Tree Preservation Orders and Trees

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Responsibility of	**Subject Lead for TPOs & Trees**
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Key legislation and policy

Legislation	• Sections 198 – 210 of The Town and Country Planning Act 1990 • The Town and Country Planning (Trees) Regulations 1999 (as amended by The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017)
National policy and guidance	• Planning Policy Wales (PPW) (Edition 12, 2024) • Technical Advice Note 10 (1997) • Tree Preservation Orders: A Guide to the Law and Good Practice (Department for Communities and Local Government)
Judgments	• Wilkinson Properties Ltd v Royal Borough of Kensington and Chelsea [2010] EWHC 3274 (QB) • Distinctive Properties (Ascot) v SSCLG & Royal Borough of Windsor & Maidenhead [2015] EWCA Civ 1250 • JR Charles & Son Ltd v Barnet London Borough Council [2005] EWHC 1056 (Admin)

Legislative Framework and National Policy

1. The Legislative Framework is provided within Sections 198 – 210 of The Town and Country Planning Act 1990 (‘the Act’) and the Town and Country Planning (Trees) Regulations 1999 (as amended by The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2017) [“the Regulations”]. These form the basis for the implementation of policy for the legal protection of trees.

2. Planning Policy Wales (PPW) (Edition 12, 2024) states that the protection and planting of trees and hedgerows should be delivered, where appropriate, through locally specific strategies and policies, through imposing conditions when granting

planning permission, and/or by making Tree Preservation Orders (TPOs) and that they should also be incorporated into Green Infrastructure Assessments and plans.

3. Local planning authorities (LPAs) have a general power to make TPOs for trees or woodlands if it appears expedient to do so 'in the interests of amenity'. They can make a provisional TPO which takes effect immediately, and it can remain effective for six months or until the TPO is confirmed.

4. Technical Advice Note 10 'Tree Preservation Orders' (October 1997) also provides guidance on where LPAs are to make adequate provision for the preservation and planting of trees when granting planning permission through the process of making TPOs.

Useful Reference Material

5. 'TPOs – A Guide to the Law and Good Practice' (The Blue Book) is an English publication **so it should not be referenced within Welsh Decisions**. However, it provides a useful reference document as the general principles apply to Welsh casework, and covers issues relating to the scope of TPOs; the making and confirming of Orders; applications to carry out work to protected trees; and appeals against LPA decisions.

6. British Standard BS5837, 'Trees in Relation to Design, Demolition and Construction' gives recommendations and guidance on the relationship between trees and design, demolition and construction processes. It sets out the principles and procedures to be applied to achieve a harmonious and sustainable relationship between trees and structures.

The Tree Preservation Order Process, Form and Content

7. When the LPA considers that a TPO is required in the interests of amenity the following issues should be assessed:

   Visibility*:* The extent to which the tree(s) or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The tree(s), 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[1].

   Individual, collective and wider impact: Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, or of groups of trees or of woodlands by reference to its or their characteristics including: size and form; future

[1] Wilkinson Properties Ltd v Royal Borough of Kensington and Chelsea [2010] EWHC 3274 (QB)

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, authorities 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.

Specifying the trees and woodlands in a TPO

8. Each TPO must specify the individual tree, groups of trees or woodlands to which it relates, and each '**individual specimen'** should merit protection in the interests of amenity in its own right.

9. The '**group and woodland'** classifications enable the protection of trees that merit protection as a collective unit where the individual category would not be appropriate. In such cases each tree need not individually merit protection in the interests of amenity but the unit, as a whole, should. Woodland TPOs also protect trees which are planted or grow naturally within a woodland area after the TPO was made[2]. This does not apply to group TPOs.

10. The '**area'** classification, while it will usually apply to a collection of trees with individual amenity value, may include by default trees that would not otherwise merit individual protection. It only protects those trees standing at the time the TPO was made. The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection.

11. TPOs should not be used to protect shrubs, bushes or hedges, although a TPO may be used to protect trees growing out of hedgerows or lines of trees of a reasonable height that may once have been managed as hedgerows.

12. TPOs should not normally be made in respect of fruit trees where these are cultivated for the production of fruit, as such work may be exempt, although a TPO may be appropriate where the commercial operation has ceased or is ceasing. It would, however, be reasonable to make a TPO in respect of individual domestic garden fruit trees where these are not cultivated for the production of fruit.

The Schedule and Map

13. Each TPO must include a schedule describing the individual tree, groups of trees or woodlands and a map showing their location. The protected trees are usually classified in the following way:

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[2] Distinctive Properties (Ascot) v SSCLG & Royal Borough of Windsor & Maidenhead [2015] EWCA Civ 1250

- as **individual specimens** - each tree (T1, T2 etc.) shown encircled in black on the map;
- in **groups** - each group (G1, G2 etc.) shown within a broken black line on the map;
- as **woodlands** - the boundary of each woodland (W1, W2 etc._ indicated by a continuous black line on the map.
- by reference to an **area** of trees - the boundary of each area (A1, A2 etc.) indicated by a dotted black line on the map.

14. All TPO's should accord with the model form of order which can be found in the Schedule to the Regulations.

15. The Regulations specify that all new orders shall not take effect (other than provisionally) unless confirmed within 6 months of the order being made.

The Appeal Process

16. A TPO prohibits the cutting down; uprooting; topping; lopping; wilful destruction, or wilful damage of the trees protected by the Order. Anyone who wishes to carry out such work on a protected tree must apply to the LPA for permission. When dealing with an application to undertake works, the LPA may grant consent and attach any condition(s) or otherwise refuse consent under the order.

17. As part of this protection procedure, Section 78 of the Town and Country Planning Act 1990 (as amended) gives people who are unhappy with a Council's decision a right of appeal to the Welsh Ministers. Appeal can be made for:

    - Against all or part of a decision to refuse consent;
    - Against any condition(s) subject to which consent has been granted;
    - Failure to determine any such application as referred in the points above within the period of 8 weeks beginning with the day after the date on which the application was received by the LPA; and
    - Against a Tree Replacement Notice (see below).

18. In determining the appeal Inspectors may allow it either in total or in part; dismiss; reverse or vary any part of the LPA's decision; and deal with the application as if it had been made to them in the first place.

The Procedure

19. The Welsh Ministers have delegated appeal functions to Planning and Environment Decisions Wales (PEDW). The procedures are set out in the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017.

The Site Visit

20. Ensure that you know which tree/trees are at issue. Prior to undertaking the site visit the Inspector will need to verify the tree(s) that are subject to the appeal and confirm the main issues based on the arguments and evidence put forward by the Appellant. It is always useful to have a site layout plan annotated with the relevant tree(s) highlighted.

21. Depending on the issues raised it may be appropriate for Inspectors to view the appeal trees from third party land, for example, when issues of loss of light within neighbouring properties are raised. In these circumstances, Inspectors should request arrangements to be made prior to the site visit.

22. However, if it becomes apparent on site that an inspection is needed from third party land, arrangements should be made to re-organise the site visit to include this. Further information is available in the Site Visits chapter.

23. The following information may need to be assessed on a site visit depending on the site characteristics and the arguments put forward:

    - species of tree(s);
    - height;
    - height of clear stem/clearance from ground to lowest part of crown;
    - branch spread or canopy shape (if relevant);
    - maturity;
    - past treatment and growth performance post treatment;
    - presence/absence of visible defects, abnormalities, damage, damaging agents, disease or decay and their extent and significance;
    - presence of other trees;
    - suitability to setting;
    - relationship of the tree/s to proposed windows, patios, garden areas - take into account any shade the tree/s may cast at different times of day;
    - the impact of the appeal tree (individually or within its “group” or woodland);
    - assessment of contribution to amenity both in the context of the immediate location and wider public viewpoints;
    - the justification/need for the proposed works;
    - any harm that would result from the proposal;
    - the tree’s potential for future growth could have a significant impact; and
    - any other special factors, such as any changes to ground levels (either cutting away or increasing levels) or the route of any necessary service trenches that might affect the tree/s.

24. Where can the trees be seen from? What is the contribution to visual amenity? The amenity value of an individual tree may be less than its value as part of a group. Therefore, if there is a group, look at each one individually and take a more distant

view of the group as a whole.

25. Any contribution in terms of amenity/screening is likely to vary depending on the seasons. If it is a deciduous specimen, what is the difference? You might be assisted, on occasion, by photographs taken at different times of the year submitted with the evidence.

26. Unless the matter is in dispute, it is generally safe to assume that a tree survey is accurate, unless of course, it looks obviously wrong on site.

27. Avoid making any comments during an accompanied site visit (ASV), or (ARSV) about the condition of a tree, as you need to remain neutral.

Content of the Decision

(i) Main Issues and Material Considerations

28. The law requires you to have regard to all "material considerations" before reaching a decision, and then state the reasons for your decision to allow or dismiss the appeal. This includes development plan policies where relevant. The Inspector must therefore deal with each of the appellant's principal grounds of appeal, although there is no need to deal with every point mentioned in support of those grounds. The original reasons for making the application must also be considered.

29. All major issues raised in the grounds of appeal should be commented on and reasoned conclusions arrived at. The Inspector should consider not only the physical impact of what is proposed but must have regard to all the representations made.

30. The decision should be as concisely written as possible but should set out clearly your conclusions on such matters as the health and aesthetic value of the appeal tree(s) and the likely effect of the proposal on either the tree(s) which are the subject of the appeal or on nearby trees. The main issues are likely to be:

    The effect of the tree works/ felling of the tree(s) on the character and appearance of the area/ XX conservation area; and whether sufficient justification has been demonstrated for the tree works/ felling.

(ii) Amenity/Character and Appearance

31. Most TPO appeals are against the LPA's refusal of consent. In these cases the Inspector must always consider:

    - the amenity value of the tree or trees in question;
    - how the amenity value would be affected by the proposed work; and
    - the reasons given for the application.

32. Amenity issues need to be considered whether or not the Appellant raises them. Appeals can succeed on amenity grounds alone. The grounds of appeal may be misconceived and there may be no sound arboricultural reasons for the work, but if the proposal would not have a significant impact on local amenity it may still be appropriate to allow the appeal.

33. It is important that all decisions should include an assessment of the amenity of the **individual tree**, and the likely impact of the proposed work on local amenity. In their amenity assessment Inspectors should consider those factors set out in the 'Site Visit' section above where they are relevant.

34. If the appeal tree is part of a **group** of trees specified in the TPO, the Inspector's decision should consider the likely impact of the proposal on the amenity provided by the group as a whole. It may be that the group of trees has a considerable amenity value, but that the proposed work on the appeal tree would not significantly affect that value.

35. In relation to applications to cut down trees in a **woodland**, the Inspector should take into account the importance of promoting woodland management, although there may be cases where amenity factors outweigh the justification for the proposed work.

(iii) Grounds of Appeal/Justification for Works

36. The quality of an appeal submission and, therefore, the grounds of appeal put forward for the proposed works, varies from case to case. Inspectors must deal with each case on its merits, in the light of the written submissions, the documentary and technical evidence before them and their own observations on the site visit.

37. The most common grounds of appeal are:

- **Health and Condition of Tree** – presence of decay/disease, cracks, previous limb or branch failure – is there any technical evidence submitted (see below);

- **Effect on the occupiers of a property** - loss of light within habitable rooms; overbearing impact and loss of outlook;

- **Nuisance/Inconvenience** - excessive shading of garden; clearing up leaves, small branches and other debris;

  If the grounds of appeal for removal of the tree relate to loss of light and the tree has been heavily reduced so it now obstructs less light, it would still be appropriate to consider likely re-growth and future effects of such work. Judgement should also be based on that rather than relying on the present situation only. Continued growth of a tree in the future is always a factor that

should be taken into account.

- **Health and safety (danger to persons or property)** – decay leading to tree failure; falling branches/debris; bird droppings; poisonous berries/foliage – is there any technical evidence submitted (see below);

  If the grounds of appeal for removal of a tree arise from concern for safety which has been impaired by events occurring after the LPA's decision (e.g. storm damage or severing roots) then this must be taken into account. If it is possible to ascertain the condition of the tree at the time of the refusal of consent by the LPA and a view can be taken as to whether the refusal would have been warranted this should be stated. This should be followed by an explanation of how later events have changed the situation as this may have a bearing on any compensation claimed.

- **Maintenance costs** – ongoing costs to the property owner;

- **Structural Damage to property** – subsidence, damage to buildings and walls, interference with drains - is there any technical evidence submitted (see below).

(iv) Technical Evidence

38. Grounds of appeal often allege that the appeal tree is decaying and/or diseased, and is potentially dangerous or is causing or will cause damage to buildings, walls, drains etc. In such cases, the Inspector should rely on the technical evidence from a relevant engineer, building/drainage surveyor or other appropriate expert 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.

39. *The Procedural Guidance - Wales* advises appellants on the content of their Full Statement of Case, further information can be found in the Hearings and Inquiries chapters.

40. Whilst it is always preferable to be able to come to a definite conclusion on the grounds of appeal, sometimes essential information required to make a definite judgement will not have been provided and could not be ascertained from the visual site inspection. This is most frequently associated with alleged damage or risk of damage to buildings. In these situations, it may exceptionally be necessary to conclude that the grounds of appeal have not been substantiated due to insufficient information, in which case the appeal can only be dismissed

41. If something of particular relevance was observed during the site visit which was not referred to in the representations it may be necessary to go back to the parties. In view of the need for decisions to be made swiftly, further information should only be required where it is considered essential.

(v) Legal Arguments

42. Grounds of Appeal also include legal arguments such as:

Validity of an Order - Inspectors are required to determine an appeal on its merits. The fact that work to a tree/s may not require consent because of the exceptions in the Regulations is not a matter that normally needs to be considered.

An appellant may argue that the order is invalid. However s284 of the Act makes clear that the validity of an order cannot be challenged in any legal proceeding (which includes appeals) except by way of application to the High Court within 6 weeks of the TPO being confirmed. Where Appellants have questioned the validity of a TPO, Inspectors are advised to make clear in their decision that it is not a matter for consideration.

Status of the Order - For example, Appellants may argue that the Order has not been confirmed and that the Order no longer is in effect.

LPAs are asked to provide evidence of confirmation with the appeal questionnaire. A suitably endorsed and dated order is usually provided as evidential proof that the Order has been confirmed and continues to have effect.

The LPA may be unable to locate a copy of the endorsed Order and may rely on other forms of evidence to demonstrate confirmation, ie statutory declaration(s), minutes of Council meetings, extract from the Land Charges Register, previous decisions on TPO consent applications. The Inspector may have to exercise judgment whether or not sufficient evidence of confirmation has been provided, as a preliminary matter. If on the balance of probabilities there is enough evidence to demonstrate confirmation, you should note this in a procedural paragraph and proceed to determine the merits of the case. If you reach the view that there is insufficient evidence of confirmation, please contact the Casework Manager to discuss next steps.

Is the tree protected? - Where the species of an individual tree or tree forming part of a group, which is the subject of the appeal, does not correspond with that shown in the schedule of the order this will not necessarily mean that the tree is not protected. The key test is whether you had looked at the scene immediately after the making of the TPO it would have been apparent which trees had been covered[3]. Consequently, if the tree is in the exact position shown on the plan or the number of trees in the group accords with that recorded on the schedule and the only difference is the species, it would normally be reasonable to hold that the tree was protected by the order even though the wrong species was identified on the schedule.

[3] JR Charles & Son Ltd v Barnet London Borough Council [2005] EWHC 1056 (Admin)

Where a tree forms part of an area order, you will have to reach a view whether the tree was present at the time the order was made. As this could involve orders made many decades ago, you will have to rely on best evidence available and your observations at the site visit to conclude on this matter.

Occasionally legal points may be raised by Appellants that do need to be addressed in the decision. Most legal or procedural points are best dealt with briefly at the start of the decision. Any special designation of the surrounding land or buildings should be particularly referred to e.g. SSSI, AONB, conservation area, listed building.

(vi) Conservation Areas

43. If the appeal tree is in a conservation area, s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Inspector, before reaching a decision on the appeal, to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

44. The appeal file should indicate whether or not the appeal tree is in a conservation area. Inspectors should include in their decisions a brief assessment of the general character and appearance of the area that is in the general vicinity of the tree. They should then go on to assess in the normal way the amenity of the tree and the impact of the proposal on local amenity, but should also include a judgement on the proposal's likely impact on the character or appearance of the conservation area. This also applies to replanting whether as part of an appeal or as a proposed condition of consent.

(vii) Extent of the works

45. Less work than that which was applied for can be approved, for example, the Inspector can approve 20% crown reduction rather than the requested 30%. Precision and accuracy are particularly important where specific work is being allowed to a tree, especially if the degree of work to be allowed is the subject of the appeal or the wording of the application is imprecise. The required work should be clearly described in the decision and there should be no need to specify the details in a condition.

46. Where the Inspector considers that the work or extent of the work applied for is not justified, the temptation to give helpful advice as to what alternative works might be appropriate should be avoided. However, if the LPA has suggested alternative work and it is considered that this would overcome the problem then it would be helpful to indicate this in the decision.

(viii) Use of Conditions and Replacement Planting

47. Conditions can be applied to consents, but these are limited in their scope to the

following:

- Conditions relating to the planting of replacement trees (ie requiring trees to be planted; requiring how, when and where planting is to be done; requiring things to be done or installed to ensure the protection of any replacement trees);
- Conditions requiring approvals to be obtained from the person giving consent;
- Conditions specifying the standard to which the works must be carried out; and
- Conditions specifying that the works may be carried out on multiple occasions or within a specified time period only.

48. In the absence of a bespoke condition, any consent is valid for a two year period, starting from the date of the consent; and the works granted may only be carried out once.

49. The primary purpose of a TPO is to protect trees from unnecessary or unjustified felling. The secondary purpose of a TPO is to secure a continuity of trees on a particular site for the benefit of the local environment. When felling becomes inevitable a condition requiring replacement planting will secure this objective.

50. However, the replacement tree will not be protected by the same TPO as its predecessor and it will be matter for the Council to decide whether or not the replacement planting warrants protection.

51. The replacement of protected trees should be supported, provided it is in the interests of amenity to do so, and the requirements of the condition(s) are reasonable and necessary and accord with Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management.

52. Inspectors should include in their decisions an assessment of how local amenity will be served by the proposed replacement tree. Whether a replacement tree is likely to be in the interests of amenity will depend on:

    - the impact of the original tree's removal on local amenity;
    - the extent to which the replacement tree will be publicly visible; and
    - its likely impact on amenity (individually or in its "group" or woodland setting) in the long-term.

53. If it is in the interests of amenity to plant a replacement tree, the LPA's condition or direction should be reasonable, but the Inspector may use their powers to vary the terms of the condition. Appellants may question the size of tree required, the species or location, or the time given in which to comply with the condition.

54. You should treat each ground of appeal on its arboricultural merits bearing in mind the characteristics of the site and what you would regard to be a common sense

solution. If the location of the replacement tree specified in a condition is unsuitable, is there an alternative location on the site? If the size of the replacement tree were, in your view, unreasonable, what would be a reasonable size? If the species of tree is unsuitable would an alternative species be more appropriate?

Dangerous Trees

55. Permission is not required for the felling or cutting of a tree protected by a TPO which is dead, the removal of dead branches from a living tree, works which are necessary to remove an immediate risk of serious harm or where the work is required to abate an actionable nuisance. LPAs should not determine applications made to them for works to trees which are excepted. It is usually obvious when a tree is dead. However, it can be difficult to ascertain when there is an immediate risk.

56. Decisions involving potentially dangerous trees should be submitted to the office as soon as possible after the site visit and a note placed on the file identifying the need for the decision to be issued swiftly. Under no circumstances should an Inspector make any comment on the safety of the tree during their site inspection.

57. 45.Where exceptionally it is considered that the danger to person/s or property is so imminent that it could occur prior to the issue of the decision then a note should be sent by e-mail to the office as soon as possible following the visit setting out the concerns and the reasons for them. The office will then write to the parties drawing attention to the exceptions to the requirements for consent set out in the Act.

Appeals Against Conditions and Tree Replacement Notices (TRNs)

58. There are a small number of appeals against conditions, for example, to plant a replacement tree.

59. Under section 206(1) of the Act a landowner has a duty to replace a tree which is removed in contravention of a TPO. Where the duty is not complied with Councils have powers, under section 207 of the Act, to issue TRNs. These powers are also exercised where a tree is removed in a conservation area in contravention of section 211 of the 1990 Act (i.e. without giving the council six weeks' notice) and in circumstances when a condition to plant a replacement tree on a consent to fell a tree under a TPO is not complied with.

60. The TRN has to be served within 4 years from the date of the alleged failure to comply with the duty to plant a replacement tree. The power to serve a TRN is discretionary, dependent upon the amenity value of the removed tree, and the reasonableness of requiring its replacement.

61. Failure to comply with a TRN is not a criminal offence. If a replacement tree is not planted within the period specified in the TRN (which may be extended by the LPA) the LPA may enter the land, plant the tree, and recover from the landowner any

reasonable expenses incurred. Anyone who wilfully obstructs a person exercising this power is guilty of an offence and liable on summary conviction in a magistrate's court

62. Section 208 of the 1990 Act gives people served with a TRN a right of appeal which must be made in writing before the TRN takes effect. The procedure for appeals against TRNs is explained in Annex 14 of the Procedural Guide - Wales.

63. An appeal may be made on any of the following grounds:

- that the provisions of the duty to replace the trees or the conditions of consent requiring the replacement of trees are not applicable, or have been complied with;
- that the duty to replace trees should be dispensed with in relation to any tree;
- that the requirements of the notice are unreasonable in respect of the period, or the size or species of trees specified in it;
- that the planting of a tree/trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
- that the place on which the tree is/trees are required to be planted is unsuitable for that purpose.

64. On determining an appeal an Inspector may:

- quash the notice;
- correct any defect, error or misdescription in the notice unless the notice is so fundamentally defective that correction would result in a substantially different notice; or
- vary any of its requirements, provided it can be done without causing injustice to either party.

65. The validity of an Inspector's decision in respect of an appeal against a TRN, or for an associated application for an award of costs, may be challenged in the High Court. The challenge must be made within 28 days of the date of the decision.

66. Advice concerning TRNs can also be found in the 'Enforcement' chapter.

Felling Licenses

67. The Forestry Act 1967[4] requires that a licence to fell growing trees must be obtained from Natural Resources Wales (NRW). However there are a number of exceptions[5] from the licensing requirements, examples being (this list is not exhaustive):

[4] Section 9(1)
[5] Section 9(2), (3) and (4)

- Trees with a diameter of less than 8cm;
- Cases where the quantity of timber to be felled is less than 5 cubic metres in any calendar quarter;
- Felling fruit trees, or trees growing in a garden, orchard, churchyard or designated public open space.
- To prevent danger or abate a nuisance;
- Felling as part of an approved planning application;
- Felling in compliance with any obligation imposed by or under an Act of Parliament;
- Works undertaken by statutory undertakers[6] that are essential to the provision of these services.

68. Where the proposal for felling relates to trees which are subject to a TPO, the work may require both a felling licence and consent under the Order. Section 15(1)a of the Forestry Act 1967 makes provision for this situation, requiring that the application for the work is made to NRW.

69. The LPA are consulted on the application. If the LPA has no objection to the proposal, NRW may grant the licence and the trees can be felled. No separate consent under the order is required.

70. If the LPA objects to the granting of a licence, NRW will refer the application to the Welsh Ministers, to deal with the matter as if it had been an application for consent under the Order. An Inspector may be appointed to report to the Welsh Ministers on the matter. If the Welsh Minister grants consent this is sufficient to authorise the works and no separate felling licence is required.

Costs

71. Costs may be awarded for cases dealt with by the written representations procedure, as well as those by hearings and inquiries. In the case of appeals proceeding by the written representations procedure the costs application must be made in writing when the appeal is submitted. The LPA should respond to the application within 2 weeks of the start date. Where an application is made by the LPA the Appellant will be given 2 weeks in which to reply. The decision on the costs application will normally be given at the same time as the appeal decision.

72. In the case of hearings and inquiries all costs applications must be formally made to the Inspector before the hearing or inquiry is closed. Any such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions.

73. Further information on the award of costs is explained in Annex 6 of the Procedural

[6] See Regulations 4(2) of the Forestry (Exceptions from the Restrictions of Felling) Regulations 1979

Guide – Wales and Section 12 of the Development Management Manual.

Case Law

74. *Burge & Anor v South Gloucestershire Council [2016] UKUT 300 (LC)* – a decision relating to a compensation claim concerning subsidence and the LPA's decision to refuse the felling of a protected tree. The decision only addresses compensation and contains no findings whether the LPA lawfully refused consent to fell.

75. *JR Charles & Son Ltd v Barnet Borough Council [2005] EWHC 1056 (Admin)* – addresses whether a wrongly identified tree would be covered by an order.

76. *Distinctive Properties (Ascot) v SSCLG & Royal Borough of Windsor & Maidenhead [2015] EWCA Civ 1250* – the judgment concerns a TRN to restock clear felled woodland, subject to a TPO; provides clarification on the meaning of the term 'tree'. See also *Palm Developments Ltd v SoS CLG [2009] EWHC 220 (Admin).*

77. *Perrin & Ramage v Northampton Borough Council & Anors [2007] EWCA Civ 1353* – concerns the exemption to TPO controls where tree work is necessary for the prevention or abatement of a nuisance. The judge concluded that all possible solutions should be considered, including the consideration of alternative engineering works, to determine the minimum works necessary to prevent or abate the nuisance. The effect of alternative engineering works should be weighed up against the effect of works to the tree. Engineering works which may be more minor than the works to the tree may be sufficient to prevent or abate the nuisance in some cases.

78. The judgment does not affect the approach Inspectors should take to determine TPO appeals. Appeals should still be determined in their merits, having regard to the amenity value of the tree and the evidence provided in support of the proposed works. The possibility of any action under the exemption remains a separate matter.

79. *Wilkson Properties Ltd v Royal Borough of Kensington & Chelsea [2010] EWHC 3274 (QB)* - ground 3 considers the issue of amenity value to the public.

80. *Evans v Waverley Borough Council [1996] 655 (CA)* – found that the LPA's power to modify an order should not be construed narrowly. However there are limits to what can be a modification and the essential nature of the order cannot be changed or transformed into 'another animal'.

Other Tree Related Matters in Casework

81. Section 197 of the Town and Country Planning Act 1990 places a duty on LPAs to ensure, whenever it is appropriate, that in granting planning permission for any development, adequate provision is made, by the imposition of conditions, for the

preservation and planting of trees. This applies equally at the appeal stage.

82. The judgment in *Distinctive Properties (Ascot) v SSCLG & RB Windsor & Maidenhead [2015] EWCA Civ 1250* provides clarification about the definition of "tree" under the Town and Country Planning Act 1990. It found in paragraph 42 that a tree is to be so regarded at all stages of its life, subject to the exclusion of a mere seed. A sapling will count as a tree, as will a seedling once it can be identified as a species which normally takes the form of a tree.

83. The effect of a proposal on trees, both those protected by TPOs and those with no protection can arise where there is a proposal to fell them, where they may be threatened by development close by, or where they might have implications for future occupiers of the development proposed.

84. Where the presence of trees on the site or the effect on them of a proposed development has been referred to in the reasons for refusal, it is likely that trees will form part of a character and appearance issue. For example, '*the effect of the development proposed on the character and appearance of the area, including its effect on (protected) trees'.*

Site Visits

85. Guidance on how to conduct site visits in relation to TPO appeals is provided above and this can be used when dealing with other S78 casework involving trees.

86. Ensure that you know which tree/trees are at issue, and if the site visit is an Accompanied Site Visit (ASV), get the parties to point out the tree(s) to which they are referring, so that both you and others are sure about which specimens are at issue.

87. Only seek or refer to on-site measurements if absolutely necessary to the decision. It is seldom essential to refer to precise heights, girths, sizes, spreads etc in simple Section 78 casework. It is likely to be sufficient to explain that, for example,

    '*The oak tree is substantial in size and located towards the front of the site…'*

    'it is an attractive specimen and makes a substantial and positive contribution to the visual amenity of the area (as recognised by its inclusion in the TPO)…'

    'the proposed houses would be located close to the tree canopy and large parts of the garden areas would be under their spreads' etc

Decision Making

88. In your reasoning, you will need to assess the amenity value of the trees (a matter for subjective judgement) their form, size and height; their prominence from public vantage points and contribution to the visual amenity of the wider area; and their

setting. Is the tree worth keeping?

89. You will then need to identify how the trees would be affected by the development proposed (direct or indirect?). Would the effect be material? Matters to which you might have regard include its existing and potential contribution to the character and appearance of the area. Would the tree survive even without the development proposed?

90. Consider opposing arboricultural evidence against the detailed advice in BS 5837, and apply common sense and judgement, as in other cases of competing specialist advice.

91. If there is no agreed tree evidence do not try and identify the tree by name (refer to it in other ways e.g. in the south-west corner of the site). Do not make comments either on the health or life expectancy of the tree, although it might be appropriate to make comments along the lines that '*I have no substantiated evidence before me to demonstrate that the tree would be unlikely to survive on site for many years.'*

92. A common argument about trees is along the lines that, '…it would be better to fell the tree now and replace it with one or more new ones' – you will need to consider how long the tree is likely to survive, and its current and on-going potential to contribute to visual amenity. Think about how long it might take for replacement specimens to reach maturity/make a similar contribution. Where could they be planted?

93. Also look at the effect the tree/s may have on future occupiers of the proposed development. Prospective house purchasers may be unaware of a tree when deciding to buy a house, or may, initially, place a high value on the contribution that it makes to the setting of a property, failing to appreciate the implications/problems of living next to a large tree, until it is too late. Be aware that it is difficult for a Council to resist applications to lop, top or fell in circumstances where safety is at issue, or where damage is being sustained e.g. root spread. Rooms may also become unduly gloomy, or gardens may be heavily shaded etc. increasing pressure to alter or remove the tree. Be careful though not to mix this up with living conditions. In this regard, it is the translation of potential adverse effects that might lead to future pressure to lop, top, or fell (i.e. character and appearance) that is the issue.

94. There may be mention of root protection areas (RPAs). You will need to give thought to:

- what work is proposed in those areas;
- the depth of any works;
- the type of foundations;
- the effects of different materials and methods of construction.

95. The majority of roots are in the top 600mm of soil. Damage can be caused by

cutting the roots, compaction of the soil structure (e.g. by movement of vehicles or storing heavy materials or equipment under their canopies), or by pollution (e.g. by diesel or lime in cement). Damage can also occur from changes in ground level particularly where this affects existing surface water flows. You might want to bear in mind that young trees can generally withstand more root-loss than older trees. Fully mature trees may die if 5-10% of their roots are damaged. If RPAs are at issue, look to BS 5837 for further guidance.

96. Could protective fencing be erected and still leave room for building works (scaffolding, storage of materials, site huts etc. see BS 5837 for where the fencing should go). It may occasionally be possible to construct foundations or hard surfaces within the RPA of a tree, but this needs special care (*see sections 11.6 – 11. 10 of BS 5837*) and should be avoided wherever possible.

97. When writing decisions, there is less chance of error if trees are referred to by their common name rather than their botanical name. If there is any doubt about the common name, you should normally refer to the tree in some other way (e.g. the tree in the south west corner of the site).

98. Don't forget that if a tree is protected by a TPO, and it is directly in the way of a development that you have allowed, you have automatically given consent for the felling of that tree, (see paragraph A41 of TAN 10). However, other protected trees might be affected indirectly by the development e.g. root severance. In such cases, consider seeking specialist advice and contact your sub-group leader in the first instance.

99. Trees in conservation areas are also protected from indiscriminate felling. As with TPO trees if the felling of a non-TPO specimen within a Conservation Area forms part of a scheme that you allow, no separate consent will be required (see TAN 10 paras 13 and A35).

100. If permitting development which involves felling or other works to trees subject to a TPO, or within a conservation area, you should make clear that you have had full regard to this. Take full account of the status of the trees concerned, and the implications of the proposal for public amenity or for the character or appearance of the conservation area, as appropriate. Bear in mind that trees with no statutory protection can also often play an important role in the amenity of an area and may influence the outcome of your decision.

Conditions

101. Specifically, in relation to trees, you need to include on-going maintenance clauses where necessary. As a starting point, the suggested model set out in Circular 16/2014 (The Use of Planning Conditions for Development Management) relating to trees and landscaping should be used and adapted to meet the specific circumstances of the case.

Other Information Sources

102. *Arboricultural Practice Notes (APN) (Tree Advice Trust).* Particularly APN 12 – Through the trees to Development (re no-dig construction of driveways etc.)

103. *NHBC Technical Standards (2011)* Chapter 4.2 Building near Trees Invaluable for foundation depths near trees, foundations on sloping ground and water demand.

104. *Mitchell: Trees of Britain and Northern Europe.* This is widely regarded in the profession as the most authoritative reference work, giving growth rates and sizes of mature trees.

105. *Welsh Government: 'Woodlands for Wales – The Welsh Government's Strategy for Woodlands and Trees'*.

Life Expectancy of Trees

106. As a very general guide, some of the common tree species can be grouped into 6 categories of useful safe life expectancy under garden or parkland conditions.

300 years +	Yew
200-300 years	London plane, English oak, sweet chestnut, sycamore, lime
150-200 years	Cedar of Lebanon, Scots pine, hornbeam, beech, Norway maple
100-150 years	Ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear
70-100 years	Rowan, whitebeam, apple, wild cherry, Indian bean tree, black locust, tree of heaven
50-70 years	Poplars, willows, cherries, alders, birches

Source: Amenity Valuation - The Helliwell System Revised, Arboricultural Journal 1994

Ultimate Heights and Spread of some Selected Trees

Tree	**Ultimate Diameter Spread of Crown (m)**	**Normal Ultimate Height in an Urban Situation (m)**
Maple	18	18
Cherry	8	9
Rowan	5	9
Birch	14	17
Whitebeam	10	18
Lime	16	30
Sycamore	20	28
Ash	18	17
Plane	18	30
Hawthorn	8	9

Robinia	14	15
Common alder	14	15
Hornbeam	16	18
Beech	20	30
Cypress	12	24
Crab apple	8	7
Wild cherry	16	18
Willow	14	18
Pine	8	20
Apple	9	8
Plum	8	8
Oak	20	22
Horse chestnut	20	28

Source: Arboricultural Research Note May 1990. Issued by DOE Arboricultural Advisory and Information Service

Relative tolerance of some tree species to development impacts

Common name	**Relative tolerance**	**Comments**
Box elder	Good	Tolerant of root loss
Norway maple	Moderate/good	Moderately tolerant of root pruning
Sycamore	Moderate	
Alders	Good	Considerable resistance to “contractor pressures”
Birch	Poor/moderate	Intolerant of root pruning. Mature trees particularly sensitive to development impacts
Deodar cedar	Good	Tolerant of root and crown pruning
Hawthorn	Moderate	Intermediate tolerance to root loss
Beech	Poor	Mature trees particularly susceptible
Ash	Moderate	Moderately tolerant of root pruning
Holly	Good	
Walnut	Poor	Intolerant of root loss and mechanical injury
Tulip tree	Poor/moderate	Intolerant of root pruning and mechanical injury
Norway spruce	Moderate	Intolerant of root loss
Scots pine	Good	Tolerant of root loss
London plane	Poor/good	Response is location dependent.
Lombardy poplar	Moderate/good	Tolerant of minor amounts of fill. Intolerant of changes in soil moisture. Decays rapidly
Douglas fir	Poor/good	Tolerant of fill if limited to 25% of root zone. Tolerates root pruning, but not poor drainage
Oaks	Moderate	

False acacia	Poor	Intolerant of root injury
Willow	Moderate/good	Moderately tolerant of root pruning. Considerable resistance to “contractor pressure”
Rowan	Moderate	Tolerant of root loss
Lime	Moderate/good	Moderately tolerant of root pruning. Considerable resistance to “contractor pressure”
Horse Chestnut	Moderate/good	Relatively resistant to “contractor pressure”

Source: Plant User Spec Guide, adapted from Matheny & Clark

NB Bear in mind that there should be no works within the root protection areas defined on any survey and in accordance with BS5837. Do not rely solely on this list.