

Mr Fergus D. Cochrane
Clerk to the Public Petitions Committee
T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

7 October 2010

Dear Mr Cochrane,

CONSIDERATION OF PETITION PE1340

Thank you for your letter dated 9 September 2010 asking the Woodland Trust Scotland to provide a written response to questions raised during the Committee hearing of the above petition on 7 September. We make this response in association with the Ancient Tree Forum.

As the Committee is now aware, tree protection in Scotland is still lacking particularly for ancient and veteran trees and other trees of special interest (TSIs). For a detailed description of what we mean by ancient, veteran and trees of special interest, we refer you to the document we submitted as additional evidence at the Committee hearing on the 7 September¹. Our response to the questions asked in your letter is below.

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

We do not believe that current strict presumptions against works to trees without notification (Conservation Areas – felling or works to trees) or permission (Felling Licences – felling only) should be extended to cover *all or any individual* trees in Scotland; but we do believe that the extension of the Conservation Area approach, should be available to stakeholders to protect trees, especially of special interest (TSIs), where they have been identified as being of the highest value by their communities. This should be on the basis of trees in their own right and not require the area to be of special architectural or historic interest.

The original petition statement suggested that *all* trees be afforded the protection of trees within a Scotland wide conservation area mechanism. After further discussion with us subsequent to lodging their petition, and as stated during the committee meeting on 7 September, it is our understanding that the petitioners recognise that a strict presumption against all “felling or damage to any trees” would be unworkable. Instead a modified approach to use Conservation Areas in a targeted way, according to local priorities and resources for identified significant groups of trees of great value, would achieve their objective.

¹ The Woodland Trust. (2008) *Ancient Tree Guide no.4: What are ancient, veteran and other trees of special interest?* Grantham. www.woodlandtrust.org.uk/publications

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Instead of a strict presumption against the felling or damage to *any* tree regardless of size or location, we are in favour of improving tree protection by a modest step that would broaden the concept for designation of conservation areas to include trees. In this case the strict presumption would be against any works carried out to trees without prior notification to the Local Authority in an area designated as a Tree Conservation Area (TCA). This alerts the LA to possible harm to an important tree and gives the LA time in which to decide if it needs to act in the interests of the community and give it the added protection afforded by a TPO. We believe that in many cases through negotiation and advice to the owner, the requirement to TPO would be limited thereby saving resources and costs. Furthermore, with prior knowledge of the tree resource and a review of the size thresholds in these areas, LA's could deal with notifications in more cost effective ways. We would be happy to explain how this would work to the appropriate stakeholders.

If the Tree Conservation Area designation were developed to enable areas to be designated for trees it would provide another tool for communities and local authorities to use in protecting the most important trees in their local area.

Two recent Scottish Government publications, the "Policy on Control of Woodland Removal" and the "Scottish Planning Policy" both identify that woods and trees should be protected, especially those of ancient or veteran status. However an individual tree of special interest that is not within a conservation area or protected by a TPO may be easily lost despite these policies because as a tree owner they the policies do not apply to them. It is only a public body that would need to consider the policies in taking a decision on a planning application or local plan for example. For these important policies to be effective the local authority has to have the appropriate tools to influence the management or protection of trees, especially those that are outside planning application sites.

There is therefore a difference between the situation faced by developers and other tree owners. A developer has to submit a planning application that alerts the LA to a threat to a tree and they can act to protect it if it is of appropriate value. An owner outside a Conservation Area does not need to alert the LA to any works to any trees and some of those trees maybe of very great value to the community. It is an unfair system where owners of tree with TPOs have to obtain approval for further works to a tree, compared with owners of TSIs which are unprotected, who can do what they like.

Communities are understandably very frustrated by this system and incensed when trees that they value are cut down without LA involvement. Judicious use of Conservation Area status for trees would be a cost effective way of preventing loss of trees of value without prior notification to LAs.

In considering this question it is important to be aware that the requirement for owners to seek consent to fell trees (subject to exemptions) already operates over very wide areas, principally of the rural environment, through felling licence controls under the Forestry Act. However the exemptions are such that 5 cubic meters per quarter, which is approximately the equivalent of 2/3 fully mature trees can be felled without the requirement for a felling licence and as such does not protect individual trees of significant value.

What is your response to the points made by the petitioner 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?

The 2002 report *The Effectiveness of Tree Preservation Orders in Scotland* estimated the cost of implementing a TPO is about £10,000. We question this considerable figure because there is no publicly available information to enable us to comment. Furthermore a TPO can be made to protect an individual tree, groups, areas and woodlands in any combination, so costs will vary. Where community requests are made for large numbers of trees to be protected, we believe that through good community engagement the costs of surveying and recording could be reduced by the use of appropriate volunteers.

It is important to remember that protection of what is valuable cannot come without costs and we are pleased that LAs, once alerted by a planning application, recognise the value of trees that may be threatened by development and place TPOs on important trees of value to the community to secure their future.

What concerns us is that many trees of greater worth than those directly affected by development are not protected where appropriate. It is our view that resources should be directed to trees of greatest value regardless of whether they are affected by planning applications or are owned by individual or multiple owners. There should be choice available for LAs to use the mechanism that is most appropriate to the circumstances. If the tree conservation area approach were available to LAs, the steps could be as follows:

- If there are many significant trees of special interest in an area in the ownership of many owners then the TCA approach is the first step.
- If there are many TSIs *at risk* in the ownership of one or two owners then a TPO utilising the Area notation maybe more appropriate
- If there is one or a few TSIs *at risk* then a TPO may be the most appropriate way forwards.

The additional tool of the TCA would achieve a number of things. First it would allow stakeholders and LAs to be proactive in the protection of their tree resource. Secondly it would allow LAs the time to protect the most important trees of special interest in a strategic manner. And thirdly it would allow areas of trees with multiple owners to be protected in a more cost effective way.

We believe that the use of a new Tree Conservation Area designation could result in local authorities being better able to prioritise the trees in their area that require TPOs and at the same time enable them to engage with applicants on managing and maintaining trees that may otherwise have been lost. Ultimately this could reduce the TPO cost burden by reducing the need for TPOs to be placed on all but the most important trees that are threatened. Furthermore there would be no requirement on LAs to use Tree Conservation Areas if they were not appropriate for them.

Yours sincerely,

Angus Yarwood
Policy & Campaigns Officer