

Trees and Tree Preservation Orders

Strategic Context

Cornwall Council are committed to being a leader in sustainable living. Collectively we aim to improve the green infrastructure of Cornwall for our residents. We recognise the importance of the treescape within this context and we are aware of the many benefits that trees provide to our communities.

This note provides guidance on the proper use of Tree Preservation Orders. Other initiatives to encourage tree planting and management are being progressed through the Climate Change Development Plan Document, Forest for Cornwall and Biodiversity Net Gain.

However, tree protection needs to be balanced with social and economic factors and the key to this, is to be forward looking, and can be summarised as “right tree– right place”

Tree Preservation Orders

One way of protecting existing trees is through the Planning and Sustainable Development Service who can protect trees by making Tree Preservation Orders (TPOs). The Town and Country Planning (Tree Preservation) (England) Regulations 2012 guides as to how we should exercise powers in relation to the making of TPOS and the crux is that Local Planning Authorities can make a TPO 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’. There are 2 main ways of doing this:

- by ensuring, when appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and supporting such conditions through the making of TPOs when necessary;
- and making TPOs in respect of trees, groups of trees or woodlands if it appears that it is expedient in the interests of amenity to do so.

When deciding whether a TPO is appropriate, authorities are advised:

- that they must be able to demonstrate that protection would bring a reasonable degree of public benefit in the present or future
- to take into consideration what ‘amenity’ means in practice

- that Orders 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.

The 2012 Regs state that:

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.

(Paragraph 7 of <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>)

The Regulations further state that where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider other factors, such as importance to nature conservation or response to climate change. However, these factors alone would not warrant making a TPO because it is the visual aspect that is the principle deciding factor. Therefore, if a tree is not clearly visible from a public area then additional factors such as its value in terms of habitat, cultural/historical value, carbon sequestration or rainwater attenuation alone would not justify a TPO being made.

Generally, TPOs are not an appropriate tool for providing protection to trees that are not clearly visible from public areas or those trees that are currently under good management. Nor is it appropriate to use TPOs to provide long term, landscape scale tree protection within Cornwall.

Points of Note

It is also important to note the following

- TPOs place a legal constraint upon landowners, requiring them seek approval of how they manage their trees or develop their property. This measure should clearly only be imposed where careful and consistent consideration has been given and it can be demonstrated that an order would bring a reasonable degree of public benefit in the present or future. Decision making must be informed by visual amenity value and the perceived threat.
- TPOs should not be used solely to prevent development nor should they prevent tree or woodland management that is in line with good arboricultural or silvicultural practice.

- Trees are living, dynamic and growing organisms that can develop defects and be subjected to diseases and pathogens. This can mean that in some circumstances the retention (or protection) of either an individual tree or particular species is neither prudent nor advisable. For these reasons the wholesale protection of an entire tree population in a location may not always be a suitable approach.
- A heavy-handed approach by the Council to the serving of TPOs is shown anecdotally to encourage pre-emptive tree felling on potential development sites, as the owners do not want to risk being served with a TPO and if they believe this will happen once negotiations begin then trees could be lost.
- Although cost is not a deciding factor, it should be noted that Orders are a significant expense to the Council to create and as the Council cannot charge for applications for works to TPO trees the cost is ongoing. There are currently some 1600 TPO's many of which encompass large geographical areas and incorporate thousands of existing trees and applications to work on these trees creates a significant workload. Therefore, our resources must be focussed towards achieving the best outcomes.

Summary

In conclusion TPOs are one tool available to the Council to ensure the protection of trees. The amenity value of, and the threat posed to trees, tree groups and woodlands shall be assessed consistently and shall inform decision making. Each site and case shall be considered on its own merits, in light of the issues and factors raised above TPOs shall be used to protect those trees that are under threat of removal or damage where actions would have a significantly detrimental impact upon public visual amenity.

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