

AGENDA ITEM

REPORT TO ENVIRONMENT SELECT COMMITTEE

12 MAY 2014

REPORT OF DEVELOPMENT SERVICES

Tree Preservation Orders and trees in conservation areas

1.0 Summary

1.1 On 6th March 2014 the existing Tree Preservation Order guidance was replaced with National Planning Practice Guidance. This report therefore sets out the most up to date situation in relation to the process of making a Tree Preservation Order, determining an application for works to a protected tree, appeals against a refusal of consent for works to a protected tree and Enforcement

1.2 In the past three years the Council has dealt with the following number of applications for works to protected Trees

	Received	Approved	Refused	Appeal Dismissed	Appeal Allowed
2011	53	48	5	1	0
2012	52	46	6	1	0
2013	73	48	12	0	0

1.3 This equates to 178 applications in total of which 142 have been approved and 23 refused and 2 appeals which were dismissed

1.4 The decisions on TPO applications normally follow the recommendation of the Council's Principal Tree and Woodland Officer, the only exception has been in January 2014 in respect of a protected tree in Eggescliffe where the application was considered by the Planning Committee which granted consent to fell.

1.5 As will become evident from the statutory requirements which control the process of tree protection it is a complex and time consuming process requiring the exercising of professional judgment and has significant implications for the amenity of the area in terms of timescale if substantial trees are lost.

2.0 Statutory Requirements

What is a Tree Preservation Order?

2.1 A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the:

- cutting down

- topping
- lopping
- uprooting
- wilful damage
- wilful destruction

of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.

What are a tree owner's responsibilities?

2.2 Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected. However, the authority can encourage good tree management, particularly when determining applications for consent under a Tree Preservation Order. This will help to maintain and enhance the amenity provided by protected trees.

2.3 The Town and Country Planning (Tree Preservation)(England) Regulations 2012 introduced a single set of procedures for all trees covered by tree preservation orders. Consequently:

- Orders made before 6 April 2012 continue to protect the trees or woodlands they cover
- the legal provisions listed in Orders made before 6 April 2012 have been automatically cancelled and replaced by the provisions in the new regulations. Only the information necessary to identify these Orders and identify the trees or woodlands they protect is retained
- there is no need for Orders made before 6 April 2012 to be remade, amended or reissued.

Why we have Tree Preservation Orders

2.4 The Council as Local planning authority can make a Tree Preservation Order if it appears to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

2.5 The Council can either initiate this process itself or in response to a request made by any other party. When deciding whether an Order is appropriate, The Council take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified.

- 2.6 When granting planning permission the Council has a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders are made in respect of trees where it appears necessary in connection with the grant of permission.

Flowchart 1 shows the process for making and confirming a Tree Preservation Order.

What does ‘amenity’ mean in practice?

- 2.7 ‘Amenity’ is not defined in law, so the Council has to exercise judgment when deciding whether it is within their powers to make an Order.
- 2.8 Orders are used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before the Council make or confirm an Order it needs to be able to show that protection would bring a reasonable degree of public benefit in the present or future.

What the Council takes into account when assessing amenity value?

- 2.9 When considering whether trees should be protected by an Order, the Council assesses the amenity value of trees in a structured and consistent way, taking into account the following criteria:
- 2.10 *Visibility:* The extent to which the trees or woodlands can be seen by the public will inform the Council’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.
- 2.11 *Individual, collective and wider impact;* Public visibility alone will not be sufficient to warrant an Order. The Council has also to assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:
- size and form;
 - future potential as an amenity;
 - rarity, cultural or historic value;
 - contribution to, and relationship with, the landscape; and
 - contribution to the character or appearance of a conservation area.
- 2.12 *Other factors;* Where relevant to an assessment of the amenity value of trees or woodlands, the Council may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

What does ‘expedient’ mean in practice?

- 2.13 Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to

be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

- 2.14 It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the Council may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. The Council can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

What trees can be protected?

- 2.15 An Order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species.
- 2.16 Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.

Can shrubs and hedges be protected by a Tree Preservation Order?

- 2.17 The Council may only use an Order to protect anything that may ordinarily be termed a tree. This would not normally include shrubs, but could include, for example, trees in a hedge or an old hedge which has become a line of trees of a reasonable height. The removal of countryside hedgerows is regulated under different legislation. Guidance on tree size in conservation areas is set out below.

When does a Tree Preservation Order come into effect?

- 2.18 An Order comes into effect on the day the authority makes it. This provisional effect lasts for six months, unless the authority first either confirms the Order to provide long-term protection or decides not to confirm it.

How does the local planning authority inform people that a Tree Preservation Order has been made?

- 2.19 The local planning authority, as soon as practicable after making an Order and before it is confirmed, serves 'persons interested in the land affected by the Order':
- A copy of the Order (including the map); and
 - A notice (a 'Regulation 5 notice') containing specified information.
- 2.20 The 'persons interested in the land affected by the Order' are every owner and occupier of the land on which the protected trees stand and every other person the authority knows is entitled to carry out certain works to any of those trees or in relation to the affected land.

2.21 The Council may decide to notify other people, groups and organisations (such as parish councils and the Forestry Commission). It can also consider displaying site notices.

Can people object to, or comment on, a Tree Preservation Order?

2.22 People are given the opportunity to object to, or comment on, a new Tree Preservation Order. Before deciding whether to confirm an Order, take into account all 'duly made' objections and representations that have not been withdrawn.

2.23 Objections and representations are duly made if:

- They are made in writing and:
 - delivered to, or could reasonably be expected to be delivered to, the authority not later than the date specified in the Regulation 5 notice;
 - specify the particular trees, groups of trees or woodlands in question;
 - in the case of an objection, state the reasons for the objection;
- In a particular case, the authority is satisfied that compliance with the above requirements could not reasonably have been expected.

2.24 All notified parties are given at least 28 days from the date of the notice to submit their representations. Objections to a new Tree Preservation Order can be made on any grounds.

How does the Council confirm Tree Preservation Orders?

2.25 The Council can confirm Orders, either without modification or with modification, to provide long-term tree protection. They may also decide not to confirm the Order, which will stop its effect. The Council cannot confirm an Order unless they have first considered any duly made objections or other representations.

There is a time limit for confirming Orders?

2.26 The Council can only confirm an Order within a six month period beginning with the date on which the Order was made. If this deadline is missed and an authority still considers protection necessary it will have to make a new Order.

Flowchart 2 shows the decision-making process for varying or revoking Orders

Why does the Council vary or revoke Orders?

2.27 The Council can vary or revoke confirmed Orders to help deliver appropriate tree protection. They may decide to vary or revoke Orders because, for example:

- land has been developed;
- trees standing when the Order was made have been removed (lawfully or otherwise);
- replacement trees have been planted;

- trees, for whatever reason, no longer merit protection by an Order;
- new trees meriting protection by an Order have been planted;
- the map included in the original Order is now unreliable;
- the Order includes classifications that no longer provide appropriate or effective tree protection; or
- errors in the Order's Schedule or map have come to light.

Applications to carry out work on trees protected by a Tree Preservation Order

Flowchart 3 shows the process for applications to carry out work to protected trees.

- 2.28 Anyone wanting to cut down, top, lop or uproot trees subject to an Order must first apply to the local planning authority for its consent unless the proposed work is exempt through an exception. Where an exception applies the authority's consent to carry out works is not needed, but notice of those works may need to be given to the authority.
- 2.29 There are further exceptions relating to trees growing in a conservation area that are not subject to an Order.
- 2.30 In addition, the Council's consent is not needed in certain specific circumstances where the Regulations are deemed to have no effect. This will be the case, for instance, in respect of anything done by, or on behalf of, the Forestry Commission on land it owns or manages or in which it has an interest.

Is consent required for work on diseased and/or dying trees?

- 2.31 The Council's consent is needed for carrying out work on diseased and/or dying trees unless some other exemption applies. One example is work urgently necessary to remove an immediate risk of serious harm. Another example is government requiring the destruction of particular trees to tackle a serious plant disease. If they serve a notice under plant health legislation this would constitute an obligation by or under an Act of Parliament.

What about tree work that may affect birds, bats and other wildlife?

- 2.32 Anyone carrying out work to a tree, even under an exception, should ensure they do not contravene laws protecting wildlife. If in doubt they are advised to seek advice from the authority or Natural England on how to proceed.

Who can apply for consent under a Tree Preservation Order?

- 2.33 Anyone can apply for consent under an Order. The applicant will usually be the owner of the tree or trees in question or an arboricultural contractor or other person acting as the applicant's agent.
- 2.34 Also, a person can apply to carry out work on a neighbour's protected tree. But such an applicant is advised to first consult the tree's owner and also notify them promptly after submitting their application. The Council may ask the applicant about their legal

interest in the tree and consult the tree's owner. If the authority grants consent it will be for the applicant to get any necessary permission (for access to the land, for example) from the owner, before carrying out the work.

How much information does an applicant have to give?

- 2.35 Applicants must provide reasons for proposed work. They should demonstrate that the proposal is a proportionate solution to their concerns and meets the requirements of sound arboriculture. The Council may ask for more information or evidence to help determine an application, but it has no power to require information beyond that specified in the standard application form.
- 2.36 It is important that applications suggesting that the proposed tree work is necessary to address tree-related subsidence damage are properly supported by appropriate information. The standard application form requires evidence that demonstrates that the tree is a material cause of the problem and that other factors have been eliminated as potential influences so far as possible. Applicants should support claims that trees are damaging lighter structures and surfaces, such as garden walls, drains, paving and drives, by providing technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert.

How does the Council publicise applications?

- 2.37 The Council keeps a register of all applications for consent under an Order. This register is available for inspection by the public during Council office hours. Where local people might be affected by an application or where there is likely to be a good deal of public interest, the Council displays a site notice or notify the residents or groups affected. In addition, where a neighbour submits an application, the Council makes sure the owner or occupier of the land on which the tree stands is informed and given a chance to comment.

The decision-making process for applications for consent under a Tree Preservation Order?

- 2.38 In considering an application, the Council assesses the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it. The Council must be clear about what work it will allow and any associated conditions. Appeals against an authority's decision to refuse consent can be made to the Secretary of State.
- 2.39 In certain circumstances, compensation may be payable by the local planning authority for loss or damage which results from the authority refusing consent or granting consent with conditions. However, there are strict criteria and limitations on what compensation may be payable. . However, if the Council believes that some loss or damage is foreseeable, it does not grant consent automatically and takes this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.
- 2.40 When considering an application the Council:

- assesses the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;
- considers, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;
- considers whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
- considers whether any requirements apply in regard to protected species;
- considers other material considerations, including development plan policies where relevant; and
- ensures that appropriate expertise informs its decision by obtaining the views of the Councils Principal Tree and Woodland Officer.

Must there be an arboricultural need for the work?

2.41 In general terms, it follows that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted. However, if the amenity value is lower and the impact is likely to be negligible, it may be appropriate to grant consent even if the authority believes there is no particular arboricultural need for the work.

What about applications relating to woodland?

2.42 The Council when dealing with an application relating to woodland must grant consent so far as accords with good forestry practice unless it is satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

What about applications relating to a conservation area?

2.43 Where an application relates to trees in a conservation area the authority must pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

What about the Council making an application to itself?

2.44 The Council is responsible for determining applications it makes to itself. It must publicise such an application by displaying a notice on or near the site for at least 21 days. This site notice must:

- identify the trees and clearly set out the proposed work and the authority's reasons for the application;
- include an address where a copy of the application can be inspected;
- include an address to which any comments about the application should be sent; and

- give a date by which representations have to be made. This must be at least 21 days from the site notice's date of display.

2.45 Before reaching its decision the Council takes into account any representations made by the date given in the site notice; and it must give notice of its decision to all people who made representations.

What can the local planning authority decide?

2.46 When determining applications for consent under an Order, the Council as local planning authority may:

- grant consent unconditionally;
- grant consent subject to such conditions as it thinks fit;
- refuse consent.

2.48 The Council must decide the application before it, so it cannot issue a decision which substantively alters the work applied for. The authority could, however, grant consent for less work than that applied for.

2.49 The Council makes absolutely clear in its decision notice what is being authorised. This is particularly important where the Council grants consent for some of the operations in an application and refuses consent for others.

2.50 A condition may:

- relate to the planting of replacement trees;
- require further approvals to be obtained from the person giving the consent;
- regulate the standard of the authorised work;
- allow repeated operations to be carried out (works may be carried out only once unless a condition specifies otherwise); and/or
- impose a time limit on the duration of consent other than the default two year period.

2.51 A condition should:

- relate to the authorised work;
- be fair and reasonable in the circumstances of each case;
- be imposed only where there is a definite need for it; and
- be worded precisely, so the applicant is left in no doubt about its interpretation and the authority is satisfied it can be enforced.

2.52 The Council is responsible for enforcing all conditions in consent, so its decision notices have to clearly state the reasons for the conditions. This is particularly

important where repeated operations have been applied for making the scope, timing and limit of the work clear.

- 2.53 The Council uses its power to impose conditions to ensure that tree work or planting is carried out in accordance with good arboricultural practice.
- 2.54 If the Council grants consent for a tree to be felled and wishes there to be a replacement tree or trees, it must make this a condition within the decision. If it does not make such a condition it cannot serve a tree replacement notice requiring replacement.
- 2.55 Where the Council grants consent for work in woodland that does not require a felling licence it may impose a condition to replant the land. The authority may enforce replanting by serving a tree replacement notice on the landowner.

How long does consent last for?

- 2.56 By default, consent is valid for two years beginning with the date of its grant. However, the authority may decide to set a different time limit with a condition in the consent. A tree owner may use an unused and unexpired consent obtained by a former owner. If any specified time limit expires, and the tree owner wishes to carry out a prohibited activity in respect of protected tree, a further application for consent has to be made.

Can people appeal against decisions on applications for consent under a Tree Preservation Order?

- 2.57 Following an application to a local planning authority for consent to cut down or carry out work on a tree subject to an Order, an applicant can appeal to the Secretary of State. These appeals are handled by the Planning Inspectorate on the Secretary of State's behalf.
- 2.58 If the local authority has not decided an application for consent within eight weeks from the day it is received, then the applicant may appeal on grounds of non-determination.
- 2.59 The appellant may withdraw their appeal at any time.
- 2.60 The authority may issue a decision more than eight weeks after it receives an application, but cannot decide the application once an appeal has been made and remains outstanding.

How are appeals decided?

- 2.61 The Planning Inspectorate deals with most appeals through a written representations appeal procedure. An Inspector makes a decision in light of the grounds of appeal and:
- The information available when the local planning authority made its original decision on the application for consent
 - The authority's decision and supporting information in that decision

- Any further information requested by the Inspector.
- 2.62 Alternatively, the appeal may be heard by an Inspector at a hearing or public local inquiry.
- 2.63 Whichever appeal procedure is used, the Inspector will consider:
- The amenity value of the tree or trees in question
 - How that amenity value would be affected by the proposed work
 - The reasons given for the application.

What about appeal costs?

2.64 The local planning authority and the appellant normally meet their own expenses. However, both the authority and the appellant can apply for some or all of their appeal costs. In certain circumstances, third parties may be able to apply for costs. Whichever appeal procedure is used, an application can be made for an award of costs on the grounds of another party's unreasonable behaviour which causes unnecessary expense. Additionally, the Inspector may make an award of costs, in full or in part, if they judge that a party has behaved unreasonably resulting in unnecessary expense and another party has not made an application for costs. There are strict deadlines within which costs applications must be made.

In what circumstances may the local planning authority be liable to pay compensation?

2.65 An authority is only liable to pay compensation in certain circumstances and there are strict criteria and limitations. Subject to provisions relating to forestry operations in protected woodland, an authority may be liable to pay compensation for loss or damage caused or incurred in consequence of it:

- refusing any consent under an Order;
- granting a consent subject to conditions; or
- refusing any consent, agreement or approval required under a condition

What are the limits for making claims for compensation?

2.66 No claim can be made for loss or damage incurred before an application for consent to undertake work on a protected tree was made.

2.67 Legislation sets out circumstances in which a claim cannot be made. Subject to provisions relating to forestry operations in protected woodland, a claim for compensation must be for not less than £500 and made to the authority either:

- within 12 months of the date of the authority's decision; or
- within 12 months of the date of the Secretary of State's decision (if an appeal has been made).

What limits the local authority's liability to pay compensation?

Flowchart 4 shows the decision-making process regarding notices for compensation.

- 2.68 Legislation limits the authority's liability by setting out circumstances in which a claim cannot be made and circumstances in which compensation is not payable.
- 2.69 Subject to specific provisions relating to forestry operations in protected woodland, any claimant who can establish that they have suffered loss or damage as a result of an authority either refusing consent or imposing conditions in respect of protected trees is entitled to claim compensation. However the authority's liability is limited. In such cases, compensation is not payable for any:
- loss or damage which was:
 - reasonably foreseeable by that person; and
 - attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent;
 - loss or damage which, having regard to the application and the documents and particulars accompanying it, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
 - loss of development value or other diminution in the value of land; and/or
 - costs incurred in making an appeal to the Secretary of State against the refusal of any consent or the grant of consent subject to conditions.

What is the decision-making process for tree protection in conservation areas?

Flowchart 5 shows the decision-making process regarding notices for work to trees in a conservation area.

- 2.70 Trees in a conservation area that are already protected by a Tree Preservation Order are subject to the normal procedures and controls for any tree covered by such an Order.

What about trees in a conservation area that are not protected by a Tree Preservation Order?

- 2.71 Trees in a conservation area that are not protected by an Order are protected by the provisions in section 211 of the Town and Country Planning Act 1990. These provisions require people to notify the local planning authority, using a 'section 211 notice', six weeks before carrying out certain work on such trees, unless an exception applies. The work may go ahead before the end of the six week period if the local planning authority gives consent. This notice period gives the authority an opportunity to consider whether to make an Order on the tree.
- 2.72 People are not required to submit a section 211 notice to the local planning authority for:

- the cutting down, topping or lopping or uprooting of a tree whose diameter does not exceed 75 millimetres; or
- the cutting down or uprooting of a tree, whose diameter does not exceed 100 millimetres, for the sole purpose of improving the growth of other trees (e.g. thinning as part of forestry operations).

2.73 In either case, the diameter of the tree is to be measured over the bark of the tree at 1.5 metres above ground level. These exemptions do not apply in circumstances where a tree has more than one stem at a point 1.5 metres above the natural ground level if any stem when measured over its bark at that point exceeds the relevant minimum.

2.74 If the Council makes an Order, it will serve notice on people with an interest in the land, inviting representations about any of the trees covered by the Order. A copy of the Order will also be made available for public inspection. Following consideration of any objections and comments the Council can decide whether or not to confirm the Order.

How does the Council decide whether a tree in a conservation area merits a Tree Preservation Order?

2.75 The authority's main considerations are the amenity value of the tree and pays special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

2.76 Even if the tree's amenity value may merit an Order the authority can still decide that it would not be expedient to make one.

What if work is done to trees in a conservation area, that are not protected by a Tree Preservation Order, without a section 211 notice being submitted?

2.77 Anyone who cuts down, uproots, tops, lops, wilfully destroys or wilfully damages a tree in a conservation area (if that tree is not already protected by an Order), or causes or permits such work, without giving a section 211 notice (or otherwise contravenes section 211 of the Town and Country Planning Act 1990) is guilty of an offence, unless an exception applies. The same penalties as those for contravening an Order apply.

When must replacement trees be planted?

2.78 If a tree in a conservation area is removed, uprooted or destroyed in contravention of section 211 of the Town and Country Planning Act 1990, the landowner has a duty to plant another tree of an appropriate size and species at the same place as soon as he or she reasonably can. The same duty applies if a tree in a conservation area is removed because it is dead or presents an immediate risk of serious harm. The duty attaches to subsequent owners of the land.

How are offences against a Tree Preservation Order enforced?

- 2.79 Anyone who contravenes an Order by damaging or carrying out work on a tree protected by an Order without getting permission from the local planning authority is guilty of an offence and may be fined.
- 2.80 There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order. This duty also applies if a tree outside woodland is removed because it is dead or presents an immediate risk of serious harm. The local planning authority may also impose a condition requiring replacement planting when granting consent under an Order for the removal of trees. The authority can enforce tree replacement by serving a 'tree replacement notice'.
- 2.81 *Flowchart 6 shows the decision-making process regarding offences.* This process applies to contraventions of Tree Preservation Orders. Unless stated, it also applies to work to trees in conservation areas that contravenes section 211 of the Town and Country Planning Act 1990.

What are the offences and who can be guilty of committing them?

- 2.82 Section 210(1) and Section 202C(2) of the Town and Country Planning Act 1990 provide that anyone who, in contravention of a Tree Preservation Order
- cuts down, uproots or wilfully destroys a tree; or
 - tops, lops or wilfully damages a tree in a way that is likely to destroy it; or
 - causes or permits such activities
- is guilty of an offence.
- 2.83 Section 210(4) of the Act sets out that it is also an offence for anyone to contravene the provisions of an Order other than those mentioned above. For example, anyone who lops a tree in contravention of an Order, but in a way that the tree is not likely to be destroyed, would be guilty of this offence.
- 2.84 For the purposes of the Act, a person does not have to obliterate a tree in order to 'destroy' it. It is sufficient for the tree to be rendered useless as an amenity or as something worth preserving.

What are the penalties for committing these offences?

- 2.85 Section 210(2) of the Town and Country Planning Act 1990 provides that anyone found guilty of these offences is liable, if convicted in the magistrates' court, to a fine of up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine. Section 210(3) provides that, in determining the amount of fine, the court shall take into account any financial benefit which has resulted, or is likely to result, from the offence.
- 2.86 There is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order.

2.87 Anyone found guilty in the magistrates' court of an offence under Section 210(4) is liable to a fine of up to Level 4 (currently £2,500).

Are there time limits for bringing a prosecution?

2.88 Section 210(4A) and (4B) of the Town and Country Planning Act 1990 set out that, in respect of offences under section 210(4) of the Act, The Council may bring an action within six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge. However, proceedings cannot commence more than three years after the date the offence was committed.

What if unauthorised work has been attempted?

2.89 Section 210 of the Town and Country Planning Act 1990 provides a clear structure for pursuing criminal enforcement action for unauthorised work. But, where an alleged action falls short of the definition in section 210 of the Town and Country Planning Act 1990, section 1(1) of the Criminal Attempts Act 1981 may provide an alternative route in some cases where unauthorised work has been attempted.

What options for action does the Council have?

2.90 When faced with what they believe are unauthorised works to protected trees, local The Council may:

- do nothing – but only if justified by the particular circumstances;
- negotiate with the owner to remedy the works to the satisfaction of the authority;
- consider the option of issuing an informal warning to impress on the tree owner or others suspected of unauthorised works that such work may lead to prosecution;
- seek an injunction to stop on-going works and prevent anticipated breaches; or
- consider whether the tests for commencing a prosecution are met.

2.91 Negotiation may enable the authority to ensure that remedial works to repair, or reduce the impact of, unauthorised works to a protected tree are carried out. The authority should also take into account the legal duty to replace trees. Prosecutions cannot require remedial works to the tree but will, where appropriate, both punish offenders and deter potential offenders. The Council will consider whether there is a realistic prospect of a conviction and whether it is in the public interest to prosecute. It also considers whether it is in the public interest to prosecute some or all of the individuals implicated in the offence.

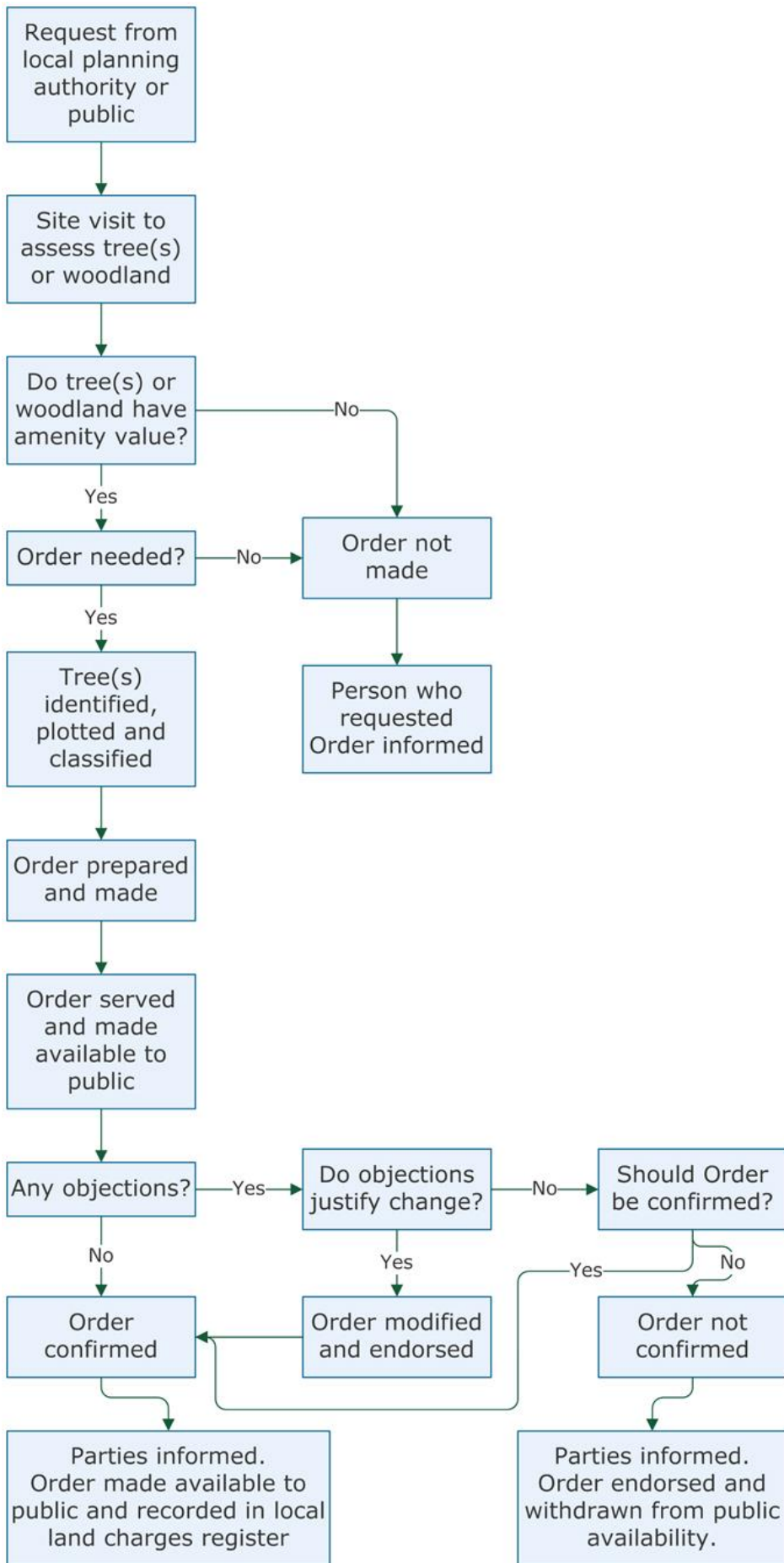
What about third parties?

2.92 It is in offence to cause or permit prohibited tree work. Furthermore, under section 44 of the Magistrates' Courts Act 1980 any person who 'aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence'. So anyone who engages a person or company that physically carries out unauthorised work may also be subject to enforcement action.

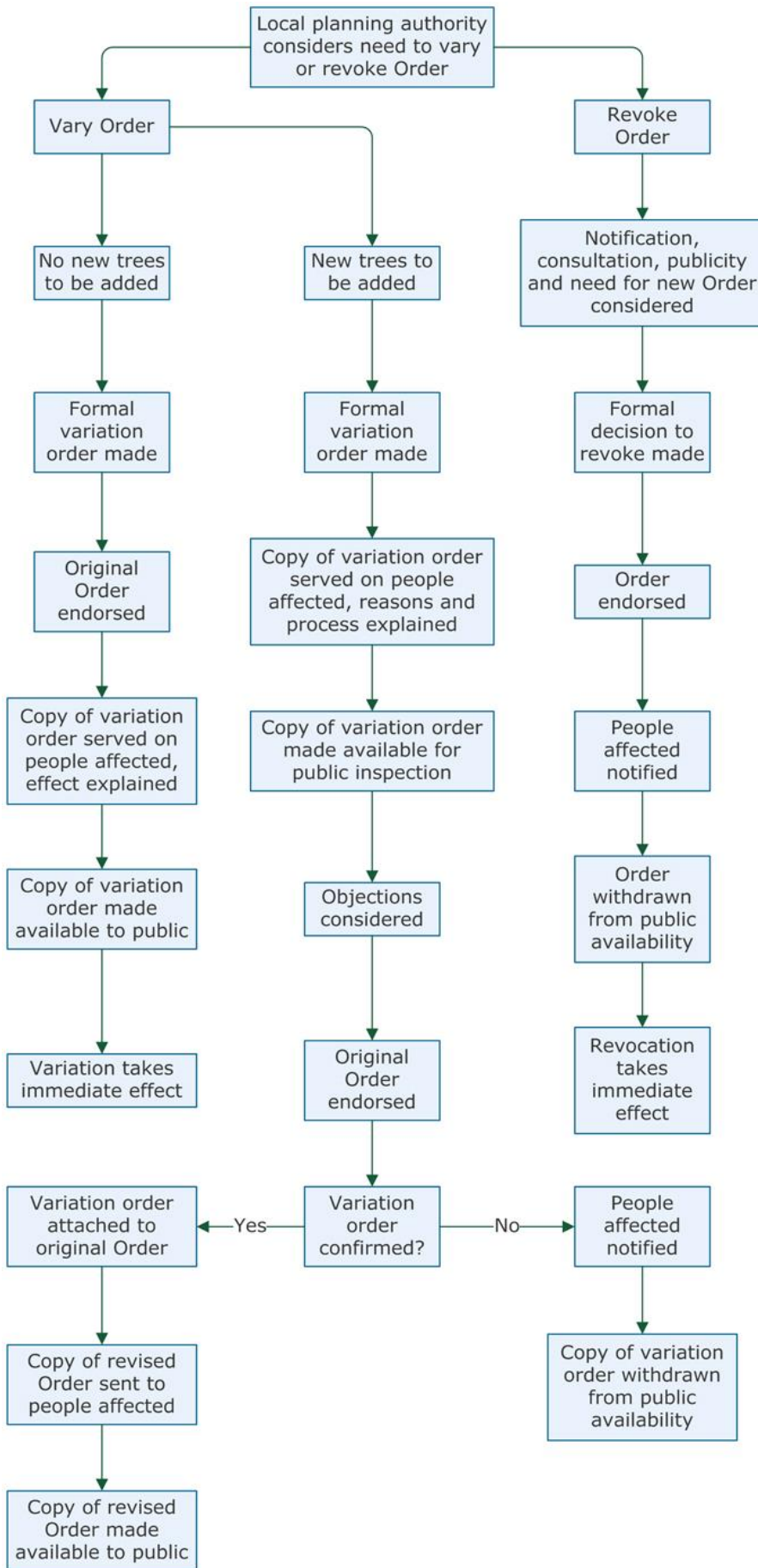
What is the decision-making process regarding tree replacement?

- 2.93 *Flowchart 7 shows the decision-making process regarding tree replacement. Unless stated, this process applies to trees subject to a Tree Preservation Order and to trees in a conservation area that are not subject to an Order.*
- 2.94 In addition to possible criminal penalties landowners have a duty, in certain circumstances, to replace trees or to replant in protected woodlands. Also, the local planning authority may impose a condition requiring replacement planting when granting consent under a Tree Preservation Order for the removal of trees.

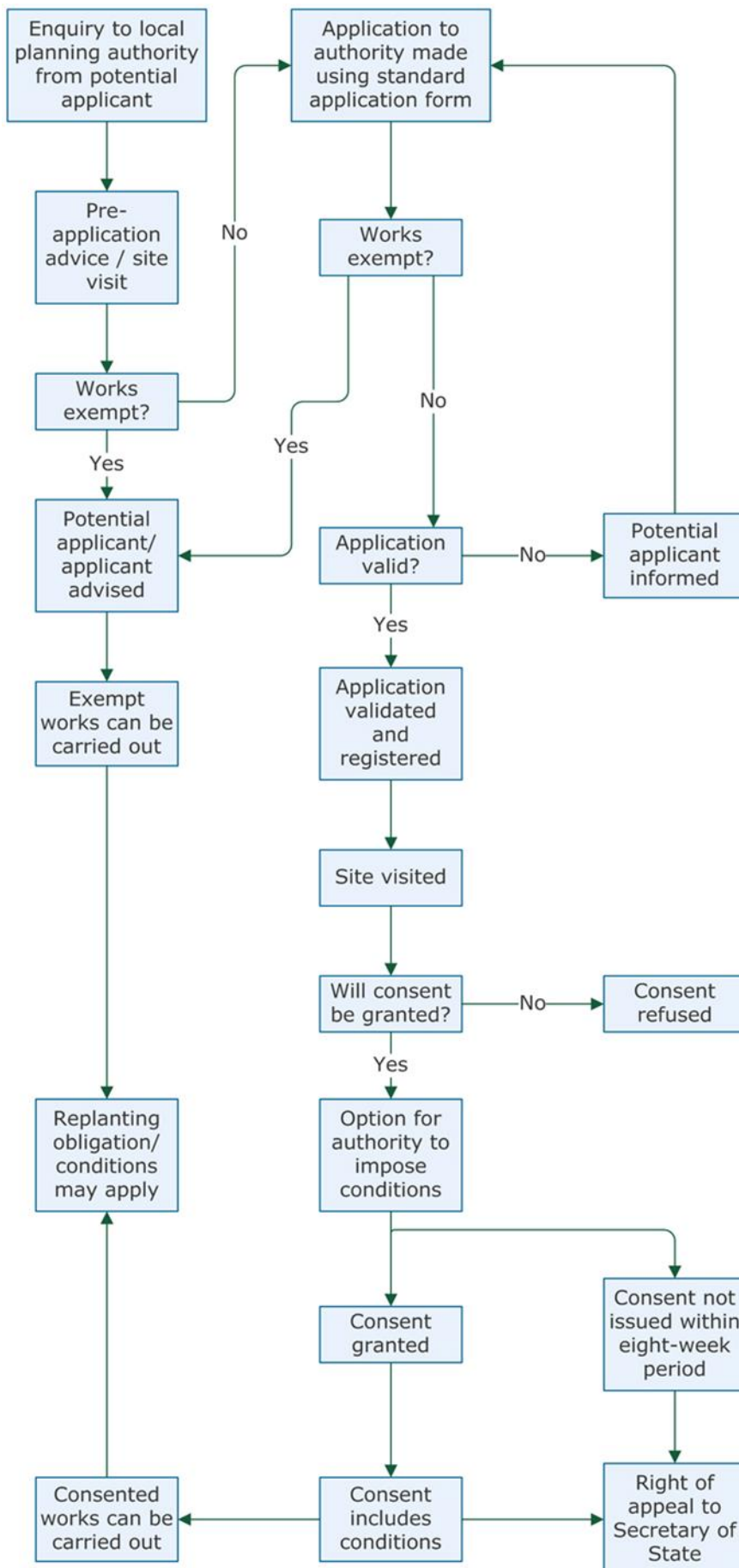
Name of Contact Officer: Barry Jackson, Development Services Manager
Telephone No: 01642 526066
Email Address: barry.jackson@stockton.gov.uk



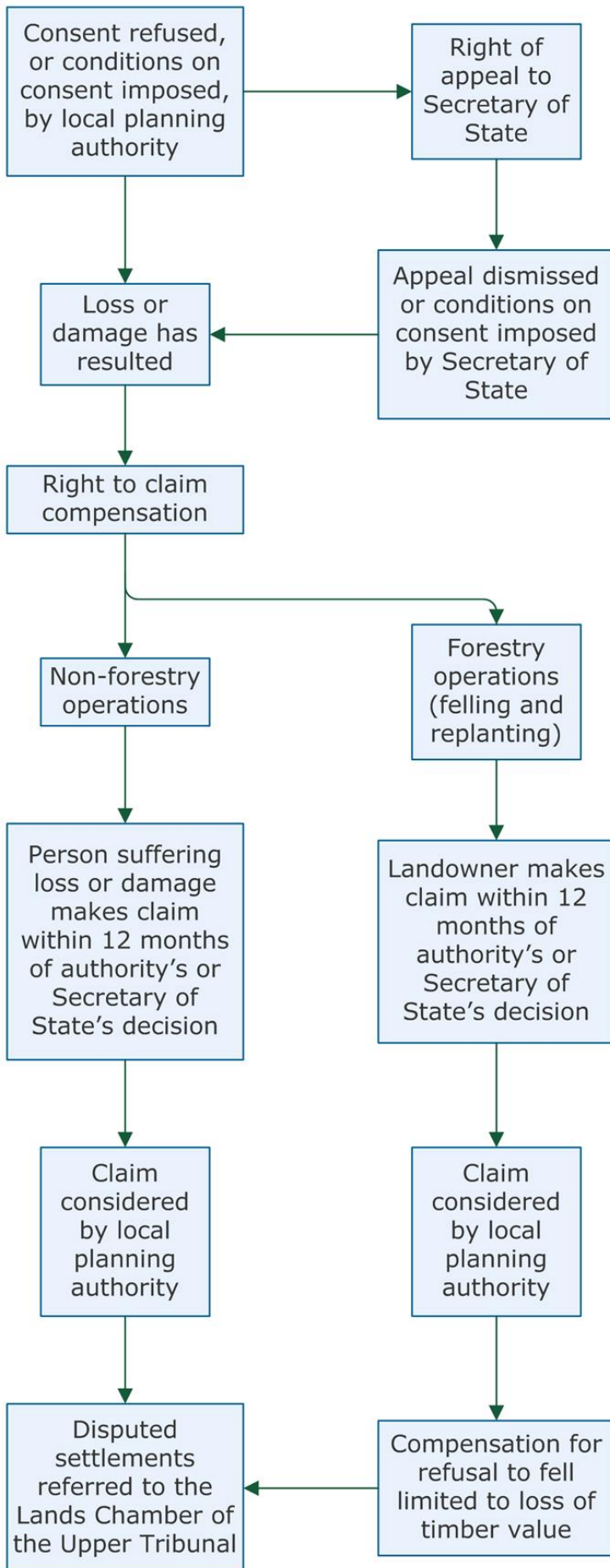
Flow Chart 1 TPO



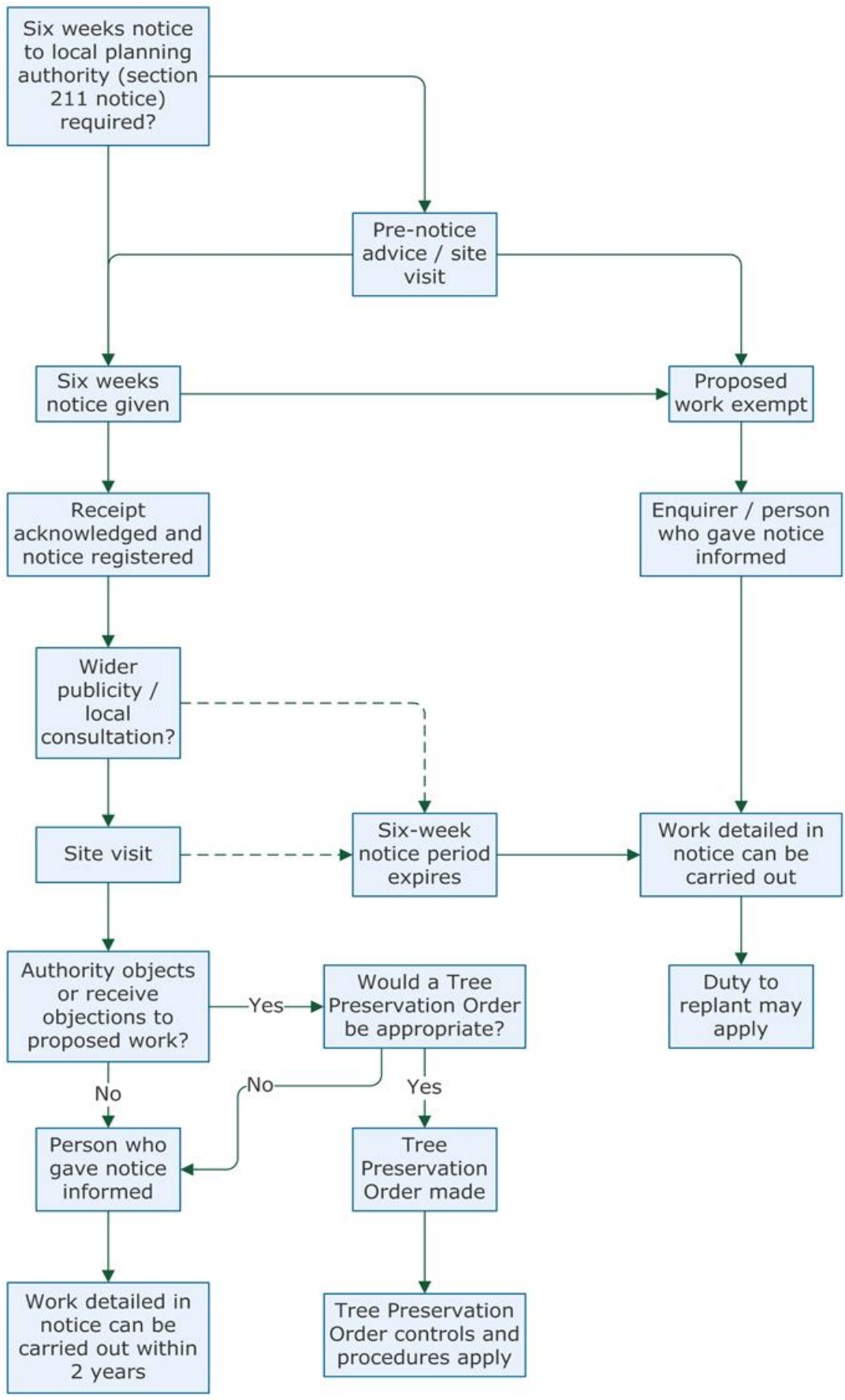
Flow Chart 2 Varying TPO



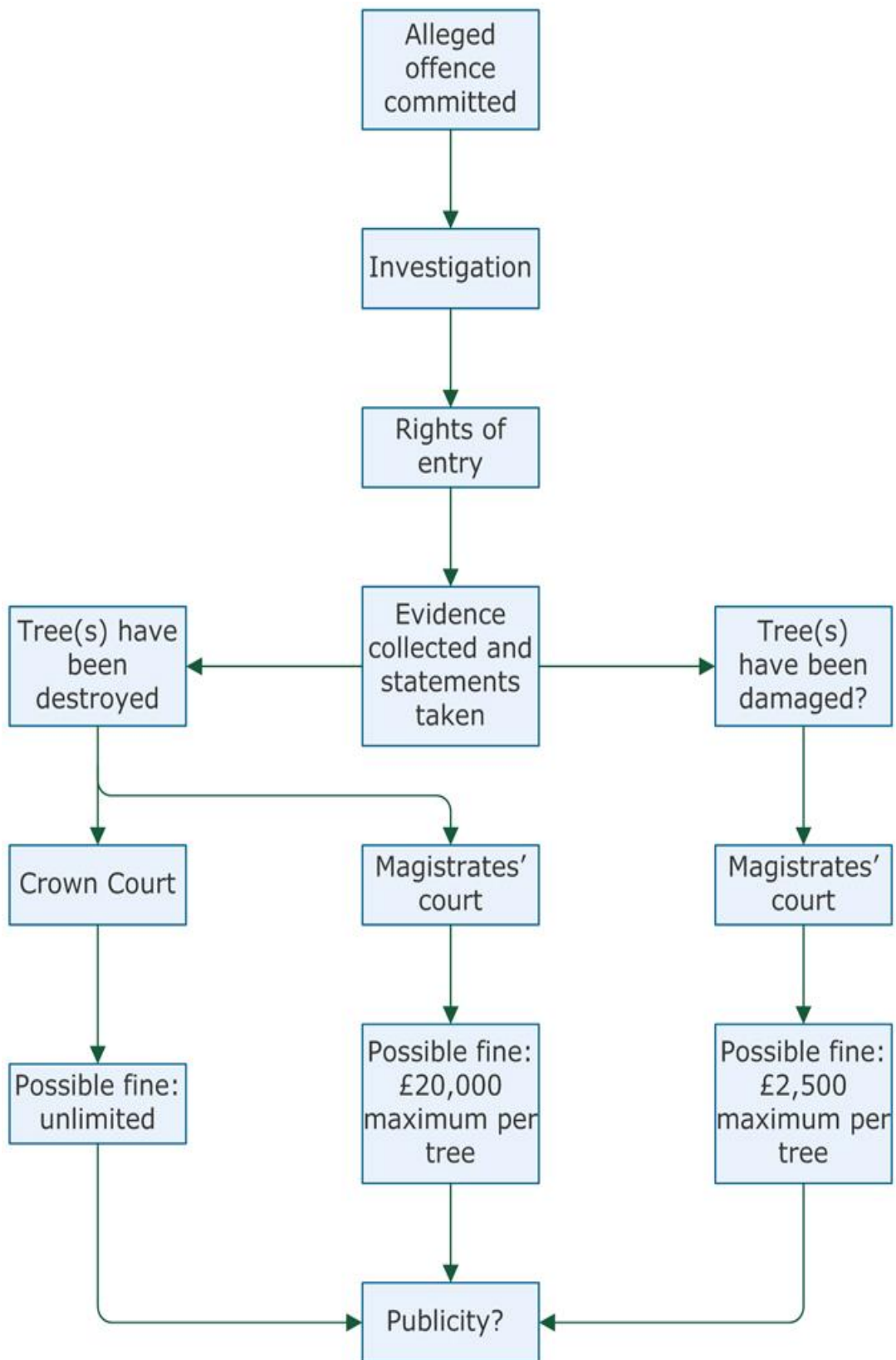
Flow Chart 3 Applications



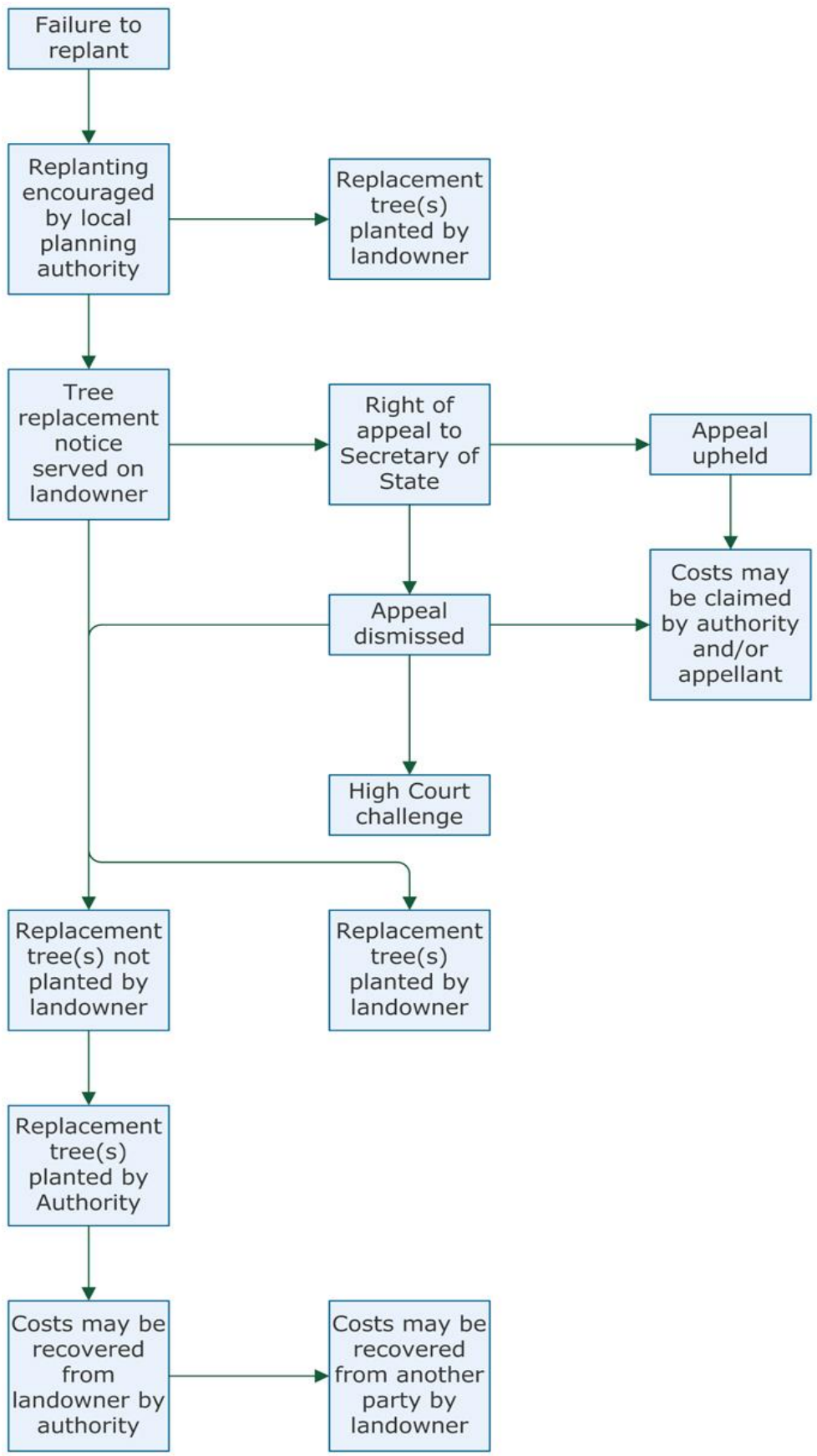
Flow Chart 4 Compensation



Flow Chart 5 Section 211 Notices



Flow Chart 6 Offences



Flow Chart 7 replacement

What are the exceptions relating to trees subject to an Order?

An [exception](#) may exempt landowners or their agents from the normal requirement to seek the local planning authority's consent before carrying out work on trees subject to an Order. These exceptions include certain work:

- on [dead trees and branches](#);
- on [dangerous trees and branches](#);
- to [comply with an Act of Parliament](#);
- to [prevent or abate a nuisance](#);
- necessary to [implement a planning permission](#);
- on [fruit trees](#);
- by or for [statutory undertakers](#);
- for [highway operations](#);
- by the [Environment Agency and drainage bodies](#); and
- for [national security purposes](#).

What are the exceptions for work on dead trees and branches?

Unless work is urgently necessary because there is an immediate risk of [serious harm](#), five working days prior written notice must be given to the authority before cutting down or carrying out other work on a dead tree. The authority's consent for such work is not required.

The exceptions allow removal of dead branches from a living tree without prior notice or consent.

Where a dead tree not covered by the woodland classification is removed, the landowner has a [duty to plant a replacement tree](#).

What is the exception for work on dangerous trees and branches?

Where a tree presents an immediate risk of serious harm and work is urgently needed to remove that risk, tree owners or their agents must give written notice to the authority as soon as practicable after that work becomes necessary. Work should only be carried out to the extent that it is necessary to remove the risk.

In deciding whether work to a tree or branch is urgently necessary because it presents an immediate risk of serious harm, the Secretary of State's view is that there must be a present serious safety risk. This need not be limited to that brought about by disease or damage to the tree. It is sufficient to find that, by virtue of the state of a tree, its size, its position and such effect as any of those factors have, the tree presents an immediate risk of serious harm that must be dealt with urgently. One consideration would be to look at what is likely to happen, such as injury to a passing pedestrian.

If the danger is not immediate the tree does not come within the meaning of the exception.

Where a tree is not covered by the woodland classification and is cut down because there is an urgent necessity to remove an immediate risk of serious harm, the landowner has a [duty to plant a replacement tree of an appropriate size and species](#).

What is the exception for work to comply with an Act of Parliament?

The authority's consent is not required for carrying out work on trees and woodlands subject to an Order if that work is in compliance with any obligation imposed by or under an Act of Parliament. This exception will apply, for example, where the Forestry Commission has granted a [felling licence](#) under the Forestry Act 1967.

What is the exception for work to prevent or abate a nuisance?

The authority's consent is not required for carrying out the minimum of work on a tree protected by an Order that is necessary to prevent or abate a nuisance. Here 'nuisance' is used in its legal sense, not its general sense. The courts have held that this means the nuisance must be actionable in law – where it is causing, or there is an immediate risk of it causing, actual damage.

Is there an exception for tree work relating to planning permission and permitted development?

The Council's consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. Conditions or information attached to the permission may clarify what work is exempt.

However, the authority's consent is required for work on trees subject to an Order if:

- development under a planning permission has not been commenced within the relevant time limit (i.e. the permission has 'expired');
- only outline planning permission has been granted; and
- it is not necessary to carry out works on protected trees in order to implement a full planning permission.

The authority's consent is also required, for example, for work on trees protected by an Order that is necessary to implement permitted development rights under the [Town and Country Planning \(General Permitted Development\) Order 1995](#).

What is the exception for work to fruit trees?

The authority's consent is not required for carrying out work on a tree subject to an Order and cultivated for the production of fruit in the course of a business or trade if the work is in the interests of that business or trade.

The authority's consent is otherwise generally required for carrying out prohibited activities to a fruit tree protected by an Order and not cultivated on a commercial basis. However, the authority's

consent is not needed before pruning any tree cultivated for the production of fruit, as long as the work is carried out in accordance with good horticultural practice.

What is the exception for work by or for statutory undertakers

The authority's consent is not required in certain circumstances for work carried out by, or at the request of, those statutory undertakers listed in [the Town and Country Planning \(Tree Preservation\) \(England\) Regulations 2012](#). These statutory undertakers, or contractors working at their request, are advised to liaise with local The Council prior to carrying out work to trees protected by an Order. It is expected that all vegetation control is carried out in accordance with best arboricultural practice. They should also take care to not contravene the provisions of legislation [protecting plants and wildlife](#).

Is there an exception for work relating to highway operations?

The authority's consent is not required for cutting down, topping, lopping or uprooting a tree protected by an Order to enable the implementation of a highway order or scheme made or confirmed by the Secretary of State for Transport under [Schedule 1 of the Highways Act 1980](#).

What is the exception for work by or for the Environment Agency and drainage bodies

The [Environment Agency](#) does not need to obtain the authority's consent before cutting down, topping, lopping or uprooting trees protected by an Order to enable it to carry out its permitted development rights. Similarly, [land drainage boards](#) do not need to obtain consent before cutting down or carrying out certain works to trees protected by an Order.