

## **Housing and Planning Scrutiny Select Committee**

**15 July 2025**

### **Part 1 - Public**

#### **Matters for Information**



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Cabinet Member: Councillor Mike Taylor – Cabinet Member for Planning

Responsible Officer: Eleanor Hoyle – Director of Planning, Housing and Environmental Health

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### **Offences under the Tree Preservation Legislation**

#### **1 Summary and Purpose of Report**

- 1.1 This report sets out to provide an overview of offences under tree preservation legislation, including the classification of such offences, distinguishing between summary offences and those triable either way and the potential penalties arising from non-compliance. Additionally, the report includes information on the Felling Licence regime administered by the Forestry Commission, as well as the role of Kent Police's Wildlife Crime Unit in enforcing relevant legislation.

#### **2 Corporate Strategy Priority Area**

- 2.1 Efficient services for all our residents, maintaining an effective council.

#### **3 Recommendations**

- 3.1 This report is for information only

#### **4 Introduction and Background**

- 4.1 This report has been written at the request of Members to provide information about offences under the tree preservation legislation.

### **Tree Preservation Orders and tree protection in Conservation Areas**

- 4.2 This report should be read alongside the Tree Preservation Orders Protocol and Tree Enforcement Protocol (both dated May 2024) and the Planning Enforcement Plan. All of these can be found on the Council's website.

- 4.3 A Tree Preservation Order (TPO) Is a Legal Order which provides statutory

protection to the trees, groups of trees, areas or woodlands specified within that Order.

- 4.4 In accordance with tree preservation legislation, a Tree Preservation Order prohibits the following activities from being carried out to the trees protected by that Order without the prior written consent of the local planning authority:

- cutting down
- topping
- lopping
- uprooting
- wilful damage
- wilful destruction

Additionally, in the view of the Secretary of State, the cutting of tree roots also constitutes a prohibited activity and therefore requires the authority's consent. Where consent is granted, it may be subject to specific conditions, which must be strictly adhered to.

Trees in a conservation area that are already protected by a Tree Preservation Order are subject to the normal procedures and controls for any tree covered by such an Order.

- 4.5 In accordance with the legislation anyone who wishes to undertake work to tree(s) which are included within a Tree Preservation Order must obtain the prior formal consent of the Local Planning Authority (LPA). The only way to obtain such consent is by submitting a formal application for the works, any such valid application would be considered by the Local Planning Authority on its own merits and either granted or refused consent as considered appropriate.
- 4.6 Trees in a conservation area that are not protected by a TPO are protected by the provisions in section 211 of the Town and Country Planning Act 1990 (as amended), hereafter the Town and Country Planning Act 1990 (as amended) is referred to as The Act.
- 4.7 These provisions stipulate that anyone who does something which might be prohibited by a TPO to a tree protected in accordance with section 211 of The Act is guilty of an offence.
- 4.8 Section 211 of The Act also provides that anyone charged with such an offence can establish a defence under law by proving that they served prior written notice of their intention on the Local Planning Authority (e.g. with sufficient particulars to clearly identify the tree(s) for which treatment was proposed and the nature and

extent of the treatment(s) proposed to those tree(s)) and that they then did the work either with the prior formal consent of the LPA, or *“after the expiry of the period of six weeks from the date of the notice but before the expiry of the period of two years from that date.”*

- 4.9 A section 211 Notice of Intent is not an application and should not be treated as such. In accordance with The Act, if the Local Planning Authority wishes to control treatment of a tree subject of a section 211 notice of intended treeworks, it must make a Tree Preservation Order. An application for Tree Preservation Order consent would then be required and would be determined in accordance with the provisions of the relevant legislation (it is not possible to grant a conditional consent or refuse a section 211 notice of intent).
- 4.10 The legislation does include some exemptions from the usual application and six week notification procedures. At law the onus to demonstrate that an exemption applies rests with those seeking to rely thereon and there is still a requirement to give the Local Planning Authority written notice of works proposed under specified exemptions – with evidence. If the Local Planning Authority receives clear evidence that an exemption applies in respect of specified works we would advise the applicant/agent accordingly and record details on our records system as an Exemption Notice.

### **Offences under the tree preservation legislation**

- 4.11 Any person who contravenes a Tree Preservation Order, for example, by damaging, or by carrying out works such as cutting down, lopping, uprooting, a protected tree without the prior written consent of the Local Planning Authority, is committing a criminal offence.
- 4.12 Under Section 210(1) of The Act, it is a criminal offence for any person in contravention of a Tree Preservation Order to:
- cut down, uproot or wilfully destroy a tree; or
  - top, lop or wilfully damage a tree in a way that is likely to destroy it; or
  - cause or permit such activities

Any individual found to have contravened the legislation in such a way may be subject to prosecution and, if convicted, liable to significant penalties.

- 4.13 For the purposes of the Act, it is not necessary for a person to completely obliterate a tree in order to be considered as having ‘destroyed’ it. It is sufficient that the tree is rendered useless as an amenity or as something worthy of preservation.
- 4.14 Section 210(4) of the Act sets out that it is also an offence for anyone to contravene the provisions of an Order other than those mentioned above. For

example, anyone who lops a tree in contravention of an Order, but in a way that the tree is not likely to be destroyed, would still be committing an offence under this section '.

- 4.15 It is an offence to cause or permit prohibited tree work. Furthermore, under section 44 of the Magistrates' Courts Act 1980 any person who 'aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence'. So anyone who engages a person or company that physically carries out unauthorised work may also be subject to enforcement action.
- 4.16 Where a company contravenes a Tree Preservation Order, section 331 of the Act provides that a director, manager, secretary, or other similar officer of the company may also be held liable if the offence was committed with their consent or connivance, or if it resulted from their neglect.
- 4.17 Where an alleged action falls short of the definition in section 210 of The Act, section 1(1) of the Criminal Attempts Act 1981 may provide an alternative route in some cases where unauthorised work has been attempted.

### **Level of Offences and Possible Penalties**

- 4.18 There are three main types of offence under UK law: summary only, triable either way and indictable only. Summary only offences are considered to be of lower severity and can only be tried in Magistrates' Court. Indictable only offences are considered to be the most serious and can only be tried in Crown Court. Either way offences can be tried in either court.
- 4.19 Offences under section 210(1) of The Act are triable either way. If someone is convicted in Magistrates' Court of a summary offence under this section, they may receive a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court (charged with an indictable offence) and, if convicted, is liable to an unlimited fine. In setting the level of any fine the Court shall in particular have regard to any financial benefit which has resulted, or is likely to result, from the offence.
- 4.20 Offences under section 210 (4) of The Act are Summary only offences. Anyone found guilty in a Magistrates' Court of an offence under this section is liable of a fine up to level 4 of the standard scale of fines for summary offences (set within section 122 of the Sentencing Act 2020 – and currently up to £2,500).

### **Replacement Planting**

- 4.21 In accordance with section 206 of The Act if a tree is removed, uprooted or destroyed in contravention of the tree preservation legislation, or (except for trees which are protected within a Woodland Designation Tree Preservation Order), where trees are removed under specified exemptions, then the legislation automatically imposes a duty on the owner of the land to plant another replacement tree of an appropriate size and species at the same place as soon as

they reasonably can.

- 4.22 If the tree which was removed, uprooted or destroyed was included with a Tree Preservation Order then the Order will automatically apply to the replacement tree as it did to the original tree.
- 4.23 If the necessary replacement planting is not undertaken voluntarily then the Council can serve a Tree Replacement Notice in accordance with section 207 of The Act to secure such planting.
- 4.24 A Tree Replacement Notice must include details of:
- what has given rise to the duty;
  - whether the notice relates to contravening a Tree Preservation Order or a section 211 notice;
  - whether the notice relates to complying with a condition of consent;
  - the number, size and species of the replacement trees
  - where the trees are to be planted (including a plan showing their position);
  - the period at the end of which the notice is to take effect (the period specified must be a period of not less than 28 days beginning with the date of service of the notice);
  - a date by when the tree replacement notice should be complied with (the Local Planning Authority should consider what the landowner can reasonably do);
  - the landowners rights of appeal against the notice.
- 4.25 Failure to comply with a tree replacement notice is not an offence. If a tree is not planted within the period specified in the notice the authority may extend the period for compliance with the notice. Alternatively, the Local Planning Authority may go on to the land, plant the tree and recover from the landowner any reasonable expenses incurred.

### **Felling Licences**

- 4.26 In accordance with The Forestry Act 1967 a Felling Licence may be required before anyone can fell trees.
- 4.27 Sometimes there are exceptions, or permissions may apply, that allow felling to proceed without a licence.
- 4.28 A tree felling licence is not required when:

- felling trees in gardens, churchyards or a public open space
  - felling trees is required to prevent the spread of a quarantine pest or disease, as authorised by a Statutory Plant Health Notice (SPHN)
  - felling trees with a diameter less than 8cm (the width of baked bean can) at a height of 1.3m on the main stem
  - trees growing in inner London boroughs
- 4.29 Up to 5 cubic meters of timber may be felled each calendar quarter without a felling licence. This is approximately 4 tonnes depending on tree species, or a stack of timber about the size of a small car.
- 4.30 It should be noted that this legislation is administered by The Forestry Commission – not the Council.
- 4.31 Annex 1 of this report is a copy of the guidance booklet “Tree felling Getting permission - updated 2023” which includes information on the Felling Licence legislation.

### **Case study Hectorage Road**

- 4.32 In January 2022 a number of trees were felled/removed from land to the north of Hectorage Road in Tonbridge.
- 4.33 An approximately 0.65 hectare area of the site was cleared using machinery including a Forest Mulcher with timber and stumps being cleared from the site as the work was being done.
- 4.34 The trees that were felled or removed were not subject to a Tree Preservation Order, the site did not fall within a designated Conservation Area, and, as the land had not been developed, there were no extant planning conditions applicable to the site at the time of the works. Members were advised that felling/removal of the trees was not in breach of the planning/tree preservation legislation. However, the felling may have been in breach of the Felling Licence legislation. The Tree and Landscape Officer therefore passed details of the case to The Forestry Commission for them to investigate.
- 4.35 Having assessed the matter, the Forestry Commission passed their file to the Defra Investigation Service to investigate in line with their procedures.
- 4.36 Defra requested that the Tree and Landscape Officer and Senior Planning Enforcement Officer provide them with witness statements and exhibits to assist in their investigation.
- 4.37 In January 2022, an alleged illegal tree felling incident occurred, prompting an investigation by Defra’s Investigation Service on behalf of Forestry Commission

(FC) England. The case was referred to the Crown Prosecution Service (CPS), which charged the landowner company under Section 17(1) of the Forestry Act 1967 of felling trees without a licence.

- 4.38 At a court hearing in July 2024, the company proposed a remedial plan to replant trees on the site. The court accepted the proposal, granting six months to plant 550 trees in line with Forestry Standards. By February, the FC confirmed that 850 trees, including appropriate species and hedgerow varieties, had been planted and committed to ongoing maintenance. The FC will conduct a follow-up inspection in two years.
- 4.39 The Gov.uk website includes the following webpage with advice on how to report suspected illegal tree felling in breach of the Felling Licence legislation:  
<https://www.gov.uk/guidance/report-suspected-illegal-tree-felling#what-could-happen-if-a-tree-is-cut-down-without-a-licence>

## **Wildlife Crime**

- 4.40 In addition to the need to comply with the provisions of the Felling Licence and tree preservation legislation anyone who is undertaking work to trees (even if the trees are not protected) will also need to comply with the requirements of wildlife protection legislation (such as the Wildlife and Countryside Act 1981).
- 4.41 Investigations and prosecutions relating to alleged wildlife crime are undertaken by the wildlife crime unit of Kent Police (not the Borough Council) and anyone who has evidence that a wildlife crime may have been committed should pass details/the evidence to the Police for them to investigate. Further information on wildlife crime and how to report it can be found on the following webpage of the Kent Police website: [Wildlife crime | Kent Police](#)

## **5 Other Options**

- 5.1 There is no proposal or other options for this report as it is purely for information and noting.

## **6 Financial and Value for Money Considerations**

- 6.1 None – this report is for information only.

## **7 Risk Assessment**

- 7.1 None - this report is for information only.

## **8 Legal Implications**

- 8.1 None - this report is for information only

## 9 Consultation and Communications

9.1 None - this report is for information only

## 10 Implementation

10.1 None - this report is for information only

## 11 Cross Cutting Issues

11.1 Climate Change and Biodiversity

11.1.1 Climate change advice has not been sought in the preparation of this report (which as noted above is for information only).

11.2 Equalities and Diversity

11.2.1 The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies is set out in Section 149 of the Act. The duty requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

11.2.2 The council have considered the above act but do not believe that the preparation of this report (which is for information only) would have a significant impact on any of the groups as noted in the Act.

11.3 Other If Relevant

- None

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|-------------------|---|
| Background Papers | None  |
| Annex             | Annex 1 - A copy of The Forestry Commission's booklet "Tree felling Getting permission - updated 2023". |