

TREE PRESERVATION ORDERS

- answers to some frequently asked questions

Local planning authorities such as Leeds City Council have specific powers to protect trees by making Tree Preservation Orders, although the Forestry Commission is responsible for the control of felling generally. Special provisions also apply to trees within designated Conservation Areas. This leaflet is written for the benefit of tree owners, the general public and amenity groups and answers some of the most common questions about tree preservation procedures. It is for guidance only and is not a statement of the law. You should consult a solicitor if you are unsure of your legal rights or obligations.

1. What is a Tree Preservation Order?

It is an Order made by a local planning authority (London Boroughs, district or unitary councils and sometimes county councils) which in general makes it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission.

2. What is the purpose of a Tree Preservation Order?

To protect trees which make a significant impact on their local surroundings. This is particularly important where trees are in immediate danger.

3. What type of trees can be covered by an Order?

All types, including hedgerow trees, but not hedges, bushes or shrubs. The Order can cover anything from a single tree to woodlands.

4. How can I find out if a tree is covered by an Order?

Details of Orders are available for inspection at the local planning authority's offices. An official search of the local land charges register can also be made before you purchase a property. This should reveal the existence of a Tree Preservation Order (or whether your property is in a conservation area). Make sure your solicitor tells you if any trees are protected.

5. If I see work being carried out on a protected tree, how can I find out if the owner has permission?

Check with your local planning authority. It has a register of applications and decisions which you can look at.

6. There are trees which I think should be protected. What can I do?

Contact your local planning authority giving details of the trees, and the reasons why you think the trees should be protected. However, if the Forestry Commission has given aid under a forestry grant scheme, a Tree Preservation Order can only be made with the Commission's permission. Before an Order can be made for trees on Crown Land, the planning authority must seek permission from the relevant authority. Crown Land includes land belonging to government departments or land held for the Queen by a government department.

7. Does an Order come into effect immediately?

The Local Planning Authority can, if it chooses, make an Order which will come into effect immediately and will continue for six months, or until it is confirmed, whichever comes first. When the planning authority confirms the Order it can modify it, for example by excluding some of the trees.

8. How will I know when a local planning authority makes a Tree Preservation Order?

It will write to the owner and other interested parties, enclosing a copy of the Order.

9. How can I object to or express support for an Order?

If you or anyone else wants to object to or support an Order, write to the local planning authority within the period they allow (usually 28 days) saying why and giving details of the relevant trees. The planning authority will take these comments into account when it decides whether to confirm the Order.

10. Does the local planning authority then become responsible for looking after the trees?

No. The owner remains responsible for the trees, their condition and any damage they may cause. But the planning authority's permission is required before carrying out work on them, unless they are dying, dead or dangerous (but see question 13). The planning authority may be able to offer appropriate help and advice on how the trees should be managed.

11. Do I need a Forestry Commission felling licence to cut down trees covered by a Tree Preservation Order?

Whether or not a Tree Preservation Order is in force you must first apply to the Forestry Commission for a felling licence if you want to cut down trees containing more than five cubic metres of wood - as long as no more than two cubic metres of any exempt amount are sold - in any calendar quarter. There are exceptions to this rule which are set out in the Forestry Act 1967 and Regulations made under that Act. For example, you do not need a licence for felling trees in gardens.

If a licence is required and the trees are covered by a tree preservation Order, the Forestry Commission will deal with your application in consultation with the local planning authority. Where the Commission proposes to grant a licence it will first give notice to the local planning authority. In such cases the planning authority has the right to object to the proposal and if it does so the application will be referred for decision to the Secretary of State for the Environment, Transport and the Regions.

Applicants should note that the Commission almost always requires felled trees to be restocked and does not normally grant licences to change woodland to agricultural use.

12. What if I want to work on a protected tree but don't need a felling licence?

Write to the local planning authority to seek permission, specifying the trees, what you want to do and why. You may find it helpful to consult a tree surgeon to clarify what you need to do. The Arboricultural Association has a list of approved tree surgery contractors (write to Ampfield House, Ampfield, Romsey, Hants SO5 9PA, or telephone (01794) 368717).

13. Do I always need the planning authority's permission to work on a protected tree?

Yes, except for:

- cutting down trees in accordance with one of the Forestry Commission's grant schemes, or where the Commission has granted a felling licence - see question 11 cutting down or cutting back a tree:
- which is dying, dead, dangerous, or
- in line with an obligation under an Act of Parliament, or
- at the request of certain organisations specified in the Order, or
- which is directly in the way of development that is about to start for which detailed planning permission has been granted, or
- in a commercial orchard, or pruning fruit trees in accordance with good horticultural practice, or
- to prevent or control a legal nuisance (you may find it helpful to check first with a solicitor).

If you are in any doubt, check with your local planning authority.

14. If I don't need the planning authority's or Forestry Commission's permission, do I still have to inform them of any work I intend to carry out?

Except in an emergency you are advised to give your local planning authority at least five days' notice before you cut down a protected tree which is dying, dead or dangerous. This is in your interests - you could be prosecuted if the authority thinks you have carried out unauthorised work. It could also decide that you do not have to plant a replacement tree. You must remember, however, that you will remain responsible for your trees and any damage they may cause.

15. When will I have to plant a replacement tree?

You will have to replant:

- if you cut down or destroy a protected tree:
- in breach of an Order, or
 - except in the case of woodland, because the tree is dying, dead or dangerous, unless the planning authority says you need not;
- if the planning authority gives you permission to cut down a protected tree but makes replanting a condition of its consent;
 - in most cases where the Forestry Commission grants a felling licence.

Local planning authorities have legal powers to ensure that you plant a replacement tree when required.

16. What happens if I carry out work on a protected tree without permission?

If you deliberately destroy a tree, or damage it in a manner likely to destroy it, you could be fined up to £20,000 if convicted in the magistrate's court. In determining the amount of the fine, the court will take account of any financial benefit arising from the offence. For other offences you could be fined up to £2,500.

You will normally have to plant a replacement tree if the tree was cut down or destroyed.

17. What if my application to carry out work on a protected tree is refused, or I object to the conditions imposed by the planning authority?

You can appeal to the Secretary of State for the Environment, Transport and the Regions in writing within 28 days of receiving the decision. The planning authority should give the address.

Appeals are normally decided without a formal hearing, on the basis of written statements followed by a site visit. Both you and the local planning authority have the right instead to a public local inquiry or hearing.

The Secretary of State may allow or dismiss the appeal, or vary the original decision.

18. Can I get any compensation if my application to carry out work on protected trees/woodland is refused or conditions are imposed?

If consent is refused - or granted with conditions - you can seek compensation from your local planning authority for any loss or damage which results. However you cannot make a claim where, under the terms of the Order, the planning authority has issued a certificate saying either:

- that the refusal or condition is in the interests of good forestry, or
- that the trees or woodland have an outstanding or special amenity value.

You can appeal to the Secretary of State against such a certificate. Local planning authorities will not be able to issue these certificates under the preservation Orders which are made after 2 August 1999. But they will be able to issue them under Orders made before that date.

Where a felling licence application has been refused by the Forestry Commission (see question 11) you may get compensation from the Commission under the relevant forestry legislation.

Replanting of woodland: You can also seek compensation from the local planning authority where, on giving permission to cut down protected woodland, it has required replacement planting. But such compensation is only available if the Forestry Commission will not give a grant for the replanting on the grounds that it would not be in accordance with good forestry practice.

19. How do I go about claiming compensation under a Tree Preservation Order?

Write to your local planning authority within 12 months of its decision, or that of the Secretary of State if you appealed.

20. Are there any extra restrictions in a conservation area?

Yes. In relation to trees not protected by tree preservation Orders you must give your local planning authority six weeks' notice in writing if you want to carry out work on them. You must not carry out any work during that period without permission. If you do, you could be fined as described in question 16. You may also have to plant a replacement tree.

But you do not need permission if you want to cut down or work on trees less than 7.5 centimetres in diameter (measured 1.5 metres above the ground) or 10 centimetres if thinning to help the growth of other trees.

The exceptions in question 13 also apply. If in doubt, check with your local planning authority.

21. How are trees on development sites affected?

Trees on development sites can be protected by tree preservation Orders or by conditions attached to the planning permission, or both. Planning conditions may also require you to plant trees which may be covered by a tree preservation Order. The Order will take effect once they are planted.

22. Can I carry out work on protected trees which are in the way of proposed development?

You can only cut down or cut back protected trees if they are directly in the way of development which is about to start, for which you have detailed planning permission. You cannot carry out tree work if you have outline planning permission. Check first with your local planning authority. It may prosecute you if it thinks you have cut down or cut back excessively.

If the development does not require planning permission (for example, putting up a garden shed) you must apply to your local planning authority for permission under the Tree Preservation Order in the normal way.

23. Can I stop planning permission being granted - or prevent approved development being carried out - by getting a Tree Preservation Order imposed on trees on the site?

No. A Tree Preservation Order does not prevent planning permission being granted. But a local planning authority will consider the risk to protected trees when deciding planning applications.

Once detailed planning permission is granted, any felling may be carried out which is directly required to enable the development to go ahead.

Further Information

You can find out more about Tree Preservation Orders in the following:

- Town and Country Planning Act 1990 (in particular sections 197-214 as amended)
- The Planning and Compensation Act 1991 (section 23)
- Forestry Act 1967 (as amended)
- The Town and Country Planning (Trees) Regulations 1999 (Statutory Instrument number 1892)

These are all available through the Stationery Office and may be seen at some main libraries.

The Department of the Environment, Transport and the Regions has also published *Tree Preservation Orders: A Guide to the Law and Good Practice*. Call 020 7944 5623 or e-mail RD04.trees@odpm.gsi.gov.uk for more details.

You may also find it helpful to obtain a copy of the Forestry Commission's booklet *Tree Felling - getting permission*. Write to the Forestry Commission, 231 Corstophine Road, Edinburgh EH12 7AT.



LEEDS
CITY COUNCIL

Sustainable Development Unit

Development Department
The Leonardo Building
2 Rossington Street
Leeds LS2 8HD

Development Enquiry Centre, Tel: (0113) 247 8000
E-mail: landscape.planning@leeds.gov.uk
www.leeds.gov.uk