

Tree Preservation Orders
A Guide to the Law and Good Practice
Addendum – September 2008



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Introduction

This addendum sets out the Government's policy advice on changes to the tree preservation order system, particularly in respect of applications for consent to carry out work to trees protected by tree preservation orders (TPO) and the handling of appeals against the decisions of local planning authorities (LPA).

These changes arise from the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) (England) Regulations 2008¹ which came into force on 6 April 2008, and the Town and Country Planning (Trees)(Amendment) (England) Regulations 2008² which come into force on 1 October 2008.

The effect of these changes is to:

- introduce a standard application form, with requirements for supporting information, which must be used when applying for consent to carry out work to trees protected by a TPO;
- introduce a fast-track appeal process for cases where LPAs refuse consent, impose conditions, issue an article 5 certificate or a tree replacement notice;
- empower the Planning Inspectorate (PINS) to process these appeals; and
- empower planning inspectors, rather than the Secretary of State to make decisions on them.

These notes do not deal with other amendments to legislation, policy or guidance which may have changed since *Tree Preservation Orders – A Guide to the Law and Good Practice* was published in March 2000. A new edition will be published in 2009 to reflect these and any other changes.

Further information can be found at the Communities and Local Government website at www.communities.gov.uk/treesandhedges. Any further advice may be obtained from the Natural Environment and Open Space team at 1/J4 Eland House, Bressenden Place, London, SW1E 5DU. Email: tpo@communities.gsi.gov.uk.

Please note that all references to Government Offices should be replaced by reference to the Planning Inspectorate (see Annex 1 below).

As from 1 October 2008 paragraphs 6.37, 6.38, 6.49, 6.51, 6.61, 6.71, 7.6–7.11, 7.14, 7.16, 7.17, 9.4, 12.3, 12.5, 12.6, Annex 1 and Annex 5 are cancelled and replaced with the following new paragraphs:

¹ Statutory Instrument ("SI") 2008, No.595.

² SI 2008, No.2260.

Chapter 1 – Introduction to Tree Preservation Orders

Insert new paragraph

- 1.2A The relevant law on TPOs also includes the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) (England) Regulations 2008 (SI 2008, No.595) which came into force on 6 April 2008, and the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 (SI 2008, No.2260) which came into force on 1 October 2008.

Chapter 6 – Applications to carry out work on Protected Trees

Delete paragraphs 6.37, 6.38, 6.49, 6.51, 6.61, 6.71

Insert new paragraphs

- 6.37 An application under a TPO must:

- (1) be made to the LPA on the standard application form³ published by the Secretary of State⁴;
- (2) include the information required on the form;
- (3) be accompanied by a plan which identifies the tree(s) on which work is proposed;
- (4) clearly specify the work for which consent is sought;
- (5) state the reasons for making the application; and
- (6) provide appropriate evidence describing the damage or defect where the work is proposed to address any structural damage to property or in relation to tree health or safety.

Any additional information that cannot be included on the form should be posted (by mail or electronically) or hand-delivered at the same time as the form.

- 6.38 LPAs have no power to require information additional to that specified in the standard TPO application form. If the LPA considers they need information or evidence over and above that set out in the TPO application form in order to make a decision, they will be able to request it, but will not have the power to require it.

³ Only one copy need be submitted to the LPA.

⁴ See regulation 9A(1) of SI 2008, No.2260. The standard application form is available on the Communities and Local Government website (www.communities.gov.uk/treesandhedges) and the Planning Portal website (www.planningportal.gov.uk). LPAs will add their details before issuing it to members of the public.

- 6.38A Any application which is not submitted on the standard form, or is incomplete, or fails to include any of the required documentation will be invalid. These requirements apply to all TPO applications regardless of the date when the TPO was made. The LPA cannot validate or consider an application until all mandatory information is received by them⁵. In relation to rights of appeal where an application is considered invalid see paragraph 7.2A.
- 6.38B The standard form will help the LPA obtain the information they need in a consistent way. The use of the standard form is mandatory, as is the provision of the additional information listed in paragraph 6.37. Guidance is provided with the standard form to assist applicants to provide the necessary information in the appropriate format. LPAs cannot accept applications made on any other form nor those that do not include the required information. It is important that the application is checked to verify that it is both valid and complete before it is accepted by the LPA. If it does not satisfy the tests outlined in paragraph 6.37 the application should be returned to the applicant and any deficiencies explained to them. It would be appropriate to resolve simple matters more informally.

Sketch Plan

- 6.38C The applicant must provide a sketch plan which clearly shows both the main features of the properties affected by the application and the location of the trees contained in the application. A formal location plan, drawn to scale, is not required.

Insert sub-heading before paragraph 6.39

6.39 Work proposals

Insert new paragraphs

- 6.40A Reasons for the proposed work must be provided with the application to assist the LPA in assessing its need and suitability. In certain circumstances specific information and evidence is required to support the proposals. This is to make sure that technical information is available to justify the proposals so that the LPA is able to make an informed decision. There will be circumstances where, whatever the reasons for the work, the tree will be of such low amenity value that consent may not be withheld. This may arise where a tree has deteriorated in condition or appearance since it was originally made the subject of a TPO or due to other causes, eg storm damage. The LPA may waive the need for the technical information in paragraphs 6.40B-6.40D where they agree that the tree is in such a state. This waiver should be confirmed in writing. An application form would still need to be submitted.

⁵ See s.327A of the Town and Country Planning Act 1990, which was inserted by s.42(5) of the Planning and Compulsory Purchase Act 2004.

Condition of trees

6.40B Where the condition of the tree is not severe enough to use the dead, dying and dangerous exemptions⁶ written evidence must be provided with the application describing the nature of the problem, its impact and justifying the work proposed. A formal report is not required. Arboricultural or other diagnostic evidence (eg from an entomologist or pathologist) must be provided where the health of the tree is affected, eg by the presence of pests, diseases or fungi. If the reasons for the application relate to the structural condition of the tree (eg damaged roots or structural defects within the tree or defects that may be of concern to the current or future safe retention of the tree or parts of the tree) then arboricultural evidence must be provided to support the proposed work.

Alleged subsidence damage to property

6.40C Applicants frequently allege that a tree is causing subsidence damage to a property, but with little or no supporting evidence. There are concerns that where evidence is provided it may not always include appropriate information. It is important that applications which suggest that the proposed tree work is necessary to address tree-related subsidence damage are properly supported. Reports will usually be required from a structural engineer and/or a chartered surveyor and be supported by technical analysis from other experts e.g. for root and soil analysis. These reports must include the following information:

- A description of the property, including a description of the damage and the crack pattern, the date that the damage first occurred/was noted, details of any previous underpinning or building work, the geological strata for the site identified from the geological map.
- Details of vegetation in the vicinity and its management since discovery of the damage, together with a plan showing the vegetation and affected building.
- Measurement of the extent and distribution of vertical movement using level monitoring. However, where level monitoring is not possible, the applicant should state why and provide crack-monitoring data. The data provided must be sufficient to show a pattern of movement consistent with the presence of the implicated tree(s).
- A profile of a trial/bore hole dug to identify soil characteristics and foundation type and depth.
- The sub-soil characteristics including soil type (particularly that on which the foundations rest), liquid limit, plastic limit and plasticity index.
- The location and identification of roots found. Where identification is inconclusive, DNA testing should be carried out.
- Proposals and estimated costs of options to repair the damage.

⁶ See section 198(6)(a) of the Act

In addition the application should include a report from an arboriculturist to support the tree work proposals, including arboricultural options for avoidance or remediation of indirect tree-related damage.

Other structural damage

- 6.40D Claims that damage is occurring to lighter structures and surfaces (e.g. garden walls, drains, paving, drives) should be supported by technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.

Submitting applications

- 6.41A Applications must be submitted on the standard application form provided by the Secretary of State. They may be submitted to the LPA by post, delivered by hand or by electronic means – fax, email or through the Planning Portal. The applicant need only submit one copy of the application.
- 6.41B LPAs are encouraged to promote the electronic submission of applications⁷. Where applications are made electronically, the LPA will assume that the appellant has agreed that they may communicate with the applicant in a similar manner. The applicant may, at any time, give at least seven days notice to the LPA if he wishes to change his contact details or withdraw his deemed agreement to the use of electronic communication. The applicant is then not allowed to change his mind and revert to electronic communication⁸.
- 6.41C It is important that any additional information that may be required is provided at the same time as the application form. This applies to those applications where the reasons for the proposed work relates to structural damage to property or to trees where their condition is of concern. Where it is not possible, due to the format of the information (eg a document is not available electronically but the application is submitted on-line) the material must be provided as soon as possible. The LPA cannot validate an application until they receive all the relevant papers. Applicants should be notified immediately of any deficiencies or omissions in the application form or additional information so that they have the opportunity to provide a complete application. When this is received the LPA should acknowledge receipt and confirm the date on which the complete application was received.
- 6.49 The LPA may wish to distinguish between classes of applications which may be decided by officers of the Council under delegated powers (for example, minor pruning work which raises no objections) and those to be decided by a committee or sub-committee (for example, a proposal to cut down trees which is opposed by local residents). The LPA should ensure that their decision is informed by appropriate expertise.

⁷ NeSDS eTrees Service Delivery Standard, 2006 (www.esd.org.uk/esdtoolkit/Communities/NeSDS).

⁸ See regulation 9A(2) of SI 2008, No.2260.

6.51 Where an application relates to a number of different operations on one or more trees the LPA may refuse consent for some of the operations and grant consent for others. Their decision notice should, of course, make absolutely clear what is being authorised. Where an application is granted subject to conditions the LPA should clearly state their reasons in the decision letter. This is the only opportunity for the LPA to explain how they have considered the reasons and supporting information provided by the applicant, how they have assessed the proposals in relation to the tree and state their justification for any condition. (See also paragraph 6.61.)

6.61 When the LPA decide to refuse consent (or grant consent subject to conditions) they should:

- (1) clearly state their reasons for the decision. These should relate to each of the applicant's reasons for making the application. For example, if a person applies for consent to cut down a tree on the grounds that (i) it is causing damage to his property, (ii) it blocks out too much light from his property, and (iii) it has little 'amenity value', the refusal notice should address each of these points. It would not be sufficient simply to refuse such an application 'because the work proposed would be detrimental to amenity'.⁹ This is important as there will be no further opportunity to expand on their reasons for refusal should an appeal be made by the applicant. Any appeal will be determined on the basis of the information available at the time that the LPA determined the application, their decision and the supporting information it contains,
- (2) explain the applicant's right of appeal to the Secretary of State against the decision,
- (3) explain the applicant's right to compensation for loss or damage suffered as a result of the LPA's decision (this will depend on whether or not the LPA have decided to issue a certificate under article 5 of a TPO made before 2 August 1999)¹⁰, and how a claim should be made.

A model refusal notice is at Annex 7.

6.71 As a matter of good practice the LPA should:

- (1) leave the applicant in no doubt that a certificate has actually been issued. For example, a decision simply refusing consent *on the grounds* that the trees have a special amenity value is vague; the LPA should *certify* that they are satisfied the trees have a special amenity value,

⁹ Where the LPA grant consent subject to conditions, they should give their reasons for each condition imposed.

¹⁰ But note that an article 5 certificate cannot be issued if the application is under a TPO that was made on or after 2 August 1999 (see paragraph 6.64).

- (2) explain their reasons for issuing the certificate. The LPA should state why they believe a tree has an 'outstanding' or 'special' amenity value, or why they believe their decision is in the interests of good forestry. This is important as there will be no further opportunity to expand on their reasons for a certificate should an appeal be made by the applicant. Any appeal will be determined on the basis of the information available at the time that the LPA determined the application, their decision and the supporting information it contains,
- (3) explain the effect of the certificate (ie that it removes the LPA's liability under the TPO to pay compensation for loss or damage caused or incurred in consequence of the decision), and
- (4) explain the applicant's right of appeal to the Secretary of State against the certificate.

A model article 5 certificate is at Annex 8.

Chapter 7 – Appeals Against Local Planning Authority Decisions

Delete paragraphs 7.6-7.11, 7.14, 7.16, 7.17

Insert new paragraphs

- 7.2A Where the LPA rejects an application as invalid, there can be no right of appeal to the Secretary of State against a decision on that application. However, where there is a dispute between the applicant and the LPA about whether the application fulfilled the legal requirements, the applicant can seek to appeal on the basis of non-determination (on the grounds of the LPA's failure to determine the application within the 8 week or two month period, depending on the date of the TPO). The Secretary of State may consider the validity of the application as a preliminary issue to establish jurisdiction. The right to complain to the Local Government Ombudsman on the grounds of maladministration will remain.

Electronic communication

- 7.5A Where appeals are made electronically, the Planning Inspectorate (PINS) will assume that the appellant has agreed that they may communicate with the appellant in a similar manner. The appellant may, at any time, give at least seven days notice to the Secretary of State if he wishes to change his contact details or withdraw his deemed agreement to the use of electronic communication. The appellant is not allowed to change his mind later and revert to electronic communication¹¹.

¹¹ See regulation 17 of SI 2008, No.2260.

PROCEDURE

- 7.6 Appeals are handled by the Planning Inspectorate (PINS) (see Annex 1). The 1999 Regulations have been amended so that as from 1 October 2008 a fast-track appeal procedure replaces the previous handling of appeals through the submission of written representations. In practice most cases will therefore be dealt with on the basis of the original application and its supporting information, the decision of the LPA and the reasons they gave when making that decision. The inspector may, however, ask for further information. Either party may if they wish have the appeal dealt with at a hearing or public local inquiry.
- 7.7 When giving notice of appeal to PINS, the appellant must at the same time send a copy of that notice to the LPA that made the original decision. On receipt of a notice of appeal the LPA are required to send, as soon as practicable, copies of the following information to PINS:
 - (1) the application for consent,
 - (2) their decision, if made, and any condition, certificate or direction they have made in relation to their decision.
- 7.8 On receipt of this information PINS will write to the LPA enclosing an appeal questionnaire. The LPA are required to submit the completed questionnaire (including the information requested), with a copy to the appellant, within a target set by PINS, which will be at least 21 days from the date it was sent to them. The questionnaire must record the date on which the LPA returned it to PINS.
- 7.9 The Secretary of State, or the inspector, may write to the appellant and the LPA asking for further information relevant to the appeal to be submitted within a stated timescale. The information requested must be provided in writing. The inspector may decide the appeal taking regard of only that information provided within the timescale set.
- 7.10 After receiving the appeal, the completed questionnaire from the LPA and any further information that may have been requested, PINS will arrange for an inspector to visit the appeal site. The inspector is responsible for considering the main issues raised under the appeal and reach a decision on the case.
- 7.14 If either party exercise their right to a hearing or public local inquiry, an inspector is appointed to hear the case and will reach a decision on the appeal, on behalf of the Secretary of State.

- 7.16 The inspector's decision is made in the light of the information available when the LPA made their original decision, the LPA's decision and supporting information in that decision, together with any further information requested by the inspector. In dealing with appeals against the LPA's refusal of an application for consent, the Secretary of State's policy is to consider the amenity value of the appeal tree or trees, how this value would be affected by the proposed work, and the reasons given for the application. The Secretary of State's general approach in dealing with appeals against 'special' or 'outstanding' article 5 certificates is described in paragraph 6.70.
- 7.17 The parties must meet their own expenses if an appeal is dealt with under the fast-track appeal procedure. In those cases dealt with by a hearing or inquiry, an application for an award of costs may be made by one party on the grounds of the other party's 'unreasonable behaviour' which causes unnecessary expense. An application should be made to the inspector at the hearing or inquiry who will make a decision on the matter. If a hearing or inquiry is cancelled as a result of one party's withdrawal any application for an award of costs should be submitted to PINS.

Chapter 9 – Trees in Conservation Areas

Delete paragraph 9.4

Insert new paragraphs

- 9.4 A section 211 notice does not have to be in any particular form. But it must describe the work proposed and include sufficient particulars to identify the trees. It may be helpful to use the standard application form provided by the Secretary of State for work to trees protected by a TPO, although the LPA cannot insist on its use.

Chapter 12 – Appeals against Tree Replacement Notices

Delete paragraphs 12.3, 12.5, 12.6

Insert new paragraphs

- 12.3 An appeal must:
- (1) be made before the tree replacement notice takes effect (this should be specified in the notice),
 - (2) be made in writing to PINS (see paragraph 7.5A and Annex 1), and
 - (3) indicate the grounds of appeal and state the facts on which it is based.

There is no fee.

- 12.5 Enforcement appeals are handled in a similar way to those against LPA decisions on applications for consent (see Chapter 7). Both parties have the right to a hearing or local inquiry, but are usually content to have the appeal dealt with under the normal appeals procedure.
- 12.6 When giving notice of appeal to PINS, the appellant must at the same time send a copy of that notice to the LPA that issued the tree replacement notice. On receipt of an appeal notice the LPA are required to send, as soon as practicable, copies of the following information to PINS:
- (1) the notice issued under section 207(1);
 - (2) where the notice has been issued following a failure to plant replacement trees under a condition of consent, the original application and consent;
 - (3) where the notice has been issued as a result of the breach of an order¹², the date of that breach, if not included in the notice;
 - (4) where the notice has been issued as a result of a failure to replace a protected tree removed under the exemption of being dead dying or dangerous¹³, the date of the alleged failure, if not included in the notice.
- 12.6A On receipt of this information PINS will write to the LPA enclosing an appeal questionnaire. The LPA are required to submit the completed questionnaire, with a copy to the appellant, within a target set by PINS, which will be at least 21 days from the date it was sent to them. The questionnaire must record the date on which the LPA returned it to PINS.
- 12.6B The Secretary of State, or the inspector, may write to the appellant and the LPA asking for further information relevant to the appeal to be submitted within a stated timescale. This can include any representations received from third parties. The information requested must be provided in writing. The inspector may decide the appeal taking regard of only that information provided within the timescale set.
- 12.6C PINS will arrange a site visit after receiving the appeal, the completed questionnaire and any further information that may have been requested. The inspector will consider the appeal before issuing the decision on the Secretary of State's behalf. If the appeal is allowed, the notice may be quashed.

¹² See section 206(1)(a) of the Act.

¹³ See section 206(1)(b) of the Act.

Annex 1

TPO Contacts

Department for Communities and Local Government

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Web: www.forestry.gov.uk

Other Contacts

Arboricultural Advisory and Information Service

Alice Holt Lodge

Wrecclesham

Farnham

Surrey GU10 4LH

Tel: 01420 22022

Fax: 01420 22000

Tree helpline (Premium rate - £1.50 per minute): 09065 161147

Email: admin@treehelp.info

Website: www.treehelp.info

Arboricultural Association

Ampfield House

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Website: www.trees.org.uk

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