

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO EXECUTIVE SCRUTINY

5 AUGUST 2014

REPORT OF ENVIRONMENT SELECT COMMITTEE

CABINET DECISION

ENVIRONMENT – Lead Cabinet Member – Councillor Rose

REVIEW OF TREE PRESERVATION ORDERS

1. Summary

The report presents the Environment Select Committee findings following the Scrutiny Review of Tree Preservation Orders. This will be presented to Cabinet on 4 September.

The main issues and overall aim of this review was:

- To consider the legislation and the division of responsibilities with regard to tree management within the Council.
- To identify any issues arising from legislation or Council process.

2. Recommendations

The Committee recommend that:

1. the Scheme of Delegation be amended to require the appropriate Head of Service to provide the final determination for Tree Preservation Orders following the consideration of the Principal Tree and Woodland Officer.

3. Reasons for the Recommendations/Decision(s)

1. This short review provided the Committee with the most up to date situation in relation to the process of making a Tree Preservation Order.
2. A Tree Preservation Order is an order made by a local planning authority in England to protect individual trees, trees within an area, or groups of trees of any size or species or whole woodlands in the interests of amenity. 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.
3. The number of applications rose 40 per cent in 2013 for which the explanation given was an increase in concern over the effect the weather was having on the stability of trees, and more general views about the location of trees.
4. Stockton Council's system was found to be robust but trees can be a contentious issue with the possibility of harming the reputation of the Council depending on the decisions taken.

5. The Committee believes that additional, but not burdensome, checks and balances should be in place to support the valued work of the Principal Tree and Woodland Officer to ensure the continued good relationships between the Council and residents affected by the proximity of trees to properties.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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COMMITTEE**

CABINET DECISION

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SUMMARY

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The main issues and overall aim of this review was:

- To consider the legislation and the division of responsibilities with regard to tree management within the Council.
- To identify any issues arising from legislation or Council process.

RECOMMENDATIONS

The Committee recommend that:

1. the Scheme of Delegation be amended to require the appropriate Head of Service to provide the final determination for Tree Preservation Orders following the consideration of the Principal Tree and Woodland Officer.

DETAIL

1. On 6th March 2014 the existing Tree Preservation Order guidance was replaced with National Planning Practice Guidance. This short review provided the Committee with 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 action if required.
2. A Tree Preservation Order is an order made by a local planning authority in England to protect individual trees, trees within an area, or groups of trees of any size or species or whole 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.
3. The Council as the local planning authority 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 as this is not defined in law, 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.
4. 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:

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.

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.

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.

5. The process by which the Council considers a request for a TPO can be seen in the flowchart at appendix 1.
6. Interested persons are given the opportunity to object to, or comment on, a new Tree Preservation Order. 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.
7. 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. Appendix 2 shows the process for applications to carry out work to protected trees.
8. 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

9. This equates to 178 applications in total of which 142 have been approved and 23 refused and 2 appeals which were dismissed.
10. The number of applications rose 40 per cent in 2013 for which the explanation given was an increase in concern over the effect the weather was having on the stability of trees, and more general views about the location of trees.
11. 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.
12. Tree protection is a complex and time consuming process resulting from statutory requirements which control the process requiring the exercising of professional judgment and resultantly has significant implications for the amenity of the area in terms of timescale if substantial trees are lost.

13. Stockton Council's system was found to be robust but trees can be a contentious issue with the possibility of harming the reputation of the Council depending on the decisions taken.
14. Currently the responsibility for TPO's is almost exclusively with the Principal Tree and Woodland Officer which the Committee feel can be overly burdensome on one person and whose focus may not take into account other issues which might affect any decisions.
15. The Committee therefore believes that additional, but not burdensome, checks and balances should be in place to support the valued work of the Principal Tree and Woodland Officer to ensure the continued good relationships between the Council and residents affected by the proximity of trees to properties.

R1 The Committee recommend that the Scheme of Delegation be amended to require the appropriate Head of Service to provide the final determination for Tree Preservation Orders following the consideration of the Principal Tree and Woodland Officer.

FINANCIAL IMPLICATIONS

16. None

LEGAL IMPLICATIONS

17. None

RISK ASSESSMENT

18. This review of tree preservation orders is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

19. Environment and Housing – Create better open spaces

EQUALITIES IMPACT ASSESSMENT

20. This report is not subject to an Equalities Impact Assessment

CONSULTATION INCLUDING WARD/COUNCILLORS

21. None

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Education related?

No

Background Papers

None

Ward(s) and Ward Councillors:

Not ward specific

Property

None



