

PLANNING ADVICE: NUMBER 12 / 2015

PROTECTED TREES GUIDANCE

Trees and woodlands enhance the environment of our towns and villages and make a positive contribution to quality of life.

Tree Preservation Orders (TPO's), Conservation Areas, Planning Conditions, felling licences and restrictions on title provide legal protection for many trees in Aberdeenshire.

Tree Preservation Orders

A TPO is a legal notice served under the terms of the Town and Country Planning (Scotland) Act 1997 and is used by the Local Authority to protect individual trees, groups of trees or woodland areas which are considered to have significant amenity or historical or cultural value.

The physical condition of the tree(s), whether or not they are under threat and their visual contribution to the surroundings are some of the considerations which determine whether a TPO is appropriate.

Conservation Areas

Trees within conservation areas are also protected by legislation. If a tree in a conservation area is not covered by a TPO, you must give six weeks written notice to the Planning Authority before undertaking any works.

You do not need to give notice of work to a tree in a conservation area if it is less than 7.5cm in diameter, measured 1.5m above the ground.

Although some exceptions may apply, it is a criminal offence to cut down, top, lop, uproot or wilfully damage or destroy a tree protected by a TPO or located within a conservation area, or to cause or permit such actions without the Planning Authority's permission or the necessary notification. The offence carries a fine of up to £20,000.

Applications for works to protected trees

Applications and notifications for works to protected trees can be submitted either through the planning portal <https://eplanning.scotland.gov.uk/WAM/> or directly to the Planning Authority. There is no fee required and you should receive an acknowledgement within 5 working days.

The Planning Authority will usually carry out a site visit to help them to assess the work. Works which would result in the loss of significant, individual, groups of trees or woodlands, will be considered in the context of national and local plans, policies and strategies including:

- Scottish Government's Control of Woodland Removal Policy
- Scottish Planning Policy
- Aberdeenshire Local Development Plan
- Local Biodiversity Action Plans

The following factors will be taken into account:

- The value of the trees within their surroundings and the likely impact the work will have on the amenity of the area;
- The impact of the proposal on the character and health of the tree, including long term growth and future management;
- The reason and justification for the proposed works.

When protecting trees and woodland, Aberdeenshire Council will have regard to current best practice guidance and standards. Where required, tree surveys should be carried out in accordance with BS5837: *Trees in relation to design, demolition and construction – Recommendations*. Any proposed works should accord with BS3998: *General recommendations for tree works*. With regard to health and safety and the assessment of risk, the Council will take cognisance of the guidance produced by the National Tree Safety Group and endorsed by the Health & Safety Executive: *Common Sense Risk Management of Trees*. If appropriate, further advice will be sought.

In general terms, the Council will aim to retain and minimise any works to protected trees. The higher the amenity value of the tree or woodland and the greater the impact of the application on the amenity of the area, the stronger the reasons needed before consent is granted. In most cases, it is advisable to seek advice of a suitably qualified arboriculturalist.

Where an application affects woodland trees, the Council will grant consent so far as it accords with good forestry practice, unless this is likely to damage the special character of the woodland or the woodland character of the area. Where Scotland appropriate the advice of the Forestry Commission will be sought.

In the case of trees protected by a TPO, the Council has up to 8 weeks to decide an application, although they will endeavour to determine the application within six weeks or may agree an extended period with you. Failure to supply precise and detailed information or sufficient evidence to support your application may result in your application being rejected or delayed. A decision notice will be sent setting out the decision and reasons for it. Where consent is granted, conditions may be applied, for example, to control the standard of work or to secure the planting of replacement trees. If your application is refused or has not been determined within the agreed timescale, or if you do not agree with the conditions imposed, you can appeal to Scottish Ministers.

Information on how to appeal can be found at www.scotland.gov.uk/Topics/Built-Environment/planning/Appeals/appealformsguidancenotes

For tree works within a conservation area, the Council has 6 weeks in which to make a decision, at which time they must either permit the works or impose a TPO. If you do not hear from the Council within this time period, the proposed work can go ahead.

Although the Council cannot refuse consent without imposing a TPO, they may negotiate with you on revising the scope of the intended works to avoid the need for serving a TPO. If a TPO is made, this will prevent you from carrying out the work without making an application for consent.

A register of Tree Preservation Orders and Conservation Areas is available at Council offices for public viewing.

Other Forms of Protection for Trees

Planning Conditions

The Town and Country Planning (Scotland) Act requires Planning Authorities to consider the protection and planting of trees when granting planning permission for a proposed development. The potential impact of development on trees, whether statutorily protected or not, is a material consideration. Conditions attached to planning permissions can be used to protect trees. Anyone wishing to undertake work to trees shown as part of a planning condition must contact the Planning Authority for advice and obtain any necessary consent or variation.

Felling Licence

The felling of trees out with garden ground may require a felling licence and the advice of Forestry Commission Scotland, should be sought. <http://scotland.forestry.gov.uk/supporting/grants-and-regulations/felling-licences>

Sites of Special Scientific Interest

SSSIs are important sites designated to protect nationally significant habitats. Certain operations will require the consent of SNH. <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/national-designations/sssisi/sssisi-management/>

Burdens on title

Tree Preservation Orders are registered with the Registers of Scotland and recorded as a burden on title. This binds the land, not individual owners and will continue over the land even if it is sold on. There may be other restrictive covenants or burdens which restrict activities or actions in relation to use and activities on the land.