



Protected Trees

Many trees within the Borough are protected by tree preservation orders or are located within conservation areas where owners are responsible for notifying the Council before carrying out any work on them.

The Planning Control section can advise on whether consent is needed for work on your trees, whether it be any type of pruning work or felling.

To apply to do work on any tree which is covered by an Order, please use the relevant form to provide information as guided by the associated validation document.

What is a Tree Preservation Order?

A tree preservation order (TPO) is an order made by a Local Planning Authority (LPA) in respect of trees or woodlands. The principal effect of a TPO is to prohibit the:

- (1) Cutting down,
- (2) Uprooting,
- (3) Topping,
- (4) Lopping,
- (5) Willful damage, or
- (6) Willful destruction

of trees without the LPA's consent. The cutting of roots, although not expressly covered above, is potentially damaging and so, in the Secretary of State's view, requires the LPA's consent.

LPAs may make a TPO if it appears to them to be:
'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

Amenity: The Town & Country Planning Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. LPAs should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath, although, exceptionally, the inclusion of other trees may be justified. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore or future development; the value of trees may be enhanced by their scarcity; and the value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat, may be taken into account which alone would not be sufficient to warrant a TPO. In the Secretary of State's view, it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

Expediency: Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO. For example, it is unlikely to be expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.

It may be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases the LPA may believe that certain trees are at risk generally from development pressures. The LPA may have some other reason to believe that trees are at risk; changes in property ownership and intentions to fell trees are not always known in advance, and so the protection of selected trees by a precautionary TPO might sometimes be considered expedient.

Scope of Tree Preservation Orders

A TPO protects trees and woodlands. The term 'tree' is not defined in the Town & Country Planning Act, nor does the Act limit the application of TPOs to trees of a minimum size. Fruit trees, for example, may be included in a TPO provided it is in the interests of amenity to do so. The dictionary defines a tree as a perennial plant with a self-supporting woody main stem, usually developing woody branches at some distance from the ground and growing to a considerable height and size. But for the purposes of the TPO legislation, the High Court has held that a 'tree' is anything which ordinarily one would call a tree.

A TPO may only be used to protect trees and cannot be applied to bushes or shrubs, although in the Secretary of State's view a TPO may be made to protect trees in hedges or an old hedge which has become a line of trees of a

reasonable height and is not subject to hedgerow management. Separate legislation is in place to regulate the removal of hedgerows.

Applications to carry out work on Protected Trees

Exemptions:

There are a number of exemptions from the normal requirement to obtain the LPA's consent for cutting down or carrying out work on protected trees. Some are set out in the Act; others are found in the TPO.

Exemptions in the act:

Dead, Dying and Dangerous Trees

- The LPA's consent is not required for cutting down or carrying out work on trees which are dead or dying or have become dangerous. In the Secretary of State's view, this exemption allows the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree. If a tree outside a woodland is removed under this exemption section 206 of the Act places the landowner under a duty to plant a replacement tree at the same place
- A dead or dying tree may provide a habitat for plants and wildlife protected under the Wildlife and Countryside Act 1981. Trees with hollows or crevices, for example, provide important natural roost sites for many bat species covered by the 1981 Act. Anyone proposing to carry out work on a tree which is used as a roost for bats should first consult Natural England.
- Determining whether a tree is dead, dying or dangerous is not always a straightforward matter. Whether or not a tree has become dangerous for the purpose of the statutory exemption is a question of fact. In deciding whether trees have become dangerous the Courts adopt the sensible approach of a prudent citizen; there must be a present danger which need not be limited to disease or damage to the trees themselves. The threatened danger does not actually have had to have occurred; it is sufficient to find that, by virtue of the state of the trees, their size, their position and such effect as any of those factors have, one can properly conclude that the trees have become dangerous. The Court will look at what is likely to happen, such as injury to a passing pedestrian. It is clear therefore that factors such as the size and position of a tree as well as its condition may be relevant, but the danger must be present. It does not mean that any individual who owns trees and wishes to remove them can say to himself, Having regard to their position, the way they have been planted and their unsuitability, I can see that in a number of years they are going to constitute a danger and then cut them down. One has to look at the position at the time. If such damage is far off, remote and not immediate the trees do not come within the meaning of the exemption.
- Anyone proposing to cut down a tree under this exemption is advised to give

the LPA five days' notice before carrying out the work, except in an emergency. Anyone who is not sure whether the tree falls within the exemption is advised to obtain the advice of an arboriculturist.

- If work is carried out on a protected tree under this exemption (or any of the other exemptions listed below), the burden of proof to show, on the balance of probabilities, that the tree was dead, dying or dangerous rests with the defendant.

Statutory Obligations

- The LPA's consent is not required for cutting down or carrying out work on trees in compliance with a statutory obligation. For example, work carried out to remove or restrict the height of trees in accordance with a direction made by the Secretary of State under the Civil Aviation Act 1982 would be covered by this exemption.

Nuisance

- The LPA's consent is not required for cutting down or carrying out work on trees so far as may be necessary to prevent or abate a nuisance. The term 'nuisance' is used in a legal sense, not its ordinary everyday sense.
- Under common law a landowner can cut the branches from a neighbour's trees if they overhang his or her property. The overhanging branches are regarded as a 'nuisance' and may be cut at the boundary between the two properties whether or not they are causing any damage. The cut branches, including any fruit, remain the property of the neighbouring owner. The same rule applies to encroaching roots. Two properties must be involved, and so householders cannot claim that the trees in their own garden are the cause of a nuisance to themselves.
- Whether the branches or roots of a *protected* tree can be cut back in this way under the exemption has not been settled by the Courts. In the unreported case of *Sun Timber Co. Ltd. v Leeds City Council* (a case involving overhanging branches) it was decided that the exemption applies only where the nuisance is 'actionable', in other words where the overhanging branches are causing, or there is an immediate risk of their causing, actual foreseeable damage. If this interpretation of the exemption is correct the LPA's consent would be required under the TPO before cutting back branches or roots which are not causing damage.

Forestry Commission: Grant Schemes and Felling Licences

- The LPA's consent is not required for cutting down trees in line with a plan of operations agreed by the Forestry Commission under one of their grant

schemes, or for the cutting down of trees in accordance with a felling licence.

Exemptions in the TPO

A number of exemptions are also included in the TPO. The guidance below gives advice on the exemptions as they appear in the current model form of TPO in the 1999 Regulations. But reference should always be made to the particular provisions of the TPO in question before determining what work is exempt in any given case. For example, the exemptions conferred on statutory undertakers in TPOs made under previous Regulations are not in the same terms as those contained in TPOs made under the 1999 Regulations.

Planning Permission

- The LPA's consent is not required for cutting down or carrying out work on trees if required to implement a full planning permission. For example, the TPO is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. In dealing with applications for planning permission LPAs consider a range of factors, including the potential loss of protected trees. Where, on balance, they decide to grant full planning permission protected trees may be cut down or cut back without any need to apply under the TPO, but only if such work is *required* to implement the planning permission.
- The exemption is limited. If only outline planning permission has been granted, the LPA's consent under the TPO is still required before cutting down or carrying out work on protected trees.
- The LPA's consent is also required before cutting down or carrying out work on trees to implement permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995. So anyone relying on permitted development rights to build an extension or put up a garden shed would have to obtain the LPA's consent if it was necessary in the process to cut down or carry out work on a protected tree.

Fruit Trees

- A fruit tree may be protected by a TPO provided, of course, the LPA believe it to be in the interests of amenity to do so.
- If a fruit tree is protected by a TPO and cultivated in the course of a business, the LPA's consent is not required for cutting it down or carrying out work on it, as long as the tree work is in the interests of that business.
- If a fruit tree protected by a TPO is not cultivated on a commercial basis, it is necessary to obtain the LPAs consent before cutting it down. However, the LPA's consent is not needed before pruning any tree cultivated for the production of fruit, as long as the work is carried out in accordance with good

horticultural practice.

Statutory Undertakers and Other Bodies

- Under the 1999 Model Order any of the following are treated as 'statutory undertakers':
 - (1) railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier and lighthouse undertakers, and undertakings for the supply of hydraulic power;
 - (2) electricity operators, public gas transporters, water and sewerage undertakers, telecommunications operators and the Post Office;
 - (3) the Civil Aviation Authority or any body acting on their behalf.
- Under the 1999 Model Order a statutory undertaker (or a contractor working at the undertakers request) does not need to obtain the LPA's consent before cutting down or carrying out work on a tree which is situated on the undertaker's operational land if necessary:
 - (1) in the interests of safety,
 - (2) when inspecting, repairing or renewing their mains, pipes, cables and other apparatus,
 - (3) when carrying out their permitted development rights under the Town and Country (General Permitted Development) Order 1995.
- The Environment Agency do not need to obtain the LPA's consent before cutting down or carrying out work on trees to enable them to carry out their permitted development rights. Similarly, drainage bodies do not need to obtain consent before cutting down or carrying out work on trees which interfere with their construction or maintenance works.

Who Can Apply?

Anyone can apply for consent under a TPO. You do not have to have a legal interest in the land and, unlike applications for planning permission, a TPO application does not have to be accompanied by a certificate that the applicant is the owner of the land concerned, or that the owner has been notified. For example, a person can apply to carry out work on trees which are situated in a neighbour's property. But an applicant who is not the owner of the trees is advised to consult the owner before making an application; the applicant is also advised to notify the owner as soon as the application has been submitted. It is legitimate for the LPA to ask applicants about their legal interests in the trees they propose to carry out work on. Their decision on the application should be based on the merits of the case, in the public interest. If they grant consent it will be for the applicant to make sure any necessary permission is obtained from the owner of the tree before carrying out the work.

The Application

An application under a TPO must:

- (1) be made in writing to the LPA using the correct application form,
- (2) state the reasons for making the application,
- (3) identify the trees to which the application relates, by reference to a plan if necessary, and
- (4) specify the operations for which consent is sought
- (5) provide evidence either from an arboriculturist or a surveyor depending on the specific situation.

The LPA has its own application form. The standard form entitled 'Application for tree works subject to a (TPO) and/or Notification of proposed works to trees in conservation areas' will help the LPA obtain the information it needs in a consistent way. For further guidance on this please see the Validation Document and associated checklist.

It is vitally important that the application sets out clearly what work is proposed. This should be straightforward if the proposal is to fell a tree, as long as the tree is clearly identified. But if the proposal is to prune a tree the application should clarify exactly what work is envisaged. A proposal simply to 'top' the tree or to 'lop' or 'cut back' some branches is too vague because it fails to describe the extent of the work.

Applicants are advised not to submit their applications until they are in a position to present clear proposals. It is suggested they should consider first discussing their ideas with a qualified Tree Surgeon or Arboriculturist.

If the LPA receive a vague application they are advised to refer back to the applicant and seek clarification. If they grant consent to an application which is open to several interpretations the LPA may find it difficult to take enforcement action in cases where the work falls within one of those interpretations, even though the LPA believe the work exceeds that for which they intended to grant consent. Any clarification of an application should be confirmed in writing, either by modifying the original application or withdrawing it and submitting a new one.

Only one application is needed to carry out a number of different operations on the same tree (for example, to reduce some branches and lift the crown) or to carry out work on a number of trees (for example, to reduce the crowns of a line of trees). Similarly, a programme of work (such as specific operations which are to be repeated on an annual or regular basis, or a series of operations phased over a period of time) could be submitted as one application. Such applications are in fact encouraged as a means of promoting ongoing beneficial woodland management plans of, say, five years without the need for repeated applications over a relatively short period of time.

Acknowledging Receipt

The LPA will normally, as a matter of good administrative practice, acknowledge receipt of the application in writing, giving the name and telephone number of the LPA officer dealing with the case.

Publicity

The LPA are required to keep a register of all applications for consent which must be made available to the public at all reasonable hours. The register should include details of every application under the TPO and the LPA's decision. They are not required to publicise applications more widely, for example by sending letters to local residents, putting up site notices or placing advertisements in local newspapers. However, where local people might be affected by the application or where there is likely to be a good deal of public interest, the LPA should consider displaying a site notice or notifying the residents, authorities or groups affected. In addition, where an application is submitted by a neighbour, the LPA should make sure the owner or occupier of the land on which the tree stands is informed and given a chance to comment.

Considering Applications

If the LPA did not visit the site before the application was made they should do so at this stage. The site visit should be carried out by an officer with appropriate arboricultural knowledge and experience. If in the opinion of the LPA the work proposed is exempt (and as such does not require consent under the TPO) they should inform the applicant in writing as soon as possible. The LPA should not purport to 'decide' the application by granting consent to the work; they should merely explain that the work does not require consent (and, where the felling of non-woodland trees is involved, explain the landowner's duty to plant a replacement tree.

In considering applications the LPA are advised:

- (1) to assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area, and
- (2) in the light of their assessment at (1) above, to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

They are advised also to consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions. In general terms, it follows that the higher the amenity value of the tree or woodland and the greater the impact of the application on the amenity of the area, the stronger the reasons needed before consent is granted. On the other hand, if the amenity value of the tree or woodland is low and the impact of the application in amenity terms is likely to be negligible, consent might be granted even if the LPA believe there is

no particular arboricultural need for the work.

Where an application relates to trees in a conservation area the LPA are required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Decisions

Powers

In dealing with an application the LPA may:

- (1) refuse consent,
- (2) grant consent unconditionally, or
- (3) grant consent subject to such conditions as they think fit.

Granting Consent Subject to Conditions

The legislation does not place restrictions on the LPA's power to impose conditions on a consent. But this does not mean the power is unlimited. In the Secretary of State's view conditions should always relate to the authorised work and be fair and reasonable in the circumstances of each case. In deciding whether or not a condition would be fair and reasonable in the circumstances the LPA should consider whether there is a definite need for it. Would the condition help tackle a specific problem? The argument that it would do no harm would not itself be sufficient justification for imposing it.

Conditions should be precisely worded so that the applicant is left in no doubt about its interpretation and the LPA are satisfied it can be enforced.

Conditions are commonly used to secure the planting of replacement trees, to impose a time limit on the duration of consent and to regulate the standard of the authorised work.

Replacement Trees

Prior discussion with the applicant should help the LPA formulate, at the time of consent, a mutually acceptable condition that makes clear the size, species and location of the replacement tree and the period within which it is to be planted. In cases where there has been no discussion, and where the applicant has given the LPA no indication of any replanting proposals, the LPA may still frame a condition that might be discharged without any further ado.

The LPA may enforce this type of condition by serving on the landowner a tree replacement notice. Tree replacement notices cannot be used, though, to enforce the maintenance of newly planted trees, so LPAs are advised not to impose maintenance requirements in their conditions. But they may impose a

condition to ensure that further replacements are planted if any newly planted trees die. A condition of this kind may also meet concerns that many replacement trees planted in compliance with a condition are not automatically protected by the original TPO.

Duration of consent

The LPA may in some cases believe it appropriate to impose a time limit (of, say, two years) on the duration of the consent. After the expiry of the time limit a further application for consent would have to be made.

Standard of work

The LPA may wish to use their powers to ensure that tree work or planting is carried out in accordance with good arboricultural practice. This may be done, where appropriate, by imposing a condition requiring compliance with the relevant current British Standard. The LPA should not, however, use such conditions without first considering whether they are relevant and reasonable in the particular circumstances of each case.

Refusing Consent

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

- (1) give 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',
- (2) explain the applicant's right of appeal to the Planning Inspectorate against the decision.

The Right of Appeal

Each TPO sets out when an appeal to the Planning Inspectorate can be made following an application for consent to cut down or carry out work on a protected tree.

An appeal may be brought against any of the following:

- (1) the LPA's refusal of consent;
- (2) any condition attached to the LPA's consent; or
- (3) the LPA's failure to notify the applicant of their decision within two months or 8

weeks from the date they received the application (or such extended period as may be agreed by the applicant and LPA in writing). Once an appeal has been made, the LPA cannot decide the application, which is treated as though it had been refused by the LPA. The appeal may be withdrawn, though, if it becomes clear that the LPA would be prepared to grant consent.

TPOs made on or after 2 August 1999 include an extra ground of appeal against: (4) the LPA's refusal to agree a matter that required their agreement under the terms of a condition of consent. For example, say the LPA grant consent to the cutting down of a tree subject to a condition that a replacement tree is planted of a size and species, and in a location to be agreed with the LPA. If the LPA and applicant subsequently fail to agree any of these matters the applicant may appeal to the Planning Inspectorate.

An appeal can only be made by the applicant (or an agent acting on the applicant's behalf). The appeal must be made in writing within 28 days of receiving the LPA's decision, certificate or direction, though the Planning Inspectorate may allow a longer period. The parties should not rule out further discussions after the appeal has been made; difficulties or misunderstandings can sometimes be resolved even at this stage, leading to the eventual withdrawal of the appeal and a saving of public resources.

The Regulations also introduce, from 1 October 2008, a new fast-track appeal system. Inspectors will only be able to consider the information provided with the original application; there will be no written representations procedure available. It is therefore important that your authority's decisions on applications for work to protected trees include a clear statement of the reasons for refusal, the imposition of conditions or issuing of article 5 certificates.

Procedure

Appeals are handled by the Planning Inspectorate. Either party may if they wish have the appeal dealt with at a hearing or public local inquiry, but in practice most cases are dealt with by an exchange of written statements followed by a site visit (the 'written representations procedure').

Written Representations

The written representations procedure is a quicker, simpler and cheaper alternative to the hearing/public inquiry method. Under the 1999 Regulations written representations now have to be submitted within set time limits. The Planning Inspectorate asks the appellant to complete an appeal form, including the grounds of appeal. The Planning Inspectorate then writes to the LPA, enclosing an appeal questionnaire. The date of this letter usually marks the formal starting date of the appeal. The LPA are required to submit the completed questionnaire, together with background papers relevant to the appeal, to the

Planning Inspectorate within two weeks of the starting date. Copies of these papers, including the questionnaire, should be sent to the appellant at the same time. If the parties wish to submit additional representations they must do so within six weeks of the starting date.

The LPA's Statement

The LPA are advised to invite any third parties who commented on the original application to submit representations on the appeal. These representations should be sent by third parties directly to the Planning Inspectorate. The LPA should involve third parties at an early stage so that they are given sufficient time to submit their representations within six weeks of the starting date.

LPAs are not required to submit their additional representations in any particular form. They must themselves judge what sort of submission they wish to put forward, but they are advised to concentrate on the main controversial issues raised by the appeal. Many appeal statements are unnecessarily long, containing material which is not relevant. Background documents submitted with the appeal questionnaire may often be sufficient to present the LPA's case. Additional information should be presented as concisely as possible.

The Planning Inspectorate send a copy of the LPA's representations to the appellant. Any third party representations submitted within six weeks of the starting date are sent to both parties. The parties are given a further two weeks to provide any final representations on any new matters arising. Late and repetitious representations are discouraged. Whether intended to reinforce points already made, have the last word, or save the best arguments to the end, such tactics confer no advantage and only prolong the appeal process.

Site Visit

After the exchange of written representations the Planning Inspectorate arrange for an officer of the Department or an arboriculturist appointed by the Department to visit the appeal site. The inspecting officer is responsible for producing an independent and impartial report on the main issues raised under the appeal, which will help the Planning Inspectorate reach a decision on the case.

The inspecting officer is usually accompanied by representatives of both parties to the appeal. The presence of the appellant may be required to gain access to the site, identify the appeal trees or clarify the work for which consent is sought. No discussion about the merits of the appeal is allowed, although the inspecting officer may ask questions on factual matters.

Arranging accompanied site visits can delay the handling of appeals. Unaccompanied site visits may be arranged with the consent of both parties, provided the inspecting officer can gain access to the site and has sufficient

information to assess all aspects of the case.

Hearings and Public Local Inquiries

If either party exercise their right to a hearing or public local inquiry, an inspector is appointed to hear the case and submit a report.

The Planning Inspectorate's Decision

The Planning Inspectorate's may allow or dismiss the appeal. He may reverse or vary any part of the LPA's decision. He may deal with the application as if it had been made to him in the first instance. He may allow an appeal in part. The decision notice is sent to the appellant and copied to the LPA. A copy will also be sent, on request, to any third party who submitted representations. The LPA should, when they receive an appeal decision, record the outcome on the public register which they are required to keep.

The Planning Inspectorate's decision is made in the light of the inspecting officer's report and the representations submitted by the parties. In dealing with appeals against the LPA's refusal of an application for consent, the Planning Inspectorate'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.

Trees in Conservation Areas:

Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls. But the Town and Country Planning Act 1990 also makes special provision for trees in conservation areas which are not the subject of a TPO. Under section 211 anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the LPA six weeks' prior notice (a 'section 211 notice'). The purpose of this requirement is to give the LPA an opportunity to consider whether a TPO should be made in respect of the tree.

Exemptions

Exemptions from the requirement to give a section 211 notice are:

- (1) for cutting down trees in accordance with a felling licence granted by the Forestry Commission or a plan of operations approved by the Commission under one of their grant schemes,
- (2) for work which is exempt from the requirement to apply for consent under a TPO,
- (3) for work carried out by, or on behalf of, the LPA (i.e. the Council as a whole and not just its planning department),

(4) for work on a tree with a diameter not exceeding 75 millimetres (or 100 millimetres if cutting down trees to improve the growth of other trees, i.e. thinning operations)

Giving Notice

The LPA provides a standard form to assist in this process.

It is vitally important that the application form sets out clearly what work is proposed. This should be straightforward if the proposal is to fell a tree, as long as the tree is clearly identified. But if the proposal is to prune a tree the section application form should clarify exactly what work is envisaged. A proposal simply to 'top' the tree or to 'lop' or 'cut back' some branches is too vague because it fails to describe the extent of the work. People are advised not to submit an application form notice until they are in a position to present a clear proposal. They should consider first discussing their ideas with a qualified Tree Surgeon or an Arboriculturist.

If the LPA receive a vague application form notice they are advised to refer back to the person who submitted it. Any clarification of the proposal should be confirmed in writing, either by modifying the original form or withdrawing it and submitting a new one.

What the LPA can do

The LPA can deal with the application in one of three ways. They may:

- (1) make a TPO if justified in the interests of amenity. The proposal would then have to be the subject of a formal application under the TPO, or
- (2) decide not to make a TPO and allow the six week period to expire, at which point the proposed work may go ahead as long as it is carried out within two years from the date of the notice, or
- (3) decide not to make a TPO and inform the applicant that the work can go ahead.

Publicity

Although the LPA are not required to publicise this type of application, they are advised to consider seeking the views of local residents, authorities or groups, particularly in cases where there is likely to be public interest. There are likely to be cases where the LPA consider no publicity is warranted. In cases where they believe some publicity is warranted, the LPA should decide what form it should take having regard to the particular circumstances of the case. They may decide to invite views on the proposal, for example, by writing to nearby residents and groups or by displaying a site notice or even by placing an advertisement in a

local newspaper. If the LPA decide to publicise the proposal they should, of course, take into account any comments duly submitted before deciding whether or not to intervene by making a TPO.

Public Register

The LPA is required to keep available for public inspection a register of all applications. The Secretary of State has determined that the register should include the following particulars:

- (1) the address of the land on which the tree stands and sufficient information to identify the tree and the work proposed;
- (2) the date of the section 211 notice and who served it;
- (3) the decision of the LPA (if they make one) and the date of the decision; and
- (4) an index for tracing entries.

Penalties

Anyone who cuts down, uproots, tops, lops, willfully destroys or willfully damages a tree in a conservation area without giving a submitting an application (or otherwise in contravention) is guilty of an offence. Anyone who cuts down a tree in a conservation area without submitting an application is liable, if convicted in the Magistrates' Court, to a fine of up to £20,000. Anyone who carries out work in a way that is not likely to destroy the tree is liable to a fine in the Magistrates' Court of up to £2,500.

Replacement of Trees: Enforcement

If a tree in a conservation area is removed, uprooted or destroyed in contravention of section 211 the landowner is placed under a duty to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. The same duty applies if a tree is removed because it is dead, dying or dangerous or because it is causing a nuisance. The duty attaches to subsequent owners of the land, although the LPA have powers to dispense with the duty.

For further information on protected trees please see the Application Forms and Guidance section.

To discuss any specific issues with a council officer see Planning Control Contact Details.