

Wilson Tree Surveys

General advice re. Tree Preservation Orders

What is a Tree Preservation Order (TPO)?

Tree protection legislation seeks to preserve the amenity, cultural and landscape values conferred to an area by protected trees. 'Amenity value' may be described as the characteristics that influence and enhance people's appreciation of a particular area. These values are derived from the pleasantness, aesthetic coherence, cultural and recreational attributes of an area. This value is often used in cost-benefit analyses, to determine the worth of natural resources that will not be harvested for economic gain. Two valuation systems in wide use in the UK are 'The Helliwell System' and 'Capital Asset Valuation of Amenity Trees' (CAVAT).

The basic approach of these systems is to allocate point scores under a number of different factors such as tree size, life expectancy, suitability to setting etc. which are combined to give an overall score which can be converted to a monetary value. CAVAT is based on the cross-sectional area of the tree stem, while Helliwell is based on the visual prominence of the tree.

The presence of trees in a neighbourhood has been shown to contribute directly to property prices and indirectly to educational achievement and economic productivity. TPO's can therefore be seen as protecting a valuable yet poorly recognised economic asset. Furthermore, for a tree to have amenity value, it must be in such a location that its benefits can be appreciated by a significant number of people. A TPO must be 'expedient' at the time it's created; in other words, there must be a danger either now (at the time of creation) or foreseeable in the near future, that the tree(s) could be damaged.

A TPO is a legal instrument that makes it an offence to:

- cut down
- top
- lop
- uproot
- wilfully damage
- wilfully destroy

trees without the local planning authority's written consent.

What legislation governs TPOs?

TPO's are regulated under various sections of the Town & Country Planning Act (1990, as amended). In England, the Town and Country Planning (Tree Preservation) (England) Regulations 2012 were brought in to force in April 2012. In Wales, the relevant regulations are contained in the Town and Country Planning (Trees) Regulations 1999, amended most recently by Welsh Statutory Instrument 548: The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017.

The 2012 English Regulations may be viewed at:

<http://www.legislation.gov.uk/ukxi/2012/605/contents/made> .

What does a TPO protect?

A TPO makes it an offence to damage the amenity value conferred to an area by protected trees. The 'amenity value' may be described as the characteristics that influence and enhance people's appreciation of a particular area. These values are derived from the pleasantness, aesthetic coherence

and cultural and recreational attributes of an area. This value is often used in cost-benefit analyses, to determine the worth of natural resources that will not be harvested for economic gain. One such analysis promoted by the Arboricultural Association is referred to as 'The Helliwell System'. The basic approach of this system is to allocate point scores under a number of different factors such as tree size, life expectancy, suitability to setting etc. which are combined to give an overall score which can be converted to a monetary value. The presence of trees in a neighbourhood has been shown to contribute directly to property prices and indirectly to educational achievement and economic productivity. TPO's can therefore be seen as protecting a valuable yet poorly recognised economic asset. Furthermore, for a tree to have amenity value, it must be in such a location that its benefits can be appreciated by a significant number of people. A TPO must be 'expedient' at the time it's created; in other words, there must be a danger either now (at the time of creation) or foreseeable in the near future, that the tree(s) could be damaged. A TPO makes it an offence to top, lop, uproot, take down, wilfully damage or wilfully destroy a tree, trees or woodland such that its amenity value is diminished unless it is by agreement with the LPA.

What work may proceed under a TPO?

A TPO is not a 'blanket ban' on all tree work. Tree work may proceed under the following circumstances:

- Normal arboricultural maintenance work to preserve, enhance or mitigate nuisance aspects of the tree's habit carried out to professional standards with LPA agreement.
- Elimination of hazards presented by dead or damaged trees or limbs to the extent required to mitigate the risk where the tree is not immediately dangerous. Significant harm must be both foreseeable and be expected to arise within eight weeks. At least 5-days' written notice must be given to the LPA (also known as a 'Section 14 notice').
- Elimination of immediately dangerous hazards presented by dead or damaged trees or limbs to the extent required to mitigate the risk.
- Removal of dead branches.
- Where tree work is required to implement a Full Planning Permission granted by the LPA.
- A number of other specific circumstances which include compliance with Acts of Parliament, activities of Statutory Undertakers (for example, utility providers), horticultural maintenance of trees for fruit production and so on.

How are TPOs created?

TPO's are created by Local Planning Authorities and may be 'provisional' or 'confirmed'. A provisional TPO may be created and come into force more-or-less immediately on the discovery of an actual or perceived threat to a significant amenity tree. The provisional order must be confirmed within 6 months and provides an opportunity for the LPA to gather further evidence or for interested parties to object. A confirmed Order stands in perpetuity or until it is revoked. For this to happen there must be a substantial change that renders the expediency of the TPO defunct e.g. the amenity value of the trees has been destroyed; geographical changes have degraded the amenity value; OR there is an error in the procedures and documentation adopted by the LPA (the order is not within the powers of the Act). Orders may protect individual trees, groups of trees or woodlands. An older form of orders that protected trees in 'an area' may be encountered but new orders of this type are no longer made, at least in England. The Schedule and Plan to the Order specify which trees are to be protected. For an Order to be valid, the LPA must follow the correct procedure which includes notification to all concerned parties, following the correct sequence of activities, publication of the Order in their Seal

Register, provision of a copy to all concerned parties. In order to Appeal against a confirmed TPO it is first necessary to make an application for tree work against it.

How is permission for tree work obtained?

In order to seek LPA approval for tree work, an application must be made to them before any work is carried out. This may be most conveniently made on-line through the Planning Portal (<https://www.planningportal.co.uk/>). The standard pro forma is fairly straightforward but depending on your answer to certain questions, the LPA can require you to produce further additional information. In all cases, you must provide a sketch map showing the location of the trees clearly enough to allow the LPA's tree officer to locate the trees. The map should show the property possessing the trees in its entirety, part of the immediately adjacent properties, the road outside (named), the location and identity of the trees and other significant vegetation, the direction of north. The description of your proposed tree work must be clear, concise and specific in its degree or extent; it helps to be conservative in approach and to use the generally accepted terminology for tree work described in BS3998:2010 and explained here: <https://www.trees.org.uk/Help-Advice/Public/A-brief-guide-to-tree-workterminology-and-definit> . For example, 'reduce height by 25%' is unlikely to be approved as it doesn't explain the reasons for the request and represents a gross removal of material, destruction of the tree's form, and creation of large pruning wounds through which disease can enter the tree. On the other hand, 'Reduce crown by 25% (by volume) in accordance with BS3998:2010 because of close proximity to house, excessive shading and leaf litter' is more likely to succeed as it represents a procedure that seeks to preserve the form, habit and health of the tree and clearly states why. Avoid making reference to structural property damage or tree safety concerns unless this is absolutely the case and you are prepared to spend significant time and money to support your case: under these circumstances the LPA REQUIRES you to provide evidence and reports from professionals back up your claims. These will be in-depth objective assessments running to several pages from highly qualified arboricultural consultants and / or structural engineers; a couple of lines from a friendly tree surgeon are in no way adequate. In the case of subsidence-related structural damage, the investigation could take at least 18 months!

The LPA must respond with a determination within 8 weeks and they may: 1. Refuse consent; 2. Grant permission; 3. Grant permission with conditions attached. If the LPA fail to determine the application within the specified time or refuse consent, you may Appeal the Decision within 28 days by writing to the Secretary of State. Appeals are handled by the Planning Inspectorate. The LPA must be informed of your appeal at the same time. Further details of the Appeal process are contained in Schedule 6 of the Town & Country Planning Act (1990) at: <http://www.legislation.gov.uk/ukpga/1990/8/schedule/6>

What happens if I go ahead without permission?

Contravention of these Regulations is an offence which the LPA may enforce through the courts. The maximum penalties for contraventions are: in the Magistrates Court a fine for destruction of the tree of up to £20,000, and for damaging the tree of up to £2,500. In the Crown Court fines are unlimited. Fines may be imposed on the owner of the tree(s), the person who contracted the work, and the individuals who actually carried out the work. The courts will take into account any gains made by the defendants as a result of the offence being committed.