



Report of the Head of Planning & City Regeneration

Planning Committee - 1 May 2018

Proposed Changes To The Creation Of Tree Preservation Order (TPO) Procedure And Scheme Of Delegation.

This report sets out the current signing and sealing procedure for making new TPOs and suggests alterations to the procedure, to allow TPOs to be made more quickly ensuring that trees that are under immediate threat can be protected. The proposed changes will also achieve officer time savings in accordance with Commissioning Review recommendations

1. Introduction

- 1.1 Section 198 of the Town and Country Planning Act give local authorities power to make tree preservation orders: *“(1) If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.”*
- 1.2 Trees that are known to be under threat from removal can only be protected by the formation of a new TPO.

2 Current procedure

- 2.1 The current procedure is that a draft order is made by the Tree Officer and passed to the Strategic Planning and Natural Environment Manager with a report for approval.
- 2.2 Once approved the draft order, report and authority for signing and sealing under delegated powers A37 is passed to the Head of Planning & City Regeneration (HoP&CR) for signing.
- 2.3 The signed report and authority for sealing under delegated power A37 is then taken to the Legal department for sealing and then signing by a Solicitor.
- 2.4 When the Order is signed and sealed it is then served on people with interest in the land affected.

3 Appraisal of current procedure

- 3.1 The current process allows a new TPO to be made in two to three days, depending on availability of officers. This period is often extended due to officer absence during periods of illness or leave. Even the shorter time scale for making a new TPO does not allow a tree to be protected that is under an immediate threat.
- 3.2 There are two steps in the current procedure that could be removed:
- Legal / Solicitor signing and sealing the Order.
 - HoP&CR signing the report and authority for signing and sealing.

Sealing of Orders

- 3.3 There is no requirement in the Town and Country Planning Act 1990 or the Town and Country Planning (Trees) Regulations 1999 for the sealing of TPO's. This is confirmed in *Tree Preservation Orders: A Guide to the Law and Good Practice* (the 'Blue Book'): "*It is up to each LPA to decide whether or not their TPOs should be sealed; the TPO legislation does not require the sealing of TPOs*".
- 3.4 The Council's Constitution in Part 4: Rules of Procedure, page 25 allows for the TPO document to be signed by HoP&CR where other provisions allow it: "33. *Signature of Documents*
Where it is proper that any document be signed on behalf of the Council, it shall, unless any enactment otherwise requires or authorises or the Council shall have given the necessary authority to some other person for the purpose of such proceedings be signed by the Head of Legal, Democratic Services & Business Intelligence (sic) the Solicitor to the Council or Chief Executive where relevant."
- 3.5 Delegated powers A37 is the document whereby the Council has given the authority to some other person via the Scheme of Delegation, permitting the HoP&CR to sign TPOs.: "*A37 Powers relating to the preservation of trees. Sections 197 to 214D of the Town and Country Planning Act 1990 and the Trees Regulations 1999 (S.I. 1999/1892) PC / HoP&CR*"

Signing of Orders

- 3.6 As discussed in 3.3 – 3.5 there is no reason for sealing of the document or signing by a solicitor. The Scheme of Delegation permits execution of the document by the HoP&CR.
- 3.7 To enable orders to be made in an even shorter time frame provision of an alternative signatory is required other than the HoP&CR. Immediate signing of orders in the absence of the HoP&CR is suggested in the Blue Book: " 3.6 *Because TPOs are often made at a time when trees may soon be cut down or destroyed, many LPAs find it convenient to delegate the function of making a TPO to an officer or officers of the Council, and to put in place arrangements to act at short notice during and outside normal office hours.*"
- 3.8 The Council's constitution states in the Scheme of Delegation at paragraph 1.6.3.3: "*Subject to any limitations imposed by the Leader, all Responsible Officers may authorise another Officer to exercise their delegated functions provided that the Responsible Officer has line management responsibility for that Officer. In those circumstances it is expected that a written*

“chain of authority” will be maintained”. This would allow the HoP&CR to authorise suitable officers below them in the structure of the service to sign a new order without a change in the scheme of delegation.

- 3.9 TPO’s are served as a ‘Provisional Order’ and as such require confirmation. Confirmation where no objections to the order are received is completed by the HoP&CR signing the order.

If objections are received to the order being confirmed, the decision to confirm the order is taken by the Planning Committee and is subsequently signed and dated by the HoP&CR. As such, the process of confirmation ensures that there is objectivity to the process and does not only rely on one Officer serving the order.

4 Conclusion

- 4.1 Legally and constitutionally the HoP&CR is able to execute new TPOs. This would allow the process to be made quicker and reduce officer time involved with the process.
- 4.2 At times TPOs need to be made as quickly as possible to prevent trees being removed, damaging the amenity of the local area. With the current procedure this cannot always be achieved. If authority is given to relevant officers to sign the TPO’s the procedure could be carried out considerably quicker when the HoP&CR is unavailable.

5. Recommendation

- 5.1 It is recommended that future Tree Preservation Orders to be served as a Provisional Order are executed by the HoP&CR and not signed and sealed by the Legal Department..
- 5.2 It is recommended that the HoP&CR give authority to the Strategic Planning and Natural Environment Manager and the Landscape Team Leader to execute the orders as set out in paragraph 5.1 above in his absence; If this were required, the HoP&CR would be notified of the creation of a new TPO and given the reasons for the required expediency.
- 5.3 It is recommended that the current procedure for confirming the Provisional Orders remain.

Background Papers:

Anon. 2006. Tree Preservation Orders: A Guide to the Law and Good Practice (The Blue Book)

Town and Country Planning Act 1990

Town and Country Planning (Trees) Regulations 1999

Appendices: None

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