

Meeting: Development Management Committee

Date: 8 October 2018

Wards Affected: 8 October 2018

Report Title: Arboricultural Response to the Motion for Network Rail Trees to be Protected by Tree Preservation Orders to Prevent the Felling of Trees

Is the decision a key decision? No

When does the decision need to be implemented?

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1. Proposal and Introduction

- 1.1 This report is an Arboricultural Response to the Notion of Motion, included in the July Council meeting proposing that Tree Preservation Orders (TPOs) are made to protect trees on Network Rail land, *as below*. Because the legislation affecting TPOs allows tree removal and pruning works be carried out on Network Rail land where this is necessary in the interests of safety, under exemption from the restrictions of a TPO, your officers consider that the making of TPOs to restrict the felling of trees immediately adjacent to the trackside would be unnecessary and could place the Council in a difficult position. Instead it is proposed that Council officers continue to liaise with Network Rail to ensure the retention of trees wherever possible, as recommended by Government guidelines.

'Torbay Council notes concerns expressed in the national media about Network Rail cutting down trees alongside their rail lines, and that local authorities across the Country have placed preservation orders on trees by rail tracks to stop them being felled unnecessarily.'

In particular, this Council further notes from 'Devon Live' that Teignbridge District Council has stopped Network Rail felling trees on Network Rail land in the Teignbridge area, by placing a preservation orders on the trees and engaging in discussions with Network Rail on this issue to find a way forward.'

Torbay Council calls on the Chief Executive to ensure that preservation orders are placed on trees that are on Network Rail land in the Torbay local authority area (whilst ensuring that the trees are appropriately managed to ensure that they do not affect the rail line), and to engage with Network Rail on this issue to avoid the unnecessary felling of trees.'

- 2.1 Torbay Council has the power under the Town & Country Planning Act 1990 to make a TPO where it is considered expedient to do so in the interests of amenity. The protection that is conferred on trees by these provisions is based upon selective designation, rather than a blanket safeguarding system. Government guidance is that it may be expedient to make a TPO if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have significant impact on the amenity of the area.
- 2.2 The Council's senior tree and landscape officer has met with the contractor acting for Network Rail in Torbay and has been informed that the contractor is seeking to carry out clearance of tree growth at a distance of 6-8m from the trackside. This is to allow clearance of growth from trains and to ensure the track is unimpeded by vegetation, for safety management. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 ('The Regulations') state that tree works, including the cutting down of trees, can be undertaken by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary in the interests of the safe operation of the undertaking even if a TPO is in place (reg. 14(1)(a)(iii)(aa)).
- 2.3 Network Rail is defined in the Regulations as a statutory undertaker and land along the trackside is operational land. This means that even if any trees within 6-8m of the track where works are currently proposed were protected by a TPO, it is highly likely that the Council would be unable to prevent their removal. Additionally, if any of the trees were protected, and permission for works to be carried out was refused, the Council has potential liability to pay compensation if loss or damage is incurred as a result of refusal to grant consent.
- 2.4 The contractor for Network Rail has confirmed that any other works to trees which are further away from the track are to be limited to the pruning of overhanging branches wherever possible. Where the overhang is to such an extent that the tree would be compromised by the works, removal will be considered, in liaison with the Council. As a result, your arboricultural officer does not consider that any trees which may be worthy of protection, and which are not a hazard to the safe running of the rail network, are at risk of removal. As such, it is not considered expedient to ensure their protection by making TPOs.
- 2.5 The recommendations of this report will help the Council to avoid making TPOs that are not capable of withstanding reasonable requests from Network Rail to carry out tree works. This will save the Council valuable officer time by avoiding making TPOs that would also fail to deliver the protection of trees that they were intended for. The Council would also avoid potentially negative publicity following the failure of TPOs to prevent tree felling on Network Rail land. It would also ensure that the Council avoids any liability from unreasonably delaying the clearance of vegetation from the side of the railway for safety management purposes.

3. Recommendation(s) / Proposed Decision

- 3.1 It is recommended that no TPOs are made in order to restrict the reasonable tree works that are being carried out to remove and prune trees next to the trackside.

3.2 It is recognised that trees on Network Rail land do often have substantial public amenity value and also can provide ecological habitats. It is therefore proposed that representatives from the Natural Environment team liaise closely with Network Rail and their contractors to ensure that those trees that are providing these benefits and that can be retained are identified and kept for the future, wherever possible.

Appendices

Appendix 1:

Background Documents

Planning Practice Guidance – Tree Preservation Orders, statutory undertakers
<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#statutory-undertakers>

The Town and Country Planning (Tree Preservation) (England) 2012, exemptions:
<http://www.legislation.gov.uk/uksi/2012/605/regulation/14/made>

Section 1: Background Information

1.	<p>What is the proposal / issue?</p> <p>The proposal is to provide a response to the Motion of Notion from July, for Tree Preservation Orders (TPOs) to be made to prevent tree felling on Network Rail land adjacent to the trackside.</p>
2.	<p>What is the current situation?</p> <p>Currently no TPOs have been made for this purpose but they have been requested by the Motion of Notion.</p>
3.	<p>What options have been considered?</p> <p>The option to make TPOs has been carefully considered with reference to the relevant legislation.</p> <p>The option to liaise closely with Network Rail has also been considered, in order to influence the tree works for the retention of trees wherever possible.</p>
4.	<p>How does this proposal support the ambitions, principles and delivery of the Corporate Plan?</p> <p>Ambitions: Prosperous and Healthy Torbay</p> <p>Principles:</p> <ul style="list-style-type: none">• Use reducing resources to best effect – by avoiding using officer time to make TPOs that will not deliver the protection of trees they were intended for• Integrated and joined up approach – liaise closely with Network Rail <p>Targeted actions:</p> <ul style="list-style-type: none">• Promoting healthy lifestyles across Torbay – by liaising closely with Network Rail to retain trees for public amenity• Ensuring Torbay remains an attractive and safe place to live and visit – by liaising closely with Network Rail to retain trees for public amenity and ecological habitats
5.	<p>How does this proposal contribute towards the Council's responsibilities as corporate parents?</p> <p>N/A</p>

6.	How does this proposal tackle deprivation? N/A
7.	How does this proposal tackle inequalities? N/A
8.	How does the proposal impact on people with learning disabilities? N/A
9.	Who will be affected by this proposal and who do you need to consult with? Network Rail are letter-dropping landowners adjacent to the railway
10.	How will you propose to consult? N/A

Section 2: Implications and Impact Assessment

11.	<p>What are the financial and legal implications?</p> <p>The proposal will save the Council resources by ensuring TPOs are not made that will place the Council in a difficult position and involve using officer time for TPOs that are not deliverable.</p>
12.	<p>What are the risks?</p> <p>The proposal adheres to the relevant legislation. It is therefore reasonable and requires no extra risk.</p>
13.	<p>Public Services Value (Social Value) Act 2012</p> <p>No</p>
14.	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>Detailed reference to the relevant legislation.</p>
15.	<p>What are key findings from the consultation you have carried out?</p> <p>N/A</p>
16.	<p>Amendments to Proposal / Mitigating Actions</p> <p>N/A</p>

Equality Impacts

17.	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people			No different impact
	People with caring Responsibilities			No different impact
	People with a disability			No different impact
	Women or men			No different impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			No different impact
	Religion or belief (including lack of belief)			No different impact
	People who are lesbian, gay or bisexual			No different impact
	People who are transgendered			No different impact
	People who are in a marriage or civil partnership			No different impact
	Women who are pregnant / on maternity leave			No different impact

	Socio-economic impacts (Including impact on child poverty issues and deprivation)		No different impact
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		No different impact
16	Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)	N/A	
17	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	N/A	