



Growth and Development Scrutiny

Wednesday, 26 January 2022

Tree Conservation

Report of the Director – Development and Economic Growth

1. Purpose of report

- 1.1 There is greater awareness and more emphasis being placed on tree planting and implications on flooding alleviation, climate change and carbon capture, and as a result concerns have been raised on the management of our own trees and tree protection in the Borough through conservation areas, Tree Preservation Orders (TPO's) and controls on development sites.
- 1.2 This report and the associated presentation to the Growth and Development Scrutiny Group will provide information on:
 - the use of TPO's
 - conservation areas and the important similarities and differences between the two designations
 - the protection of trees during construction work following planning applications
 - protection offered to agricultural hedgerows
 - management of the Borough Council owned trees and replacement planting
 - diseases and climate change factors that will impact on the Borough's trees.

2. Recommendation

It is RECOMMENDED that Growth and Development Scrutiny Group:

- a) supports the drafting of a tree protection policy and tree management policy setting out the Council's role, function and priorities
- b) supports investigation into the feasibility of an online mapping system which could be used to show protected trees in the Borough.

3. Reasons for recommendation

- 3.1. The proposed policies will help steer staff and councillors in relation to matters relating to tree protection. It will also help guide the public on when we are likely to carry out tree work and help set out a framework for future programmes of work.

- 3.2. An online mapping system could free up staff time and would benefit customers. This is subject to the associated cost of any options and also that there is a system that fits the requirements.

4. Supporting information

- 3.1. Government guidance on TPO and conservation areas is available online: [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/guidance/tree-preservation-orders-and-trees-in-conservation-areas).

Tree Preservation Orders

- 3.2. A TPO can be used to protect trees where 'it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.
- 3.3. 'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make a TPO. Government advice is that TPO's should be used to "protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future. It is considered that trees should normally be visible from a public vantage or viewpoint."
- 3.4. The law regarding Tree Preservation Orders does not mention the environmental benefit of trees and their amenity value is primarily considered to be their aesthetic value and visual prominence. However, Government guidance suggests "environmental factors can be taken into account, but on their own wouldn't warrant making a TPO" An example of a tree where environmental value would need to be considered would be a veteran tree which may have a much-reduced canopy with wounds and decay that wouldn't meet the standard criteria of what is an attractive healthy tree. In conservation areas, non-native or ornamental trees may not be appropriate for protection as they will be out of character in that area.
- 3.5. A tree may have sufficient amenity value to warrant protection, but the Council also needs to consider if it is expedient to make a TPO. This requires the Council to consider whether the tree is currently under good management and whether there is a risk to it in the future. It is considered unlikely to be necessary to protect trees which are under good management. Risks to trees do not have to be known and it is possible for the Council to make proactive TPO's as a precaution.
- 3.6. Most of the current TPO's were made as a result of planning applications and as a result many trees are now located in very different surroundings to when they were first protected. The Council also use conservation area tree notices and enquiries from the public as a catalyst to make TPO's.
- 3.7. When TPO's are made, interested parties are allowed 28 days in which to comment or object. Any objections are considered by the Council's Planning

Committee, who decide whether or not the TPO should be confirmed, or in other words, made permanent.

- 3.8. Anyone wishing to work on a protected tree generally needs to apply to the Council. Councils are not obliged to consult interested parties but should notify the owners of trees if a third party applies. Rushcliffe consults neighbours, Parish/Town Council and Ward Members. Government advice is that the higher the amenity value the greater the justification needs to be, whereas if the tree has low value there may not need to be an arboricultural need for the work. TPO applications allow conditions to be used to control the standard of work or require replacement trees.
- 3.9. There are a number of exemptions where applications to work on trees don't need to be made such as trees which are considered dead or dangerous, removal of deadwood, work by statutory undertakers and work to implement an approved planning permission amongst others. When felling trees which are considered 'dead or dangerous' the work can take place without a formal application, five days' notice should be given to the Council or in urgent cases, notice should be given as soon as reasonably practical after the work takes place. When felling trees under this exemption there is a duty to plant a replacement unless it is a woodland TPO.
- 3.10. Unauthorised work can lead to fines if a prosecution is successful in a magistrate's, or crown, court. There is a requirement to plant replacements which can be enforced.
- 3.11. When deciding applications to work on protected trees, the Council needs to bear in mind that there are limited circumstances where it could be required to pay compensation for refusal, for example, if a tree caused over £500 worth of damage for reasons given in the application within a year of the decision.
- 3.12. In general, the Council looks to protect prominent trees which are good examples of their species, with good structure and health, which can grow to full maturity without the need for regular pruning. When considering making TPO's or where decisions need to be justified, the Council has a points-based evaluation – see Appendix A. This records the rationale used when evaluating trees. It primarily considers their aesthetic value, impact on the public if felled, condition and ability to grow to maturity without impacting on properties and health and safety issues. It also recognises that wildlife value and the appropriateness of trees in terms of character of conservation are also relevant.
- 3.13. Councils have discretion on how to apply TPO rules and judge the number, type and quality of trees to be protected and Rushcliffe has always taken a pragmatic approach and has tried to be selective about when TPO's are made, and which trees are protected. Whilst it may seem desirable to protect more trees, there are consequences in doing this. The Council needs to maintain certain standards when it comes to selecting which trees are protected due to the need to defend these decisions and once a tree is protected there is a sense from some parties that it should be retained no matter what. It also has implications in terms of resources, both in making the TPO's, but also the increased

objections, applications, appeals and long-term reviews. A balance also needs to be struck where developers and tree surgeons are confident in talking to officers about proposals without the worry that the automatic response will be to protect trees, otherwise the incentive is for them to fell trees and ask questions later. Professional judgement is made when considering all these matters and the adoption of a formal policy will strengthen this position.

- 3.14. Rushcliffe has 313 TPO's; some will protect an individual tree, whereas others will protect groups/woodlands or a number of individual trees over a wide area. Councils are advised to keep their TPO's under review. Past reviews have ensured all the TPO's are confirmed and, therefore, carry legal weight. TPOs are now stored electronically. However, reviews to see if TPO's are still appropriate and reflect what is found on site don't take place on a regular basis due to the resources available.
- 3.15. The Council's TPO records are not available online and customers and tree surgeons need to contact the Council to enquire if trees are protected, which has some advantages, as the Landscape Officer speaks to people and discusses the issues and can provide advice. However, this is resource intensive, and customers are increasingly making the Council aware that they are expecting to find such information available to view on the website.

Conservation Areas

- 3.16. Bar some exemptions, residents of conservation areas are required to give the Council six weeks' written notice of tree works, this is intended to give the Council an opportunity to protect the trees with a TPO. The legislation regarding conservation areas and TPO's is similar in many ways, especially in relation to exemptions and enforcement. However, there are some differences and in conservation areas, work to small trees with a trunk diameter of 75mm or less at 1.5m above ground level is exempt, as is thinning out trees in a group with a trunk diameter less than 100mm.
- 3.17. A conservation area tree notice is intended to be a relatively informal process, there is a shorter timescale than a TPO application and if the Council doesn't respond in six weeks the work can proceed. There is no duty on councils to consult interested parties and it cannot use conditions to enforce replacement planting when considering a notice, all the Council can do is make a TPO to prevent the work taking place or simply allow it to proceed.
- 3.18. For the past three years, over 200 notifications have been received per year and this has resulted in few TPO's being made. A lot of the work is pruning, which in general terms is likely to be appropriate unless it is particularly severe and this often allows trees to be retained that would otherwise outgrow their location. Many applications also relate to trees which would not be considered for protection, such as:
 - Those that are not prominent or visible to the public
 - Ornamental or non-native trees which are not in keeping with the character of the conservation area

- Trees which have structural faults or disease
- Trees which are causing or are likely to cause damage due to their proximity and effect on buildings.

Replacement Planting

- 3.19. TPO's allow the Council to condition replacements when considering applications. There are also other circumstances in both TPO's and conservation areas when there is a duty to plant a replacement, such as when trees are felled under what's known as the 'dead or dangerous' exemption and when trees are felled without the appropriate permission. The Council has discretion about whether to require tree planting and whilst it is normally desirable, there are times when replanting is not appropriate, such as when trees are causing damage or a nuisance, or where they are unlikely to establish or grow into good specimens due to suppression from other established trees.
- 3.20. Conservation area tree notices do not allow the Council to condition replacement planting. The Council is often asked to consider allowing felling of trees which are not dead but are going into decline, or have structural faults where the long-term retention of the tree is not viable. When considering conservation area tree notices, it isn't appropriate to protect a tree in decline purely with the intention of making a TPO with a view that this would then allow a replacement to be conditioned if a subsequent application to fell is made.

Planning Applications and Tree Protection During Construction Work

- 3.21. Local Plan Part 1 – Policy 16 considers the strategic approach to the delivery, protection and enhancement of Green Infrastructure within development. Local Plan Part 2 has a range of policies relating to green infrastructure and nature conservation, the most relevant to this report is Policy 37 Trees and Woodlands which advises:
- Adverse impacts on mature tree(s) must be avoided, mitigated or, if removal of the tree(s) is justified, it should be replaced. Any replacement must follow the principle of the 'right tree in the right place'.
 - Planning permission will not be granted for development which would adversely affect an area of ancient, semi-natural woodland or an ancient or veteran tree, unless the need for, and public benefits of, the development in that location clearly outweigh the loss.
 - Wherever tree planting would provide the most appropriate net-gains in biodiversity, the planting of additional locally native trees should be included in new developments. To ensure tree planting is resilient to climate change and diseases: a wide range of species should be included on each site.
- 3.22. In most applications, the Council encourages native trees within areas of public open space where there is more space available and sites are likely to border the countryside. Non-native trees are allowed within gardens and areas of housing, as this allows smaller growing species which are less likely to outgrow their location.

- 3.23. When granting planning applications, conditions are often used to protect trees whilst construction work takes place. This is usually in the form of protective fencing or suitable ground boards to prevent physical damage to trees as set out in British Standard 5837:2012. It is not practicable to monitor all development sites and the Council relies on local councillors and residents informing us where issues arise.
- 3.24. We do not routinely protect trees when planning applications are being considered. If trees are shown to be retained and have been taken into account by the design, or if the site is within a conservation area, a TPO is not usually required. TPO's tend to be made when applications have not fully considered the value of prominent trees on the site and an application is likely to be refused which could lead to increased pressure to remove trees.

Hedgerow Regulations 1997

- 3.25. The hedgerow regulations require landowners to notify us about the removal of hedgerows in agricultural settings. The regulations specifically exclude hedgerows within or adjacent to residential properties. When the Council receives a notice, it is required to determine whether it meets the criteria set out in the Regulations to be considered 'important' for wildlife or historical reasons. Whilst it could be argued that all hedges are important for wildlife reasons, the regulations set out specific tests that need to be met. If a hedge is considered important there is a strong presumption in favour of retaining it, if not, the Council have no option but to allow its removal. Unauthorised work can result in prosecution and enforced replacement planting.

Trees in Public Spaces

- 3.26. Rushcliffe only manages trees on land we own or took a decision to maintain. When it comes to public spaces, it is often difficult to determine who maintains what, with open spaces close to each other often maintained by Rushcliffe, Nottinghamshire County Council, Town/Parish Councils, housing associations, housing developers and private landowners. This leads to numerous enquiries from the public. All street/highway trees are maintained by Nottinghamshire County Council.
- 3.27. Rushcliffe maintains around 3200 individual trees with around 200 groups or woodlands. Last year, an external consultant was appointed to survey all our trees and as a result 1600 recommendations for work were proposed. Last year, the focus was on large scale urgent works such as felling or pollarding, this winter Streetwise are implementing smaller scale urgent work and in coming years will focus on lower priority work.
- 3.28. Rushcliffe doesn't have a formal policy on when the Council will prune or fell trees. Trees adjacent to properties are a frequent source of complaints and enquiries from the public and the Council tries to be a considerate neighbour and give consideration to pruning where residents identify that trees are having a negative effect on their property. The Council avoids felling trees unless there

are good reasons, such as where they are at risk of causing damage or injury or where their removal will benefit adjacent trees.

3.29. When trees need to be felled the Council doesn't routinely plant replacements as there are often good reasons why a replacement tree is not appropriate. For example, if a tree has caused a nuisance, damage, concern or upset to a local resident there is no point in planting a replacement which will only cause the same issues in the future. Planting trees below or adjacent to mature trees will make it hard for them to establish and risk the trees becoming a poor suppressed specimen. However, the Council more than offsets the loss of felled trees by tree planting in other more appropriate locations across the Borough.

3.30. Last year we felled 78 trees, but planted or arranged the following:

- Public free tree scheme supplied 873 Crab Apple and 1056 Hazel. The community (parish) tree scheme - supplied 173 trees and 300 hedging plants
- The Property Team planted 28 heavy standard trees and 290 whips
- The Country park planted 63 heavy standard trees and 20 whips
- Tree Wardens planted 50 trees at Greythorne Dyke.

The ability to plant trees on Council land is somewhat limited by the nature of the sites which are often surrounded by housing, contain services or run alongside paths or roads with limited space for planting trees that can reach maturity without regular pruning. Officers have looked to see if sites could accommodate areas of woodland planting but opportunities are extremely limited and it is considered that most future tree planting will be scattered individual trees. Exploration of buying land for the purpose of tree planting is being explored by the Communities team.

3.31. The influence of climate change and other diseases and pests is likely to have an increasingly obvious effect on Council trees. Already certain native trees are struggling in southern parts of the Country, such as Rowans. Diseases affecting trees such as London Plane and Sweet Chestnut are common in Europe and pests such as the Oak Processionary Moth (with hairs that cause skin and eye irritation) have become established in southern counties. The key to this will be to plant a greater variety of trees and a balance will need to be struck between planting native trees for their wildlife value and non-native trees due to their likely ability to be more suited to climate change.

3.32. Ash dieback (*Hymenoscyphus fraxineus*) is a serious disease which in recent years has spread across the Country. Whilst Rushcliffe is fortunate that the disease is not as prevalent as some other parts of the Country, the disease is becoming increasingly apparent. We maintain 260 individual Ash trees and in all likelihood most of these will die within coming years which represents around an 8% loss of our tree stock. The effect on Sharphill Wood could be dramatic with the central part of the woodland being dominated by mature Ash, but the Friends Group have carried out some succession planting in recent years. The impact on landscape character particularly in the Vale of Belvoir where the

dominant roadside and hedgerow tree is Ash is likely to be particularly profound.

4. Risks and uncertainties

Climate change and new tree diseases and pests will undoubtedly affect the management of trees in the future, but the precise implications of this and timescale is impossible to predict.

5. Implications

5.1. Financial Implications

There are no direct financial implications associated with this report. Recommendation B could have a financial implication at a later date, but this will be reviewed and considered before proceeding.

5.2. Legal Implications

There are no legal implications associated with the consideration of this report and the recommendation.

5.3. Equalities Implications

The Council is committed to delivering all activities in accordance with its Equality and Diversity Policy and will embed the principles of that policy in its approach to regulatory functions. The statutory processes regarding trees and hedgerows relate to land and property and personal circumstances will rarely be a material consideration. Therefore, the Council will treat all people equally and fairly. Where complaints are made about trees on our land, we take into account personal circumstances where they are relevant to the issue being considered e.g. disability.

5.4. Section 17 of the Crime and Disorder Act 1998 Implications

There are no crime and disorder implications associated with the consideration of this report and the recommendation

6. Link to Corporate Priorities

Quality of Life	The protection of trees and hedgerows and the management of public open spaces are integral to the quality of life of Borough residents. Trees we manage can cause damage, concern, and have a harmful effect on local residents.
Efficient Services	The delivery of efficient and effective statutory functions and the management of our trees is consistent with the Council's corporate priority to transform the Council to enable the delivery of efficient high-quality services.
Sustainable Growth	The retention and protection of trees on development sites is key to sustainable growth.

The Environment	The appropriate use of tree protection measures along with other legislation relating to hedgerows has an impact on the environment whilst in some circumstances it is not the primary function of the legislation. The management of our public open space also has a role to play in enhancing the environment alongside other functions.
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7. Recommendation

It is RECOMMENDED that Growth and Development Scrutiny Group:

- a) supports the drafting of a tree protection policy and tree management policy setting out the Council's role, function and priorities
- b) supports investigation into the feasibility of an online mapping system which could be used to show protected trees in the Borough.

For more information contact:	Tom Pettit Senior Design and Landscape Officer 0115 9148 558 tpettit@rushcliffe.gov.uk
Background papers available for Inspection:	None
List of appendices:	TPO evaluation sheet

Appendix A
CONSERVATION AREA TREE NOTIFICATIONS AND TPO CONSULTATIONS
TREE EVALUATION SHEET

Ref No.			
Location of Tree			
Species			
1. Aesthetic Quality		3. Condition	
Excellent	4	Excellent	4
Good	3	Good	3
Fair	2	Fair	2
Poor	1	Poor	1
Unsightly	0	Dying/Dead	0
2. Impact on public amenity if removed		4. Proximity and effect on buildings	
Very severe adverse impact.	4	Able to grow to full mature extent.	4
Severe adverse impact.	3	Able to grow to reasonable maturity without significant impact on properties	3
Moderate impact (or only visible from a limited no of properties).	2	Spread will eventually affect properties with nuisance impact – shade, debris, soil depletion etc.	2
Little impact or no change.	1	Will eventually affect buildings with structural implications.	1
Improvement (or not visible to public).	0	Buildings already affected.	0
Total Score		Maximum possible total	16
A tree with a score of 11 or above will be considered for a TPO although a score of 0 or 1 in any category will negate this.			
HEALTH AND SAFETY			
This scoring system does not take into account damage or injury which could be caused if a tree located close to buildings, gardens, roads, or places of public access should fall or shed branches. Regardless of the tree's condition or type this possibility must be considered. An assessment should be made of the damage which could be caused, scoring as follows :			
		Damage to property or physical injury highly unlikely	0
		Limited structural damage possible but unlikely to cause injury	1
		Moderate risk of damage or injury	2
		Significant risk of damage or injury	3
This assessment is inevitably subjective but we must err on the side of caution. A tree scoring 2 or 3 should not be subject to a TPO. A score of 1 should be subtracted from the final total of 1 to 4 above and could be the deciding factor in borderline cases.			
Wildlife			
In some locations where ecological considerations are particularly important a non-native or ornamental species may not be regarded as appropriate for protection when a locally native species of tree would be. This will be a matter for consideration in each case.			