

WAVERLEY BOROUGH COUNCIL

TREE GUIDELINES – MARCH 2012

INTRODUCTION

1. About 30% of Waverley is wooded and there are important trees and groups of trees within every town and village. Trees are, therefore, an essential part of the character of Waverley. Amongst other things, they are a major feature of Waverley's landscape; give an attractive setting for the settlements; screen development and roads, provide wildlife habitats; take carbon dioxide out of the atmosphere and, in places, provide an economic crop for forestry.
2. The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991), places a 'duty' on Local Planning Authorities to ensure that they make adequate provision for the preservation and planting of trees. It states that local authorities 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 or woodlands in their area..."*
3. The purpose of these Guidelines is to explain the matters that the Council considers when:-
 - a) deciding whether or not to make a new TPO or update an existing TPO; and
 - b) assessing applications for consent to carry out works to trees that are already protected by a TPO.

DIFFERENT TYPES OF TREE PRESERVATION ORDER (TPO)

4. When making a TPO, trees can be protected in the following way:-
 - Individually
 - As a group
 - As a woodland
 - As an area
5. More information on the different types of TPO and their uses is available on the web site at: *(link)*
6. It is important to stress that, irrespective of whether or not the Council applies a TPO to a tree, the legal duty of care for maintenance of the tree remains with the tree owner and is not transferred to the Council.

EXISTING POLICY AND GUIDANCE ON MAKING TPOs AND CONSIDERING TREE WORK APPLICATIONS

7. "Tree Preservation Orders: A Guide to the Law and Good Practice" (2000) (otherwise known as the 'Blue Book') provides national guidance in relation both to the legal duty to protect trees and the matters to be considered when deciding whether or not to make a TPO. This document can be viewed or downloaded at: <http://www.communities.gov.uk/publications/planningandbuilding/tposguide>
8. There are also 'saved' policies in the Waverley Borough Local Plan 2002 that are relevant. In particular, Policy D6: 'Tree Controls', Policy D7: 'Trees, Hedgerows and Development' and Policy C7: 'Trees, Woodlands and Hedgerows' and Policy C8: 'Felling Licences and Woodland Grant Schemes'. These can be viewed or downloaded at: <http://www.waverley.gov.uk/site/scripts/documents.php?category/D=494>

NEW TREE PRESERVATION ORDERS

9. When deciding whether to make a TPO, the Council will consider:-
 - Whether the tree or trees are of sufficient **amenity** value; and
 - Whether it is **expedient** to make a TPO.

Amenity Considerations

10. A fundamental consideration when deciding whether or not to make a TPO is whether the tree or trees have a public amenity value. Primarily, this will be interpreted as meaning that the tree(s) are clearly visible from a public place and add value to the streetscene or local landscape. However, trees that have a strong cultural, historical, wildlife or rarity value can also be considered.
11. When assessing the visual amenity value of trees, the following factors are considered:-
 - **Visibility:** the extent to which the trees or woodlands can be seen by the general public will inform the Council's assessment of whether its impact on the local environment is significant. If they cannot be seen or are just barely visible from a public place, a TPO might only be justified in exceptional circumstances;
 - **Individual impact:** the fact that a tree is publicly visible will itself not be sufficient to warrant a TPO. The Council will also assess the tree's particular importance by reference to its size and form, its future potential as an amenity, taking into account any special factors such as its rarity, value as a screen, or contribution to the character or appearance of a conservation area. In relation to a group of trees or woodland, the assessment is made of its collective impact;

- **Wider impact:** the significance of the trees in their local surroundings will also be assessed, taking into account how suitable they are to their particular setting, as well as the presence of other trees in the vicinity.
12. In assessing the amenity value of a tree it is not just a case of considering the tree as it is now. The Council may decide that a tree merits a TPO if it has the potential to accrue a substantial amount of amenity value in the future.

The Expediency of Making a Tree Preservation Order

13. Although a tree may merit protection on amenity grounds, it is still necessary to consider whether, in the circumstances of the case, it is expedient to make a TPO. This means considering:-
- the health of the tree;
 - the extent to which it is under threat;
 - whether the tree is causing physical damage to buildings; and
 - whether the tree is causing significant problems that unreasonably affect the quality of life of tree owners. (See the section on works to protected trees for further guidance on this matter)
14. In relation to the **health** of the tree, this involves examining the tree for evidence of ill health that would have a bearing on its long term future.
15. Examples of where a TPO may be expedient because there is a potential **threat** to a tree include:-
- **Emergency action.** It may be necessary for the Council to take emergency action to protect a tree / trees if they are under an immediate threat of being damaged or removed.
 - **Proposed development.** In many cases the Council is prompted to take measures to protect trees that are threatened by proposed development.
 - **Strategic TPOs.** Many of the new homes built in Waverley come forward through intensification within existing residential areas. This can put the existing tree stock under threat. There could be circumstances, therefore, where the Council pro-actively places strategic TPOs on sites that have been identified as potential development sites.
 - **Other threats.** Various other circumstances may put trees under threat and prompt the Council to consider their protection. These may be precautionary measures to prevent damage to or the removal of trees involved in neighbour disputes, or where the future intentions of the landowner are not known, such as when land changes ownership.

EXEMPTIONS

16. Irrespective of the attributes they may have, certain trees are exempt from inclusion in TPOs at the outset, or exempt from the need for subsequent applications for consent to carry out work if they are already subject to TPO's. These include:
- **Trees that are dead, dying or dangerous:** Assessing whether or not a tree is dangerous is often a matter of professional judgement. The perceived 'danger' from the tree must be present. If this is the case then it is unlikely that it would be included in a TPO. In addition, work may be carried out on a tree subject to a TPO, in order to make it safe, without the need to formally apply for consent to carry out the works. If the owner of a tree that is already protected by a TPO considers that it is dangerous, then onus is on him/her to demonstrate why this is the case.
 - **Fruit trees:** These can be included in TPO's, but there is an exemption from obtaining consent from the Council for annual pruning for fruit production.
 - **Some statutory undertakers** (such as electricity or drainage companies) are exempt from planning restrictions inferred by TPO's.
 - **Sites with planning permission for development:** Where full planning permission has been granted for development on a site containing TPO trees, the Council's permission is not required to undertake works to TPO trees in order to implement the planning permission. The approved plans should include a schedule of the specific works to TPO trees that have to be carried out in order to implement the permission. There may be other TPO trees on the site not affected by the implementation of the planning permission and these would remain protected and subject to normal TPO controls.
 - **Forestry Commission Grant Schemes:** Although sections of woodland can be included in a TPO, if the land concerned comes under one of the Forestry Commission's grant schemes, it would not be considered for inclusion in a TPO. Consequently, the Council's consent is not required for the felling of trees in line with a plan of operations agreed by the Forestry Commission under such grant schemes. More information on these Grant Schemes can be found at: **...web link...**

REVIEWING EXISTING TREE PRESERVATION ORDERS

17. The Council has a number of old tree preservation orders that are becoming out-of-date in relation to land use, legal reasons and public amenity value. There are a number of TPOs that contain 'area' or blanket designations that apply to all the trees within a designated area that existed at the time when the TPO was made. However, trees planted since the order was made are not protected. The purpose of keeping TPOs under review is to ensure that all TPOs are appropriate, relevant, up-to-date and enforceable.

18. There is an on-going review of old TPOs. These reviews are prioritised, concentrating initially on:-
- TPOs made before 1974;
 - TPOs that do not have 'wilful destruction or damage' as an offence;
 - TPOs that contain incorrect group definitions; and
 - TPOs containing area designations.

APPLICATIONS FOR WORKS TO TREES THAT ARE PROTECTED BY A TREE PRESERVATION ORDER

19. Unless one of the exemptions applies, all trees subject of a TPO require formal consent for tree works. More information on the requirements for tree works applications is contained on the Council's web site: *...link...*

Tree Removal

20. Whilst the Council recognises the need to conserve tree cover, there will be occasions where tree removal is justified. Normally, the felling of a tree or trees that are protected by a TPO will only be considered if one or more of the following apply:-
- The protected tree does not meet the criteria set out above for making a new TPO;
 - The tree is causing damage to a building and where tree removal rather than other tree works such as pruning is considered to be the most appropriate remedy;
 - The removal of the tree would be in the interests of good silvicultural and arboricultural management and would benefit the long term development of adjacent better quality trees.
21. The Council will not normally support the removal of trees that do not fulfil the above criteria, for example, where the trees are perceived to be a problem due to leaf or fruit fall or bird droppings. However, in certain circumstances, removal of a tree or trees may be justified where the tree owner's or the neighbour's right to the reasonable enjoyment of their property is significantly affected. In such cases, it will be necessary to weigh the amenity value of the tree or trees against the impact on the amenities of the tree owner or the neighbour. In such cases, the following criteria will be used:-
- The public amenity value or landscape importance of the tree or trees, along with any strong cultural, historical, biodiversity or rarity value;
 - The tree species, density of canopy, condition and age;
 - The aspect of the property and garden in relation to the tree or trees.
22. Where there is a requirement or duty to plant a replacement tree, it should be of a suitable size and species to avoid causing any future problems.

Tree Pruning

23. From time to time it is necessary to prune trees to help to retain them in a safe and healthy condition. Permission for pruning will normally be allowed where the work is in the interests of the tree's future, accords with the latest version of British Standard 3998 'Recommendations for Tree Work' and:-
- The work is required to prevent direct or indirect physical damage to a building; or
 - The work would not adversely affect the public amenity value of the tree; or
 - The work is necessary to improve the growth of adjacent better quality trees.
24. As with the case of tree removal, the Council will not normally allow the pruning of trees that are perceived to be a problem because of leaf fall, fruit fall or bird droppings. However, the Council acknowledges that that there may be occasions where the relationship of a tree to a property causes excessive problems that significantly affect the reasonable enjoyment of the tree owner's or the neighbour's property, and where this situation would be improved as a result of pruning. When considering such cases, the Council will weigh the amenity value of the tree or trees against the impact on the owner or neighbour's amenity, as set out in the section above regarding tree removal.

Other Considerations

25. In dealing with an application for works in woodlands, the Council will grant consent so far as accords with good forestry practice unless satisfied this would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.
26. Where an application relates to trees in a conservation area, the Council will pay special attention to the desirability of preserving or enhancing the character or appearance of that area, in accordance with the Planning (Listed Buildings and Conservation Areas) ACT 1990.

CONSERVATION AREA NOTICES

27. It is a requirement that the Council be given 6 weeks written notice of intended works to any tree within a conservation area, during which time no works are to commence. During this notification period, the Council has the opportunity to assess the impact of the proposed work and decide whether or not to make the tree/trees the subject of a TPO, using the criteria described above.