

Protected Trees

Frequently asked questions



This leaflet is written for tree owners, their neighbours and local community groups, and answers some of the most common questions about tree preservation procedures in England. It is for information only and you should consult a solicitor if you are unsure of your legal rights or obligations.

Please note that new tree preservation legislation, which came into force on 6 April 2012, affects all existing and new tree preservation orders (TPOs).

1. Why are trees protected?

Local planning authorities have a duty to 'make provision' for the protection of trees. As such there is a general presumption to the retention and preservation of trees through this protective legislation. Torbay Council attempts to ensure such protection through a balanced and consistent approach to protected tree management.

Trees may be protected for a wide range of reasons including their contribution to public visual amenity, if they are unusual or rare specimens, they may have strong historical associations with a property, etc. We consider each request to protect a tree/s on its individual merit and therefore no exhaustive list has been prepared.

2. How are trees protected?

The protection of trees may be achieved by the use of any of the following classifications:

- **Tree preservation orders**

These are orders made by Torbay Council. In general, they make it an offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree without the planning authority's permission, subject to the exemptions noted in Q17.

- **Conservation areas**

Conservation areas are defined as areas of special architectural or historical interest, the character of which it is desirable to preserve or enhance. Both buildings and trees may contribute to the special character of a Conservation area, so Torbay Council must be notified of proposed tree works to allow time to consider if the works would be detrimental to the character and appearance of the Conservation area.

There is no duty to notify Torbay Council of an intention to fell trees that arise within Conservation areas that are of a size less than 75mm in diameter, or 100mm if cutting down trees to promote the growth of other trees i.e. thinning.

- **Planning conditions**

Torbay Council has a statutory duty to ensure that provision is made for the retention of trees when granting planning permission by imposing planning conditions and TPOs. The use of conditions is particularly effective when the need for special measures, including root protection, special surface installation and so on is deemed necessary. Conditions should not be used for long term tree protection, where the TPO system is more suited to this purpose.

It should be noted that the same level of statutory protection is afforded to trees within Conservation areas and trees protected by TPOs.

3. Are all trees and tree species covered by TPOs, Conservation areas or Planning Conditions?

All tree species can be protected, including trees that emerge from hedgerows, but hedges, shrubs and bushes are not covered. Any species can be protected, but no species is automatically protected by a TPO.

The act does not limit the application of TPOs to a minimum size.

Planning conditions that serve to protect trees are required to be detailed in their description of which trees are protected so that they can be enforceable and therefore a copy of the approved plan/s would be necessary to answer enquiries in this matter. Copies of detailed plans are available by registering with planning online at the following address www.torbay.gov.uk/planningonline. Printed copies of plans and documents are available from Spatial Planning for which various fees are chargeable depending upon the size and number of documents required. More information can be found by contacting them directly on 01803 207801 or visiting the website.

4. How can I find out if a tree is protected?

Torbay Interactive Mapping (TIM) is available at the following address www.torbay.gov.uk/torbaygis/TorbayInteractiveMap.aspx. TIM is a visual and text based resource that reveals cultural, social and historical information about many different areas of importance within Torbay, including information on the location and type of TPO's applying to various addresses. However due to accuracy concerns, if you wish to confirm conclusively the status of a tree's protection you should contact Natural Environment Services prior to any commencement of works that may affect a tree. The location of the various Conservation areas is also detailed within the TIM. When your question applies to trees that may be protected by planning conditions copies of approved plans would be available by viewing Planning Online, TIM or contacting Spatial Planning directly on 01803 207801.

Specific protection enquiries against properties may be made by emailing naturalenvironment@torbay.gov.uk or contacting Natural Environment Services directly on 01803 207797.

An official search of the local land charges register can also be made before you buy a property. This should reveal the existence of an order and whether a property is in a Conservation area. Make sure your legal adviser tells you if any trees are protected.

If you wish to either view a copy of the original TPO or receive a copy you should email development.services@torbay.gov.uk or contact Spatial Planning directly on 01803 207801 and they will arrange for a copy to be made available to you.

5. Are there any differences between protection offered to trees within Conservation areas and those covered by TPO legislation?

There are a number of crucial differences between the two forms of protection, outlined as follows:

- **Trees protected by TPOs**

Tree Preservation Orders are the main vehicle for long term tree protection contained within the Town and Country Planning Act 1990. TPOs allow Torbay Council to make a variety of decisions in respect of tree work applications. They can approve, part refuse, refuse with alternative, refuse and issue decisions subject to conditions specifying such things as a requirement for detailed pruning regimes and the need to replant replacement trees.

- **Trees protected by conservation areas**

Works that are required to trees that are within Conservation areas, but that do not have any TPO protection in addition, are notified to Torbay Council, and not applied for (see Q6 below). This allows Torbay Council a six week period to do one of the following three actions:

- a) Make a TPO if justified in the interests of amenity. The proposal would then have to be the subject of a formal TPO application.
- b) Decide not to make a TPO, allow the six week period to expire at which point the proposed works can go ahead as long as they are undertaken within two years of the date of the notice.
- c) Decide to not make a TPO and inform the applicant that the work can go ahead.

6. How can I apply for works to a protected tree?

For works to trees protected by TPOs you can apply online by visiting www.torbay.gov.uk/tpo. This option is highly recommended as it creates an easily identified record of your application, recording the date of its submission; is much quicker than postal options and, of course, is less expensive to yourself and the Council to administer. Please contact us if you require a copy emailed or posted to you. Please visit our website for more information www.torbay.gov.uk/tpo Making an Application for Tree Work on a Protected Tree.

Please be aware that all supporting information that is requested within the standard application form must be submitted prior to your application being validated. We are unable to validate any applications that are not fully completed or that do not contain the relevant supporting information.

For proposed works to trees within Conservation areas there is no requirement to use the standard forms but it will aid the process and the collection of appropriate information and enable timely validation.

For those trees protected by way of planning conditions study should be made of plans available at Planning Online or by contacting Spatial Planning directly on 01803 207801.

7. Is there a cost for an application?

There is no cost at present for a tree work application or a subsequent appeal against refusal of consent or the reasons (the appeals described in Q22).

8. How can I comment upon a tree work application or Conservation area notification?

The weekly lists of planning applications, which include tree works, are available here **www.torbay.gov.uk/planningonline**. If you register for Planning Online, you can adjust your account settings to receive emails about tree work applications that may be of interest to you within your local area. You will also receive email updates upon the progress of the decision. Registering will allow you to make online comments upon applications.

We cannot receive your comments verbally, either on the telephone or in person. The easiest way to submit a comment on a planning application is by registering with Planning Online, our online database for planning applications. Registering also enables you to track the progress of an application and receive email notification when the decision is made. By law, the Local Government (Access To Information) Act 1985, all comments received must be open to public inspection and will be available for public inspection on our Planning Online database. Comments made online will appear immediately. Comments can also be submitted by email to **planning@torbay.gov.uk**

You can also submit comments by letter. Please use our comments form which has been designed to make commenting in writing easier for you. Comments made by letter will normally be made available to view online within two days of receipt by Torbay Council. Please write your name, address and the reference number for the application in capital letters, as this will help us to register your letter.

9. How can I tell if tree works presently being undertaken are permitted?

You can search for determined tree work applications on Planning Online **www.torbay.gov.uk/newpublicaccess/**

If you are unable to identify an approved application, please contact Natural Environment Services direct and we will endeavour to investigate this matter.

10. What should I do if I see protected trees being worked upon without permission?

If you have checked Planning Online and suspect that unauthorised tree works are being undertaken you should contact Natural Environment Services. An officer will then determine the appropriate course of action.

11. What are the penalties for working on a protected tree without permission?

Torbay Council will use our powers appropriately to ensure compliance with TPOs, when we consider our actions are in the public interest, are proportionate to the offence and are reasonable. If the decision is taken to pursue a criminal prosecution with regard to unauthorised works to protected trees, Crown Courts have powers to fine anyone contravening the tree regulations laid down in part 8 of the Town and Country Planning Act 1990. These include penalties for cutting down, topping, lopping, uprooting, wilfully destroying or damaging protected trees. If you deliberately destroy a protected tree, or damage it in a manner likely to destroy it, you could be fined up to £20,000 if convicted in the magistrates' court. In determining the amount of the fine, the court will take account of any financial benefit arising from the offence. For other offences including working on the tree without permission you could be fined up to £2,500. There is also a duty to replace any protected tree that has been removed illegally. Should the replacement tree die a further replacement would then be required. Any conviction would result in a criminal record.

As noted earlier the same level of statutory protection, and severity of offence, is accorded to trees growing within Conservation areas.

Further information regarding Torbay Council's policies for enforcement can be found here www.torbay.gov.uk/planninginvestigation

12. How can I apply to have a tree/s protected?

The serving of any new TPO is a matter of great significance both in terms of the cost to Torbay Council and in terms of the constraints it imposes upon the owner of the tree. The council will only consider those trees of most present or future visual amenity value for protection. In the first instance you should write detailing the reasons for your request to have a tree or trees protected to Natural Environment Services, Lower Ground Floor, Town Hall, Torquay TQ1 3DR. Details of our amenity evaluation process are available online at www.torbay.gov.uk/treeandwoodlandframework

13. What is the process for serving a TPO?

Before a tree can be protected it must first be assessed by Torbay Council as being an important landscape feature offering significant amenity to the general public. To ensure the process is open, defensible and reasonable we have devised an adopted policy for assessing the potential of a tree or trees for any new TPO.

- A site visit is undertaken and the amenity evaluation assessment is completed on site.
- If the tree/s score is above the minimum threshold of 15, an amenity report is completed and submitted for approval by the delegated officer. This is then sealed by the legal department if approved.
- The TPO is served with immediate effect. Affected parties are notified and a site notice is displayed on site. The TPO is registered against the properties involved.
- There is a twenty eight day period for comments to be received commencing from the date of serving.

- Following the twenty eight day period in which affected parties can inform the council of their legal interest in the land and make representations, a review of the TPO is undertaken. This determines whether the TPO should be confirmed by the legal department.
- The affected parties are notified of the decision and the records of the council are updated accordingly.

14. If the council serves a TPO on my tree, is it then responsible for its maintenance and ensuring it is inspected?

The serving of a TPO does not transfer any responsibility to Torbay Council for the management of protected trees, nor does it impose a duty on it to pay for any works that become necessary. It remains the responsibility of the tree owner to ensure it is inspected as appropriate.

15. Can I apply for works to my neighbour's protected trees?

You may as a third party, usually a neighbour, apply to, or notify Torbay Council, of your desire to undertake works to protected trees outside your ownership. The normal tree work application procedure should be used and once validated an officer will undertake the site visit to make an assessment. It may be necessary to view the tree from both sides and therefore arrangements should be made with the tree owner if the application relates to defects not apparent from the applicant's land. Depending on the decision, you may then undertake those permitted works that can be achieved from within your own land without requiring the tree owner's permission. However you are strongly advised to discuss the matter with the tree owner in advance of the works so that they may make arrangements to either include elements of the work that are applicable to them or to allow time to move items that may be damaged. *The decision of Torbay Council only applies to approval for those works covered by the Town and Country Planning Act 1990. It does not infer any right to enter another person's land or climb parts of the tree over their land. Permission must be sought from the tree owner if works require access on to your neighbour's land.* The arisings from the work still legally belong to the owner and must be offered back but they are not obliged to accept them.

16. What works to protected trees are likely to be regarded as acceptable to Torbay Council?

Generally only those works that are in accordance with the current B.S.3998, Recommendations For Tree Works that would not lead to a reduction to any public visual amenity contributions, wildlife benefit, loss of important historical trees, or loss of an important screening group would be acceptable. There is a general presumption that certain tree works to trees will be acceptable, for example to allow ordinary vehicular access, normal garden maintenance, reasonable clearances from buildings, removal of epicormic growth from stem and basal areas, to provide clearance to clear utility lines. If, following the site visit, it is considered that the works are reasonable and arboriculturally appropriate then permission would ordinarily follow. A cyclical condition may be attached that would allow for a repeat of those works that are considered reasonable and that would not affect the amenities of the tree/s without the need for any further applications to the council.

17. Are there any exemptions from the requirement to gain permission for works?

The matter of exemptions from the requirement for permission from Torbay Council is an extremely complex area of statute law. We would strongly advise that any person wishing to undertake works using the exemptions to the TPO (or Conservation area) seek advice from a person competent in arboriculture. A competent person would be defined as a person who has the necessary experience and technical ability to be able to ascertain that the required works are clearly exempt and are not works that it would be more suitable to use the normal tree work application process for.

Here are the main exemptions from the requirement for permission of Torbay Council, but please note this list is not exhaustive. The council's consent is not required for:

- cutting down or carrying out work on trees if required to implement a full planning permission;
- cutting down or carrying out work on a fruit tree which is cultivated in the course of a business, as long as the tree work is in the interests of that business;
- the statutory undertakers who manage major infrastructure, they are exempt from the requirement for permission to undertake works to trees affecting their equipment or within the boundaries of their operational land;
- works that require the cutting down or carrying out works on trees that are dead or dangerous. However, you must give five days' written notice to the authority. If you need to remove urgently a tree that poses an immediate risk of serious harm you may undertake this without prior notifying Torbay Council. Notice in writing should be given to us as soon as practically possible after the works became necessary, if not in advance. You must collect evidence for the reasons for any urgent felling as you may be challenged. If work is carried out on a protected tree under this exemption, or any of the other exemptions listed, the burden of proof to show, on the balance of probabilities, that the tree was dead or dangerous rests with the person undertaking the works or their agent.
- work on trees that may be necessary to prevent or abate a nuisance to unprotected trees. The term 'nuisance' is used in its strict legal sense, not in the ordinary everyday sense. You are strongly advised to seek legal advice before seeking to use this exemption;
- cutting down trees in line with a plan of operations agreed by the Forestry Commission under a grant aid scheme or for the cutting down of trees in accordance with a felling licence.

18. I think nesting birds, bats or other protected species are being affected by works to protected trees.

Each decision notice issued by Torbay Council contains informative advice for the applicant which contains guidance with regard to avoiding disturbance of protected bird species. RSPB guidance states that tree cutting should be avoided between March and August. However,

works may continue if a pre-work survey for active nests of protected species is undertaken by a competent person to check for the presence of nests. More detailed guidance is available from the RSPB publication at www.rspb.org.uk/ourwork/policy/wildbirdslaw

A similar informative note is contained within decision notices which relates to possible harm to bats or their roosts. More detailed guidance is available from the Bat Conservation Trust website at www.bats.org.uk/pages/bats_and_the_law.html

It is the responsibility of the applicant and their agent, if used, in all instances to satisfy themselves that any tree works they propose to these or any protected species should not be contrary to the Wildlife and Countryside Act 1981 which can be found at jncc.defra.gov.uk/page-3614, and any other statute that replaces or supplements it. Torbay Council has no powers to enforce wildlife protection legislation and any concerns you may have with regard to birds, bats or other protected species should be made as soon as is possible to your Police Wildlife Liaison Officer who has powers to investigate and take appropriate action.

19. My neighbour has entered my land to undertake tree works.

This is an offence under English law and therefore you should contact Devon & Cornwall Police for further advice. Torbay Council has no powers to prevent entry onto land. The non-emergency number for Devon & Cornwall Police is 101.

20. Could you explain the tree work application process?

A tree work application or Conservation area notification will be dealt with in the following manner:

- a) The received tree work application/notification is checked to ensure that all relevant and required information is submitted with the form.
- b) If further information is required the application will be made invalid and you will be notified of the need for this information. We will await your response before proceeding.
- c) Once all relevant information is received, your application will be validated and you will receive an acknowledgement. This will inform you of the officer handling your application and the target date for decision.
- d) A three week period for making representations for Conservation area notifications, and a four week period for TPO applications, is allowed before the application can be determined.
- e) A site visit, if appropriate, will occur prior to the target date for decision.
- f) The decision notice will be issued after review and approval by the delegated officer.
- g) You then have a twenty eight day period to lodge an appeal against a decision of the authority with the Planning Inspectorate. For further information refer to Q21.

21. Can I appeal against a refusal of consent for a tree work application?

Within a twenty eight day period from the date of a decision, you may appeal for any of the following:

- Refusal of consent.
- Any condition attached to the local planning authority's consent.
- The ability for Torbay Council to issue Article 5 Certificates (preventing claims for loss or damage to the authority for decisions based upon pre 1999 orders) has been revoked within the new Tree Preservation Order Regulations 2012, and claims for loss or damage resulting from a decision is now unified under one compensation framework, which would be detailed within the decision notice.
- Failure to determine the application within the eight week time limit.

If you are considering lodging an appeal regarding the council's decision regarding your tree work application useful guidance is available here www.planningportal.gov.uk/uploads/pins/tpo_app_guidance.pdf and at the end of the decision notice.

22. Why have I been made to plant a replacement for the trees removed?

Torbay Council has a duty to ensure that wherever a protected tree is removed, if appropriate, a replacement tree of an appropriate species and size should be replanted in a position as close to the tree removed as practically possible. The need for this duty arises to ensure that the original amenity contributions of whatever form previously made by the removed tree are replaced to ensure the long term amenities of the local and wider landscape. Torbay Council welcomes dialogue with tree owners regarding suitable species to replant, with this process allowing better future relationships between the tree and the applicant.

23. Can an officer visit my property and offer general tree advice?

Unfortunately we are unable to undertake pre-application site visits due to the high volume of work undertaken by our Natural Environment Services team. If you need professional advice before submitting an application you may find it useful to discuss the matter with a qualified tree surgeon that will be able to offer you advice based on current industry best practice. If your garden or the facility you manage has extensive grounds you may find it more useful to have a competent person prepare a tree management plan that deals with the whole site holistically. Once prepared, this could be submitted for review by Torbay Council and, if found acceptable, this could become an approved document that would allow a whole range of works that would not require repeat applications.

For more advice on this option please contact the department on 01803 207797 and an officer will be happy to discuss this with you.

How to contact us:

Write to us:
Natural Environment Services

Torbay Council
Lower Ground Floor
Town Hall
Torquay TQ1 3DR

Telephone us:

For enquiries regarding the issues identified in this booklet, please contact us on

01803 207797

Visit us:

www.torbay.gov.uk/tpo

Email us:

naturalenvironment@torbay.gov.uk

Contact us via Social Networks:



Torbay's Natural Environment Services



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