

TREE PROTECTION LEGISLATION

Woodlands, trees and hedgerows are important features contributing to landscape quality, local amenity and nature conservation value, and their retention may be crucial to the maintenance of that quality in a range of settings.

Trees help to define the character of a locality, and contribute to the attraction of places for people to live and work. Some have historical associations or significance or are local landmarks.

In recognition of their importance, Local Authorities have specific powers to protect trees by making Tree Preservation Orders (TPOs). Protection is also given to trees within Conservation Areas.

In Scottish Planning Policy Government advice is stated as:

“woodlands, hedgerows and individual trees, especially veteran trees, may have significant biodiversity value and make a significant contribution to landscape character and quality so should be protected from adverse impacts resulting from development.”

1. WHAT ARE Tree Preservation Orders (TPOS)

Tree Preservation Orders are made by a Planning Authority under Section 160 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006 and within the procedures set out in the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2011. They are an effective means of protecting individual trees, groups of trees or woodlands whose removal would have significant impact on the public amenity of an area.

2. WHERE ARE TPOS APPROPRIATE

TPOs are used to protect selected trees and woodlands if their removal would have a significant detrimental impact on the environment and its enjoyment by the public. Trees may be worthy of preservation for their intrinsic beauty, for their contribution to the landscape or because of their cultural or historic significance.

The value of a group of trees or a woodland may be collective, the form of an individual tree being less important in this situation.

Trees must be in sound condition, have a significant life expectancy and should not be dead, dying or dangerous. All species of tree including hedgerow trees can be covered.

The TPO must be enforceable, i.e. there should not exist circumstances which would prejudice the existence of a tree.

TPOs for trees on Crown land can only be made with the consent of the appropriate authority and do not come into effect until the land ceases to be Crown land or becomes subject to a private interest.

3. PROCEDURES FOR MAKING TPOS

Who makes TPOs?

The Council is committed to the protection of trees and is reviewing its existing TPOs and considering new ones. Any member of the public can propose that a tree be afforded the protection of a TPO. This can be done by emailing development.management@dundeecity.gov.uk

A Tree Preservation Order is made by a Planning Authority. Once made, the Order is served on the owner of the tree or trees and interested parties. The Order comes into effect immediately, but will lapse after 6 months unless it is confirmed by the City Development Committee.

Commenting on a TPO

Notice of the Order is served on the owner and advertised in the local press. Anyone may make objection or comment within 28 days of the date of the advertisement.

Confirming the Order

Any objections or comments are summarised in the report to the City Development Committee. They are taken into account when the Committee considers confirmation of the Order. If the Committee remain satisfied that making the TPO is in the public interest, they will confirm it, either without modification or "subject to such modifications as they consider expedient". Alternatively, they may decide not to confirm the TPO.

It is desirable to reach a decision on confirmation without undue delay. The TPO has to be confirmed within six months.

Recording of a TPO

When it is confirmed by the City Development Committee, the Planning Authority must give notice of the confirmation of the TPO to the owners of the trees and interested parties. It will also be recorded in the Register of Sasines and registered in the Land Register and imposes a legal burden attached to the title of the land.

4. EFFECT OF MAKING A TPO

How to Obtain Consent for Work on Protected Trees

Where protection is given by a TPO, prior consent in writing is required from the Council to carry out any work on the trees. It is an offence to cut down, lop, top, uproot or wilfully damage or destroy a protected tree without the Council's permission.

An owner wishing to carry out work on a tree must apply online at the Scottish Government's e-planning system at <https://eplanning.scotland.gov.uk/WAM/> (alternatively you can write to the Council about the works you propose) specifying the tree or trees, and explaining what they want to do and why. A site inspection will be carried out, and an assessment made of the impact of the proposed work on local amenity, and the condition of the tree. For more information go to <https://www.dundee.gov.uk/citydevelopment/trees> Consent to fell or prune will only be granted if necessary for arboricultural reasons and will be on condition that replacement planting takes place with trees of appropriate size and species and in the same location or near to that location or on such other land as may be agreed.

Work must be carried out to BS 3998 (2010) "Recommendations for Tree Work".

Replacement trees must be specimens approved by the Council capable of achieving at least the same stature as the original trees. Deciduous trees planted as replacements should be of a size not less than "standard" trees as defined in BS 3936 Part 1 1992, unless the trees form part of a woodland, in which case suitably sized whips or forest transplants will be acceptable. The consent will lapse if the work is not carried out within 2 years of the decision letter.

Right of Appeal

If the applicant objects to the decision made, or to conditions imposed by the Council, an appeal can be made to the Scottish Ministers within 28 days of receipt of the decision.

Notification

The Council is required to keep a register of all applications for consent to fell or prune protected trees, which must be available to the public at all reasonable times. There is no requirement to publicise applications more widely or to notify neighbours.

Penalties for Contravention of a TPO

Contravention of a TPO by cutting down, uprooting, wilfully destroying, damaging or topping or lopping a tree in a manner likely to destroy it, is an offence, and liable on prosecution, to a fine of up to £20,000. In addition the Council will require that a replacement tree is planted in the same or a suitable location.

5. TREES IN CONSERVATION AREAS

Legal Protection of Trees in Conservation Areas

The City's Conservation Areas are defined as areas of special architectural or historic interest where it is desirable to preserve or enhance their character or appearance. If you input an address in the Council's "My Dundee - Local Information Portal" at <http://www.dundeecity.gov.uk/forms/my-dundee.php> and select the My Planning tab you can discover if your property lies within a conservation area.

Established trees make a major contribution to their character and amenity. Under the Planning Acts, trees within these areas also have statutory protection and are protected from unauthorised pruning, lopping or felling. Before carrying out any tree work within a Conservation Area, the owner of the tree must give 6 weeks written notice to the Council detailing the nature and extent of the proposed work and identifying the trees. This allows time for an officer to inspect the trees, discuss the work with the applicant, offer advice, and make recommendations.

The proposed work is also noted in a Public Register. The only way the Council can protect the trees is to promote a TPO; it cannot otherwise refuse consent.

This will be done if the trees are of significant public amenity value and are considered to be at risk. After 6 weeks if the Council has not responded and if a TPO has not been served, the tree work specified may proceed. If the intended work does not proceed within two years the "notice of intent" will be deemed to have lapsed, and a further notification will be required.

Should work take place without notification, similar penalties apply as for trees protected by a TPO – Where an application for work to a protected tree is made, a site inspection will be carried out promptly and an assessment made of the impact of the proposed work on the local amenity. We will aim to carry out a site inspection and respond within the 6 week statutory time limit. If access is not readily available, a warrant to enter the land may be obtained.

6. EXCEPTIONS TO TPOS AND CONSERVATION AREAS

Protection

Permission is not required to work on a protected tree where;

Tree removal has been approved as part of a full planning consent. If only planning permission in principle has been granted the Council consent is still required before carrying out work on protected trees.

The works are urgently necessary in the interests of safety, but the owner has a duty to notify the Council in writing preferably with at least 5 days' notice before any work commences or as soon as is practicable after work has taken place. In order to justify such action prior to approval or notification, proof will be required detailing the condition of the tree before the remedial work was undertaken.

Prior consultation with the Council is always encouraged. Lack of consultation may result in difficulties in justifying work retrospectively and could lead to consideration of prosecution. The applicant will be contacted and an appointment arranged.

7. DEVELOPMENT ON SITES CONTAINING TREES

Planning Authorities have a duty when considering planning applications, to ensure that adequate provision is made for the preservation and/or planting of trees by imposing conditions and making TPOs.

Requirements for Planning Applications

Development proposals must take account of all existing trees, whether or not they are protected, indicating on the application plans their position, canopy spread, provisions to be made for their protection during construction work, and provisions for their long term retention.

Effect of a TPO on a Development Site

A TPO in itself does not prevent planning permission being granted for development, but is a material consideration in determining a planning application. The making or existence of a TPO implies a strong presumption against any form of development, or change of use of land which is likely to damage the amenity provided by the trees, or otherwise prejudice their long term viability.

Provision for Trees and Conditions on Consents

Trees on development sites may be protected by TPOs or by conditions attached to a planning permission, or by both. Government guidance recommends that the long term protection of trees should be secured by TPO rather than by a planning condition.

Planning conditions may also require the planting of trees which may subsequently be covered by a TPO. The TPO takes effect once the trees are planted.

8. TREES UNDER THREAT

Where a tree is under threat of imminent damage or destruction the Forestry Officer or Enforcement Officers can be contacted (see Section 11 below).

Forestry Commission Felling Licence

Whether or not a TPO is in force, an application must be made to the Forestry Commission for a felling licence if it is intended to fell more than five cubic metres of timber. This is approximately equivalent to two large mature trees. This is not applicable if the trees are in gardens, public open space, churchyards or orchards.

In some areas, a Forestry Commission management agreement may be appropriate and grant aid may be available for woodland improvement. The Council encourages this involvement and can provide advice.

Site of Special Scientific Interest Designation

Scottish Natural Heritage should be consulted regarding any work to trees within the area of an SSSI.

9. OWNERS' RESPONSIBILITY

There is no transfer of ownership or responsibility for trees when they are covered by a TPO. As with any other trees, liability for their safety, their condition, and any damage they may cause continues to lie with the landowner. There is a clear duty on the owner to comply with a TPO, and they should be aware that failure to do so may result in financial penalties and a requirement to reinstate trees.

Positive management of trees covered by TPOs is encouraged. If extensive investigative and survey work is required, a specialist Arboricultural Consultant should be commissioned.

The Council cannot become involved in disputes between neighbours over trees.

10. TREES ON LOCAL AUTHORITY LAND

Large numbers of trees and woodlands are on land owned by the Council in parks, amenity areas, schools and roadside verges. These are managed by the Environment Department.

11. CONTACTS

Duty Planning Officer

Dundee City Council, Floor 6, Dundee House, 50 North Lindsay Street, Dundee, DD1 1LS
Tel. 01382 433105

Email: development.management@dundeecity.gov.uk

Enforcement Officer

Gillian Kane 01382 43 3315 *Email* Gillian.kane@dundeecity.gov.uk

Amanda Vaughan 01382 43 3812 *Email* Amanda.vaughan@dundeecity.gov.uk

Forestry Officer

Environment Department, Dundee City Council, 353 Clepington Road, Dundee, DD3 8PL
Tel. 01382 433793 *Email:* eric.hamilton@dundeecity.gov.uk