

TREE PRESERVATION ORDERS: IMPROVING PROCEDURES

NATO's CONSULTATION RESPONSE FORM: January 2008

Chapter 2: Making a TPO

Q1. Should copies of newly made TPOs, or variation Orders, be sent only to owners and occupiers of the land where the trees in question are situated?

Yes

75%

No

25%

Explanation/comment:

Yes

It is the opinion of N.A.T.O that, the present system is an administrative nightmare, there should be a model notice produced (like the Model Order & Model Regulation 3 Notice); this should be a notice of service rather than a flyer.

there should be guidance provided regarding when to issue a notice to neighbouring land owners as there are issues of common law right to undertake works to the tree as well as issues of available daylight.

Guidance also need to be provided regarding on whom it is appropriate to serve the notice i.e. the owner or the occupier of the land or both

there needs to be clear guidelines as to how other interested parties are informed and what constitutes an interested party if there is to be a national standard.

Can some reassurance be given by DCLG that, by not serving the Order on all neighbours, this would not affect the Council's ability to prosecute the neighbour in future should they breach the TPO.

No

While there is a minority opposed to the proposed changes all their concerns would be addressed if the points raised above are addressed.

Chapter 3: Applications

Standard Application Form

Q2. Are the questions in the application form clearly expressed?

Yes

62.5%

No

37.5%

Explanation/comment:

A concern of N.A.T.O is that each question should have reference to the specific guidance note as it is vital that these notes are referenced. Just because guidance notes are provided there is no guarantee they are read and so referencing them in each question reinforces their importance

N.A.T.O feels that Section 7 should also refer to pre-application consultation with the LA's Arboricultural Officer and not just the suggested tree surgeon. Many applications come from

pre-application meetings; most people do not know how to describe the works and want advice on what works would be appropriate. A tree surgeon may levy a charge for advising and submitting an application as the agent. By carrying out a pre application site meeting the determination process is usually speeded up.

Section 8 could also suggest the use of photos for location and possibly identifying branch removal.

LA's are increasingly using the facility for on line applications and attaching photos with electronic applications is deemed beneficial.

N.A.T.O is concerned that it is not expressed unequivocally in supporting documents that submission of the standard form is mandatory. If it is to be a standard application there can be no grey areas regarding the definition of an application form. it is either a standard form or it is not.

Even though the form asks the question '*what are you Applying for*' The distinction between a TPO application and a s211 notice, is not apparent or clear for a member of the general public and there is no guidance note on this either.

the size of sketch plan box is considered insufficient. If an attached plans is acceptable this needs to be clearly expressed.

N.A.T.O feels that the title of the form is unclear as to its usage and that reference to trees within a conservation area has to be incorporated within the title with

in Box 7 '*Identification of Trees Reasons for Works*' an explanation needs to be given that only '*Reasons for Work*' are required for TPO applications, this should be on the form rather than the guidance notes. In Box 7 the first question should read "Tree species and number".

There is an opinion within N.A.T.O that does not consider Box 6 is necessary. The officer validating the application can quickly and easily add this information. Space should be made for this information at the top of the form, in a 'for office use only' box. This box should also have room for 'date received', 'application number' and 'file reference'

In Box 3 asking for the easting and northing in the separate box could lead to some confusion. These 2 sections should be deleted & then the Description of Location box should have "and/or grid reference" added to it.

Q3. Do the questions appear in a logical sequence?

Yes
50%

No
50%

Explanation/comment:

N.A.T.O can see confusion arising regarding the submission of contact detail that will only result in Officers time being unnecessarily wasted.

At 12 & 13 Contact details are asked for: It would be more logical for this to be tagged onto the address boxes 1 & 2.

The telephone numbers which are currently requested in boxes 12 & 13 should be requested in boxes 1 & 2 as this makes a more logical sequence.

Q4. Are we asking the right questions? If you think we should be asking other questions, please use the comments box to say why this additional information is required.

Yes

75%

No

25%

Explanation/comment:

Yes

But N.A.T.O. feels it is important that in regard to ownership there should be some sort of reference to trespass or entering another's land in the accompanying notes if not on the actual form and the applicant should be clearly directed to the guidance notes e.g.

- a) If any tree that is the subject of a notice is on the property of a third party a letter of permission from the Council does not obviate the need to gain permission from the tree owner.

Or:-

- b) If any tree that is the subject of this permission is on the property of a third party it does not obviate the need to gain permission from the tree owner unless it is to carry out the minimum works necessary to abate or prevent an actionable nuisance.#

There needs to be a section added 'pre-application meeting' this section does not need to be large as it only requires; yes no tick box, name of officer, position in LA, date of visit.

It is at this at the pre-application stage that questions of additional information can be clarified. And this would benefit those more bureaucratic LPA's where site visits are made by Officers other than those processing the application. this would effectively speed application through the system.

Because of the contentious nature of tree ownership N.A.T.O believes that to include under Trees Ownership the question "Is the owner aware of this application?" with a possible additional "Do they agree or support the application?" would help its members be ware of an possible situation they maybe dragged into resulting in wasted officers time.

To speed the process N.A.T.O suggests that in boxes 12 and 13 the applicant / agent should be asked if they prefer to be contacted by e-mail or post (for letters of acknowledgement, decision notices etc)

Q5. Do the guidance notes provide sufficient explanation?

Yes

50%

No

50%

Explanation/comment:

While the guidance notes give plenty of information at first glance N.A.T.O believes this information is both inaccurate and incomplete and that the following issues need to be addressed if the guidance note are to help applicants complete the forms correctly and carry out the proposed work to the required standard.

N.A.T.O. believes It is imperative that it is made clear that the application, and any subsequent appeal, will be decided on the basis of the information contained on the application form.

There needs to be more clarity of the difference between TPO applications and s211 notices. This is often misunderstood even by Local Authorities.

If this is being used as a form for both TPO applications & Section 211 notices, it is worth highlighting that, whilst reasons are not required for Section 211 notices, although it may

assist the Authority's decision making process. Clarification of this issue should be provided in the guidelines.

Greater emphasis has to be placed on BS 3998 the guidance diagrams have to be clearer and relate to the BS. A picture paints a thousand words so the picture has got to be clear in what it portrays.

The pictures of crown thinning, crown lifting and crown reduction are misleading and poor examples of tree work standards (especially the crown lifting and crown reduction pictures). These should be removed & replaced with reference to British Standard 3998. As and when the new version of BS 3998 is adopted, any relevant text/pictures could be incorporated into the guidance notes for reference.

Note 9 relating to additional information needs to reiterate the information given in the question. The question appears to give more information than the note. This is always going to be an area of contention and therefore the notes need to be far more clear and precise as to what will be accepted as additional information.

Q6. Is there any other information which would be helpful to include as guidance?

Yes

75%

No

25%

Explanation/comment:

Yes

Many of the points in raised in reply to question 5 are applicable in this instance.

How to express the amount or degree of work intended this needs to be much clear that is proposed e.g. '*please state clearly using either a fraction or a percentage the amount of work you intent to undertake*'. This often leads to ambiguity and possibly to misunderstandings of intent if not expressed clearly and accurately.

The potential is for increased application rejection due to lack of clarity of work specification which means increased admin. time spent. It is vital that this issue is addressed if the aim of the changes is to succeed as this will be a major reason for not registering applications.

A definition of a 'tree professional' is needed in order to establish an acceptable level of knowledge and/or experience of those who would provide reports as required on the application form. without this guidance Officers will undoubtedly find themselves having to justify refusing substandard reports and thereby waste time.

A note directing applicants to the Forestry Commission for a felling licence if they wish to remove more than 5 cubic metres of timber from a site in any calendar quarter.

Consider web site links for description of works such as ISA and AA

Supporting Information

Q7. Should the supporting information to accompany TPO applications be specified, through the form, at the national level? Such requirements would be mandatory and apply to all relevant TPO applications.

Yes

55.5%

No

44.5%

Explanation/comment:

Yes

N.A.T.O is of the opinion that this issue should be directed at a national level so that a national standard can be maintained. However N.A.T.O feels that it is possible to set clear and robust parameters for additional information that would allow individual LA's scope to meet specific problems within their localities.

If a more flexible approach is taken to this issue it is important that the guidance needs to be designed so that weak or draconian standards are avoided.

The message needs be clear and unequivocal at the outset that applications aren't valid without the related supporting information.

Supporting documentation for e.g. if linked to subsidence needs to be in the form of reports from structural and soil engineers and evidence of adequate monitoring ...and also DNA results This would depend on the reasons give for the work.

In the case of trees that it is claimed are in a declining condition it is important that clear guidance is given at a national level regarding the standard of evidence presented as a supporting document if there is to be a national standard.

Q8. Have we got the requirements right?

Yes

44.5%

No

55.5%

Explanation/comment:

on the whole but there is some feeling that both the applicant and the LPA's need precise guidance. There will almost certainly be an increased cost to the applicant if every tree officer asks for a report to confirm the evidence of his own eyes. While this issue can be overcome by pre-application discussions there will be an increase in returned unregistered applications.

N.A.T.O. has to ask the question whether it is advisable to include 'Horticultural advisor' Reference to a report from a horticultural advisor (in boxes 9 and 10) should be removed as they are generally not suitably professionally qualified or experienced enough to give this information.

N.A.T.O. sees no reference to alternative solutions as a significant oversight and must be referred to in the subsidence reports i.e. have alternative solutions been considered Information should be provided regarding the related costs of the alternative solutions.

Where it refers to alleged subsidence damage in Box 9, this should include reference to any structural damage, not just subsidence.

Q9. Do these proposals provide local planning authorities, at the outset, with all the information they need to determine an application?

Yes

75%

No

25%

Explanation/comment:

Yes

they have the potential to, but grey areas about additional information have the potential to cause what maybe perceived as unnecessary delays. This is a situation not too dissimilar to the present situation. There needs to be clear guidance on acceptable additional information

On the assumption that the above comments are addressed.

No

Unless amended in line with comments submitted.

Q10. Do they provide the right balance between the need for consistency and certainty while allowing some flexibility to respond to the individual circumstances of the case?

Yes

66.5%

No

33.5%

Explanation/comment:

N.A.T.O. believes that on balance the above statement is correct as long as the issue of additional information is addressed so that the requirements are not overly prescriptive or so vague that they unworkable.

The issue of supporting documentation especially from the Arb industry it is foreseen as being a grey area and is an example of difficulty in achieving the intended aims of the proposals.

On the assumption that the above comments are addressed.

Q11. Will the proposals make it easier to determine whether an application is valid?

Yes

77.5%

No

22.5%

Explanation/comment:

Yes

N.A.T.O. is of the opinion that the proposals are an improvement and certainly will make the majority of application easier to validate.

However there is still the issue of supporting evidence that it is crucial to address as this has the potential to undermine the objectives of the proposals as it may well involve Tree Officers in protracted discussions trying to resolve the issue of the value of the supporting evidence.

Q12. Are there any other requirements which should be included? If so, please use the comments box to say why this additional information is needed.

Yes

55.5%

No

44.5%

Explanation/comment:

Yes

There is one very important oversight that N.A.T.O. has been made aware of by its membership; there would appear to be no box allocated for the LA's contact details as it is standard practice for LA's to give detail of who to return the forms to on there existing TPO application form. N.A.T.O feels it is not satisfactory for each LA to send out a covering letter with each application stating who to return the completed forms to.

Chapter 4: Appeals

Fast Track Appeals Procedure

Q13. Is this fast track procedure fair and reasonable?

Yes

87.5%

No

12.5%

Explanation/comment:

Yes

It appears to be so, but only time will tell!

It is unclear from paragraphs 4.2 and 4.19 what processes other than fast track will remain available to the appellant i.e. hearing or public inquiry.

Who would determine whether the fast track process is appropriate? Would this be the appellant or the Secretary of State?

Providing the local authority has had all the required information referred to above and that the inspectors do not take into account any additional reasons that have not been referred to in the application. This would not be fair or reasonable, as the local authority may not have had the opportunity or information to consider these reasons prop

However there is a possibility that If the appellant and possibly the Council are not allowed to submit new and relevant information for the inspector to consider. Then this could lead to a new application by the appellant were that person includes the new information and if it is then refused again by the Council it could lead to a new appeal by the appellant.

Therefore this could in some instances lead to an increase in cases and recourses for the Planning Inspectorate and the Council. Also there could be the perception on the public side that the appeal process is not a fair.

On Balance the vast majority of the N.A.T.O. believes that the proposals are indeed fair and reasonable.

Q14. Does it strike the right balance between speed and quality of decision?

Yes

88.5%

No

11.5%

Explanation/comment:

Yes

the most important change would appear to be that any decision is based on the evidence present to LPA at the point of application and N.A.T.O. supports this move.

Only time will tell.

We have concerns about the possibility of local member review bodies being involved in the process due to the lack of professional expertise of these bodies. Whilst they may be able to make a speedy decision, and are currently already used to decide on appeals relating to TPOs, they might require additional, independent arboricultural expertise to act as an 'expert witness' in the process. The Tree Officer will already be constrained by their earlier involvement.

No

Q15. Can the process be further simplified?

Yes

77.5%

No

22.5%

Explanation/comment:

Yes

No

Q16. Will it work for all types of TPO appeal, including appeals against tree replacement notices?

Yes

77.5%

No

22.5%

Explanation/comment:

Yes

the questionnaire and the site visit should be sufficient for the applicant to convey their case to the Inspector. As long as the LPA has sent out sufficient information regarding the species and the site of the replacement that shows regard for the situation has been taken then I see no reason why a fair decision can not be made.

Delegating Decisions to Appointed Inspectors

Q17. Should decisions on all TPO appeals be taken by Inspectors appointed by the Planning Inspectorate?

Yes

95%

No

5%

Explanation/comment:

Yes

As long as they are arboriculturists.

On the assumption that the inspector is appropriately experienced & qualified.

Q18. Are there risks with this approach which have not been identified?

Yes

20%

No

80%

Explanation/comment:

Yes But only in exceptional circumstances and only if the appointed inspector brings with him his personal political beliefs or practices that are out of step with normal or good practice.

No as long as the Inspectors do have Arb experience as indicated.

Q19. How might we mitigate such risks?

Yes

No

Explanation/comment:

Yes Very clear guidance should be given to inspectors about what they can and cannot consider as part of an appeal process though if the appeal process were based on the application detail this should be self evident.

The local planning authority should be able to make representation to the Secretary of State if an appeal inspector is considered to have made a series of unusual or strange decisions.

The Secretary of State would then be able to appoint an independent advisor to look into the issue.

The applicant and the local planning authority could be given the opportunity to request a different inspector if they wish.

No

Chapter 5: Impact Assessment

Q20. What are the likely effects of any of the changes on you, or the group or business or local planning authority you represent?

Explanation/comment:

It would place the onus on the applicant to provide evidence that the tree is in a dangerous condition or the cause of subsidence.

The proposed changes should ensure an improved level of information submitted with tree work applications and make assessment of applications more thorough, hopefully leading to better decision making.

there will be minor changes to working practices and initial conflict with applicants not reading the guidance notes and local tree contractors submitting substandard reports as supporting documentation is foreseen.

N.A.T.O. members will also have to review their existing policies.

It has the potential to reduce the amount of officer time spent dealing with applications as the quality of information should be improved and there will be less paperwork to produce during the appeals process.

Q21. Will there be unintended consequences?

Yes

70%

No

30%

Explanation/comment:

Yes

N.A.T.O. is concerned that a process, which the Government considers should reduce officer time, might be used to reduce funding to Local Authorities, when no savings may, in fact, be made.

The possibility of reduction in resources from above is anticipated rather than the potential to make better use of available time.

There is some real concern that some applicants may be deterred from making applications, or may feel intimidated, due to the complexity of the form. this may well result in appropriate work not being carried out at the appropriate time and the knock on effect is that there will be application for inappropriate work to be carried out due to lack of maintenance.

There always are but often they only become apparent once a new system is in place, therefore the proposed review of the situation after 3 years should pick any issues up.

Q22. Do you have any general comment on the outcomes predicted in the Impact Assessment, in particular the costs and benefits?

Yes

63.5%

No

36.5%

Explanation/comment:

Cost of commissioning an arboriculturalist – how will this change.
Filling in forms more quickly? The proposed form is more complicated and restrictive from many already in use
Savings in tree officer time?..perhaps the opposite will apply.

Whether there is any real cost saving in the short to medium term there remain doubts . if the aim is to standardise the TPO application system Nationally then the issue of additional information could be a problem, but there is the real problem of increasing the cost to the applicant unnecessarily.

The estimates of cost appear to be somewhat flawed particularly with regards to the amount of officer time taken to determine applications, especially in rural areas where it can take 2 hours just to visit the site, without actually doing anything on site.

Q23. As an applicant or local authority, what are the current costs of applying for and processing applications for consent to fell or prune trees?

Explanation/comment

Unquantified.

Minimal (this would not reduce if we were to introduce the proposed form and might increase)

Actions are:

Provide applicant with form by post, email or from LPA website (no change)

Receive completed form

Make site visit and assess proposal

(Optional): Consult locally – only if “contentious”

Ask for engineer’s report in cases where damage, subsidence, etc. alleged.

Write to customer, giving consent or refusing consent

no accurate data available

This has never been quantified.

Q24. As an applicant or local authority, how are these costs likely to be affected by the proposal to introduce a standard application form? Where possible, please specify or estimate the costs involved.

Explanation/comment

Potential for reduction to both parties.

It will reduce the time spent visiting people who think that a tree may be unsafe, as they will need to have the tree inspected.

Might increase, due to more opportunity for applicants to complete form incorrectly.
Current form is simple and it works.

there will be a minimal cost of amalgamating the TPO application process with the Planning application process.

Unable to estimate amounts but in theory it should save time & therefore save costs to both the applicant and the authority.

As Q 20 The potential applicant are more likely to want help with filling in the application on site, and if the applicant feels it may not be appropriate to seek the help of the Council’s Arboricultural Officer they may feel they have to seek advice from a Tree Contractor or Consultant which will have cost implications.