

EXMOOR NATIONAL PARK AUTHORITY

1 FEBRUARY 2005

REVIEW OF TREE PRESERVATION ORDERS

Report of the Head of Conservation and Land Management

Purpose of Report: To outline the recent Review of Tree Preservation Orders, to seek the Authority's approval for the revocation, variation and reserving of various Orders and to ask Members to approve the revised procedures for the making of Tree Preservation Orders.

Legal Implications:

The 1947 Town and Country Planning Act introduced the term "Tree Preservation Order". The current legislation is set out in the 1990 Town and Country Planning Act, which consolidated and replaced numerous previous Acts. Further powers of control are set out in the Planning and Compensation Act 1991 and in the Town and Country Planning (Trees) Regulations 1999. The cutting, lopping, topping or felling of trees protected by a Tree Preservation Order is an offence under the Town and Country Planning Act, 1990. The maximum fine in the magistrates courts is £20,000. The fine in the Crown Courts is unlimited.

Financial Implications:

Implementing the recommended actions will require significant resources. However it is anticipated that if the work is spread over 12 months, it can be carried out by existing staff.

Human Rights Act 1998 Implications:

None anticipated

National Park Purposes:

These proposals further the first purpose.

RECOMMENDATION:

Members are recommended to NOTE the contents of the report; to AUTHORISE staff to revoke 4 Orders, modify 2 Orders and re-serve 5 Orders and to APPROVE the revised procedures for the making of Tree Preservation Orders.

1. INTRODUCTION

- 1.1 The National Park Authority, as the Local Planning Authority, is responsible for serving Tree Preservation Orders when it is expedient to do so, and for authorising any work on such trees. Tree Preservation Orders take the form of Individual Orders, Group Orders, Woodland Orders or Area Orders. They exist to prevent the cutting, felling, lopping, topping, uprooting, willful damage or destruction of trees, groups of trees or woodlands, considered to be of high amenity value.
- 1.2 In March 2000, Planning Authorities were advised by the Department of the Environment, Transport and the Regions to review their Tree Preservation Orders. Planning Authorities were advised to:
- **Review Area Orders.** Area Orders are those which simply cover an area of land; individual trees within that area are not specified. Area Orders give no record of the precise number, age and species of tree on the site. It may therefore be difficult to prove tree loss and to be confident

that any particular tree is protected. Trees that have grown up subsequent to the serving of the Order are not protected. The DETR recommended reserving them as Individual, Group or Woodland Orders.

- **Review Orders served before 1975.** Orders served before 1975 do not prohibit the *willful damage or uprooting* of trees. Planning Authorities are recommended to consider the re serving of such Orders where appropriate.
- **Check the existence of protected trees.** Trees may have died of natural causes, sites may have been developed and trees may have been felled. The Order should reflect the current situation.
- **Consider the making of new Orders or revoking Orders on certain sites.** On some sites, particularly development sites, new trees will have been planted, or the land use will have changed. It may be appropriate to protect trees or to revoke redundant Orders.
- **Ensure that errors do not exist in the associated Schedules and maps.**

1.3 In 2003 the NPA decided to carry out a Review of its **54** Tree Preservation Orders and its procedures for making such Orders.

2. THE TPO REVIEW

2.1 The Review comprised:

- 1 an assessment of Individual, Group and Area Orders
- 2 an assessment of pre 1975 Orders and Woodland Orders
- 3 a review of the procedures for serving Tree Preservation Orders

To date, an assessment of the need to serve new Tree Preservation Orders has not been made as this was not considered a priority in the Exmoor context where there has been relatively little development.

2.2 Individual, Group and Area Orders

In 2003 an independent arboricultural consultant was commissioned to visit, photograph and carry out a rapid assessment of each of the Individual and Group Orders. The maps and schedules were all checked for inconsistencies. He was also asked to carry out a more detailed survey of the four Area Orders and to catalogue the trees lying within the Area Orders, recommending which should be included in any new Order.

Most of the recommendations made by the consultant are set out below. In some cases where the recommendation is minor (e.g. to modify the name of the Order) and where it is not considered necessary to act, this has been omitted.

Table of Recommendations to Revoke, Vary and Reserve Tree Preservation Orders.

| TPO Reference | Date Served | Name of Order | Details and Issues | Recommendation |
|----------------------|--------------------|--|---|---|
| F14/2/8 | 1970 | Wootton Knowle, Wootton Courtenay Area Order | Area Order which does not identify individual trees. | Revoke existing Area Order and simultaneously Re-serve Order as 16 individual trees. |
| F14/3/4 | 1978 | Bracken Wood, Porlock Weir T1 | Tree incorrectly located on plan. | Variation to correctly locate on plan. |
| F14/3/8 | 1983 | Porlock Rectory T1-28 | A number of trees included in the Order are missing, some have no documented consent to remove. | Variation to include 11 trees of the remaining 13. |
| F14/3/10 | 1986 | Bossington Lane, Porlock. Area Order | Area Order which does not identify individual trees. | Revoke existing Area Order and simultaneously Re-serve as 2 new woodland orders identifying 35 and 76 individual trees. |
| F14/3/11 | 1987 | Wickets. Bridgetown T1 | Tree felled in 2002 as a result of disease. Replaced with small tree suited to location but not worthy of TPO. | Revoke Order |
| F14/2/12 | 1972 | Hollam Estate Area Order | Area Order which contains individual and groups which are not specified some of which are not worthy of protection. | Revoke existing Area Order and simultaneously Re-serve as Order with Individual trees and Groups. |
| F14/2/13 | 1973 | Nettlecombe Area Order | Area Order covering ancient parkland trees, now a Site of Special Scientific Interest. | Re-serve as 3 Groups |

2.3 Orders made before 1975

Tree Preservation Orders made and confirmed before 12 March 1975 prohibit the cutting down, topping, lopping or willful destruction of trees. They do not prohibit the “uprooting” or “willful damage” of trees. Local Planning Authorities are recommended to consider re-serving these Orders. Within the National Park, there are 26 Orders made before March 1975. Twenty one of these are Woodland Orders. Two are Area Orders (see table above) and three are Individual Orders.

It is considered that the threat of willful damage or uprooting of these trees is minimal and does not justify the resources involved in reserving these Orders.

2.4 Woodland Orders

Woodland Orders were used fairly frequently in the 1960s and 1970s (although a few are later) to protect broadleaved woodlands of high amenity value. There are 22 Woodland Orders within Exmoor National Park. Many sites are now owned by conservation bodies such as the National Trust, Badgworthy Land Company or ENPA. They were served at a time when the Forestry Commission's licensing arrangements for felling trees allowed relatively large clear fells without the need to restock and when there was no presumption in favour of the retention of ancient woodland or broadleaved woodland over conifers. Woodland TPOs were therefore used by Local Authorities to prevent woodland loss and to prevent conversion of broadleaved woodland to conifers. Today there is far greater protection of broadleaved woodland.

The revocation of some of these woodland Orders, particularly where the woodland is in conservation management has been considered. However there are a number of reasons for leaving the Orders in place.

- 1) The system of Felling Licences does allow some felling and if the 5 cubic meter allowance is used systematically, a woodland could eventually be cleared. The woodland TPO provides a robust mechanism for controlling felling.
- 2) Selecting which owners have conservation objectives could be politically difficult. Even if this could be agreed, ownership can change and management objectives can change.
- 3) The revocation of each Order would involve substantial consultation (with all adjoining landowners), administration and staff time.

On balance it is recommended that the Woodland Orders are left in place, without modification.

3. PROCEDURES FOR THE MAKING OF TREE PRESERVATION ORDERS

3.1 The Department of the Environment, Transport and the Region's advice provides clear guidance regarding law and good practice as it relates to the serving and management of Tree Preservation Orders. In line with this advice, the NPA will continue to use Tree Preservation Orders to protect trees of groups of trees of high amenity value, and where there is considered to be a potential threat to the future of the tree or trees.

3.2 It is not considered judicious in such a rural area to survey the national park in order to identify significant trees and protect them with Tree Preservation Orders, as it is highly unlikely that these trees are under any sort of threat. The two main routes for the creation of new Orders are:

- 1) As a result of the need to protect important trees on development sites
- 2) As a consequence of the Authority being notified of proposals to lop top or fell trees in Conservation Areas. (In Conservation Areas, owners must notify the NPA of their proposals and the Authority has six weeks to consider serving a TPO in order to protect and retain the tree or trees.)

3.3 In judging whether a tree is worthy of protection, the Authority considers a number of factors. The tree should be of high amenity value. The Town and Country Planning Act does not define "amenity", but DETR guidance suggests that TPOs should be used to protect selected trees and woodlands if "their removal would have a significant impact on the local environment and its enjoyment by the public." The trees, or at least part of them should be visible from a public place. The benefit of the trees may be now or in the future. They may be worthy of preservation for their "intrinsic beauty or for their contribution to the landscape or because they serve to screen an eyesore

or future development.” Their value may be enhanced by their scarcity. Other values such as wildlife interest may be taken into account

- 3.4 A standard method of assessment known as the Helliwell system is routinely used within the Authority to assess the amenity value of trees being considered for protection. The looks at the size, useful life expectancy, importance in the landscape, presence of other trees, relation to the setting, form and any special features.
- 3.5 Proposals to serve a new Order are currently brought to the NPA Planning Committee for information once the Order has been served. It is not usually possible to bring the proposal to Members before it is served as the need to serve such Orders is usually as a response to an immediate threat. However, if possible, the Authority seeks the views of the Parish Council and the local Member before creating a new Order.
- 3.6 Once the Order has been served, a consultation period of 6 weeks allows the landowner, neighbouring landowners, and other interested parties to express views on the proposal. The Authority carries out an arboricultural assessment of the health of the tree before confirming the Order if concerns about its condition are raised. If the Authority wishes to confirm the Order, it must do so within 6 months for it to become legally binding.
- 3.7 In order to avoid burdening Members with uncontroversial and straightforward decisions, it is proposed that the system is streamlined such that Orders are only brought to Members where there is an objection to the proposal. This would bring the making of Tree Preservation Orders in line with procedures for approving planning applications, in that only the more complex and potentially controversial decisions are brought to Members for a decision.

Sarah Bryan
Team Leader Woodlands and Landscape
20 January 2005

Background papers on which this report, or an important part of it are based, constitute the list of background papers required by Section 100 D (1) of the Local Government Act 1972 to be open to members of the public comprise:-

Consultants Report - *Review of Tree Preservation Orders, 2003*, Wessex Tree Consultants.

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