

**Tonbridge and Malling Borough Council
Tree Preservation Orders Protocol
May 2024**

Contents:

- 1 Introduction and Context
- 2 Legislation and guidance
- 3 Overarching aims
- 4 An overview
- 5 Scheme of prioritisation
- 6 The assessment process.
- 7 Making a new Tree Preservation Order
- 8 Consideration of representations
- 9 Confirmation of a Tree Preservation Order
- 10 Review of historic Tree Preservation Orders

Annexes:

- 1 Tree Evaluation Method for Preservation Orders (TEMPO) – Survey Data Sheet

1. Introduction and Context:

This document is intended to provide guidance on the administration, assessment, making and confirming of new Tree Preservation Orders (“TPOs”) by Tonbridge and Malling Borough Council. The Protocol seeks to demonstrate a consistent system for the service and administration of TPOs, from the prioritisation of requests for new TPOs, through the assessment of trees for possible inclusion within a new TPO, to service of an Order and confirmation (where the TPO is made permanent).

A TPO is a legal Order which provides statutory protection to specified trees, groups of trees, areas or woodlands. In accordance with the tree preservation legislation an Order prohibits the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of the specified trees without the prior formal consent of the Local Planning Authority (LPA – Tonbridge and Malling Borough Council).

2. Legislation and guidance:

The law on Tree Preservation Orders is contained in Part VIII of the Town and Country Planning Act 1990 (as amended) and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.

(<https://www.legislation.gov.uk/ukpga/1990/8/part/VIII>)

Section 192 of the Planning Act 2008 made further amendments to the 1990 Act which allowed for the transfer of provisions from within existing Tree Preservation Orders to regulations.

(<https://www.legislation.gov.uk/ukpga/2008/29/section/192>)

The government publishes online guidance “Tree Preservation Orders and trees in conservation areas” which explains the legislation governing Tree Preservation Orders and tree protection in conservation areas.

(<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>)

3. Overarching aims:

The aims of this Protocol are as follows:

- To demonstrate principles of consistency in the assessment and decision-making process of considering whether new Tree Preservation Orders should be made and confirmed.
- To increase public confidence and understanding in the system.
- To speed up decision making by streamlining the assessment process where acceptable and making it more robust.

4. An overview:

Local Planning authorities can make a Tree Preservation Order 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’*.

It is important to recognise that making TPOs is an entirely discretionary power: meaning that the Council does not have to place a TPO on any tree. Deciding whether or not to protect trees by way of TPO is a matter of judgement to be made by officers and there is no obligation for us to do so.

The government advises authorities *“to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified.”*

The Town and Country Planning Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity (expedient) to make a TPO. The government guidance provides the following advice:

“What does ‘amenity’ mean in practice?”

‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

What might a local authority take into account when assessing amenity value?

When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;*
- future potential as an amenity;*
- rarity, cultural or historic value;*
- contribution to, and relationship with, the landscape; and*
- contribution to the character or appearance of a conservation area.*

Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

What does ‘expedient’ mean in practice?

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.”

When assessing what trees can be protected it is important to note that a TPO can be placed on any tree that has amenity value, and no species of tree is automatically protected. Orders can be used to protect trees that are, for example, particularly attractive, are good examples of the species, contribute significantly to the appearance and amenity of an area and/or have any special cultural or historic value. A TPO can protect anything from a single tree to all the trees within a defined area or woodland. However, only trees can be included within an Order – other plants such as managed hedges, bushes, shrubs, climbing plants or grasses cannot be protected

by a TPO (although an old hedge which has become a line of trees of a reasonable height might be possible to include within a TPO, and if a line of trees that are already included within a TPO is pruned to form a hedge the TPO protection will still apply).

Trees can be included within a TPO under one of four designations:

- **As Individually specified trees:** A tree may merit protection within an Order in its own right (for example a tree that has grown up individually and is largely unaffected by competition from nearby trees). Individually designated trees are prefixed with the letter “T” in the first schedule of an Order, which will also include details of the genus (or species) of the tree(s) - for example “T1 Oak” and are shown as individual black circles on the TPO map.

- **As Groups of trees:** Several trees that have grown close together might have a collective amenity value that exceeds the value of the individual specimens. They may have grown to become co-dependant on one another affording each other mutual shelter or might be part of a formal landscape feature such as an avenue where it is the overall impact and quality of the group as a whole that merits protection. Group designations are prefixed with the letter “G” in the first schedule of an Order, which will also include details of the numbers of each different genus (or species) of the tree(s) within the group - for example “G1 2 Oak and 1 Beech”. Group designations are shown on the TPO map surrounded by a broken black line.

- **As Areas of trees:** Area designations can be made to include, for example, all the trees of whatever species, only those of selected species, or those shown on a plan (such as a landscaping plan) within a defined area. Such designations usually include larger numbers of trees than would be included within a Group designation and can include large collections of trees which because of their situation are inappropriate for inclusion within a Woodland designation. Area designations are shown on the TPO map surrounded by a black dotted line.

- **As Woodlands:** The purpose of a Woodland designation is to protect a woodland as a whole. As such the designation protects all trees within the boundaries of the woodland as shown on the TPO map. It is expected that in a woodland trees will decline and fall and others will grow up to replace them in a continuous self-perpetuating dynamic and, in addition to the trees present at the site at the time a TPO is made Woodland designations also include trees and saplings which grow naturally or are planted within the woodland area after the Order is made. Woodland designations are shown on the TPO map surrounded by a solid black line.

[For the avoidance of any doubt, Ancient Woodlands are not necessarily protected by way of TPO. The NPPF affords ancient woodland specific policy protection and other controls may also exist – such as the Felling Licence legislation.]

5. Scheme of prioritisation:

A request for a new TPO may arise from a number of different sources (for example in response to a s211 Notice of Intent, or a development application/enquiry, or from a request made by a member of the public, Council Member or Parish Council, or even from internal discussions).

Requests for a new TPO should in all circumstances be made in writing by emailing planning.applications@tmbc.gov.uk. The Council will not normally respond to anonymous requests, unless there is other information that indicates a very serious threat to important trees. Requests should include information that clearly identifies the location and species of the tree(s) in question, explain why the request is being made (why the proposer thinks the subject trees should be included within a new Order) and what threats to the tree(s) are present.

The Council will investigate all alleged threats to trees and all requests for trees to be made the subject of a TPO in the public interest.

However, given case volumes it is necessary to have a scheme of prioritisation for such requests. Work with statutory timescales must take precedence and as such the highest priority when dealing with requests for new TPOs will be given to those requests relating to trees which are affected by a current s211 Notice of Intent or full planning application. Assessment of the trees subject of such requests will be made within the relevant statutory decision target period for the Notice or Application.

Otherwise in assessing priority officers will take account of the perceived or real level of threat in any given circumstance. It also follows that the more urgent the threat is perceived to be, and the higher the public amenity value of the tree, then the greater weight should be given in terms of prioritisation.

The lowest priority will be given to requests where there is already a mechanism of control on the subject trees – for example if the trees are already protected by virtue of standing within a Conservation Area, or if the Council already has direct control of the trees as owner, or if a felling licence would be required.

Requests will be triaged upon receipt to clarify priority and may be assigned a higher, or lower priority if further information subsequently comes to light.

It should be noted that at this stage, the Council will not enter into discussions with the landowner to ascertain the level of real or perceived threat to the trees and we do not publish details of the requests for new TPOs that we receive. This is to avoid the potential risk arising from landowners accelerating felling programmes when alerted to the Council's interest in trees, which could lead to important trees being lost.

6. The assessment process:

The Government guidance advises that Local Planning Authorities should “develop ways of assessing the amenity value of trees in a structured and consistent way” taking account of the criteria referred to in “An overview” above.

The Government's view is the TPO's should be used to protect “selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public.” It therefore follows that there must be something that sets apart trees that are appropriate for inclusion within a TPO from other trees in general.

The Council needs to be able to show that a reasonable degree of public benefit exists, or would accrue, before TPOs are made or confirmed.

Trees may be worthy of preservation for their intrinsic beauty, or for their contribution to the landscape. The value of trees may be enhanced by their scarcity. The value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat, nature conservation or response to climate change may also be taken into account but these factors alone would be unlikely to be sufficient to warrant a TPO.

In terms of 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.

Trees are included within TPOs for their public benefit and the assessment will include an appraisal of the visibility of the subject trees from publicly accessible locations (this may include future visibility – for example when assessing trees on a potential development site).

As advised by the Government guidance just because a tree is visible from public locations does not necessarily mean that it is appropriate for inclusion within an Order and the assessment will also include an appraisal of the individual, collective and wider impact of the subject trees with reference to their

- Size and form,
- Future potential as an amenity
- Rarity, cultural or historic value
- Contribution to, and relationship with, the landscape and
- Contribution to the character or appearance of a Conservation Area

The Council's assessment will also take account of

- The condition of the tree(s) – which has implications for the future potential as an amenity.
- Previous treatment/management of the tree(s) and future management requirements – which also has implications for the future potential as an amenity.
- Proximity to the existing built form and suitability for location (which links to Contribution to, and relationship with, the landscape)

The Government guidance is clear that other factors can also be taken into account and no list of criteria could ever be exhaustive. Clearly it is not possible to predict every possible situation and there may be unusual circumstances which are of relevance in a particular case. Where there is such unusual circumstance the assessment report will detail why it is considered of relevance to the consideration of the particular tree(s).

Although a tree might warrant protection in terms of amenity value, it is also necessary to consider whether the protection of the tree by a TPO is 'expedient'. This is a test as to whether the serving of an Order in the public interest is a suitable/appropriate action in the circumstance of a particular case. For example, it is unlikely to be expedient to make a tree the subject of a TPO if it is under good proactive arboricultural or forestry/woodland management. However, if the Council consider that there is a risk of a tree being cut down, pruned or damaged in such a way that would have a significant and adverse impact on amenity, then a TPO may be appropriate.

The Council may have other reasons to believe that trees may be at risk. Circumstances such as changes in property ownership or management, general development pressure and possible development potential of a site can mean that the protection of trees by a precautionary TPO may be considered expedient. In some instances, because of a lack of accurate information, the risk may be perceived rather than actual. However, the Council has to take a precautionary approach because enquiries (regarding ownership for example) might trigger or accelerate tree removal.

There are a number of exemptions within the tree preservation legislation from the usual need to obtain the prior formal consent of the LPA for works to a tree (as set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012). For example the LPA's consent is not required for work to a tree which is dead even if it is included within a TPO and there is also an exemption for work necessary to implement a full planning permission as well as other specified exemptions. Exemption provisions can have an impact on the appropriateness or expediency of making a new TPO (there is unlikely to be public benefit in making a new TPO on a tree which could be immediately removed under exemption).

An appraisal of the expediency of making a TPO will be included in the assessment and previous planning history will also be considered.

It should be noted that there are some published evaluation methods for assessing the amenity value of trees. The Tree Evaluation Method for Preservation Orders ("TEMPO") is designed to be a structured guide and record of the assessment process for determining the value of trees

for the purposes of a TPO. A TEMPO assessment can sometimes assist in decision making and where appropriate officers will also undertake a TEMPO assessment in considering requests for new TPOs (it should be noted that TEMPO was designed for assessment of either 'Individual' or 'Group' designations and would not be appropriate for the consideration of whether to include trees within an Area or Woodland designation TPO. TEMPO assessments will also not be undertaken when assessing s211 Notices)

Any TEMPO assessment that is undertaken will be done in accordance with the published guidance - A copy of the TEMPO survey data sheet is produced at Annex 1 and published guidance notes for users can be found via the link below: <https://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf> (note: CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the Arboricultural Information Exchange www.aie.org.uk)

7. Making a new Tree Preservation Order:

In all instances, the completed assessment report (including formal recommendation by the assessing officer), along with supporting evidence (for example, photographs) will be sent to the DPHEH, or other senior officer in the Planning Department (under responsibilities delegated via the DPHEH) for formal decision.

Having considered it appropriate to make an Order, the Council will make and then serve a copy of the TPO together with a formal Notice (the Regulation 5 Notice) to the owner or occupier of the land on which the subject tree(s) stand, and to any 'persons interested' in the land, or persons who may be entitled to carry out works to the tree affected by the TPO. The Regulations clearly defines a person interested in relation to an Order being every owner and occupier of the land affected by the order and every other person whom the authority knows to be entitled to

(a) to cut down, lop or top any of the trees to which the order relates; or

(b) to work by surface working any minerals in, on or under the land affected by the order.

Where a TPO is made in response to a s211 Notice of Intent the person(s) who served that Notice will also be served a copy of the TPO.

Land Registry search(es) will be undertaken to identify registered owners/interested parties as necessary. Dependent on the urgency assigned to the TPO, the documents will be either delivered by hand to the owner or occupier, left at the usual or last known address of the owner or occupier, or sent by recorded delivery, or 1st class post to the last known address of the owner or occupier. In the case of registered companies, the documents may be served on the company's secretary or clerk at the registered or principal office.

When the affected land is unoccupied, or when ownership of the land affected by the TPO cannot be ascertained, or when it is necessary to alert other parties who may be working on the land, the Council may also affix the documents conspicuously to some object on the land – such as the tree itself, a gatepost of the property concerned, or its fence.

It is important to note that provided the documents have been correctly or 'duly' served, it is not necessary for the owner to actually be aware of the TPO for the TPO to be in force. It is therefore advisable for anyone wishing to carry out works to trees to first check with the Council that permission is not required.

When a new TPO is served a copy will also be sent to Ward Councillors and the Parish Council(s). The person(s) who made the request(s) for the new TPO will also be notified of the

outcome of their request once the formal decision has been made (along with either a copy of the relevant new TPO, or reasoning for the decision as appropriate).

8. Consideration of representations:

In accordance with the legislation statutorily defined interested parties as described above must be given the opportunity to make representations on new Tree Preservation Orders. These are considered by the Council to be “duly made” if:

- They are made in writing (to planning.applications@tmbc.gov.uk or by post if email is not possible)
- delivered to, or could reasonably be expected to be delivered to, the authority not later than the date specified in the Regulation 5 notice which will be a 28-day period
- specify the particular trees, groups of trees or woodlands to which they relate;
- in the case of an objection, state the reasons for the objection;

Any subsequent correspondence made by defined interested parties **cannot** be taken into account to influence the decision whether to confirm the TPO or not unless the Council believes that the 28-day period for objections could not have been reasonably met.

Furthermore, any representations received will only be taken into account in deciding whether to confirm an Order where a clear interest is demonstrated in accordance with the relevant legislation. Where wider representations are made these will not be taken into account in the final decision as to whether an Order will be confirmed or not.

Provided they fall within these specified parameters, representations about/objections to a new TPO will be formally taken into account in deciding whether to confirm or modify the Order.

9. Confirmation of a Tree Preservation Order

All TPOs are made on a provisional basis, which runs for a period of six months, and the TPO must be confirmed before the six-month period expires otherwise it will lapse and cease to take effect.

Following the making of a provisional TPO the LPA may receive objections or representations about the making of the Order from the owner/other interested parties.

The LPA should not confirm a made (provisional) Order unless any objections and representations duly made about the making of the Order have first been considered

Where the LPA has received objection(s) to the making of the Order and those objection(s) have not been subsequently withdrawn, then the decision whether to confirm the Order or not will be made at the relevant Area Planning Committee.

For all other cases the decision on whether to confirm the Order will be made by the DPHEH, or other senior officer in the Planning Department (under responsibilities delegated via the DPHEH).

Prior to the decision the case officer will prepare a report for the relevant committee/senior officer which includes a summary of any representations, assessment of any issues raised and recommendation.

Provisional Orders are unlikely to be withdrawn/not confirmed because a perceived level of risk has reduced, however they may be withdrawn/not confirmed if, on further assessment, it is considered that the trees fail the test of public amenity or that, for example, it is found that the tree(s) could be removed under exemption provisions within the tree preservation legislation.

There can remain disagreements surrounding the real threat to trees. However, it is considered that once work has been prioritised and assessments made that the trees are of the required quality in the public interest for a TPO to be justified, it would be a failure not to continue to the service of a confirmed Order. Owners of trees may consider that they have no intention of carrying out any detrimental work to their trees. However, trees can have a considerable lifespan, often far in excess of land ownership and it is considered that having established that a tree is of a quality worthy of protection it would be imprudent not to carry through the work because a potential threat was not immediate.

Subject to confirmation, the TPO will remain in force until it is revoked or until all the tree(s) have been removed without statutory replacement.

The placing of a TPO on land or individual trees does not place a moratorium on works to a tree, nor does it prevent a tree being removed. It does however require a person, wishing to undertake work to a protected tree, to apply to the Council for approval for such work (subject to exemption provisions within the legislation).

When the decision is made on whether to confirm or not confirm an Order the Council will notify those persons with an interest in the trees/land of the decision in accordance with the legislation along with Ward Councillors, **Parish Council(s)**, and any persons who made a request for the specified trees to be included within a new TPO.

10. Review of historic Tree Preservation Orders:

If the Council were to review an existing TPO then the subject tree(s) would be considered in accordance with the assessment process detailed in this document.

However, it should be noted that the Council does not currently have any scheme to systematically review its existing TPO's. There are a large number of existing Orders in force within the Borough, which between them include thousands of trees, and it would take a considerable resource (not currently available) to embark on a full scale review of the Orders.

Further consideration of a program to review existing Orders will be brought forward if the necessary resource becomes available and following scoping work in liaison with Borough Councillors.