

Decision Maker: **Development Control Committee**

Date: **23rd November 2010**

Decision Type: Non-Urgent Non-Executive Non-Key

TITLE: CONSULTATION ON PROPOSED NEW TREE PRESERVATION ORDER REGULATIONS

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Ward: Borough Wide

1. Reason for report

The Department of Communities and Local Government have issued a consultation document entitled "Tree Preservation Orders: Proposals for Streamlining". This report sets out the proposed alterations.

Appendix 1 of this report includes the consultation questions asked by Communities and Local Government Department. The consultation questions and answers are to be submitted to Central Government by the closing date of 20th December 2010.

2. RECOMMENDATION(S)

Members are requested to note the details of the consultation document and agree the responses to the consultation questions which can be found in Appendix 1 of this report.

Corporate Policy

Existing policy: UDP 2006

Financial

1. No cost to the Council arising from the decisions recommended in this report
 2. N/A
 3. Budget head Planning Division budget
 4. Total budget for this head £3.8m
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Staff

1. Number of staff (current and additional) – 1
 2. If from existing staff resources, number of staff hours – N/A
-

Legal

1. Statutory requirement: Town and Country Planning Act 1990
 2. Call-in is not applicable:
-

Customer Impact

Estimated number of users/beneficiaries (current and projected) - All residents of the Borough as well as those making applications for works to trees with tree preservation orders.

3. COMMENTARY

- 3.1. As part of the government's pledge to cut red tape it has produced a consultation document to seek views on consolidating the legislation and to streamline the tree preservation order procedures. The aim is to reduce the administrative burden and make it a fairer system but the government have made clear their desire to ensure that tree protection remains as strong as before.
- 3.2. Tree Preservation Orders were first introduced in the 1940s and over time the TPO system has become cumbersome and fragmented. Regulatory requirements are spread across both primary and secondary legislation and the various TPO documents used since 1947. This labyrinth of regulation is hard for tree owners to understand, at times difficult to administer and is also inconsistent in safeguards that it provides for tree owners.
- 3.3. The proposals are as follows:
 - 3.3.1 To replace the existing 3 sets of regulations with 1 new set and also to include in those regulations provisions currently contained in both the Planning Act and the TPO documents themselves. By having all of the requirements in one set of regulations will eliminate confusion, make the system simpler and easier to administer.
 - 3.3.2 To introduce a new shorter and easier to understand model form of TPO. The current standard form of order has lengthened over the years to 12 pages and is not easy to understand. The proposal is for a new model order of only 2 pages and to automatically amend all existing orders by cancelling their contents except the schedule listing the protected trees and the accompanying map showing their locations. It is unclear how existing tree owners will be informed of these changes although in practice little will change as requirements to obtain consent for any work to trees will be unaffected.
 - 3.3.3 To give all new TPOs immediate effect. Currently an order only becomes effective if it contains a direction to that effect. This direction gives provisional protection for up to 6 months, with the order needing to be confirmed within that period. All new orders would have this immediate provisional protection with no need for a direction. Currently all new TPOs made by Bromley contain such a direction.
 - 3.3.4 To reduce requirements to publicise new orders. When making a TPO prior to 1999 local authorities only had to notify owners and occupiers of land where the tree was growing. Since 1999 all adjoining owners also had to be notified even if the tree was at some distance from their property. It is proposed that only owners and occupiers of land where the tree is growing and neighbours where trees overhang a boundary be notified. Currently, considerable expense is involved in notifying adjoining owners who are not directly affected by a tree. These changes will reduce the numbers of people who have to be notified about a new TPO resulting in some small savings in the costs of paper and postage.
 - 3.3.5 To clarify exemptions for making applications. Currently consent is not required for work where a tree is dead, dying or has become dangerous. The latter two exemptions can cause uncertainty, for example the term dying has been confused with diseased even where the disease may not be fatal, and this has sometimes resulted in the unnecessary loss of trees. It is proposed to remove this ambiguity by removing the exemptions for dying trees and limiting the

exemption for dangerous to only work that is urgently necessary in the interests of safety. This will remove ambiguity in respect of dying trees but confusion is likely as to the extent of work that may be necessary in the interests of safety. The amendments may result in an increase in the numbers of formal applications.

3.3.6 Adopting one system for the duration of consents and revocation of consents. TPOs made before 1999 contain a power for consents to be modified or revoked. This is rarely used and it is proposed that this power will be removed. Consent for work to a protected tree can last indefinitely unless a specific condition is imposed. Currently Bromley generally imposes a time period condition of two years. It is proposed to that a default period of one year be imposed, although Councils could vary the time period. In practice most tree work is done very soon after the grant of consent and the proposed changes will simplify processes and avoid confusion. It is also proposed that proposals for regular tree work over a stated period of time (for example 5 years) could be allowed by the imposition of specific conditions. This would remove the need for repeat applications but in practice allowing work over a 5 year period may be difficult to administer.

3.3.7 Using conditions rather than directions to secure replacement planting in woodlands. Currently where a woodland TPO exists and consent is granted for felling, replanting can only be required by the imposition of a direction. It is proposed to remove the need for directions and replace them with conditions. This would mean a unified system for granting consent.

3.3.8 Making all compensation provisions the same by closing the loophole which allowed local authorities to avoid compensation claims. Compensation may be payable for loss or damage as a result of a refusal of consent or the granting of consent subject to conditions. For TPOs made before 1999 an article 5 certificate can be issued stating that a tree is of outstanding or special amenity value. This means that the liability to pay compensation is removed. Such certificates cannot be issued for orders made after 1999. It is proposed to remove the power to issue certificates so that the system for compensation is unified. It is proposed that compensation could not be claimed for less than £500 and Councils would not be liable for loss of development value or loss or damage that was not reasonably foreseeable when the application was determined or for loss or damage reasonably foreseeable and attributable to a persons failure to take steps to avert loss or damage or to mitigate its effect. Compensation is usually only claimed where a tree is implicated in subsidence of a property. It such cases claims relate to the, often significant, additional costs involved in underpinning a property and are made on behalf of insurers. The removal of the provision to safeguard trees of significant amenity value may lead to additional loss of trees.

3.4. The proposed amendments are generally to be welcomed as they would mean that that TPO system would become more transparent and easier to administer. The main concerns are set out in the suggested responses in Appendix 1.

Non-Applicable Sections:	Policy Implications, Financial Implications, Legal Implications, Personnel Implications
Background Documents: (Access via Contact Officer)	Tree Preservation Order: Proposals for Streamlining; DCLG November 2010.

Consultation Questions
Responses in Italics

1. Will the proposal to consolidate legislation and introduce one system for TPOs benefit tree owners and local planning authorities?

Yes, consolidating the legislation into one system will make the system clearer for tree owners and easier for local authorities to administer.

2. Will bringing all existing and future TPOs into the same shorter format be clearer for tree owners and help local planning authorities?

Yes, having a shorter TPO document will be easier for owners of newly protected trees to understand. There are concerns about how owners of trees already protected will be informed of these changes. However in practice owners rarely rely on anything in the TPO document other than the schedule and map and providing there is sufficient publicity the simplification will make administration easier.

3. Is the proposed provisional protection helpful to local planning authorities and, given the interests of tree owners, fair and reasonable?

In practice most new TPOs are made with a direction for immediate effect. This has not resulted in any unfairness to tree owners as they have the right to object to the making of the order and immediate protection allows a period for reflection without risking the loss of a tree unnecessarily.

4. Is the proposed minimum notification of new and varied TPOs targeting the right people?

Yes.

5. Are the proposals to remove the current exemption for work to dying trees and limiting work to dangerous trees useful clarification, and reasonable?

These proposals are reasonable but in respect of work to dangerous trees, confusion may arise as to the extent of work that may be necessary in the interests of safety. The amendments may result in an increase in the numbers of applications.

6. Do you agree that the power to vary and revoke consents for work under TPOs made before 2nd August 1999 should be removed.

Yes.

7. Is a default period of one year for the duration of consents reasonable?

Yes

8. Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?

The proposals may assist owners but could be difficult for local authorities to administer for example a five year period may be too long a period if single operations are time limited to one year. Consideration should also be given to limiting the number of times an operation could be repeated before a fresh application should be made to the local authority.

9. Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?

Yes

10. Are the proposed changes with regard to compensation fair and reasonable?

Most compensation claims arise from alleged tree root related subsidence of properties. Householders are usually covered by insurance against such damage. Local authorities are currently financially squeezed and there can be occasions where trees may be unnecessarily lost because of fears of excessive claims. Rather than removing the right to impose Article 5 directions they should be extended to cover all TPOs but firm and clear advice given as to when it would be appropriate to use the power.

11. Do you have any further comments to make about the draft regulations?

The opportunity has not been taken to address for issue of area orders, particularly in respect of older TPOs which include areas and because of their age confusion as to what may be protected.

12. Do you have any general comment of the outcomes predicted in the impact assessment, particularly about the costs and benefits?

It is difficult to quantify the benefits of consolidating the system, but savings per local authority would be small.

13. Are there any benefits to the “do nothing” option of not consolidating regulations and creating a unified system for TPOs?

No