



DEVELOPMENT CONTROL AND REGULATORY BOARD
11 JULY 2024

VARYING OF LEICESTERSHIRE COUNTY COUNCIL TREE
PRESERVATION ORDERS REPORT 2024

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

Purpose of the Report

1. The purpose of the report is to make the Development Control and Regulatory Board (DCRB) aware of an exercise that is to be undertaken to review and vary Leicestershire County Council Tree Preservation Orders (TPOs) that no longer reflect the intent of the original order.

Background

2. Until 1974, Leicestershire County Council made 274 orders following their introduction in the 1947 Planning Act. After that date, the power to make TPOs was transferred to the district Local Planning Authorities (LPAs). A small number of TPOs have been made since by Leicestershire County Council, where the tree was on Council land.
3. Planning practice guidance from the Ministry of Housing Communities and Local Government (MHCLG) published on 7 March 2014 replaced earlier guidance on the law and good practice around TPOs. As in earlier guidance, this advises that authorities keep their TPOs under review, to ensure that protection is still merited, and that Orders contain appropriate classifications. There are currently 264 orders remaining in effect.
4. Prior to 12 March 2020, the DCRB considered applications for works to the Council's TPOs for approval. After this date, the powers to deal with applications for works to protected trees was delegated to officers, unless an elected Local Member has indicated that the application should be referred to the Board for determination. The DCRB receives a full list of the delegated decisions made on applications for works to the Council's TPOs every six months.

Tree Preservation Orders General Information

5. TPOs are 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. Trees can be specified in a TPO either individually, by reference to area, in groups, or as woodlands. If a tree has merit in its own right, it will be specified as an individual. Area classification is used as an alternative way of specifying scattered individual trees. The group specification is used for trees whose overall impact and quality merit protection. A woodland classification is used for woodlands which have a defined boundary.

6. The youngest County Council TPO is now over 35 years old, and some of the oldest are over 70 years old. Changes in legislation and procedures since the majority of the County Council's Orders were made include:
 - a) The designation of Conservation Areas where works to any tree with a stem diameter of 75mm at 1.5m height has to be notified (pursuant to section 211 of the Town and Country Planning Act 1990) to the district LPA who have the power to make a TPO should the tree be judged to contribute to the special character of the Conservation Area.
 - b) That in the case of TPO protected woodland, where the volume of timber that is proposed to be felled is over 5.0 cubic metres, the Forestry Commission determine the application under the 1967 Forestry Act through a Felling Licence. The LPAs are consulted on the felling proposals.
 - c) Applications for works to trees subject to district TPOs can be made electronically through the planning portal. This facility is not available for applications relating to works to trees subject to County Council TPOs.
7. Area TPOs cover all trees that were planted at the time that the order was confirmed, so not all trees within the specified area may be covered. Woodland TPOs cover all trees, whatever the size within the defined area of woodland.
8. In the case of a tree protected by a TPO, the County Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.
9. If the County Council wishes to carry out works on protected trees within their own estate, there is no statutory requirement to complete an application for TPO works as it is considered that the Council would use best practice to maintain trees. The County Council's Forestry Team informs the County Council's Tree Officer of planned TPO works which is agreed by both parties (as specified in Chapter 6 section 6.76 of the Tree Preservation Orders: A Guide to the Law and Good Practice, published by the Department of the Environment, Transport and the Region).

Issues

10. Some TPOs, which are still in force, were made in the 1940s and the 1950s, the oldest being Charnwood Forest made in 1949. Since that time, the use of

the land might have changed; the land might have been developed; trees standing at the time the TPO was made might have been removed (with or without the consent of the LPA); some of the trees still standing, perhaps, no longer merit the protection of the TPO; new trees might have been planted which do merit protection; or the map attached to the original TPO might bear little comparison with a modern map of the area.

11. Such difficulties are likely to be compounded when dealing with an old 'area order' which protects only those trees standing at the time the TPO was made but does not identify each one. In time, this is likely to lead to uncertainty about whether particular trees were present at the time of the making of the TPO. According to the Government's guidance (Tree Preservation Orders a Guide to Law and Good Practice), if it is no longer possible, to ascertain with certainty which trees on the site are protected, by reference to the TPO and map, it may be time to review and vary the TPO.
12. The Council previously completed the process of revoking 10 TPOs in the district of Oadby and Wigston in 2022-23, with the Borough Council having made seven new replacement Orders.
13. As part of the continuing process of reviewing and improving the Council's TPOs, the intention is to undertake an assessment of the Council's TPOs and vary those orders found to be inaccurate, in that the original order, schedule and plan no longer reflect the current situation on the site of the order.

Legal Considerations

14. Planning controls relating to trees are set out in Part VIII of the Town and Country Planning Act 1990 (as amended by the Planning Act 2008) and the procedure for making, varying and revoking TPOs is set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012. See figure 1 below for further details.
15. County Planning Authorities have only limited powers, pursuant to the Town and Country Planning Act 1990 to make TPOs. The LPAs are now the principal bodies for making new TPOs.
16. Trees in a conservation area that are not protected by a TPO are protected by the provisions of section 211 of the Town and Country Planning Act 1990. That provision makes it an offence to damage trees within a conservation area.
17. It is not proposed that any Orders are revoked at this time, rather, that those with significant changes be reviewed and varied as appropriate. As the TPOs are administered and managed by the County Council, there is no statutory requirement to consult with the district councils on this matter. The County Council will need to inform the district councils of any changes to TPO schedules and plans, so that they can update their records.

Flowchart 2: Varying or revoking a Tree Preservation Order

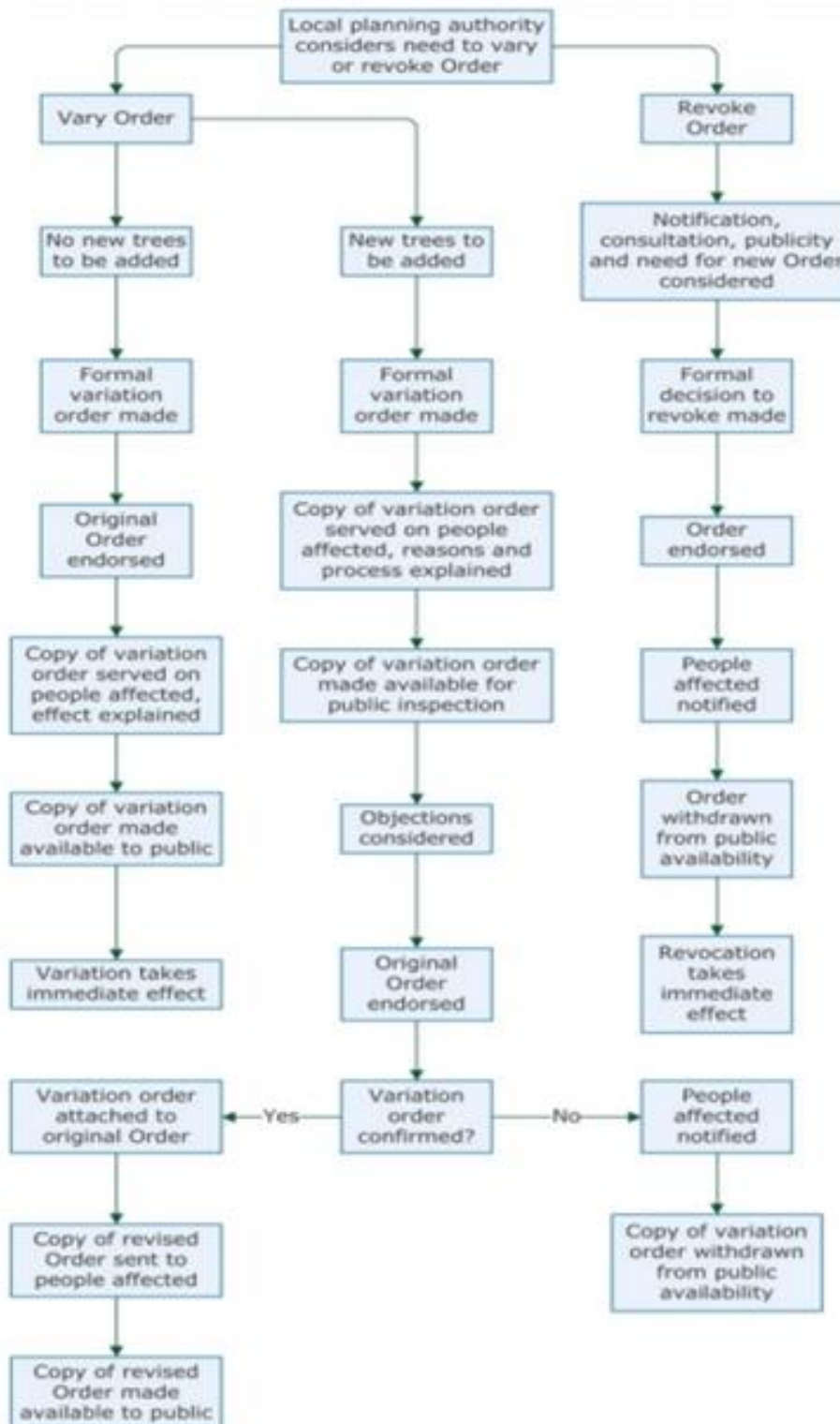


Figure 1: Flowchart showing process for varying or revoking a Tree Preservation Order

Proposed Process

18. It is proposed that the following steps will be taken to enable a review of the Council's TPOs to be carried out:
- a) Undertake a desktop assessment by district of the County Council's TPOs using the Ezytreev (software used for managing and mapping the Council's tree assets) and Google Streetview in order of priority for review and produce a list of categorised orders for review / variation:
 - i. Category 1: High priority – those Orders that have seen significant development and/or other changes.
 - ii. Category 2: Medium priority – those Orders that have seen some development and/or other changes.
 - iii. Category 3: Low priority - those Orders that have seen little or no development and/or other changes.
 - b) After a desktop review, those sites deemed to be high priority sites are to be visited in person and visually assessed using the Ezytreev onsite mapping system and TEMPO (Tree Evaluation Methodology for the Making of Preservation Orders) and re-categorised if needed.
 - c) A report from the above site visits will be produced, including a list of high priority sites that warrant the TPO being varied with the report being submitted to the DCRB for approval.
 - d) Subject to approval, the formal process of varying TPOs as per the list contained in the report will begin.
19. Once the review of high priority sites has been completed, the review of medium and low priority sites will follow the same process, with reports going to the DCRB for information and approval. The process of reviewing all County TPOs is expected to take several years.

Equality and Human Rights Implications

20. There are no discernible equality and human rights implications.

Resource and Financial Implications

21. The review and varying of Orders will have no additional resource or financial implications to the Council as the work will be scheduled to fit within the standard working hours and within the routine of existing roles. It should be emphasised that this proposal is being pursued for the reasons of improved service delivery to the public and the medium- to longer-term improvement in the efficiency of administrating the Council's TPOs.

Conclusion

22. The Council's TPOs cover the period of 1949–1974. Many of these Orders need reviewing due to development and removal of trees over the years. This inaccuracy makes it difficult to manage the TPOs effectively. A review of the TPOs by surveying Orders could result in a number being varied or revoked due to the TPO no longer being viable as shown in the original order.

Recommendation

23. The DCRB is being asked to note the content of the report and in particular the proposed process for carrying out the review and variation of the Council's TPOs.

Background Papers

National planning practice guidance

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

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