



# Executive Committee

All Wards

17th February 2010

## PLANNING SERVICES - SCHEME OF DELEGATION TO OFFICERS AMENDMENTS RELATING TO TREE PRESERVATION ORDERS

(Report of the Acting Head of Planning & Building Control)

### 1. Summary of Proposals

To seek Members' consent to amend the current scheme of delegation to Officers relating to Tree Preservation Orders to provide a more efficient service with quicker response times and thus an improved effect on the natural environment of the Borough.

Officers are seeking amendments to the current scheme of delegation from Planning Committee in order to focus the Committee on matters of wider public interest and to assist Officers in working towards best practice. Officers are also seeking such measures in order to be able to take action to protect and/or improve the quality of the natural environment of the Borough as quickly as possible.

Delegated powers are sought for Officers in order that trees can be afforded protection where they merit it.

### 2. Recommendations

The Committee is asked to **RECOMMEND** that

- 1) **authority be delegated to Officers as summarised at Appendix 1; and**
- 2) **the Scheme of Delegation to Officers, as detailed at Appendix 2 to the report, be adopted.**

### 3. Financial, Legal, Policy, Risk and Sustainability Implications

#### Financial

- 3.1 There are no perceived financial implications for these proposals. However, the reduction in administration that would be required would result in small staff time savings.

### Legal

- 3.2 There are no perceived legal implications, however the statutory framework under which planning decisions are made includes:
- 1990 Town and Country Planning Act (as amended).
  - 2004 Planning and Compulsory Purchase Act.
  - 2003 Anti-Social Behaviour Act.
  - 2008 Planning Act.
- 3.3 Section 101 of the Local Government Act 1972: A local authority may arrange for the discharge of any of their functions by an Officer of the authority.
- 3.4 Under the Local Authorities' (Functions & Responsibilities) Regulations 2000, the Council's Town and Country Planning functions are reserved to Full Council and delegation of any Town & Country Planning powers can only be made by Council.
- 3.5 A Tree Preservation Order (TPO) affords specified tree(s) protection from felling, pruning and other works. The owner must first seek consent from the Council prior to carrying out such works, and the Council will only allow those works in which the health and safety of the tree or residents would otherwise be in danger, or where the works will improve the merit of the tree and assist in its longevity.
- 3.6 It is likely that changes will be made to the legislation regarding TPOs in the near future that mean that certain types of existing TPOs could not continue to be relied upon, and thus replacement TPOs that fall under the new or another existing legal framework would need to be made.

### Policy

- 3.7 The decisions and actions of Officers would remain in accordance with the adopted policies of the Council and other bodies as appropriate.

### Risk

- 3.8 There are no perceived additional risks arising from the proposal.

### Sustainability / Environmental

- 3.9 There is no perceived additional harmful impact arising from the proposal. Indeed, the ability to take action more quickly to protect trees would have a positive impact on the quality of the environment

and implementation of the biodiversity objectives of the planning framework.

### **Report**

#### **4. Background**

- 4.1 Currently, there are four types of TPOs that can be served: individual, group, woodland and blanket. An individual TPO is served on an individual tree of merit, a group TPO is served on a specified group of trees identified within the order, and a woodland TPO covers a woodland.
- 4.2 A blanket TPO covers a large area, and only those trees within that area that were present on site when the order was made are protected by it. Thus, trees now worthy of merit but not in existence 40 years ago when an order was served remain unprotected. Further, individual or group TPOs cannot be served in an area where a blanket TPO exists. Thus to protect such trees, the original blanket TPO must be revoked and replacement individual/group TPOs served for all trees of merit within the original blanket TPO area.
- 4.3 It is also apparent that the legislation is due to change such that blanket TPOs will become void. It will therefore be necessary to consider the position in which the Council would find itself if these blanket TPOs fall away, and the alternative means of protection that would be required to preserve and enhance the natural environment of the Borough. A review is likely to be necessary in the future, and Officers are considering an appropriate approach.
- 4.4 Where protected trees are damaged and criminal offences occur, Officers already have delegated authority to serve tree replacement notices where appropriate, although prosecution proceedings must first be authorised by Members at Planning Committee due to the cost implication.

#### **5. Key Issues**

##### **Tree review**

- 5.1 At present, the Borough has 36 blanket TPOs, known as New Town TPOs, as they were made when the new town came into existence. These cover large areas of the town, and whilst there are many trees of merit worthy of the protection afforded to them by the blanket TPOs, there are also many properties within them where there are no trees, or a least none afforded protection. Further, since the

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TPOs were served it follows that the natural and built environment of these areas has drastically changed and impacted upon the current tree population.

- 5.2 Officers are considering how to approach the task of reviewing trees prior to their loss of protection when the legislation, and the powers sought here are likely to benefit this process in the future.

### Delegated powers

- 5.3 Due to the procedures dictated by statute, the serving of TPOs is a lengthy process, which is elongated by the requirement to seek Member authorisation first. Whilst clearly Officers would still need to act within the procedural requirements of the legislation, there are benefits to being able to deal with matters more quickly, especially on the greenness of the visual impact on the Borough.

- 5.4 In order to acknowledge public interest and in order to ensure transparency and accountability, Officers propose to report some proposed new TPOs to Members for determination. This would be where a TPO is proposed on a tree that has not previously benefited from protection and objections have been received, or on rare occasions where TPOs are proposed for Council-owned trees.

## 6. Other Implications

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|------------------------------|---|--|
| Asset Management             | - | No perceived implications.   |
| Community Safety             | - | No perceived implications.   |
| Health                       | - | No perceived implications.   |
| Human Resources              | - | No major perceived implications, although fewer committee reports will result in additional staff time spent on resolving case work. Staff time carrying out the tree survey and supporting administration can be done using existing staff resources. |
| Social Exclusion             | - | No perceived implications.   |
| Environment / Sustainability | - | No perceived implications.   |

### 7. Lessons Learnt

Blanket TPOs are clearly not such a powerful or effective tool as was anticipated when they were introduced many decades ago. Although still in existence in the Borough, blanket TPOs are no longer used as a tool in this authority, favouring instead the more specific orders that can respond more directly with the environment.

### 8. Background Papers

Current Scheme of Delegation to Officers.

Report to Executive Committee 3rd December 2008 relating to delegated planning powers.

Report to Planning Committee 3rd February 2009 relating to delegated enforcement powers.

### 9. Consultation

There has been no consultation other than with relevant Borough Council Officers.

### 10. Author of Report

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### 11. Appendices

Appendix 1 - Additional delegated powers sought.

Appendix 2 - Proposed schedule for insertion into the constitution relating to delegated powers.