

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**THE TOWN & COUNTRY PLANNING (TREES)(AMENDMENT)(ENGLAND)
REGULATIONS 2008 AND AMENDED GUIDANCE ON TREE PRESERVATION
ORDERS**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform members of; changes to the Tree Preservation Order (TPO) Regulations (The Regulations), and; Amended Guidance concerning TPOs issued by the Department of Communities and Local Government (DCLG), involving;
- 1.2 The introduction of a mandatory national standard form for TPO applications.
- 1.3 Changes to procedures for applications for works to protected trees
- 1.4 Changes to the appeals procedure for refusals, conditions and replacement planting enforcement
- 1.5 Issues around the publicising of TPO applications.
- 1.6 Future changes to the TPO legislation.

2. BACKGROUND INFORMATION

- 2.1 The Regulations came into force on the 1 October 2008 amending regulations made in 1999.
- 2.2 The main changes are; the formalisation of electronic submission of TPO applications through the Planning Portal, and; a new legal requirement for submission of applications for tree work by a standard statutory application form.
- 2.3 In addition, The Regulations now require the submission of specific arboricultural reports for trees considered by applicants to be unsafe and, where trees are alleged to be causing subsidence; structural engineers reports, level monitoring and / or crack monitoring, costs of repair and identification of trees by root identification and/or DNA testing,

- 2.4 The way in which councils determine applications is also prescribed. To the extent that applications must be determined on an evidential basis this prescription follows best practice and should be supported. Additional procedures will however, be necessary because of this prescription. I.e. If additional information is deemed necessary following a site inspection this must be requested within a reasonable time, or; If necessary information is not available upon the submission of an application or, is not provided upon request, then an application should be returned or (following validation), refused.
- 2.5 The amended guidance on TPOs (See Para 6.40A background paper 2), however, also provides for a council can agree a lesser standard of evidence, but it must provide written confirmation of this prior to an application being submitted.
- 2.6 The Planning Inspectorate (PINs) will now deal with appeals through the Fast Track system as currently used for High Hedges and householder developments.
- 2.7 New TPOs are made in accordance with a set format termed a "model order". In the past (7th July 2006 Model Order), the model included information about making appeals and applications. For procedural reasons this information will no longer be contained in the model. Anyone served with a new TPO would not know the procedure for making an appeal or an application therefore; councils need to produce their own addendum to the model to explain appeal and application procedures.
- 2.8 PINs issued a guidance document in April 2008 (See background paper 4), setting out how appeals are to be dealt with, but this would need to be amended to reflect the replacement of Written Representations by the Fast Track system. DCLG have issued a public guidance document explaining the new application process (See background paper 3). Whilst the changes do not alter procedures concerning trees in conservation areas (Submissions under Section 211 of the Town and country planning Act 1990), the DCLG addendum does provide some further clarification concerning the notification procedure.
- 2.9 None of these changes alter current guidance on the publicising of TPO applications i.e. there remains no statutory requirement (as with planning applications), to provide wider publicity for TPO applications or submissions concerning trees in conservation areas (See background paper 5 Para. 6.4.).
- 2.10 DCLG have stated that they intend to review the regulations further in 2009 and bring in additional changes as part of the review and replacement of the 1990 Town and Country Planning Act.

3. OPTIONS FOR CONSIDERATION

- 3.1 The introduction of the new regulations means that stakeholders need to be made aware of the new requirements; this could be either on a case-by-case basis or by advertising; a seminar to ensure that stakeholders are aware of the changes could also be of use.
- 3.2 The regulations also require review of internal procedures in regard to:
- Registration of Applications - The registration of applications now requires that all the necessary application form fields are completed and the fields to be filled in will vary with the type of work being applied for. This is likely to require some arboricultural input to verify an application prior to it being registered, refused or a request for further information is sent out.
 - Decisions on applications - Decisions on applications can only be made on the evidence available at the time of making the decision; therefore, time limits need to be set when asking applicants for further information, if the decision is to be made within the 8 weeks or 2 months depending on the date of the TPO. Applications lacking necessary information must therefore, be either returned or refused.
 - Pre-application discussions will need to be introduced into the existing procedure to allow for those cases that do not need the full extent of evidence (see item 2.3 above), as will a standard letter allowing this to occur.
 - Appeals – It is likely that most appeals will be dealt with by the Fast Track system and this requires that the above two bullet points are carefully documented and these documents can be easily produced at the time of appeal.
- 3.3 Introduction of amended procedures could be either by training of specific staff, more involvement of planning support officers or by creating a detailed decision making chart similar to that used for High Hedges. In any event support officers will need to ensure that they are fully aware of the changes and the implications for administration of applications and appeals.
- 3.4 For administrative reasons publicity for tree applications has been subsumed under the broader heading of publicity for planning applications. Currently, publicity for tree applications is not undertaken in accordance with government guidance (see 2.9 above) and it is logical that at the same time as introducing new procedures that this procedural anomaly should also be addressed. As most applications for work to protected trees specifies relatively minor work that can be

dealt with within the context of good arboricultural practice most tree applications have few if any implications for amenity that justify a need for the same level of publicity as attaches to a planning application.

- 3.5 In these circumstances the site notice procedure is considered an appropriate vehicle for publicising tree applications. An exception to this is the removal of trees. This could have significant amenity implications and in such circumstances neighbour notification letters and, as necessary, public notices, should also be used (notifications to Town and Parish Councils always being undertaken). *(These publicity protocols would not apply in the case of dead, dying or dangerous trees where applications for works are not generally required).*

4. ANALYSIS OF OPTIONS

- 4.1 Providing an information sheets on applications and appeals, as per the DCLG and PINs guidance notes is the simplest way forward in dealing with stakeholder considerations. This could be drafted in a similar way to the Local Link document of frequently asked questions.
- 4.2 Due to the grey areas caused by the out of date information on appeals, the use of 'appropriate evidence' and acceptance of lesser evidence in some cases, there exists potential for misunderstanding and a probable cause of unnecessary delays in some cases. This issue has however, already being addressed through the simple expedient of support staff contacting arborists when unsure about the nature or relevance of submitted information.
- 4.3 Some delay may occur in the processing of applications however, the protocol described above appears to be working well at present and will be regularly reviewed. Procedures should also be put in place to ensure that requests for additional evidence concerning proposed works to trees are made in good time and are properly recorded.
- 4.4 Given the above, it is not considered necessary to arrange seminars.
- 4.5 As a non statutory procedure and for the reasons outlined in 3.4 and 3.5 above publicity on applications for works to TPO trees and submissions for works to trees in conservation areas should follow the site notice procedure as described above.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Cost of providing a customised guidance note concerning appeals and applications – from within existing resources.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Statutory – need to comply with new procedures and tailor existing procedures to achieve compliance (2008 addendum and changes to the TPO Regulations).
- 6.2 Environmental – it is likely that the procedures brought in by the new Regulations and the Addendum, in so far as they require higher levels of proof concerning work to protected trees, will result in more informed decision making and a healthier tree stock overall - this to the benefit of local people and to wildlife also.
- 6.3 Diversity – need to ensure that the design of published information communicates to an identified range of groups and needs.
- 6.4 Section 17 – Crime and Disorder – it is unlikely that there will be any significant impacts on the reduction of crime or the fear of it as a result of the changes in procedures outlined above.
- 6.5 Other - Maladministration claims – delay in processing applications or in determining certain forms of application “incorrectly” may give rise to claims of maladministration. Whilst this needs to be guarded against it is considered unlikely that such claims will arise if the stated procedures are followed.
- 6.2 Other - Audit Commission / CPA – need to ensure that current procedures are up to date and robust in order to meet Audit/CPA requirements.

7. OUTCOMES OF CONSULTATION

- 7.1 Head of Planning suggested that the explanation of current publicity procedures be expanded upon. This has been done and paragraph 3.5 has been added.
- 7.2 Legal Services suggested some grammatical changes and that information concerning application and appeal procedures (See 4.1 above), could be provided as a question and answer format. This suggestion will be followed.
- 7.3 Human Resources – no comment.
- 7.4 Finance – no financial implications.

8. **RECOMMENDATIONS**

- 8.1 That the changes to the TPO procedures introduced by the new regulations are noted and that the new procedures to meet with these and with publicity matters as described in Section 4 of this report be endorsed and agreed.

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Background Papers used in the preparation of this report

1 Statutory Instrument 2008:2260

2 DCLG Addendum to Tree Preservation Orders: The Law and Guide to Good Practice.

3 DCLG Guidance on Making TPO Applications.

4 PINs Guidance on TPO Appeals Procedures.

5. Tree Preservation Orders: The Law and Guide to Good Practice.