

GUIDANCE NOTES FOR MAKING TREE PRESERVATION ORDERS - AND WORKS TO PROTECTED TREES

The District Council has duties and responsibilities under the Town and Country Planning Act, Government Regulations and Circulars to protect trees within its administrative area in the interest of amenity(1). These duties and responsibilities extend to making Tree Preservation Orders, which in general makes it an offence to cut down, top, lop, uproot, wilfully damage or destroy a tree without the District Council's written permission, and to special provisions for trees within conservation areas.

The maximum fine for the wilful destruction of a TPO or Conservation Area tree is £20,000 per tree. Wilful damage carries the maximum fine of £2,500 per tree.

This leaflet has been written for the benefit of tree owners, the general public and special interest groups to explain the factors that are taken into account by the District Council in determining the suitability of trees for protection under a Tree Preservation Order (TPO) and how decisions affecting trees are made. Anyone relying on it should bear in mind that it is for guidance only and not a statement of law.

MAKING TREE PRESERVATION ORDERS

Tree Preservation Order powers are used selectively in accordance with government advice.

Under the Town and Country Planning Act the District Council may make a Tree preservation Order (TPO) if it appears to them to be:-

“Expedient in the interests of amenity to make provision for the preservation of trees in their area”

The Act does not define what is meant by ‘amenity’ but Government Circular provides the following advice:

- TPO's may be used to protect selected trees and woodlands, that if removed, would have a significant impact on the environment and its enjoyment by the public.
- A reasonable degree of public benefit must accrue from the creation of a TPO.
- Trees should normally be visible from a public place (such as a road or footpath) although exceptionally other trees may be included.
- The benefit may be present or future (for example, when proposed development has taken place).
- The trees are worthy of preservation for their intrinsic beauty or for their contribution to the landscape.
- The trees screen an eyesore or a site for new development.
- The trees have a scarcity value.
- The trees are part of a valued group.

- Other factors (such as importance as a wildlife habitat) may be taken into account, which alone would not be sufficient to warrant a TPO.

Importantly, although a tree may merit protection on amenity grounds government advice is that it is not necessary to make a TPO to protect it, unless, the District Council believe that it is at risk of being cut down either immediately or at some time in the future.

If it appears that judged on the above criteria that the making of a TPO is justified, the District Council will also need to be satisfied, following a detailed inspection, that:

- the tree has a reasonable life expectancy, and
- the tree is sound, healthy and free from disease or serious defect, and
- the tree is not causing structural damage to existing buildings, utility services or public highways and is not likely to do so in the near future, and
- the tree will not cast excessive shade or otherwise interfere with occupier's reasonable enjoyment or property, and
- there are no issues of public safety or other impediment.

WORKS TO TREES UNDER TREE PRESERVATION ORDERS

The written consent of the District Council is required for cutting down or carrying out work on trees protected by a TPO.

Exemptions

There are, however, a number of exemptions including:-

- Dead, dying or dangerous trees.

A TPO does not prevent cutting down or other tree works being undertaken on trees, which are dead, dying or dangerous. This exemption additionally covers the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree.

There is no statutory requirement to notify the District Council but anyone who intends to fell a tree or carry out major works under this exemption is requested to give the Local Planning Authority five days notice before carrying out the work, except in an emergency. It is wise to seek independent professional advice before undertaking works in the scope of this exemption as the onus of proof of condition of the tree in any legal proceedings lies with the owner. There is a duty to replant where trees have been felled.

[Where trees are a danger to highway users separate powers exist under highway legislation and the District Council would not be involved in these cases.]

- Statutory obligations imposed by Act of Parliament.
- Land subject to a forestry dedication covenant under the Forestry Act 1967.
- Land subject to the grant of planning permission where development directly affects the trees.
- Fruit trees cultivated for fruit production in an orchard or garden.
- Trees on land owned by statutory undertakers listed in the Legislation where works on the land cannot otherwise be undertaken or the reason for the works relates to safety purposes.

(Electricity companies are additionally permitted to cut down or carry out work on trees which obstruct the construction of an electric line or interfere with the maintenance or working of an electric line).

Felling

Where works to protected trees are not exempt the District Council will give consent for the felling of a tree where it is satisfied that:-

- the tree is causing or has the potential to cause structural damage to a building, utility services or public highway (an independent professional report may be required), or
- in the interests of good tree management the felling of a tree would benefit the development of other nearby trees, or
- it would be beneficial to the amenity of an area in the longer term to replace a tree that is over mature or of poor quality.

Major works including lopping or topping

Where major works of lopping or topping to a protected tree are proposed the District Council will give consent, always providing that the integrity of the tree is maintained, where it is satisfied that:-

- the works are in the interest of good tree management, or
- the works will alleviate problems of excessive shading, or
- the works are necessary to prevent or alleviate damage to buildings, utility services or public highway (an independent professional report may be required), or
- there is an issue of public safety eg damage to passing vehicles.

Minor works

Most proposals, however, fall into the category of 'minor' and examples would include pruning, shaping or thinning. Consent to carry out works will not be unreasonably withheld always provided that the integrity of the tree is maintained.

In all cases including felling, major or minor works, it is important that reasons are given to justify the work.

WORKS TO TREES IN CONSERVATION AREAS

Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls. Trees which are not covered by TPO's are the subject of a special provision in the legislation. Any felling or other works to trees in conservation areas may only be carried out following a six week period of notice given to the District Councillor if the Council consents such works within that period.

Conservation areas are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. They are designated by the District Council and are usually centred around listed buildings. Trees may contribute to the special character of a conservation area. The purpose of the notification is to provide the District Council with the opportunity to bring the tree under the control of a TPO. Special attention must be paid to the desirability of preserving the character or appearance of the conservation area. If a TPO is not made then consent for the works described in the notice cannot be refused nor can consent be granted subject to conditions.

The protection afforded to the trees in conservation areas is subject to a number of exemptions similar to that for TPO's with the addition that trees which have a diameter of less than 75 mm measured over the bark at a point 1.5 metres above ground level are also exempt.

An application form for works to protected trees that sets out the information required by the Council is attached to this leaflet.

FINDING OUT IF A TREE IS COVERED BY AN ORDER OR IN A CONSERVATION AREA

Details of all TPO's, including applications for works to trees covered by an order and all notifications to works to trees, are recorded in a register which is available for inspection at the Planning reception on the second floor of the District Council Offices, St Albans, during normal office hours. The Trees and Woodlands Section can also provide this information. Details of applications for works to protected trees are also available on the Council's website www.stalbans.gov.uk. Information on conservation areas is also available.

WORKS TO PROTECTED TREES

Dead and dying trees often provide important habitats for plants and wildlife which may be protected by the Wildlife and Countryside Act 1981. For example, trees, especially older trees with hollows or crevices, provide natural roost sites for many bat species which are protected by the 1981 Act. Anyone proposing to cut down a tree which is used as a roost for bats must consult English Nature.

Under the same legislation, all birds, their nests and eggs are protected by law and it is, generally speaking, an offence to damage or destroy the nest of any wild bird while it is in use or being built. Further information can be obtained from the Royal Society for the Protection of Birds.

English Nature
Harbour House
Hythe Quay
Colchester
Essex CO2 8JFH
Tel: 01206 796666
Fax: 01206 794466

The Royal Society for the Protection of Birds
The Lodge
Sandy
Bedfordshire
SG19 2DL
Tel: 01767 680551
Fax: 01767 692365

OTHER INFORMATION

Information on the legal processes involved in the making of TPO's and the requirements and procedures in dealing with proposals affecting protected trees are available on request from the Trees and Woodlands Section who can be contacted at the address below:-

Trees and Woodlands Section Tel: 01727 819363 (direct line)
Enterprise and Civic Environment Fax: 01727 845658
Civic Centre
St Peters Street
St Albans
AL1 3JE