

Options regarding works to protected trees

Background

Under the Town and Country Planning Act 1990 Section 211 covers trees in conservation areas.

In brief, it is an offence for persons to undertake works, which might be prohibited by a tree preservation order, to a tree in a conservation area unless they have served a notice on the local planning authority (LPA) and it has consented to the works or the works are done after the expiry of six weeks but before the expiry of two years from the date of the notice. The purpose of the six weeks notice is to enable the LPA to make a tree preservation order, if considered necessary.

Once a notice is received the LPA must consider the expediency of issuing a Tree Preservation Order to formally protect the tree(s) in perpetuity.

Such a consideration will take into account amenity value of the tree, species (rarity value and indigenous nature) and the form of the tree.

Should the Council not issue a TPO then the works or removal of the Tree are able to take place upon either the issuance of a no objection from the LPA or the expiry of the six week statutory period.

Unlawful Works

It is a criminal offense to undertake works to trees within a conservation area without first serving notice on the LPA.

S213 of the Town and Country Planning act imposes a duty to replace the tree with “another tree of an appropriate size and species at the same place as soon as he reasonably can”

S207 affords the Council the ability to issue a notice to ensure replacement of a tree. This would usually be after informal negotiation has failed. It should be noted that where a tree cannot be replanted in the same location then the duty does not fall away, the LPA is able to impose another suitable location.

The Council does have the ability to prosecute against unlawful works to trees, but must do so in accordance with its ‘ Planning Enforcement Policy’ which requires it to consider the proportionality of doing so and any other available options.

To undertake a prosecution – the public interest test is the first starting point. This considers the severity of the breach, the wilfulness of the behaviour, whether it can be undone or that the works would have been granted permission should it have been sought.

Where (usually following an interview under caution) guilt has been admitted the Council is able to issue a "Simple Caution". This is a formal caution similar to those used by the police.

Where guilt has not been established but a clear offence has taken place the Council can issue an informal caution, which goes on record and can be used should further breaches take place on the same site.