

A thorn in the side of landowners



Trees have always held great value and importance in our society; their “amenity” value and ability to shape a landscape, their ecological and environmental value and their economic value. Therefore, it is no great surprise that trees can be protected from damage and destruction under statute.

Whilst the protection afforded to trees is arguably good for the greater community, and numerous studies have found that trees in residential areas even increase property values, the presence of a “protected tree” on private property can severely limit what a landowner is permitted to do on their land.

What is a Tree Preservation Order (“TPO”)?

If it considers it necessary, a local authority can choose to protect specific trees, groups of trees or entire areas of woodland by making them subject to tree protection orders (TPOs). TPOs are the principal means of protecting trees.

A TPO is an order made by a local planning authority over a tree or collection of trees which prevents anyone from: cutting down, topping, lopping, uprooting, wilfully damaging or destructing a protected tree. TPOs usually relate to trees on private property, and as such they can present huge problems for landowners when it comes to developing or changing the landscape of their land.

If a landowner wishes to carry out any works (subject to certain limited statutory exceptions) on a protected tree, an application for consent needs to be made to the local authority who then decide on whether or not consent should be granted.



Non-compliance with a TPO

The penalties for non-compliance with a TPO are severe. Under the Town and Country Planning Act 1990 ("the TCPA"), it is a criminal offence to interfere with a protected tree or to permit another person to carry out prohibited activities. A landowner can be convicted if they: cut down, uproot or wilfully destroy a tree or top, lop or wilfully damage a tree in a way that is likely to destroy it. If convicted, they can be liable to pay an unlimited fine and will also walk away with a criminal conviction.

The courts take the view that no one should profit from a criminal offence and so the level of fine will factor in any economic gain made by the offender. This general principle is also rooted in statute by virtue of s210(3) or the TCPA.

Confiscation Orders and TPOs

The local authority may also choose to seek a confiscation order against the landowner under the Proceeds of Crime Act 2002 which has been interpreted broadly by local authorities. Some local councils are taking full advantage of the broad application of the legislation and are able to recover large sums of money from landowners who contravene TPOs.

For example, in May 2018 a landowner who cut down several trees in his garden which were subject to TPOs was convicted of a criminal offence and fined £12,000, ordered to pay costs of £20,000 and pay a victim surcharge of £170. The local authority estimated that by removing the protected trees the landowner had increased the value of the property by £137,500. The council obtained a confiscation order against the landowner under the Proceeds of Crime Act and he was consequently ordered to pay £137,500 to the council on top of the fines already paid.

Given the propensity for councils to seek confiscation orders in relation to TPOs it appears that, for local authorities under the current statutory regime, money does indeed grow on trees!

When to seek legal advice

Despite the severe consequences to landowners of interfering with protected trees, it has nonetheless been held that "the statutory regime concerning tree preservation orders represents a fair balance between the general interest of the community and the requirements of the protection of the individual's rights".¹

Due to the severity of the potential consequences of carrying out any act in relation to protected trees, it is always best to err on the side of caution and seek legal advice before carrying out any works. If you have any queries or issues relating to protected trees on your land, our [property dispute](#) team can help.

1 R (on the application of Brennan) v Bromsgrove District Council 2003