



LIVINGSTON SOUTH LOCAL AREA COMMITTEE

TREE PRESERVATION ORDERS IN LIVINGSTON SOUTH WARD (WARD 4)

REPORT BY HEAD OF PLANNING, ECONOMIC DEVELOPMENT & REGENERATION

A. PURPOSE OF REPORT

The purpose of this report is to advise the Local Area Committee on Tree Preservation Orders (TPOs) in the Livingston South Ward (Ward 4).

B. RECOMMENDATION

The Local Area Committee is asked to note the extent of TPOs in the Livingston South ward and that a review is underway.

C. SUMMARY OF IMPLICATIONS

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| I Council Values | Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; working in partnership. |
| II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment) | <p><i>Scottish Government Planning Circular 1/2011 Tree Preservation Order</i> sets out Scottish Government Policy on TPOs and trees in conservation areas contained in the <i>Town and Country Planning (Scotland) Act 1997</i>, as amended by the <i>Planning etc. (Scotland) Act 2006</i>, and the <i>Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas)(Scotland) Regulations 2010</i>. The circular is intended to provide an overview of TPO procedures, explaining how the requirements from the Acts and Regulations fit together.</p> <p><i>The West Lothian Local Development Plan (LDP, September 2018)</i> provides a policy basis for woodland and tree protection, specifically policies ENV 9 <i>Woodlands, forestry, trees and hedgerows</i> and ENV 10 <i>Protection of Urban Woodland</i>.</p> |
| III Implications for Scheme of Delegations to Officers | None. |

IV Impact on performance and performance Indicators	Increased reviewing activity and resources may have an impact on performance indicators for assessment surveys for TPOs (TEMPO+) and the making of TPOs.
V Relevance to Single Outcome Agreement	Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.
VI Resources - (Financial, Staffing and Property)	Modernisation and review work for extant and proposed TPOs will be funded from existing budgets and staff resources.
VII Consideration at PDSP	This report has not been considered by a PDSP. New TPOs are referred to Development Management Committee or are taken forward through the Scheme of Delegation.
VIII Other consultations	Head of Finance and Property Services; Head of Operational Services.

D. TERMS OF REPORT

D1 Background to Tree and Woodland Protection

There are three main ways in which tree and woodland protection can be achieved. These are tree preservation orders (TPO), designation of conservation areas, and planning conditions. It is an offence for any person in contravention of a TPO to cut down, uproot, wilfully destroy a tree or wilfully damage, top or lop a tree in such manner as to be likely to destroy it without the consent of the planning authority, this includes trees in conservation areas. A breach of a planning condition would be progressed as an enforcement matter.

TPOs arise through the development planning system where a planning authority may make a TPO for reasons of amenity and/or cultural or historical significance or as a result of community interest. However, a TPO is a legal order and therefore requires specific procedures to be followed to ensure that the TPO is effective and enforceable.

Where a TPO is in force, any proposed works to '*fell, top, lop, uproot or otherwise damage a tree to which a TPO pertains*' requires an application for tree works which allows the planning authority to assess whether permission can be given for such works. Applications for tree works are determined in a similar way to a planning application. A Treeworks Application is not a Planning Application and therefore different provisions relating to notification and assessment of the application apply.

The 2010 Regulations relating to TPOs require that '*a TPO must define the position of the trees to which it relates to by means of a map...to a scale which is sufficient to give a clear indication of the position of the trees*'. In practice this means that blanket TPOs – large areas of trees and woodlands that lack sufficient clarity to identify trees to be protected.

Conservation areas offer broad tree protection for approval for tree works, and, planning conditions attached to consents for planning permissions can be the most expedient way to achieve tree and woodland protection. A small area of the Livingston Village conservation area lies within the Livingston South ward.

D2 TPOs in West Lothian and Ward 4 (Livingston South)

There are 13 extant TPOs in Livingston. Extant TPOs are confirmed by the council and recorded as a burden on title deeds by Registers of Scotland. Details of these TPOs, together with location plans, are set out in Appendix 1.

In addition to the 13 extant TPOs there are a further six TPOs which require further work to bring them to extant status. These are listed in Appendix 1 as “*Proposed TPOs under Assessment*”.

Of the ‘*Proposed TPOs under assessment*’, five require confirmation or completion of recording on the land register. Registers of Scotland have been approached about investigating these gaps in title records.

For the ‘*Previously proposed TPOs – NOT progressed, nor legally enforceable*’ group, the TEMPO+ Survey (Tree Evaluation Methodology for Protection Orders + Scottish requirements) has been used to assess the viability of potential new TPOs in recent years. Some trees are not appropriate for TPO for a variety of reasons as is the case at Kaims estate where fast growing poplar are inappropriate for a residential area and woodland management is the issue.

D3 Review of West Lothian Tree Preservation Orders

In order to ensure that TPOs are enforceable, all areas in West Lothian where a TPO has previously been promoted are now being reviewed by the council in accordance with section 159 (c) of The Town and Country Planning (Scotland) Act 1997. A working group has been set up and an action plan has been drafted setting out the tasks required.

The ongoing digitisation and e-mapping processes used by Registers of Scotland have created much more stringent requirements for the preparation of TPO maps. Thus there is an additional need to verify and re-fresh the TPO registration process used by the council. A TPO is a legal order which effectively creates a title condition restricting how a landholder can use trees or woods on their land.

The review of TPOs is one of a number of reviews of spatial planning designations carried out through the preparation of the West Lothian Local Development Plan) (LDP), the LDP having been informed by the West Lothian Local Landscape Designation Review, the West Lothian Landscape Character Classification and the West Lothian Open Space Strategy. All documents can be found on the council’s web pages at:

[https://www.westlothian.gov.uk/media/4841/West-Lothian-Local-Landscape-Designation-Review/pdf/WestLothianLocalLandscapeDesignationReview\(LLDR\)-FinalReportJune2013.pdf](https://www.westlothian.gov.uk/media/4841/West-Lothian-Local-Landscape-Designation-Review/pdf/WestLothianLocalLandscapeDesignationReview(LLDR)-FinalReportJune2013.pdf)

<https://www.westlothian.gov.uk/media/4837/West-Lothian-Landscape-Character-Classification/pdf/WL-LandscapeCharacterClassificationAugust2014.pdf>

and

<https://www.westlothian.gov.uk/article/2448/Open-Space-Strategy>

The LDP includes areas designated as countryside belts and a suite of policies which offer protection for trees and woodland across West Lothian. Of particular note are Policies ENV 9 *Woodlands, forestry, trees and hedgerows* and ENV 10 *Protection of Urban Woodland*. Policies ENV 9 and ENV 10 are set out in Appendix 2. Planning Guidelines (PG) in support of the LDP and to expand on these policies is to be prepared and will provide further guidance to all interested parties on tree matters across West Lothian.

E. CONCLUSION

Due to the central location of the Livingston South ward and the build out of Livingston new town there has been considerable need for tree protection in Ward 4 with TPOs being one of the mechanisms offering protection to trees and woods. A review is now underway to ensure that appropriate effective protection is in place and enforcement pursued where necessary.

F. BACKGROUND REFERENCES

West Lothian Local Development Plan 2018

Scottish Government Planning Circular 1/2011 Tree Preservation Order

[Scottish Planning Policy \(2014\)](#)

The 1997 Act - *The Town and Country Planning (Scotland) Act 1997* as amended by the 2006 Act

The 2006 Act - *The Planning etc. (Scotland) Act 2006*

The 2010 Regulations - *The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010*

Appendices/Attachments: Two

Appendix 1: Ward 4 Livingston South – Update on Tree Preservation Orders

Appendix 2: Extract from West Lothian Local Development Plan – policies ENV 9 & ENV 10

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