Tree Preservation Orders: Improving Procedures

Report on consultation exercise including Government response to consultation replies
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1. Introduction

1.1 In November 2007, the Government published a consultation paper on its proposals to amend the Town and Country Planning (Trees) Regulations 1999 to streamline certain procedures associated with tree preservation orders (TPOs) in England.

1.2 The consultation paper was placed on the Communities and Local Government website, and was drawn to the attention of a wide range of bodies by means of e-mail and letter. The consultation exercise ran for 12 weeks from 27 November 2007 until 19 February 2008. There were 105 responses received. Respondees can be broken down into the following groups:

- 58 (55 per cent) Local authorities
- 15 (14 per cent) Individuals (including a number of local authority tree officers responding in a personal capacity)
- 14 (13 per cent) Public or private companies
- 9 (8 per cent) Local organisations
- 7 (7 per cent) National representative bodies or organisations
- 2 (2 per cent) Government agencies

1.3 Copies of the individual responses to the consultation have been placed in the Communities and Local Government library in London and will be available for viewing for a period of six months from the date of this publication. If you wish to make an appointment to inspect the responses please telephone 020 7944 5623.
2. Policy background and purpose of proposals

2.1 TPOs are made by local planning authorities to protect selected trees and woodlands in the interests of amenity. TPOs prohibit the cutting down, uprooting, topping, lopping, wilful destruction or wilful damage of trees without the consent of the local planning authority.

Making or varying a TPO

2.2 Under the current Regulations, local planning authorities are required when they have made a new TPO or varied an existing one, to send copies of the TPO not only to the owners and occupiers of the land where the trees are situated but also to the owners and occupiers of any adjoining land.

2.3 In many cases this has resulted in local planning authorities having to send copies of TPOs to all the occupiers of a neighbouring block of flats even though they may be located some distance from the tree(s) in question. This is considered to be an unnecessarily bureaucratic, costly and time consuming exercise.

2.4 The proposal was to revert to the pre-1999 position whereby copies of TPOs would only be sent to the owners and occupiers of the land where the trees are situated, although the local planning authority would have the option to inform others where they considered it to be appropriate.

Applying to carry out works to protected trees

2.5 At present, an application to carry out works to a protected tree does not have to be submitted on a form. The statutory requirement is that an application is made in writing to the local planning authority which identifies the trees to which the application relates, specifying the proposed operations and stating the reasons for making the application. In dealing with a TPO application, the local planning authority’s role is to consider whether the reasons given in support of the application outweigh the amenity reasons for protecting the tree.

2.6 Most planning authorities have produced their own forms. Variations in style and content of these forms have resulted in inconsistencies in the level of information required. In addition, local authorities often receive incomplete or vague applications. They are obliged, therefore, to channel resources into seeking the additional information which they consider necessary to determine the application.
2.7 The principle of introducing a standard application form for consent to carry out works to trees protected by tree preservation orders was subject to an earlier consultation\(^1\), so the purpose here was to seek views on the content of the form.

Supporting information

2.8 When assessing a TPO application, the local planning authority’s role is to consider whether the reasons given in support of the application outweigh the reasons for protecting the tree. Some of the reasons given for felling or pruning protected trees raise complex technical issues. Planning authorities have, therefore, needed to request additional information and evidence to supplement the material provided at the time of the application.

2.9 The draft form suggests that applications which claim that the proposed works are necessary because a tree is unhealthy or unsafe, or because it is implicated in subsidence damage must be accompanied by reports from relevant experts. A proposed list of the essential evidence required in such cases was set out in the form.

Fast track appeals procedure

2.10 If someone is aggrieved by a local authority’s decision on their application to fell or prune a protected tree, or by their failure to make a decision, they have the right of appeal to the Secretary of State. Similar rights of appeal also apply in relation to notices enforcing replanting requirements, known as tree replacement notices. About 750 TPO appeals are made to the Secretary of State each year. The majority are determined on the basis of an exchange of written representations with a few being the subject of informal hearings. Even those appeals which follow the written route take an average of around 26 weeks from start to decision.

2.11 Appeals relating to TPOs must be made to the Secretary of State within 28 days of receiving the relevant decision or tree replacement notice and must specify the grounds on which the appeal is made. Under the current system, the appeal is often not a review of the merits of the local authority’s decision but involves consideration of new information which is submitted by the parties with the appeal or even at a later stage. The result is that the issues before the Secretary of State may differ significantly from that originally considered by the local planning authority.

2.12 The introduction of a standard application form should enable appeal decisions to be based on the information gathered during consideration of the original application. This would remove the current requirement for multiple rounds of consultation between the parties before a decision.

on appeal is taken and should significantly reduce the time and resources necessary to come to a decision.

Delegating powers to appointed inspectors

2.13 To further speed up the appeals process, it is proposed that once the paperwork has been gathered under the fast track procedure, it would be passed to an appointed Inspector who would visit the site and decide the appeal. Where appropriate, the appeal would be handled by an inspector with suitable arboricultural expertise. The Secretary of State would retain the power to “recover” an appeal where appropriate.

Impact Assessment

2.14 The consultation ‘package’ also included a draft impact assessment. A number of questions were asked to assist in the consideration of the impact of the proposals.
3. Consultation questions and responses

Making or varying a TPO

Q1. Should copies of newly made TPOs or Variation Orders, be sent only to owners and occupiers of the land where the trees in question are situated?

3.1 Of the 105 responses, 54 (51 per cent) agreed with the proposal and 41 (39 per cent) disagreed. Many of those that agreed (predominantly local authorities) referred to the unnecessary bureaucracy of identifying and then writing to all the owners and occupiers of adjacent land – which, as one respondent indicated, could number several hundred people. However, the majority of respondents (80 per cent) qualified their response, with most (irrespective of whether the agreed or disagreed) stating that where branches overhang another property, those neighbours directly affected should be advised of the TPO. This would reduce the risk of inadvertent contravention of the TPO if neighbours carried out their common law right to prune branches that overhang their property, and it would also increase the local awareness of the presence of a protected tree(s). While many local authorities thought that it should be left to their discretion to decide who should be notified, others considered there should be a statutory requirement at least to inform affected owners and occupiers.

3.2 Other comments were made suggesting that there would be benefits in informing others about the making of new orders, such as Town and Parish Councils, Ward Councillors, amenity and residents groups and agents. A number of methods of notification were suggested, including the use of letters, flyers or promoting the use of various other media, particularly local authority websites.

Standard application form

Q2. Are the questions in the application form clearly expressed?

Q3. Do the questions appear in a logical sequence?

Q4. Are we asking the right questions? If you think we should be asking other questions, please say why this additional information is required.
Q5. Do the guidance notes provided sufficient explanation?

Q6. Is the any other information which would be helpful to include as guidance?

3.3 A little over half (53 per cent) of respondents agreed that the questions were clearly expressed, although 36 per cent disagreed. 8 per cent of respondents commented that references to the applicant and agent in boxes 1 & 2 could be confusing; 8 per cent commented that box 4 (tree ownership) should include a question about whether or not the owner supported the application. There were 13 other comments by 32 respondents on matters of detail.

3.4 Two thirds of respondents agreed that the questions were in a logical order, although the separation of the applicant or agent’s name and address (Box 1 or 2 respectively) from their contact details (Box 12 or 13) was queried by 25 per cent of respondents.

3.5 56 per cent of respondents agreed that the form asked the right questions. The most frequent suggestions were to request information, where appropriate, on the species, location and size of proposed replacement trees (10 per cent) and to require crack and level monitoring for a minimum of 12 months in alleged subsidence cases, and not for a ‘suitable period’ as requested in question 9 on the application form (5 per cent).

3.6 However, almost two thirds of respondents indicated that the guidance notes which accompany the form did not provide sufficient explanation. In particular, 30 per cent of respondents commented that the diagrams and guidance on standard descriptions of tree work needed improvement and various suggestions were provided. A quarter of respondents commented that the guidance on exemptions for dead, dying or dangerous trees should be expanded and a fifth of respondents commented that the guidance should clarify whether the form should be used to give notice of works to trees in conservation areas. 10 per cent of respondents commented that the guidance on alleged subsidence damage should be expanded. Other issues included guidance on the identification of boundaries, structures and other trees (8 per cent), advice on pre-application discussions (7 per cent) and clarification that the application and any appeal will be determined on the basis of the information provided with the application form (4 per cent).

3.7 In relation to Q6 there were over 100 comments which could be grouped into 38 themes. By far the most frequent suggestion for other information was on the selection and use of appropriate contractors, consultants and landscape architects (22 per cent of respondents). Other suggestions included the provision of guidance on where the form should be returned to (7 per cent), the level of detail required (6 per cent), works that may not require consent (5 per cent) and referring to the need for applicants to consult the Forestry Commission if they were proposing to fell a volume of timber that would require a felling licence (5 per cent).
Supporting information

Q7. Should the supporting information to accompany TPO applications be specified, through the form, at the national level?

Q8. Have we got the requirements right?

Q9. Do the proposals provide local planning authorities, at the outset, with all the information they need to determine an application?

Q10. Do they provide the right balance between the need for consistency and certainty while allowing some flexibility to respond to the individual circumstances of the case?

Q11. Will the proposals make it easier to determine whether an application is valid?

Q12. Are there any other requirements which should be included? If so, please say why this additional information is needed.

3.8 70 per cent of respondents agreed that the supporting information should be specified through the form at the national level. However, 19 per cent of respondents commented that flexibility was needed because different cases needed different information, while 7 per cent of respondents commented that there should be minimum national standards.

3.9 Only 43 per cent of respondents agreed that the requirements were right while 41 per cent disagreed. There were various suggestions for setting minimum standards on the information that should be required for cases involving alleged subsidence damage. 9 per cent of respondents commented that a full arboricultural report was not always necessary in cases involving the health or safety of a tree. 6 per cent of respondents commented that this requirement was too onerous in these cases, some commenting that this could be a disincentive for felling dangerous trees. 9 per cent of respondents commented that use of the form should be mandatory for conservation area [section 211] notices as well as TPO applications. 6 per cent of respondents commented that there needs to be a reference to alternative solutions in subsidence cases.

3.10 A higher proportion (57 per cent) of respondents agreed that the proposals would provide local planning authorities with all the information they would need to determine the application, although 26 per cent disagreed. It is notable that three quarters of the local authorities that responded considered
that they would have all the information they needed. 8 per cent of respondents (mainly local authorities) commented that there should be scope for LPAs to request more information when they believe it necessary.

3.11 54 per cent of respondents agreed that the form provided the right balance between the need for consistency and certainty while allowing some flexibility to respond to the individual circumstances of the case. 16 per cent of respondents commented that a standard form was too inflexible, 6 per cent of respondents commented that the form required too much information and 6 per cent thought it was too complicated.

3.12 There were a few suggestions for additional supporting evidence. The most frequent (16 per cent of respondents) suggested the discretionary use of photographs. Other individual suggestions included management plans, root surveys, aviation safety and a national method for assessing the value of trees in order to justify protection.

Fast track appeals procedure

Q13. Is the fast track procedure fair and reasonable?

Q14. Does it strike the right balance between speed and quality of decision?

Q15. Can the process be further simplified?

Q16. Will it work for all types of TPO appeal, including appeals against tree replacement notices?

3.13 69 per cent of respondents agreed that the proposed fast track procedure was fair and reasonable. 5 per cent of respondents commented that restriction of the introduction of new evidence at the appeal stage would potentially prejudice the interests of appellants because they felt that there were circumstances where additional information would have become available, for example, as a result of ongoing site monitoring. 4 per cent of respondents commented that there was a need for a clear process for accepting new evidence at the appeal stage. 3 per cent of respondents (all of them LAs) commented that the procedure would not be fair and reasonable if late submission of new evidence was accepted at the appeal stage. 3 per cent of respondents commented that the procedure was too inflexible, while 3 per cent of respondents were concerned that the option of a hearing or inquiry might be removed.

3.14 About the same proportion of respondents (65 per cent) agreed that the proposal struck the right balance between speed and quality of decision, however, 16 per cent disagreed. 6 per cent of respondents commented that restriction of the introduction of new evidence at the appeal stage would
potentially reduce the quality of the decision. 3 per cent of respondents commented that the option of a hearing or inquiry was necessary for cases with significant technical arguments.

3.15 Around 20 per cent of respondents indicated that they thought the process could be simplified further, while 57 per cent disagreed. 5 per cent of respondents commented that further simplification would bring a major risk of reducing the value of appeals.

3.16 58 per cent of respondents agreed that the fast track procedure would work with all types of TPO appeal, including those against tree replacement notices. 15 per cent disagreed. 5 per cent of respondents commented that only a more flexible procedure would accommodate all types of tree appeals.

Delegating powers to appointed inspectors

Q17. Should decisions on TPO appeals be taken by Inspectors appointed by the Planning Inspectorate?

Q18. Are there risks with this approach which have not been identified?

Q19. How might we mitigate such risks?

3.17 There was strong support (83 per cent) for delegating decisions to Inspectors appointed by the Planning Inspectorate, with only 6 per cent disagreeing. 46 per cent of respondents commented that Inspectors must have arboricultural expertise (many specifying relevant qualifications and experience).

3.18 A number of risks were identified. 9 per cent of respondents commented that the use of Inspectors who are also independent arboricultural consultants raised the possibility of conflict of interest. 3 per cent of respondents commented that the right under the Human Rights Act to a fair, independent and impartial decision might be compromised. 5 per cent of respondents commented that poor quality decisions could be made by Inspectors, who until now have provided only a report to be considered by a Government Office decision officer. 5 per cent of respondents commented that there was a risk of inconsistent decisions by different Inspectors. 5 per cent of respondents commented that the workload for local authority officers might increase.

3.19 The main method identified to mitigate these risks was to ensure that the Inspectors received appropriate training and there was sufficient oversight by the Planning Inspectorate.
Impact Assessment

Q20. What are the likely effects of any of the changes on you, or the group or business or local planning authority you represent?

Q21. Will there be unintended consequences?

Q22. Do you have any general comment on the outcomes predicted in the Impact Assessment, in particular the costs and benefits?

Q23. As an applicant or local authority, what are the current costs of applying for and processing applications for consent to fell or prune trees?

Q24. As an applicant or local authority, how are these costs likely to be affected by the proposal to introduce a standard application form? Where possible, please specify or estimate the costs involved.

3.20 There was a wide range of views expressed about the likely effects of the proposed changes but there was very little consistency between respondents. Some thought the changes would save time and local authority involvement while others considered that it would increase their workload. There were concerns that if there were cost savings to local authorities; this might lead to reductions in their funding. Some considered that the cost of applications would increase (as already identified in the draft impact assessment) but there were no comments on the estimated scale of the additional costs.
4. The Government’s response to the comments received

Making or varying a TPO

4.1 A TPO is a restriction on land and the way it is used. The main purpose of sending out copies of newly made TPOs is to allow those whose land will be subject to this restriction to make representations and to have them considered before the local planning authority confirms the Order. However, a strong case has been made for ensuring that neighbours who might otherwise have a common law right to carry out work to the tree(s) are also made aware, so that they do not inadvertently contravene a TPO.

4.2 Unfortunately, the consultation exercise has not provided sufficient clarity about options which would reduce unnecessary burden on local authorities while ensuring that the ‘necessary’ people are made aware of the presence of protected trees. The Government has therefore decided not to bring forward this amendment to the current system now, and will reconsider its options alongside other proposed changes to the TPO system expected to be introduced, following further consultation in 2009.

Standard application form

4.3 The Government welcomes the constructive comments on the content of the standard application form and will look again at the balance of information included in the form and the more detailed guidance in Tree Preservation Orders – A Guide to the Law and Good Practice (The ‘Blue Book’). The reason for not including the contact details (ie telephone numbers) in the same box as the applicants (and agents) names and addresses is to make it easier for local planning authorities (LPAs) to comply with the Data Protection Act when they make applications available to the public. This is consistent with the approach taken for other standard forms used to apply for planning permission. We will also look again at the diagrams and guidance on standard descriptions of tree work, information on dead, dying and dangerous trees and on the information required in cases of alleged subsidence.

Supporting information

4.4 The Government welcomes the general support for setting out the information requirements at a national level on the application form. It notes the widespread concern that there is a need for more flexibility to respond to
the specifics of individual cases, and that some of the requirements are not yet right. As this is an important component of the intended streamlining process, the wording of Regulation 9A(c) has been amended to allow a more proportionate approach to the requirements for supporting information (eg in appropriate cases, allowing a letter from an arboriculturist rather than a formal consultant’s report) and further consideration will be given to the guidance included with the form.

Fast track appeals procedure

4.5 The Government intends to continue to pursue the fast track appeals system.

4.6 The Regulations will provide the power to enable the Inspector to require further information where they consider it to be necessary during an appeal.

Delegating powers to appointed inspectors

4.7 In view of the strong support for these proposals the Government will give delegated powers to appointed Inspectors to enable them to decide TPO appeals. Appropriately qualified arboriculturists will be used in technical cases.

Impact Assessment

4.8 The draft Impact Assessment has been revised to take account of the additional information on costs to local authorities.
Annex – List of respondents

Alderwood Consulting Ltd
Anderson Tree Care Ltd
Andy Clout
Arboricultural Advisory and Information Service
Ashford Borough Council
BAA
Barnsley Metropolitan Borough Council
Bath & North East Somerset Council
Birmingham City Council
Bolsover District Council
Bolton School
Bournemouth Borough Council
Boxley Parish Council
Bradford Metropolitan District Council
Bristol City Council
Bromsgrove District Council
Brympton Parish Council
Buckingham Town Council
Campaign to Protect Rural England
Carrick District Council
Charles Bennett
Chiltern District Council
Cllr Simon Goldsack
Colchester Borough Council
Coventry City Council
D F Clark Bionomique Ltd
Dartmoor National Park Authority
David Kavanagh-Spall
David King
Devon & Cornwall Tree Officers Group
Diocese of Southwark
DJP Arboricultural Consultancy
Doncaster Metropolitan Borough Council
Dr Anthony E Wrathall
East Hampshire District Council
East Riding of Yorkshire Council
Ellesmere Port and Neston Borough Council
Elmbridge Borough Council
Gedling Borough Council
Graeme Golding
Hartlepool Borough Council
Heath & Hampstead Society
Hilary Power
Horsham District Council
International Tree Foundation (Dorset Branch)
James Hedges
Jim Smith
Joy Thomas
Kirkburton Parish Council
Landscape Planning Group Ltd (inc Landscape Planning and OCA UK Ltd)
Leicestershire County Council
London Borough of Barnet
London Borough of Bromley
London Borough of Camden
London Borough of Ealing
London Borough of Hammersmith & Fulham
London Borough of Havering
London Borough of Redbridge
London Borough of Tower Hamlets
London Tree Officers Association
Maidstone Borough Council
Marian Janes
Marishal Thompson Group, Crawford & Co and Royal Sun & Alliance Insurance
Martin Orrom
Mendip District Council
Mid Bedfordshire District Council
Mid Sussex District Council
Milton Keynes Council
Monmouthshire County Council
National Association of Tree Officers
Natural England
Network Rail Infrastructure Ltd
North East Wales Institute of Higher Education
North Warwickshire Borough Council
Norwich City Council
Pendle Borough Council
Quaife Woodlands
Redditch Group – Campaign to Protect Rural England
Rootcause arboriculture
Royal Borough of Kensington & Chelsea
Royal Borough of Windsor & Maidenhead
Sedgefield Borough Council
Sefton Metropolitan Borough Council
Simon Jones Associates
South Hams District Council
South Norfolk Council
St Helens Council
Suffolk Coastal District Council
Swanland Parish Council
Thames Water
The Civic Trust
The Hampshire Tree Officers Forum
The Institute of Historic Building Conservation
The Landscape Institute
The Planning Inspectorate
The Subsidence Forum
Tim Coffey
Tunbridge Wells Borough Council
Warwick District Council
West Didsbury Residents Association
West Oxfordshire District Council
Westminster City Council
Woodland Trust and Ancient Tree Forum
Wrington Parish Council
Zoe McAden