

REPORT TO: CITY DEVELOPMENT COMMITTEE - 23 AUGUST 2010

REPORT ON: CONSULTATION ON TREE PRESERVATION ORDERS

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 309-2010

1 PURPOSE OF REPORT

- 1.1 To inform the Committee that the Scottish Government has published a Consultation paper on Tree Preservation Orders.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee notes the response set out as Appendix 1 submitted by the Director of City Development to the Scottish Government on the Consultation paper.

3 FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications arising as a result of this report.

4 BACKGROUND

- 4.1 This purpose of the consultation paper is to seek views on the Town and Country Planning (Tree Preservation Orders and Trees in Conservation Areas) Regulations 2010 and the Model Tree Preservation Order (TPO). This document may be found at <http://www.scotland.gov.uk/Publications/2010/04/16114715/1> and copies have also been deposited in the members lounges.
- 4.2 The consultation paper poses a series of succinct questions relating to the above matters.
- 4.3 In Scotland, the legislation relating to Tree Preservation Orders has changed little since 1975. Research carried out in 2002 concluded that the TPO system was basically sound. A white paper "Modernising the Planning System 2005" indicated that proposals to enhance the effectiveness of TPOs would be taken forward through the planning bill. This primary legislation was enacted through the Planning Etc (Scotland) Act 2006 and the consultation relates to secondary legislation based on the Act.
- 4.4 The principal changes proposed in the consultation paper relate to updating the regulations and the model order with reference to the new act, removing the model order from the regulations and making it a matter for planning authorities, introducing new procedures where a TPO is not confirmed and introducing procedures for varying and revoking TPOs.

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Director of Finance and Assistant Chief Executive have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 Consultation Paper - Tree Preservation Orders (TPOs) - Scottish Government (April 2010).
- 7.2 Planning Etc (Scotland) Act 2006.

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APPENDIX 1 - LIST OF CONSULTATION QUESTIONS

Q1 Do you have any comment on the model order being contained within guidance rather than within the regulations?

A1 It is agreed that this proposal be supported; as failure to reproduce a notice prescribed by regulations would not invalidate it.

Q2 Do you agree that neighbour notification should be at the discretion on the planning authority?

A2 It is agreed that this proposal be supported; as there may be occasions that the additional work and costs merit neighbour notification where properties lie underneath a tree canopy.

Q3 Do you support the requirement to notify any person who made representations of the planning authority's decision?

A3 It is agreed that this proposal be supported; it should not add significant costs to the TPO notification process.

Q4 Do you support the proposed procedures where a TPO is not confirmed?

A4 It is agreed that these proposals be supported; as it draws a line under the TPO process and lets owner/occupiers etc know where they stand.

Q5 Do you agree with the proposed procedures for varying and revoking TPOs?

A5 It is agreed that these proposals be supported; communities value the amenity value of trees in their areas. Where there are no longer trees on the land a simpler procedure would be welcomed.

Q6 Do you agree with the principle of requiring an application for consent under a TPO where proposed development is either planning permission in principle or permitted development (other than statutory undertakers)?

A6 It is agreed that this proposal be supported.

Q7 Do you consider the model order should contain exemptions from compensation? If so, what exemptions should be included?

A7 It is considered that exemptions should definitely be included. S165 of the Town and Country Planning (Scotland) Act 1997 allows exemptions to be contained within the TPO but it would be better if all authorities are in line. The English exemptions are as follows:

- 1 no claim for compensation can be made if the loss or damage incurred amounts to less than £500;
- 2 no compensation is payable for loss of development value or other diminution in the value of land. "Development value" means an increase in value attributed to the prospect of developing the land, including clearing it;

- 3 no compensation is payable for loss or damage which, bearing in mind the reasons given for the application for consent (and any documents submitted in support of those reasons) was not reasonable foreseeable when the application was decided;
- 4 no compensation is payable to a person for loss or damage which was (i) reasonably foreseeable by that person, and (ii) attributable to that persons' failure to take reasonable steps to avert the loss or damage or mitigate its extent;
- 5 no compensation is payable for the costs incurred in bringing an appeal to the Secretary of State (In Scotland Scottish Ministers) against the LPA's decision to refuse consent or grant it subject to conditions.

Similar exemptions could be contained in the Scottish TPO's.

Q8 Do you support the retention of the area classification within Schedule 1?

A8 It is agreed that this proposal be supported; it will be particularly useful in an emergency. However, once the opportunity arises the area TPO should then be replaced with individual or group classifications where appropriate.

Q9 Do you consider that Schedule I is sufficient for the identification of protected trees?

A9 Yes.

Q10 Do you consider that the appeals provisions contained within the model order are sufficient?

A10 Yes, it is agreed that the appeals provisions contained in the model order are sufficient.

Q11 Do you consider that the appeals provisions should restrict the matters that are raised at an appeal to those matters that were before the planning authority at the time of the decision?

A11 Yes.

Q12 Do you consider that the proposed model order is easier to understand?

A12 Yes.

Q13 Do you consider that any provisions or information requires to be added to the model order?

A13 It is considered that the penalties referred to in S171 of the Town and Country Planning (Scotland) Act 1997 be contained in the model order.

Q14 Are there any potential impacts on business or voluntary sectors that we should be aware of in finalising the regulations and model order?

A14 None.

Q15 Are there any potential impacts on particular societal groups that we should be aware of in finalising the regulations or model order?

A15 None.

Q16 Do you have any other comments to make on the draft regulations or model order?

A16 No further comments to add.