

Guidance on Protected Trees



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 the making of 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 additional 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.

In these cases consent from the Council for any tree work is likely to be required.

What is a Tree Preservation Order?

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.

TPOs are a means of protecting individual trees, groups of trees or woodlands whose removal would have a significant impact on the public amenity of an area.

It is an offence to cut down, top, lop, uproot, willfully damage or willfully destroy a tree with a TPO without the Council's permission.

What is the purpose of a Tree Preservation Order?

The purpose of a TPO is to protect individual trees, groups of trees or woodland that contribute to amenity, for example 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.

In order for a TPO to be made trees must normally 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.

What type of trees can be covered by an order?

All types of trees, including hedgerow trees, can be covered. However, hedges, bushes and shrubs cannot. A TPO can cover anything from a single tree to woodlands.

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

You can check online whether a tree has a TPO placed on it by visiting www.edinburgh.gov.uk/privatetrees and using 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?

Applications for tree works can be viewed by visiting 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 contact 0131 200 2000. 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?

Any member of the public can propose that a tree be afforded the protection of a TPO. This should be undertaken in writing and can be emailed to planningtrees@edinburgh.gov.uk identifying the tree or trees concerned and stating the reasons why it is important to protect them.

Requests for TPOs will be considered against three main criteria:

- the amenity provided by the tree or trees and the contribution made to the attractiveness and character of the locality,
- issues relating to biodiversity, wider environmental considerations, heritage and individual characteristics of trees, e.g. rarity of species, size,
- the level of threat to the tree or trees.

We can also make a TPO as a precautionary measure if there is reason to believe the tree or trees could be at risk in the future and for the short or long-term protection of trees on development sites.

What is the process for making a TPO?

Once proposed, the Council will write to the owner and other interested parties serving notice of the making of the TPO, and advertising the TPO 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. We will not consider anonymous objections or comments.

The TPO comes in to effect immediately, but will lapse after 6 months unless it is confirmed by the Planning Authority. Any objections or comments are summarised in the report to the Planning Committee and are taken into account when the Committee considers confirmation of the Order. The Committee may confirm the TPO either without modification or "subject to such modifications as they consider expedient". Alternatively, they may decide not to confirm the TPO.

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, liability for their safety, their condition, and any damage they may cause continues to lie with 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?

Where protection is given by a TPO prior consent in writing is required from the Planning Authority to carry out any work on the trees.

Anyone wishing to carry out work on a tree must apply online at the [Scottish Government's e-Planning](#) system, specifying the tree or trees requiring work, and

explaining what they want to do and why. A site inspection will be carried out, and an assessment made of the impact of the proposed work on local amenity and the condition of the tree.

Consent to fell or prune will only be granted if necessary for arboricultural reasons and will be on condition that replacement planting takes place with trees of an appropriate size and species, and in the same location or near to that location or on such other land as may be agreed.

Work must be carried out to 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 Part 1 1992, unless the trees form part of a woodland, in which case suitably sized whips or forest transplants will be acceptable.

The consent will lapse if the work is not carried out within 2 years of the decision letter.

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 permission to carry out 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. This will need the permission of the 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 the uprooting, felling or lopping is urgently required in the interests of safety you are required to provide the Council with at least 5 days notice. This is in your

interests - you could be prosecuted if we think you have carried out unauthorised work.

If tree works are required immediately for safety, you may carry it out but the requirement is for you to demonstrate that the works were absolutely necessary. Only a minimum amount of work necessary to remove a danger can be carried out e.g. a tree can not be felled if it would have been sufficient to remove a branch. You are therefore advised to collect evidence such as a tree surgeons report, photographs and/or an independent witness statement and you must apply for tree works consent as soon as possible on the [Scottish Government's e-Planning](#) website.

When will I have to plant a replacement tree?

- 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.

Do I need a Forestry Commission felling licence to cut down trees covered by a Tree Preservation Order?

Whether or not a TPO is in force, an application must be made to the Forestry Commission for a felling licence if it is intended to fell more than five cubic metres of timber. This is approximately equivalent to two large mature trees. This is not applicable if the trees are in gardens, public open space, churchyards or orchards.

In some areas, a Forestry Commission management agreement may be appropriate and grant aid may be available for woodland improvement. The Council encourages this involvement and can provide advice.

Where trees are covered by a TPO the Forestry Authority will pass your felling licence application to this Council together with its comments, for a decision under the TPO.

What if my application to carry out work on a protected tree 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 an 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 that a replacement tree is planted in the same or a suitable location.

How do I apply to carry out works to a tree in a Conservation Area?

The City's Conservation Areas are defined as 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 any tree work within a Conservation Area, a person must give 6 weeks written notice to the Council identifying the trees and detailing the nature and extent of the proposed work. This can be done online through [Scottish Government's e-Planning](#) system. This allows an officer to inspect the trees, discuss the work with the applicant and make recommendations.

The only way the Planning Authority can protect the trees is to promote a TPO; it cannot otherwise refuse consent. A TPO will be promoted if the trees are of significant public amenity value and are considered to be at risk.

After six weeks, if the Authority has not responded and if a TPO has not been served, the tree work specified may proceed. If the intended work does not proceed within two years, the "notice of intent" will be deemed to have lapsed, and a further notification will be required.

Should work take place without the required notification, similar penalties apply as 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 can not in itself 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 and the likely effect of development proposals

on trees is a material consideration.

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 an existing or a new TPO, no further express consent is required for the cutting down, lopping and felling of trees if directly 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

When deciding who should prune or fell your tree you should bear in mind that:

- Tree work is a dangerous activity and should be carried out by trained, competent and appropriately insured arborists.
- Tree work should be carried out to a good standard. The Planning Authority will usually require the work to comply with BS 3998 *Recommendations for Tree Work*.

Trees on Council Land

Large numbers of trees and woodlands are on land owned by the Council in parks, amenity areas, schools and roadside verges. These are managed by the Council's Forestry Service. If you have any queries regarding Council owned trees please contact Forestry Services on 0131 311 7074 forestry.service@edinburgh.gov.uk

Further Information

For further information regarding privately owned trees please visit www.edinburgh.gov.uk/privatetrees