



Office of the
Deputy Prime Minister

Creating sustainable communities

Tree Preservation Order Appeals

How the Process Works

This leaflet is for people who live in England and have applied to their local Council to fell or prune trees which are protected by a tree preservation order (TPO). It explains how you can appeal to the Secretary of State if you are not happy with the outcome.

An appeal should be a last resort. So we suggest you speak to your Council to see if a mutually acceptable solution can be found to the problem. The Council may, for example, be prepared to look favourably on an application for less drastic work than that originally requested. These discussions can carry on even after you have sent in an appeal. The appeal can be stopped at any time.

When you can appeal

You can appeal if:

1. The Council has refused your application

You may disagree with the Council's reasons for refusing consent. Or maybe the Council has given consent for less work than you included in your application, but you see no reason why you shouldn't be allowed to do what you have asked for.

2. The Council has allowed your application but attached conditions

For example, the Council has allowed felling but attached a condition requiring the planting of a replacement tree which you don't think is reasonable.¹

3. The Council has issued a certificate that the tree has an outstanding or special amenity value or that its decision is "in the interests of good forestry"

Commonly known as "article 5 certificates" these effectively remove the Council's liability for any loss or damage that might arise as a result of its decision.² Read the Council's decision letter carefully – an article 5 certificate may be a separate document accompanying the decision letter or it may be included in the decision letter itself. Look for the wording "the

¹ You can also appeal if the Council has issued a "direction" to replant areas of woodland or if you haven't been able to agree some detail that the Council said had to be agreed when issuing its decision, such as the species, size or precise location of a replacement tree. Appeals on these grounds are relatively few and far between.

² Article 5 certificates may not be issued by the Council if your TPO was made after 1 August 1999.

Council certifies” or “the Council hereby certifies”. If you disagree with the certificate, you can appeal to have it cancelled.

4. The Council has not decided your application within eight weeks

If the Council hasn't reached a decision within eight weeks of receiving your application, you can appeal. It will be treated as if the Council had refused the application. Before appealing, however, it is best to find out from the Council when a decision on the application is expected. You may wish to delay your appeal until a formal decision is forthcoming.

How to appeal

Your appeal should be made on an appeal form, available from your regional Government Office or *via* its website. Contact details of the Government Offices can be found at the end of this leaflet. The completed form can be sent by post or e-mail to the Government Office but it must reach them within 28 days of the date you received the Council's decision. Where the Council have not reached a decision, the 28 days normally start eight weeks after the date of your application.³ The Government Office will not usually accept late appeals unless they are satisfied there's a good reason for the delay.

Completing the form

We have tried to make the appeal form as simple as possible. Make sure you know what you are appealing against, and tick only the relevant boxes on the form. If you want to appeal against the Council's decision to refuse your application **and** you also want to appeal against an “article 5 certificate” included or attached to the Council's decision, make sure you tick **both** boxes.

Think carefully about your grounds of appeal. Explain as clearly as you can why you think the Council's decision should be overturned. You should provide all relevant information and evidence to support your arguments. In particular, if you are alleging that a tree may be dangerous or may be damaging your property in some way, it will help if your case is backed up by a report from a tree expert or other relevant professional. You should enclose a copy of any such report with your appeal form.

³ If your TPO was made after 1 August 1999, you can appeal at any time all the while the Council have not made a decision on your application. Once they have decided it, then you have 28 days to submit an appeal.

Appeal procedure

Written procedure

Indicate on the appeal form if you are happy for the appeal to be dealt with through a written procedure.⁴ 49 out of 50 people decide to have their appeals dealt with in this way because it's generally quicker and more straightforward. It doesn't mean that corners are cut or that the quality of the decision is affected. Written comments are gathered within a set timetable, followed by a site visit, and a few weeks later the final appeal decision is issued.

Hearing procedure

Alternatively, you can ask to set out your case in person and in your own words. This usually takes the form of a hearing. It is best where a round-table discussion between you and the Council would help to resolve issues. Some written papers are still gathered in the early stages of the appeal and there's also a site visit. A hearing does, however, take longer than the written procedure.

What happens in the written procedure

The Government Office writes to the Council asking for their written response to your grounds of appeal within six weeks. A copy of their reply is sent to you, and you are given a further two weeks to make any final observations, again in writing. Keep your comments as concise as possible and concentrate on your grounds of appeal. There is no advantage to be gained by sending in long submissions or by repeating points already made.

Other interested parties

If anyone sent in comments about the original application, the Council may let them know about the appeal. These people can, if they wish, send their observations about the appeal to the Government Office. Copies of these comments will be sent to you. When all the paperwork is in, the Government Office arranges a date for the site visit.

⁴ Also known as the "written representations procedure".

Site visit

On a date agreed with you in advance, an inspector visits the site, usually in the presence of you and the Council's representative. No discussion about the main issues of the appeal is allowed, but the inspector may ask general questions to clarify factual information. In some cases the inspector may carry out the site visit on his/her own, as long as they can get access to the site. We won't set up a visit on this basis unless you agree.

What happens in the hearing procedure

The Government Office obtains some background papers from the Council and passes the case to the Planning Inspectorate, which arranges a date for the hearing. You might have to wait up to 10 months for a hearing date.

The hearing

Guided by the inspector, everyone concerned is offered a chance to set out their views in an informal, round-table discussion. In most cases the inspector will suggest further discussion on-site, provided that all parties agree and are able to attend. Most hearings come to an end after the on-site discussion.

Appeal decision

The next step is for the inspector to write up his/her findings in a report to the Secretary of State. The inspector doesn't decide your appeal but the report, together with all written comments received from the parties, is taken into account by the Government Office which makes the final decision. A copy of the inspector's report is attached to the decision letter. We aim to let you know our decision no more than 16 weeks after the date of the site visit.

When the decision letter is issued, the Government Office's involvement in the case comes to an end. It falls to the Council to enforce any conditions attached to tree works that might be allowed (for example, that pruning should be carried out to a proper standard or that a replacement tree is planted).

If your appeal is unsuccessful, it doesn't stop you from making another application to the Council some time in the future, but you should be able to show that the circumstances have changed.

After the appeal decision

You can legally challenge the appeal decision by going to the High Court. You can do so only on a “point of law” or because proper procedures haven’t been followed. You have to apply to the Court within six weeks of the date of the appeal decision. Before taking such a step you should obtain legal advice on the procedures involved and the likely costs if your challenge is unsuccessful.

Costs

There is no charge for lodging your appeal. Each party is expected to meet any costs that they do incur during the appeal process, whether they win or lose the appeal.

For appeals dealt with under the hearing procedure, you or the Council can make a claim for costs. But claims can only be made for the recovery of expenses incurred unnecessarily because of the other party’s “unreasonable behaviour” (for example, if they pull out of the hearing at the last minute without good reason).

Further information

You can find out more about tree preservation orders in the following:

- *Protected Trees: A Guide to Tree Preservation Procedures* – a leaflet providing basic information about the tree preservation order system. For a free copy telephone 0870 1226236 or visit www.odpm.gov.uk/treesandhedges.
- *Tree Preservation Orders: A Guide to the Law and Good Practice* – a more detailed publication on all aspects of the tree preservation order system. For a copy (price £8) telephone 08701 226236 or visit www.odpm.gov.uk/treesandhedges.

Contact details

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For links to all the Government Office websites visit
www.gos.gov.uk

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