

Directorate for the Built Environment
 Planning Delivery, Planning Policy and North Division



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 TG.01
 The Scottish Parliament
 Edinburgh
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Your ref: PE1340
 Our ref: B4243221
 1 October 2010

Dear Mr David

PETITION PE1340 – PROTECTION OF TREES

I refer to your letter of 9 September, requesting a written response from the Scottish Government to the issues raised in the petition and related discussion, and written questions raised by members of the Committee.

Q 1 – Will you extend the protection enjoyed by trees in conservation areas to all trees?

Conservation Areas are areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. There is not a strict presumption against felling trees in a conservation area. It is an offence to carry out works to trees in a conservation area without notifying the planning authority which then has an opportunity to designate a TPO should they choose to do so. We do not intend to introduce the same requirement outwith Conservation Areas. Through the planning reform programme we are striving to make the system more efficient and proportionate. Extending planning regulation to all trees in Scotland would be inconsistent with these objectives.

Preliminary investigations also indicate that the proposal would have significant resource implications for planning authorities. A notification would require to be processed by the planning authority every time someone wished to carry out works to a tree. Officer time would be required to investigate alleged breaches. There is no fee system attached to notifications so the planning authority would be unable to recoup the additional costs involved.

Q 2 - Should there be a strict presumption against felling or damage to any trees, irrespective of whether or not these lie in a conservation area?

As discussed above, there is not a strict presumption against felling trees in a Conservation Area. It is an offence to carry out works to trees in a Conservation Area without notifying the

planning authority which then has an opportunity to designate a TPO should they choose to do so.

Scottish Planning Policy states that ancient and semi natural woodland is an important and irreplaceable natural resource that should be protected and enhanced. Woodland of high nature conservation value should be identified in development plans along with relevant policies for its protection and enhancement. Other woodlands, hedgerows and individual trees, especially veteran trees may also have significant biodiversity value and make a significant contribution to landscape character and quality so should be protected from adverse impacts resulting from developments.

The Scottish Government's control of woodland removal policy includes a presumption in favour of protecting woodland resources. Woodland removal should only be allowed where it would achieve significant and clearly defined additional public benefits.

A felling licence from Forestry Commission Scotland is required in order to fell trees, except where exemptions apply, relating to either certain locations, including gardens, orchards, churchyards and designated open space; the type of tree work; the volume and diameter of the tree; where certain other permissions are required and have been obtained; or where trees need to be felled to comply with legal and statutory requirements.

Q 3 - What is your response to the points made by the petitioners that the costs of raising a TPO are very high, if not prohibitive, and that it is impractical for individuals or groups to attempt to apply for TPOs for large numbers of trees which, for example, surround a settlement or village? What solutions exist to address this type of situation?

The research report *The Effectiveness of Tree Preservation Orders in Scotland (2002)* indicated that it costs £10,000 to designate a TPO. As the TPO is a legal document staff costs both in terms of tree officer time and solicitors costs are unavoidable. There are also costs associated with land searches, notification and registering the TPO in the Land Register of Scotland.

A TPO can be designated on an individual tree, groups of trees or woodlands, therefore one TPO could cover a large number of trees. Individuals or groups can request that the planning authority serve a TPO on specified trees. It is the planning authority who considers that request and takes the decision on whether or not to designate the TPO.

Q 4 - Can the system of Tree Preservation Orders be a) simplified, b) improved and c) made more accessible? If so, what actions will you take to that effect and when?

In Scotland the legislation relating to Tree Preservation Orders has changed little since 1975. In 2002 research was commissioned to examine whether the TPO procedures in Scotland are still effective. The research report *The Effectiveness of Tree Preservation Orders in Scotland* published in December that year, found that the TPO system is basically sound, and that a series of fine tunings would provide an up-to-date structure for protecting trees across Scotland.

The Planning etc. (Scotland) Act 2006: introduces a duty on planning authorities to review existing TPOs, expands the powers of planning authorities to serve TPOs to include trees, groups of trees, or woodlands of cultural or historical significance; makes all TPOs

provisional for 6 months and introduces a new power for a person authorised by the planning authority to enter land for the purposes of affixing a TPO in certain circumstances.

The TPO Consultation Paper and the draft Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 2010 proposed changes to the TPO system that would: update the references within the regulations to the Town and Country Planning (Scotland) act 1997 and the Planning etc. (Scotland) Act 2006; remove the Model order from regulations to guidance; introduce new procedures where a TPO is not confirmed and introduce new procedures for varying and revoking TPOs. The changes to both primary and secondary legislation are aimed at simplifying, improving and making TPO more accessible. We hope to lay the regulations in Parliament in October 2010, with commencement expected to be early next year.

Q 5 - What was the outcome of the recent consultation on Tree Preservation Orders?

The Tree Preservation Order (TPOs) Consultation Paper (April 2010) sought views on the proposed Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010 and the proposed Model Tree Preservation Order. Overall respondents were generally supportive of the procedures being put forward in the consultation paper. The analysis of consultation responses is available at <http://www.scotland.gov.uk/Publications/2010/09/10103253/0>

Q 6 - What is the potential to establish a register to protect trees on a national/regional/local area basis?

The Directorate for the Built Environment does not consider that there is any potential for a statutory register but indicated during the Planning Bill that a non-statutory register may be a possibility. Robin Harper MSP proposed amendments at both Stages 2 and 3 of the Planning etc. (Scotland) Bill, seeking to give Scottish Ministers (or someone on their behalf) powers to compile a register of trees of special interest. The amendment was rejected at Stage 3. The Scottish Government at that time considered that a non-statutory register may be attractive for the purposes of funding, managing or protecting trees, but would not in itself protect trees. The provisions in the Act offer new opportunities to protect special trees, strengthen powers of protection and are proactive on the protection of cultural and historical trees, therefore the case for a statutory register of trees of special interest is not justified. The Scottish Government remains of the view that a register will not guarantee the protection of trees.

Q 7 - Does the tree protection that applies to developers also apply to householders?

With regard to tree protection afforded both by TPOs and conservation areas there are no significant differences in the provisions that apply to developers and householders. The main distinction is that where there is a planning application, it will be considered on the basis of policies within Scottish Planning Policy and Local Plans through the planning system while proposals from an individual simply carrying out work to a tree may not be.

I trust that the Committee finds this information helpful.

Yours sincerely,

Ian Black

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Directorate for the Built Environment



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