these are:

#### **Question 10: Compensation**

The consultation states that it is right in principle to make all the legislation operate on the same basis, however there is no analysis of the impact of the change made in 1999 or consideration of the potential impact this could have on either the stock of protected trees, or the finances of local authorities. It is suggested therefore that this change is premature and should be backed by statistical analysis.

The change made in 1999, only in relation to TPOs made after that date, was to take away the provision for the LPA, when determining any application, to certify trees as being of special or outstanding value. This has the effect of protecting the LPA from compensation claims.

This authority faces many applications as a result of alleged subsidence, particularly after hotter summers. It is accepted that in the majority of cases felling is unlikely to be refused where evidence of subsidence is sufficient to prove the case. However, there are particularly special trees whose loss would cause great harm to local amenity. It is suggested that the previous position, that it was possible to protect the authority from compensation claims in respect of such trees, was reasonable and proportionate.

#### **Question 11: Further Comments**

Area orders are occasionally useful as an emergency measure, where access to survey trees is not available and the Woodland form of TPO is not appropriate. Area orders are mentioned in the draft model order but not in the draft regulations. It is suggested that it should be clarified whether the intention is to continue to allow area TPOs.

The legislation also includes the out of date terms “lopping” and “topping”. It is considered this is regrettable. The government’s view has been that these firms are legally enforceable whereas more up to date terms such as “crown reduction” are liable to be circumvented. However, it is considered that some other general terms in common usage could be found which would be more up to date and less regressive.

The reference in the draft regulations, Part 4, paragraph 17 (3), to “good Forestry” alone is regrettable; it is suggested that the phrase should be expanded to include “good woodland management” since, by and large, TPOs are applied to woodlands not forest.

#### **Question 14: Merits of the “Do Nothing” Approach**

Although it is agreed that the “do nothing” option would not be preferable, and indeed there are significant benefits from the proposals, the consultation is flawed in that it contains no overall assessment of issues relating to TPOs or assessment of alternative options for change. The evidence that is presented relates solely to the proposed solution as against “do nothing”. Although a 5 yearly review is proposed it appears there are no proposals to collect information to make that review meaningful. It is suggested that this approach should be reconsidered.

#### **Reason for decision:**

It is important to support the proposed changes, since the effects are largely beneficial, but also to register concerns.

#### **Options considered and rejected:**

None

**Consultation undertaken:**

None

**Resource implications:**

Budget provision: none

Personnel: None

Land: None

Community Plan/BVPP reference: Corporate plan: 5: ...protecting the special character of the District.

Relevant statutory powers: Town and Country Planning 1990 as amended Section 197, 198 & following.

Background papers: Government Consultation, Tree preservation orders: proposals for streamlining September 2010. (DCLG)

Environmental/Human Rights Act/Crime and Disorder Act Implications: none

Key Decision reference: (if required) not required