

Report to the District Development Control Committee

Date of meeting: 17 January 2006



**Epping Forest
District Council**

Portfolio: Planning and Economic Development

**Subject: Tree Preservation Orders, Applications to Fell Trees and Enforcement –
Procedural Changes and Delegated Authorities**

Officer contact for further information: John Preston

Committee Secretary: Graham Lunnun

Recommendations/Decisions Required:

Tree Preservation Orders (TPOs) – Procedure and Confirmation

- 1. That a report be submitted to the Council recommending that item (8) (page C12 of the Constitution) of the terms of reference of the four Area Plans Sub Committees be amended to read as follows: “To determine the confirmation of those tree preservation orders which are opposed”;**
- 2. That the delegated authority exercised by the Head of Planning & Economic Development in respect of TPOs (Ref T12 – page D58 of the Constitution) be amended to read:“ To authorise, serve and execute all unopposed Tree Preservation Orders in accordance with Section 197 of the Town & Country Planning Act 1990 (as amended) and any subsequent legislation and to notify action taken in the Members’ Information Bulletin.”**

Applications to Fell Trees – New Government Advice on Valid Applications

- 3. That the Protocol and Guidance agreed in April 2005 be amended to take account of the Secretary of State’s advice that only the minimum requirements in the model TPO need be met in order to validate an application, provided that the decision taker is provided with adequate information to decide whether the proposed tree works are justified;**

TPOs – Potential Compensation Cases

- 4. That a report be submitted to the council recommending that item (2) of the terms of reference of the District Development Control Committee be amended to read as follows:**

“ To determine any recommendation of an Area Plans Sub Committee which relates to potential decisions liable to give rise to claims for costs or compensation including development control matters and enforcement of planning requirements (including recommendations of no action) but excluding tree preservation orders.”;

Enforcement Action & High Hedges– Additional Delegation to Head of Planning & Economic Development etc

- 5. That the existing delegation to the Head of Planning & Economic Development (item E9 – page D18 of the constitution) be amended by the addition of:**

(a) temporary stop notices to paragraph 1;

(b) the additional words “(and any subsequent legislation or regulations)” being added to paragraph 1;

(c) the addition of a new paragraph 6 as follows:

“ 6. Authority to determine complaints and issue relevant notices in relation to High Hedges provision of Part V of the Anti Social Behaviour Act 2003, to determine that such notifications are valid and to respond to any relevant appeals.”

- 6. That the delegated powers for the Head of Planning & Economic Development (paragraph P5 – page D45 of the Constitution) be amended to provide for entry in pursuance to Part VII of the Anti- Social Behaviour Act 2003.**

TPOs Under the Supervision of Essex County Council

- 7. To note the revised arrangements to come into effect from 1 January 2006 in respect of applications under Essex County Council TPOs; and**
- 8. That the Head of Planning & Economic Development clarify the extent of consultation on and notification of action taken by the County Council under the new arrangements.**

Tree Preservation Orders –Drafting and Confirmation

- 1.1** Experience in dealing with recent tree and subsidence applications under several Tree Preservation Orders has shown that current procedures for dealing with Tree Preservation Order applications need to be reviewed. At the same time it is suggested that the arrangements for the making of Tree Preservation Orders, and in respect of determination of applications also be reviewed and revised to minimise financial risk to the Council, to ensure speed and consistency in decision making and to increase transparency.
- 1.2** Changes will be required to the matters delegated to the Head of Planning and Economic Development, the Head of Legal, Administration Services and Estates, and to this Committee, and to the Area Committees.

Existing procedures

- 1.3** When this Council set up procedures in 1974 to deal with trees that warranted preserving, the process involved Members both giving authority that a tree could be the subject of such an order, and then agreeing that the order be confirmed (having considered any objections to the order.) Those procedures have been changed over the years.
- 1.4** The Development Committee in 1997 delegated authority to the Head of Planning Services to make orders, where there was an urgent threat. However these arrangements preclude any strategic orders. They also imply that where a threat exists but is not of great urgency, authorisation must still be given by an Area Plans Sub Committee.
- 1.5** Following the current review a need for consistency in making Tree Preservation Orders has become clear. The Head of Planning & Economic Development should have authority to make and confirm all Orders (whatever their urgency) with action

subsequently reported to members. The exception would be opposed orders which would continue to be referred to a Sub Committee for final decision. The artificial prohibition against TPOs where a threat does not exist is therefore superfluous which accords the priority for strategic TPOs in the future as a result of increased development pressures.

Applications to Fell Trees

- 1.6 The Committee agreed a new protocol and guidance to be used by officers in respect of validity of applications on 26 April 2005. Several cases have been received that were determined to be invalid but which have been the subject of appeals for non-determination. The Council challenged the validity of the appeals given that it considered that the original applications had not been valid.
- 1.7 The Secretary of State has now written to give detailed advice to the appellants, supporting the Council's substantive position but not the technical issue of validity. It is important therefore to decide what status should be given to the protocol and guidance agreed. Counsel's advice has been obtained to this end.
- 1.8 The Secretary of State advises that the only requirement in the legislation in respect of validity is the minimum requirement and therefore does not support the contention that these applications were legally invalid. However, the advice also states that the 'decision maker' is entitled to reasonable information in order to be able to determine such applications. In each case the advice indicates that the information supplied was insufficient for him to determine the appeals and by implication for the Council to determine the original application. In no case has he agreed to determine the appeal.
- 1.9 Counsel's advice is that the Council's original position was well founded but the Council's Solicitor has advised that mounting a legal challenge to the Office of the Deputy Prime Minister on this issue is unlikely to be successful.
- 1.10 It is therefore recommended that the guidance and protocol should now be used in respect of determination of applications, to give guidance to the applicants and also to Officers and Members. It is not, however, considered sustainable to continue to insist that applications without full information are invalid. This does not however appear to weaken the Council's policy of insisting that all applications for felling in respect of subsidence should be supported by sufficient information to assess the case.
- 1.11 New documentation will be devised by officers to implement this procedure.

Decisions in Relation to Tree Preservation Order Applications

- 1.12 Tree Preservation Order can entail compensation is payable in respect of any loss suffered as the result of the Council's decision unless, in relation to old orders, the Council issues a certificate that the tree is either 'special' or 'outstanding' in terms of its amenity value. Such certificates are, however, subject to appeal which if dismissed do not protect the Council from compensation claims. Compensation claims can give rise to substantial liabilities, particularly where underpinning is required to allow trees to be retained. Where claims are made and not agreed they are settled at the Land's Tribunal.
- 1.13 All tree applications involving felling, as well as applications which are disputed, are dealt with by the Area Sub-Committee rather than by the Head of Planning and Economic Development. The Area Sub-Committees presently have no powers to agree applications where there is seen to be a risk of compensation. Such applications have to be referred to the District Development Committee. However, such a referral carries an extra risk of compensation to the Council as the timescale may result in appeals for non-determination. In such circumstances no certificates may be issued. The additional delay may also be significant for the applicants who

may already have waited a considerable time to have their claim processed by the insurance company.

- 1.14** The issue of the likelihood of compensation is not straightforward. All TPO applications carry the risk of compensation being claimed, and such losses do not have necessarily to be foreseeable. It is a matter of judgement as to whether a claim may be likely, and also whether the Council may be adequately protected by a certificate, at least in the case of the older orders.
- 1.15** The recommendation therefore is that in all TPO cases the Area Planning Committee should have the authority to determine applications. It will be still be possible for any case which causes concern to be referred to this Committee for decision.

Enforcement

- 1.16** Protection of trees on development sites generally requires urgent action. Where trees have not been satisfactorily protected even a short delay can lead to significant harm, particularly to the root system.
- 1.17** Current officer delegated authority refers only to stop notices. Earlier this year revised legislation introduced powers to serve temporary stop notices. For the avoidance of doubt it is suggested that this new power be added to the delegated authority. A drafting change should also be made to cover any changes in the statutory powers.
- 1.18** At the Cabinet meeting on 14 March 2005 the Head of Planning & Economic Development was authorised to take action on behalf of the Council under part VIII of the Anti-social Behaviour Act 2003 concerning High Hedges including enforcement powers. These powers should be included in the officer delegation.

Powers of entry

- 1.19** The Cabinet also authorised the Head of Planning and Economic Development to designate the High Hedges Officer and other post holders within Planning Services to have powers of entry under part VIII of the 2003 Act.
- 1.20** It is recommended that the Constitution is amended to include the reference to the powers concerning High Hedges here, rather than for them to be separately listed.

Essex County Council TPOs: Procedural changes.

- 1.21** Notice was received on 14 December 2005 that the County Council is changing the arrangements for dealing with Essex TPOs which are still extant within the Epping Forest District. The letter expresses thanks for the district's support in assisting with this but from 1 January 2006 the County Council intend to deal with all administrative issues, applications, enquiries and legal issues in connection with their orders.
- 1.22** Four reasons are given: to speed decision-making, to avoid confusion in the mind of the public over respective roles and adverse consequences thereof, to achieve a consistent approach across the county and to improve the quality of service to the public.
- 1.23** Commenting briefly the existing and longstanding arrangement has been that the District Council uses largely the same formal decision-making process for Essex TPOs as for its own, giving neighbours, Town and Parish Councils, amenity groups or other interested parties the right to comment. By officer agreement this Council has also taken the lead on breaches of County Orders, investigating and, where evidence is found, taking legal action. It has often also been more convenient for tree owners to seek advice from us, which has been freely given. That being so the last reason is

not accepted. In respect of the other three reasons it is considered that the benefits of a local service that makes active efforts to assist tree owners, to incorporate local views into decision-making, and which is able to react swiftly when necessary outweighs any disbenefit.

- 1.24** That said increasing threat of appeals and litigation in respect of TPO applications in relation to subsidence gives a strong reason for decisions to be made quickly, and to rely on investigation by the body that will face any claim.
- 1.25** Officers will reply to request details of the consultation which may be expected with the County in future, and what notification is to be given of applications when granted to ensure that arrangements in future work smoothly.

Constitution

- 1.26** The changes to the terms of reference of the Area Plans Subs and this Committee require the assent of the council. The changes to the delegated authorities exercised by officers will be included in the constitution documents if they are agreed by this Committee.

Statement in support of recommended action:

Recent experiences with a number of aspects of procedures concerning different stages of making, dealing with applications, taking timely decisions and enforcement concerning preserved trees has raised issues about the clarity of the procedures.

This opportunity is being taken to try to deal with those issues, and to make clear in the Constitution what the procedures are, and to make changes in the Constitution to bring it up to date in respect of a number of legislative changes, and so that if one is seeking to check powers that one up to date section lists fully the related or similar matters.

Options considered and rejected:

No action.

Resource implications:

Budget provision: From existing resources.

Personnel: From existing resources. In respect of changes to procedures in respect of Essex TPOs there will be a small freeing of officer time to deal with EFDC TPO cases.

Land: Nil.

Community Plan/BVPP reference: Nil

Relevant statutory powers: Town and Country Planning Acts

Background papers: None.

Environmental/Human Rights Act/Crime and Disorder Act Implications: Key Decision reference: (if required) Nil