



JOINT RESPONSE

To

Communities and Local Government

Tree preservation orders: proposals for streamlining

Consultation paper

- 1 The Woodland Trust and the Ancient Tree Forum (ATF) welcome the opportunity to respond to this consultation. The Trust is the UK's leading woodland conservation charity. We have four main aims: no further loss of ancient woodland, restoring and improving woodland biodiversity, increasing new native woodland and increasing people's understanding and enjoyment of woodland. We own over 1,000 sites across the UK, covering around 20,000 hectares (50,000 acres) and we have 300,000 members and supporters.
- 2 The ATF has pioneered the conservation of ancient trees and is the main UK organisation concerned solely with their conservation. The ATF seeks to secure the long-term future of ancient trees through advocacy of no further avoidable loss of ancient trees, good management of ancient trees, the development of a succession of future ancient trees, and seeking to raise awareness and understanding of the value and importance of ancient trees.

Enabling Tree Strategies

- 3 Tree strategies should be at the heart of Local Authority approaches to tree protection and the government should give clear direction on the need for them. If tree strategies are to be effective, the approach to tree protection needs to change so that protection and care is driven by tree value and urgency regardless of whether the tree is directly affected by development. At present, too many valuable trees and all their benefits and ecosystem services to communities are being lost and not being replaced. Once high value large canopy trees are lost, even if replaced, their value cannot be replaced or recovered within a human lifespan.
- 4 In the spirit of the Big Society, local communities should be encouraged to assist LA's to systematically and proactively identify trees of value. The Local Authority's role would be to respond by using their powers to protect trees if they are vulnerable and retain the community's assets.

- 5 The government has called for suggestions on how Local Authorities could improve their delivery. We do not think that the legislation is keeping pace with public demand for better protection for trees. LAs should have another tool in the protection tool box – the power to designate Tree Conservation Areas which has a lighter touch. Tree Conservation Areas would recognise the value of the trees in their own right and not only as a function of the heritage of the built environment. At the same time there should be greater emphasis on preventing loss and damage to trees through advice and negotiating with owners to encourage them to follow good tree management practice. This would help to reduce the need for TPOs and applications.
- 6 Where trees provide significant community benefits, owners should be supported in their care by the Local Authority or a national fund in return for good stewardship in the same way that woodland owners, farmers or owners of listed buildings are eligible for payments for social and environmental benefits. This could be either by a concession on the Community Tax or other fiscal mechanism a grant system or possibly by a rewards system such as are currently being pioneered by progressive LAs (e.g. Windsor and Maidenhead).

Proposed exceptions in the Regulations

The exception for dangerous trees

- 7 We welcome the changes from the current exemption, however we believe it should be in line with the principles set out in the draft National Tree Safety Group¹ guidance on the appropriate management of tree related risk. It is crucial that a distinction is made between *real and present danger* (i.e. *imminent* risk of serious harm) and *perceived* hazardous trees and the extent of the work is limited by the specific objective to preserve amenity. We believe the wording should be as follows (alterations highlighted in italics):

“to the extent that such works are urgently necessary in the interests of *reasonable (a)* safety, the cutting down, *(b)*, topping or lopping, *those parts(c)* of a tree that have become dangerous.”

- a. The term '*reasonable*' is used throughout legislation and guidance on the management of safety and as a bench mark for judgments in court cases.

¹ The NTSG is an inclusive stakeholder organisation representing landowners, advisors and professionals concerned with trees with the aim of developing a nationally recognised approach to tree safety management and providing guidance that is proportionate to the actual risks posed by trees.

- b. We have excluded 'uprooting' as we can think of no situations in which this would be a reasonable response to address a safety issue.
 - c. Adding 'those parts' makes explicit to owners and tree workers the limitations of the exception. If reasonable safety can be achieved by lopping or topping it is clearer that felling is not a permitted option. Together with the requirement to give prior notice (see x below) it will also give Tree Officers the opportunity to influence works so that as much of the value of the tree is retained.
- 8 As in Scotland we consider that the following stipulation should be added to this exception:-
- a. *"So long as notice in writing of the proposed operations is given to the planning authority as soon as is practicable after the operations become necessary"*
- 9 Good practice guidance advises owners to give 5 days' notice to LAs prior to doing exempt work. This should be statutory as it provides an additional safeguard. It provides the LA with a much valued opportunity to see the condition of the tree (by inspection or remotely) and agree the scope of work permitted under the exception. Given the irremediable nature of tree work; the ease and speed with which trees can be felled; how easily evidence can be disposed of; the cost and disincentives to prosecution in the absence of evidence; it has in practice proved beneficial in preventing unnecessarily severe work and felling. The safeguard for the owner is that it has to be practicable.
- 10 We believe a notification of some kind is also necessary to maintain a coherent system. Without one, the LA has no way of transparently tracking the state and condition of protected trees and their replacements. This results in the documentation becoming increasingly inaccurate in relation to the situation on the ground and increases the need for costly total review and re-make. As LAs should be providing information about protected trees on the internet, which would help reduce administrative costs, it is in their interest to know what is happening to trees so they can amend information to maintain its accuracy.
- 11 Where trees are felled under this exception, the owner has a duty to replace the tree – unless the LA dispense with the requirement. Without a requirement to give notice of felling the LA has no way of knowing when that duty arises so that records can be updated and if necessary checks or enforcement on replacement made.

The exceptions for dead trees and dead branches on living trees are unnecessary.

- 12 We are extremely dismayed by the retained exception for dead trees and a new exception for the removal of dead branches on living trees.

- 13 We strongly disagree with the inclusion of the exception for removal of dead branches. No justification for this exception on any grounds has been provided to understand the basis on which it has been suddenly introduced without any prior notice, despite continued discussions with us over preceding years. In this International Year of Biodiversity, such an addition shows ignorance of the value of dead wood, of natural ecosystems and our international obligations.
- 14 There is no justification to provide a specific exception for dead trees and dead branches on grounds of safety. As with living trees and branches, the extent of work that might be urgently necessary to provide for reasonable safety and stability is a matter of judgment. We consider that the dangerous exception is therefore the only exception that is necessary.
- 15 The retention /inclusion of these exceptions also perpetuates the view that dead trees and branches have no visual or other amenity value and are axiomatically dangerous. Whereas dead and decaying wood habitat is important for ecosystems and its connectivity and is at critically low levels across Europe. It is in the national and community interest to retain for as long as is reasonably possible the values of a protected tree which has significant habitat or heritage value even if it dies. These exceptions are therefore contrary to legislation and policy in Europe and England which is aimed at the retention of dead and decaying wood wherever possible for its benefits for biodiversity. See annex 1 for full details however the Natural Environment and Rural Communities (NERC) Act 2006 and Planning Policy Statement 9 are particularly important in this context.
- 16 The (NERC) Act 2006 places a duty on all public bodies to have regard for and conserve biodiversity. Local Authorities could fulfill this duty by controlling the removal of dead trees and dead branches. Planning Policy Statement 9, 'Biological and Geological Conservation', specifically recognises the special role of aged and veteran trees for conserving biodiversity. By selectively controlling the removal of dead trees and branches the Local Authority has the means to retain them and conserve biodiversity wherever appropriate.
- 17 One of the species on the Wildlife and Countryside Act Schedule 8 is a bracket fungus, *Buglossosporus quercinus* or oak polypore. This fungus produces an annual bracket on the heartwood of oaks. It seems anomalous that the dead tree or dead branch that is host to this species cannot be protected while the biodiversity value of the fungus is clearly recognised.
- 18 In recent reviews and changes to the TPO legislation in Scotland, the Scottish Government has not deemed it necessary to introduce either of these two exceptions and no case has been made for them on burden or cost grounds. There are, however, substantial costs in reviewing TPOs and retrospectively enforcing the requirement to replace trees. We would welcome an opportunity to look at any evidence of a cost benefit evaluation of retaining or

introducing these exceptions should they be available.

- 19 The exception for dead trees would prevent some of the oldest trees of great heritage, visual and biodiversity value being protected, which if the tree were alive (even if only partially), would be an obvious candidate. Trees are very long lived organisms and it is unlikely that trees are dying at such a rate to add significantly to the work load of a Local Authority.
- 20 As we have argued in relation to the dangerous exception, it is a requirement that, where necessary, a replacement tree is established to provide continuity of value. It is therefore in the community's interest that the Local Authority is aware that a tree has died in order to engage with the owner to secure replacement trees. It is also in the LAs interest to know when a tree dies and it is agreed that it can be removed so that the documentation can be kept up to date.
- 21 Furthermore in Scotland a tree can be protected on heritage grounds alone. As such, an important tree that is associated with an historical event or location or person can be protected regardless of whether it is dead. The original link between the tree and any historical associations can be retained for as long as possible.
- 22 When an ancient or veteran tree is "dying back" or retrenching, and dead branches are often present, it is in the interests of society that such an important tree is managed by good practice. Where the condition of the tree or the situation is remediable, positive action should be taken to retain the tree for as long as possible. The requirement for consent in such circumstances provides an opportunity for the LA to give or direct an owner to guidance on and negotiate good practice management with the owner. The dead branches may be due to the poor environment of the tree, especially the root zone and it would be an ideal opportunity to advise on changes to management of the protected tree or site so that the tree can recover.
- 23 In addition, it seems unlikely to us that owners have made sufficient applications for the removal of dead branches alone to warrant the specific inclusion of this exception.

Removal of exemption for dying trees

- 24 We welcome the removal of the exemption for dying trees. This exemption was open to considerable interpretation and has no doubt led to the untimely loss of some very valuable trees. We are pleased that now could be ancient and veteran trees can be protected by a TPO where there have been misunderstandings in the past about the condition of the tree.



25 The time over which a tree progresses from dying to dead may be long or sudden. It can result in the reduction of some aspects of [visual] amenity but potentially increasing wildlife values, however none of these values disappear on death. Under the proposed changes a LA can now protect a tree that is valuable even if it is dying and advise the owner on the best practice in its management, but not protect it after death. This is irrespective of however old, culturally significant or important for biodiversity the tree may be. Neither will it be possible to prevent the removal of dead branches even if they are very significant for visual amenity and biodiversity values. This negates an important benefit of the removal of the 'dying' exemption.

The Woodland Trust, Kenton Way, Grantham, LINCOLNSHIRE NG31 6LL

www.woodland-trust.org.uk/campaigns

www.ancient-tree-forum.org.uk

www.treesunderthreat.info

For more information, please contact:

Jill Butler email: jillbutler@woodland-trust.org.uk, or tel: 01488 686 440