

# Protected trees in Edinburgh: a guidance note



Trees and woodland make an enormous contribution to the unique urban landscape of Edinburgh and play a major role in the international importance of its setting.

The Council is committed to the protection of trees and woodland within the City of Edinburgh. This is achieved by making Tree Preservation Orders (TPO) and by the protection of trees within Conservation Areas.

Where trees are affected by development, the Council has policies to protect existing trees and requires the planting of new trees where appropriate.

The following provides guidance regarding the protection of trees.

## What is a Protected Tree?

A protected tree is a tree which is:

- subject to a Tree Preservation Order,
- in a Conservation Area, or
- subject to a condition upon the granting of Planning Permission.

When a tree is protected, there are procedures that must be followed before undertaking tree work. You must apply for consent to carry out tree works where there is a TPO, or submit a notification of intention if the tree is within a Conservation Area.

## What is a Tree Preservation Order?

A TPO is a way for a local authority to protect trees. It is an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree with a TPO without the Council's consent.

Tree Preservation Orders (TPOs) are made by a Planning Authority under Section 160 of The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006, and within the procedures set out in the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2011.

## What is the purpose of a Tree Preservation Order?

The purpose of a TPO is to protect trees that contribute to amenity, for example trees which enhance the character and attractiveness of a locality, or that have cultural or historical significance. Other factors such as wildlife value can be taken into account too.

To be eligible for a TPO trees should usually be in good condition, have a significant life expectancy and should not be dead, dying or dangerous.

A TPO gives the Council an opportunity to assess the impact of any proposed work to trees or other operations which may affect them. A TPO is not intended to prevent the sound management of trees and woodlands, but to allow the Council to control works which affect them in order to prevent the loss of public amenity.

## What type of trees can be covered by an order?

All types of trees can be covered. This includes individual trees, groups of trees,

woodlands and hedgerows. However, hedges, bushes and shrubs cannot.

## How can I check if a tree has a preservation order placed on it?

You can check the locations of TPOs on the Council's website. Please visit [this page](#) and use the map-based search facility.

## If I see work being carried out on a protected tree, how can I find out if the work has permission?

You can find applications for tree works, and their outcome, through the [Planning and Building Standards Portal](#).

Details of applications to carry out work to protected trees are also on a weekly list of planning applications which is available online and is sent to Community Councils and local councillors. There is no legal requirement for the Council to consult on tree applications.

If you see works to trees being carried out that you can find no record of on the Planning and Building Standards Portal, please email [planningtrees@edinburgh.gov.uk](mailto:planningtrees@edinburgh.gov.uk). If, without putting yourself at risk, you are able to obtain information such as photographs, details of the contractor, vehicle registration numbers etc. this will help the Council in any potential enforcement action.

## There are trees which I think should be protected. What can I do?

Anyone can propose that a tree should be protected by a TPO. Please email

[planningtrees@edinburgh.gov.uk](mailto:planningtrees@edinburgh.gov.uk) identifying the tree(s) and explaining why it is important for them to be protected.

Requests for TPOs will be considered against the following criteria:

- the amenity value of the trees, and the contribution they make to the character and attractiveness of the area,
- the cultural or historic significance of the trees,
- other aspects of the trees' value, including biodiversity, the wider environment, the green-blue network, heritage, and arboricultural characteristics such as crown form and species rarity,
- the level of threat to the trees – a TPO is usually only made if the trees are under threat.

## What is the process for making a TPO?

TPO documents are drawn up by the Council, who will then write to the tree owner and other interested parties serving notice of the new TPO. It will also be advertised in the Scotsman and Evening News newspapers.

Anyone may make an objection or comment in writing to the Planning Authority within 28 days of the date of the advertisement. Anonymous objections or comments are not considered.

The TPO comes in to effect immediately. After six months it must be confirmed by the Planning Authority or it will lapse. The TPO is considered by the Planning Committee, along with any comments and objections. The Committee will then decide whether to confirm the TPO and may make modifications to it. If confirmed, the TPO is then effective indefinitely.

## Does the Council then become responsible for looking after the trees?

No. There is no transfer of ownership or responsibility for trees when they are covered by a TPO. As with any other trees, their condition and safety is the responsibility of the landowner. There is a clear duty on the owner to comply with a TPO, and they should be aware that failure to do so may result in financial penalties and a requirement to reinstate trees.

The management of trees covered by TPOs is encouraged. If extensive investigative and survey work is required, a specialist Arboricultural Consultant should be commissioned.

## What if I want to work on a protected tree?

If a tree is covered by a TPO, prior consent for the tree works must be given by the Planning Authority. Applications for consent are made through the Scottish Government's [ePlanning Portal](#) and must include details of the trees, the proposed work, and the reasons. Proposed tree works should be described in a precise and clear manner and quantified in metres where appropriate.

The Council will assess the proposal and the impact it will have on local amenity. Consent to fell or prune will only be granted if necessary for arboricultural reasons and may require the planting of a replacement tree of appropriate size and species. Consent is valid for two years.

Work must be carried out to the standards specified in BS 3998:2010 "Recommendations for Tree Work". Replacement trees must be specimens approved by the Planning Authority capable of achieving at least the same stature as the original trees. Deciduous trees planted as replacements should be of a size not less

than “standard” trees as defined in BS 3936:1992 “Nursery Stock Specification for Trees and Shrubs”, unless the trees form part of a woodland, in which case suitably sized whips or forest transplants will be acceptable.

### **Is there a fee for a tree works application?**

There is no charge for a tree works application.

### **Who can apply to carry out works to a protected tree?**

Anyone can apply for consent to tree works to a protected tree, however, consent from the Council does not allow you to carry out work you are not legally entitled to do. You also need permission from the tree owner. It is always recommended that you speak to the owner first before making an application.

### **What if I need to work on a protected tree because it is dangerous?**

Where tree works are urgently required in the interests of safety, this work is exempt from the need for consent, so long as you notify the planning authority as soon as the necessity for the work becomes apparent. You should provide the Council with a minimum of five days’ notice. This is in your interest – you could be prosecuted if we think you have carried out unauthorised work.

If the tree works are required immediately for safety, they may go ahead, but you must be able to demonstrate that the works were absolutely necessary. You may only undertake the minimum amount of work necessary to remove the danger. For example, a tree may not be felled if removal of a branch would have been sufficient to make it safe. You are advised to collect evidence such as an arborist’s report,

photographs and an independent witness statement and you must notify the planning authority as soon as possible on the ePlanning Portal.

### **When will I have to plant a replacement tree?**

A replacement tree is required if:

- You cut down or destroy a tree in breach of a TPO, or
- You are given consent for tree removal and replanting is a condition of the consent, or
- You own protected woodland and are given consent to cut down trees.
- If you cut down or destroy a protected tree in breach of a TPO, or
- If you are given permission to cut down a protected tree but replanting is a condition of its consent, or
- If you own protected woodland and permission is given to cut down trees.

The Council has legal powers to ensure that you plant a replacement tree when required. The original TPO will normally cover the replacement trees.

### **When do I need felling permission from Scottish Forestry?**

If a landowner plans to remove more than five cubic metres of timber in one calendar quarter, they may be required to obtain felling permission from Scottish Forestry (previously known as the Forestry Commission). This is approximately equivalent to two mature trees. Felling permission is not required if the trees are in a domestic garden, a public open space, a churchyard or an orchard.

For more information about felling permission please see the [Scottish Forestry website](#).

## **What if my application for tree work is refused or I object to the conditions imposed by the Planning Authority?**

You can appeal to the Scottish Ministers through the Department of Planning and Environmental Appeals (DPEA) in writing within 28 days of receiving the decision. The appeal will normally be decided on the basis of written representations. The DPEA may allow or dismiss the appeal, or vary the original decision.

## **What happens if I carry out work on a protected tree without permission?**

It is a criminal offence under the Town and Country Planning (Scotland) Act to carry out work to, or damage a protected tree without the Council's consent or having provided the required notice. Offences are reported to the Procurator Fiscal and you could be fined up to £20,000 on a summary conviction, or on indictment be liable to an unlimited fine. In addition the Council will require replacement tree planting in the same or a similar location.

## **How do I arrange tree works in a Conservation Area?**

The City's Conservation Areas are areas of special architectural or historic interest where it is desirable to preserve or enhance their character or appearance. Established trees make a major contribution to their character and amenity. Under the Planning Acts, trees within these areas also have statutory protection.

Before carrying out tree works within a Conservation Area, a person must submit a notification to the Council with six weeks' notice. This must identify the trees and provide details of the proposed tree works. Proposed tree works should be described in a precise and clear manner and quantified in metres where

appropriate. The tree work notice should be submitted through the Scottish Government's [ePlanning Portal](#).

The Council may choose to protect the tree by creating a TPO; it cannot otherwise refuse consent. A TPO will be promoted if the trees are of significant public amenity value. After six weeks, if a TPO has not been served, the tree works may proceed as specified in the notice. The works must be completed within two years of submission of the notice.

If tree works proceed in a Conservation Area without the required notification, this is a criminal offence and the penalties are similar to those for trees protected by a TPO.

## **How are trees on development sites affected?**

Planning Authorities have a duty when considering development proposals to ensure that adequate provision is made for the preservation and/or planting of trees by imposing conditions and making TPOs. Development proposals must take account of all existing trees, whether or not they are protected, indicating on the application plans their position, canopy spread, provisions to be made for their protection during construction work, and provisions for their long term retention.

## **Can I stop planning permission being granted by getting a Tree Preservation Order imposed on a tree on the site?**

The existence of a TPO does not prevent the development of land taking place, but the Council, as planning authority, has a duty to have regard to the preservation and planting of trees. The likely effect of development proposals on trees is a material consideration including where there is no TPO on the site.

It is common practice for the Council to place a TPO on land with trees that is, or may become, the subject of development proposals. This is not to prevent development, but to ensure that the removal or cutting of trees does not take place until the Council has had an opportunity to assess any proposals.

If the Council has granted a detailed planning permission on a site where there is a TPO, no further express consent is required for tree works which are required for the implementation of the detailed planning consent.

The [Edinburgh Design Guidance](#) provides guidance regarding the protection of trees when considering development.

## Appointing a Contractor

If you are looking to organise tree work, bear in mind that tree work is a dangerous activity and should be carried out by trained, competent and appropriately insured arborists.

Additionally, tree surgery is highly skilled work and should be carried out by arborists who are trained and knowledgeable in pruning and felling methods to the standards specified in BS3998:2010 "Recommendations for tree work".

You can find arboricultural contractors who are accredited by the Arboricultural Association on their [website](#). There are also arborists listed on the local [Trusted Trader](#) page.

If you are looking for a professional to provide tree inspections, surveys or management advice regarding trees, then you should find a suitably qualified Arboricultural Consultant. Details of consultants are provided by the [Arboricultural Association](#) and the [Institute of Chartered Foresters](#).

## Trees on Council Land

Large numbers of trees and woodlands are on land owned by the Council in parks, greenspaces, cemeteries, schools, Council housing gardens, walkways and roadside verges. These are managed by the Council's Forestry Service. If you have any queries regarding Council owned trees please contact the Forestry Service on [forestry.service@edinburgh.gov.uk](mailto:forestry.service@edinburgh.gov.uk) or call 0131 311 7074.

## Further information

If you have any further queries about protected trees in Edinburgh please email [planningtrees@edinburgh.gov.uk](mailto:planningtrees@edinburgh.gov.uk).