

The scope and purpose of Tree Preservation Orders

TPO Guidance Note 1 (Revision 2)

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Oldham
Council

Tree Preservation Orders

A tree preservation order (often referred to as a TPO) is an order made by a local planning authority (LPA) in respect of trees or woodland (the local planning authority for the Oldham area is Oldham Council - hereinafter referred to as "*the Council*"). The principal effect of a TPO is to prohibit the:

- Cutting down...
 - Uprooting...
 - Topping...
 - Lopping...
 - Wilful damage...
 - Wilful destruction...
- ...of trees without the Council's consent.

The carrying out of any such works without the necessary consent is an offence. Anyone found guilty of such an offence is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine.

The powers to make TPOs are contained in the *Town and Country Planning Act, 1990 (TCPA 1990)* and associated regulations.

Applications for consent to fell or carry out other works to trees subject to a TPO must be made in writing, on the appropriate forms, to the Council (i.e. Transportation and Planning Division at Oldham Council). An application pack, including an application form and guidance notes are available to download from the Council website or by calling 0161 770 4105.

The existence of a TPO does not mean that necessary routine management work on the trees, such as selected branch removal or thinning (and even, in some exceptional circumstances, felling), is precluded but is rather intended to ensure that such work is carefully controlled to ensure that:

- It is only carried out with good reason
- It is in line with good arboricultural practice
- It will not have an unacceptable impact on the visual amenity of the public realm

Scope of Tree Preservation Orders

The term "*tree*" is not defined in the Act, nor does the Act limit the application of TPOs to trees of a minimum size. The High Court has previously held that, for the purposes of TPO legislation, a "*tree*" is anything that one would ordinarily call a tree.

A TPO may 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 hedgerow that has grown into a line of trees of reasonable height and is not subject to hedgerow management.

A TPO may cover individual trees, groups of trees (where the overall impact and quality of the group warrants protection), and woodlands. An area classification (the so-called "*area order*") may be used in some instances where individual trees are scattered over a relatively wide area and/or there is insufficient time to carry out a detailed survey of the land. Such a classification should ideally be used only on a temporary basis pending a more accurate survey and more precise identification of those trees worthy of protection.

When will a TPO be made?

The Council may make a TPO if it appears to them to be “*expedient in the interest of amenity to make provision for the preservation of trees or woodlands in their area*” (s198(1) TCPA 1990).

The term “**amenity**” is not defined in the Act, nor are the circumstances in which it may be considered “*expedient in the interests of amenity*” to make a TPO prescribed. However, Government guidance suggests that 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. Local Planning Authorities should be able to show that a reasonable degree of public benefit would accrue before TPOs are made or confirmed.

In this regard the following criteria will be applied by the Council in considering whether a TPO should be made in any particular instance:

- 1) **Visibility:** the extent to which the trees or woodlands can be seen by the general public. If they cannot be seen, or are just barely visible, from a public place (e.g. a road or footpath) a TPO might only be justified in exceptional circumstances.
- 2) **Individual impact:** the mere fact that a tree is publicly visible will not in itself be sufficient to warrant a TPO. The Council must also assess the tree’s particular importance by reference to its size and form, and both its existing **and future** potential amenity value. The intrinsic quality of an individual tree may be important, including its rarity value, but considerable value may also derive from its contribution to the wider streetscape** or landscape, or its value as a screen (of an eyesore or future development), or its contribution to the character or appearance of a conservation area.

*** In very occasional circumstances the existence of certain trees may actually be considered to detract from the quality of the streetscape (e.g. where they substantially obscure the public view of an important historic building or detract from the architectural qualities of formal townscape elements such as squares or urban terraces)*

- 3) **Group value:** a TPO may be warranted in respect of a group of trees not on the basis of the qualities of the individual trees but because their overall impact and quality merit protection.
- 4) **Other factors:** such as the importance of trees as a wildlife habitat, the level of existing or potential adverse impact on residential or workplace amenity (most commonly by excessive overshadowing), or significant and imminent potential for a tree to cause damage to a property, may also be relevant considerations. It will rarely be appropriate to make a TPO on a tree which is known to be dead, in an advanced state of decay, 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 (e.g. in those instances where the trees are under good arboricultural or silvicultural management).

It may be expedient to make a TPO if the Council 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. Commonly trees will be protected when land is known, or thought likely, to be subject to development pressure.

In this latter regard, whilst the existence of trees subject to TPO will always be an important material consideration when development proposals for a site are under consideration, it does not automatically follow that all protected trees will be considered sacrosanct. In many instances a careful balance will need to be struck between the need to accommodate well designed new development and the objective of protecting existing trees of significant amenity value.

Who decides to make a TPO?

Because a tree preservation order (TPO) often needs to be made quickly when trees are under threat the Council has delegated the function of making the initial (“*provisional*”) orders to relevant officers. Where objections or other representations are made in response to the making of a TPO, a decision as to whether to confirm the order will be made by officers in accordance with the Council’s Delegation Scheme.

The need to consider the making of a TPO may arise from a number of circumstances (e.g. the initiation of discussions with a developer about the possible development of land, the submission of a planning application or concern from local residents that trees may be under threat for any reason).

In most instances where it is decided that a TPO is justified there will be a need to act quickly and because of this, and given the purpose of the order, it will, regrettably, seldom be expedient for the Council to discuss its intentions with land owners.

However, the recipients of the TPO and other interested parties do have an opportunity to make objections or other representations in respect of the order and these will be carefully considered by the Council before it makes the final decision as to whether or not to confirm the order or, alternatively to modify it in some way.

Procedure for making, serving and confirming a TPO

Where time and circumstances permit, Council officers will visit the site of a prospective TPO to carry out a survey of the trees and take photographs. An assessment will then be made as to which trees, if any, should be made the subject of an order.

The TPO documentation is then drafted in the prescribed form and served on any owners and occupiers of the land affected by the TPO. Those “*affected by the TPO*” are taken to include not only the owner and occupier of the land on which the trees are situated but also any owners and occupiers of any directly adjoining land. No other publicity is required under the legislation.

The order must clearly indicate the trees (individual, group, area or woodland) to which it relates.

Recipients of the order and others have 28 days from the given date of service to make any objections or other representations thereto. These must be made in writing stating clearly, in the case of objections, on what grounds the objections are made. Grounds might include, for example:

- Challenging the Council’s assessment of the public amenity value of the tree(s)
- Claiming that a tree is dead, dying or dangerous
- Claiming that a tree is causing damage to property or is causing undue overshadowing of habitable rooms in a house or is otherwise unduly prejudice reasonable standards of residential amenity
- Pointing out inaccuracies or errors in the TPO
- Claiming that procedural errors have been made

If no objections or representations are made, and the Council remain satisfied that the trees merit the protection of a TPO, the order will be confirmed as unopposed.

If objections or representations are received the Council’s officers may seek to negotiate modifications to the TPO with a view to overcoming such objections. If, as a result, the objections are withdrawn the order will again normally be confirmed as unopposed.

If objections remain then these will be considered by officers in accordance with the Delegation Scheme and a decision will be made whether or not to confirm the provisional order.

Unless the Council confirms the order in the meantime the protection afforded to trees by a provisional TPO lapses after 6 months. However, an order can still be confirmed after the 6 months period is up.

There is no right of appeal against the decision of the Council to make a TPO. However, there is a right of appeal to the Secretary of State against any subsequent refusal of consent by the Council for works to a protected tree.

Finding out about TPOs

Details of all existing TPOs are available for public inspection at the offices of the Council's Transportation and Planning Division at the Civic Centre, West Street, Oldham.

A search of the local land charges register (usually made before buying a property) should always reveal the existence of a TPO on land.

Trees in conservation areas

Trees in designated conservation areas are not automatically subject to a TPO. However, anyone intending to carry out works of any description to such trees* must first give the Council six weeks prior written notice (a "section 211 notice"). The purpose of this notice is to give the Council an opportunity to consider whether a TPO should be made in respect of the trees. An application pack, including an application form and guidance notes are available to download from the Council website or by calling 0161 770 4105.

** this requirement only applies to trees with a diameter in excess of 75mm (3 inches) measured 1.5m above ground level.*

Anyone who carries out such works without giving a section 211 notice or before the expiry of the six week period is guilty of an offence.

This guidance is broadly based on that contained in: *"Tree Preservation Orders – A Guide to the Law and Good Practice"* (DETR, March 2000).

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