

Tree Task and Finish Forum



Cllr Mike Howe
Chairman



Cllr David Atkins



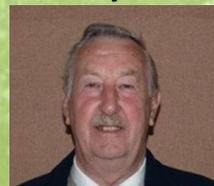
Cllr Roger Giles



Cllr Tony Howard



Cllr John Humphreys



Cllr David Key



Cllr Brenda Taylor

Final Report
March 2015

Overview and Scrutiny Committee



Cllr Claire Wright

Preface

Councillor Mike Howe

Chairman of the Tree Task and Finish Forum

Members: David Atkins, Roger Giles, Tony Howard, John Humphreys, David Key, Brenda Taylor, Claire Wright

Meetings also attended by: Iain Chubb (Portfolio Holder – Environment) and Tom Wright (Deputy)

At the meeting of Council in October 2013, a motion asked the Council to recognise the value of trees to the East Devon landscape and wildlife, to seek greater protection for existing trees and pursue options for woodland creation and tree planting. The meeting referred the amended motion to the Overview and Scrutiny Committee to set up a Task and Finish Forum to examine the issues raised to help protect trees – the remit was widened to examine the main threats to trees and appropriate action that could be taken and robustly defended.

The meetings of this useful Task and Finish forum have greatly benefited from the in-house expertise of Charlie Plowden, Service Lead – Countryside and Leisure, and David Colman and Stuart Baker (Officers from the Council's Arboricultural team). Also special thanks to John Golding, Strategic Lead – Housing, Health and the Environment, Ed Freeman, Service Lead – Planning Strategy and Development Management and Henry Gordon Lennox – Service Lead – Legal and Democratic Services who assisted the Forum in their deliberations.

The Forum has also benefited from useful publications produced by Trees and Design Action Group (TDAG), Communities and Local Government, and the Forestry Commission and from a presentation by Jim Smith of the Forestry Commission.

As a result of the meetings and discussion, Members of the Task and Finish Forum have drawn together some practical and helpful recommendations which we hope gain the support of the Overview and Scrutiny Committee.

Mike Howe

March 2015

Recommendations

The Forum recommends the following, based on their interviews, presentations, analysis of publications and practice adopted at other councils:

- (1) That Tree officers be involved in pre planning application meetings as standard; greater involvement at an early stage would benefit the process and enable any issues to be addressed in a timely way.
- (2) That, as part of the Systems Thinking review of the tree service at East Devon, to look at national guidance and best practice and where appropriate to look to adopt this within new work flow systems,
- (3) That a review be undertaken of information provided on the Council's website relating to arboriculture, and produce new web guidance on the main work areas to reduce service demand.
- (4) That the decision on the choice of which TPO system is to be adopted be made by the Arboricultural Service, but for weight to be given to the importance of providing guidance notes with the TPO form to reduce 'preventable demand'.
- (5) That the Council develops a Tree Enforcement Policy.
- (6) That guidance be given to community groups working on Neighbourhood Plans to encourage particular consideration to be given to addressing issues in respect of trees and how their value within the community and landscape can be recorded and protected – the guidance to be drawn up by the Arboricultural Service in consultation with the planning policy team.
- (7) That the Development Management and Planning Enforcement team (with technical support from the Arboricultural Service) look for effective ways to monitor the future protection of trees following development of a site – this to include criteria for monitoring and how to involve local councils and ward members in this process so that information is fed back to the Council as quickly and effectively as possible.
- (8) That the benefits of remote data capture be supported and the Arboricultural Service be encouraged to undertake trials of the system so that it can be used to develop a district-wide on-line database of trees. In addition, to investigate the feasibility and cost of open mapping to plot the district's trees and calculate their ecosystem service benefits in monetary terms.
(There is potential for this system, if effective, to be extended for use by community groups and tree wardens to help with logging tree information across the district – this information could also be used to populate Neighbourhood Plans.)
- (9) That the current arrangement of local councils with Quality Status and dealing with applications for work to trees be reviewed. Although local determination of applications adds value to the customer experience, local councils seek advice from the arboricultural service and so none of the work burden is taken from the arboricultural team. In addition, not all of the decisions taken by the local councils

follow advice given by officers; there have been appeals against decisions where a tree of poor quality had been approved for protection, contrary to advice from officers. This has resulted in delays in issuing a decision notice.

- (10) That following adoption of the Local Plan, the Planning Team, in round table consultation with the Arboricultural Service and all other services that have tree assets (including Streetscene, Housing and Countryside), develop a Tree Strategy to fit with other guidance, support and policy documents, to be taken into account during development and other related decision making.

The Strategy to include:

- the Council's aims in respect of urban and rural planting and the green infrastructure,
- trees and development, to incorporate a replacement tree strategy
- subsidence
- public liability, health and safety, duty of care,
- determination of tree works applications,
- the recognition and analysis of the benefits of urban and rural forests and tree canopies to the environmental, aesthetic, economic and social well being of the area and how these could be maintained and enhanced,
- the authority's perception and value of trees within the district,
- the importance of succession planting,
- tree protection including TPOs , reviewing TPOs, enforcement and supplementary guidance.
- the effective capture and monitoring of data relating to canopy cover
- efficient management of all trees including council owned trees,
- sustainability,
- climate change
- guidance on species choice and planting,
- how to achieve effective partnership working with the district's communities, agencies and organisations,
- examples of best practice,
- education

- (11) That the Arboricultural Service work with other relevant EDDC services and its partners to develop a programme of education to widen the public's knowledge of trees and their value within the environment.

Review Approach

How does the review relate to the Council Plan?

The Council Plan states that the Council will conserve and enhance our finest assets and keep East Devon an outstanding place, increasing people's enjoyment of its wonderful natural assets. The Plan is forward-looking with realistic and resilient priorities arrived at through consultation, listening and drawing on expert advice.

Scope of the review

The scope of the Forum makes clear what was included and just as crucially, what was not. The agreed scope of the review is set out below:

Broad topic area:	Value and protection of trees
Specific area to explore within topic area:	<ul style="list-style-type: none"> • Criteria for assessment of tree when a TPO application is made • Explore the measures available to protect trees • Consider the local evidence and issues that threaten trees • Review national and local policies designed to protect trees • Practicalities and resource issues of tree assessment of trees currently not covered by a preservation order • Explore other approaches by local authorities • Consider enforcement data, enforcement resources and penalty for felling trees under a Tree Protection Order (TPO) or in a conservation area
Areas NOT covered by the review:	<p>Specific review of applications to remove, or works to, tree protected by a preservation order (“TRE” applications) is not permitted under the constitution.</p> <p>Local plan housing allocation. The emerging local plan part D3 Trees and Development Sites (6.231) can be considered by the Forum as part of the review of national and local policies designed to protect trees</p>
Desired outcomes of the review:	<p>Clear understanding of the demands on the aboricultural service and the resources available</p> <p>Establish the effectiveness of current local measures to protect trees and recommend any further improvements if felt necessary, to local policy, working practices and resources</p> <p>Understanding of national policy on the protection of trees and recommend, if felt necessary, modifications to national policy to the Department of Environment, Food and Rural Affairs.</p>
Who should be consulted for evidence	<p>Countryside service Aboricultural officers Planning officer Trees & Design Action Group Ward members for local evidence and issues Woodland Trust Forestry Commission</p>
What evidence already exists (consultation, good practice examples)	Epping Forest pilot on fees

What experts are needed to help with the review:	Countryside service Arboricultural officer Planning officer Trees & Design Action Group
What other resources are needed:	Democratic Services to service.
Timescale including start date:	To be considered at the first meeting of Overview and Scrutiny following the May 2015 elections, with that Committee's recommendations being then referred to Cabinet.

Evidence sources

The Forum took into account contributions from:

- EDDC Officers
- Local members
- Portfolio Holder and Deputy - Environment
- Forestry Commission

Reference material:

- The case for trees – Forestry Commission England
- Urban Tree Strategies – advice to local authorities – Forestry Commission England
- Protected trees – A guide to tree preservation procedures – Communities and Local Government
- An introductory guide to valuing ecosystem services – DEFRA
- Common Sense risk management of trees – National Tree Safety Group
- Trees in the Townscape – a guide for decision makers – Trees and Design Action Group (TDAG)
- Trees in Hard Landscapes – a guide for delivery TDAG
- Trees in Towns Two (Executive Summary) – Communities and Local Government
- Trees in the Townscape (comprehensive overview) – Communities and Local Government
- Dangerous trees advice note – Cornwall Council example
- Hedgerow removal notices – Cornwall Council
- Tree works application submission guide – Cornwall Council

Findings

Context for the Task and Finish Forum

- A motion debated by Council in October 2013 calling on the Council to recognise the value of trees and the importance of protecting them was amended and referred to the Overview and Scrutiny Committee, requesting that a Task and Finish Forum be set up.

Resolution in full:

that a Task and Finish Forum be set up and led by the Environment Portfolio Holder to examine the issues raised in the motion to help protect trees, with the remit being widened to examine the main threats to trees and appropriate action that could be taken and robustly defended.

- Throughout its considerations, the Forum never lost sight of the value that trees play in our sense of place in East Devon – they shape our environment and its character – physical, cultural, wellbeing, economic.
- Educating people to value trees was regarded by the Arboricultural Service and highlighted through the Forum’s deliberations as the most effective way of protecting trees.
- The Forum recognised the excellent work carried out by the service and praised the officers for their dedication. Plans to increase the resource within the service were welcomed.
- The Forum referenced relevant published documents (listed above) as a key element of its work.
- Examples of on-line documents used by other authorities were also considered
- Council in-house experts - Charlie Plowden, Service Lead – Countryside and Leisure, and Officers David Colman and Stuart Baker from the Council’s Arboricultural team attended and contributed to every meeting of the Forum.
- John Golding, Strategic Lead – Housing, Health and the Environment, Ed Freeman, Service Lead – Planning Strategy and Development Management and Henry Gordon Lennox – Service Lead – Legal and Democratic Services were called on by the Forum to provide information and answer questions, particularly in respect of:
 - a) how planning applications are dealt with to ensure that all relevant information in respect of trees is captured
 - b) enforcement action
 - c) monitoring and how ward members and local councils could be more involved in this process
 - d) national guidance notes and a review of advice currently provided on the Council’s website in respect of trees
 - e) follow-up action on planting schemes
 - f) the planning service restructure and replacement of the expertise of the landscape architect
- Jim Smith, Forestry Commission attended a meeting of the Forum to give a presentation on ‘the case for trees in development and the urban environment’ to highlight the key messages, practical implementation and answer questions.

Tree Preservation Orders (TPO) and processes to protect trees

Comparatively, East Devon has a high number of TPOs - this reflects the number of valued trees within the district and the drive to protect them. The Council had the ability to protect trees but the service needed sufficient resource to do so and to monitor. The importance of education was emphasised with a TPO being used as a last resort – it was far better for the developer or resident to appreciate the value of the tree and understand the underlying reasoning.

Under the current TPO regulations, all provisional orders must be confirmed within 6 months of the date the order being made. After that time, unless the order has been confirmed the order is no longer valid.

The current Systems Thinking review of the TPO process is dealing with demand, capability, what matters to customers, value and preventable demand, work flow,, legal aspects, government guidance and which process to follow. One of the key issues was the assessment of trees (visual amenity, tree health, value to the locality, special factors and expediency) and deciding if a TPO was relevant. The TPO form currently used by the service was considered by the Forum together with examples of other assessment methods. These would be considered during the current Systems Thinking review.

Options included:

- retaining the current assessment form or
- tree evaluation method for preservation orders (TEMPO) currently used by a number of neighbouring authorities. (The benefit of TEMPO was that it included guidance notes and adopting a system already used by neighbouring authorities would provide more consistency).
- Other systems, including the Cornwall adopted Halliwell system, which included a financial assessment of the trees' value.

Area preservation orders are still used. Best practice guidance is to use these orders on a temporary/interim basis as a way of expediting the issue of more specific orders based on specimen trees, groups of trees or woodlands. For a range of reasons, but mainly workload, around 350 area orders are still in existence; there are examples of these covering acres of land. Area orders raise problems of enforcement. Extensive work will be needed to go back over the area orders and work out which trees need to be identified as worthy of an individual or group order. (A tree officer had been appointed in 2003/04 to deal with this work but the volume of day-to-day reactive work has been given priority).

Not all trees can be protected, not all are worthy of protection and some die or become dangerous. There is an argument for protecting young trees so that they can replace the older ones.

It is a clear-cut offence to remove a tree in a Conservation Area (CA), or one with a TPO, without prior notification to or consent from the Local Planning Authority (LPA). Anyone found guilty of an offence in a Magistrates Court for the destruction of a protected tree is liable to a fine of up to £20,000 – the fine is unlimited at Crown Court.

Whilst the presence of regulatory controls (TPO, CA) does in most cases secure the retention of appropriate trees on potential development sites, it is preferable if the retention of such trees occurs by default due to owner's/developer's understanding and recognition of the intrinsic values that tree cover adds to the development.

Making available and publicising appropriate information and guidance as well as engagement with the pre-application planning process will facilitate the enhanced understanding of the value of trees.

Where existing canopy cover is sub-optimal or tree loss does occur, replacement planting is one method, which is effective in compensating for tree loss. A policy and guidance should be developed and adopted to ensure such planting is carried out.

The Council needed to be cautious about over reacting to information gleaned from pre-application advice. This could easily deter developers from engaging in the process and realising the benefits that this delivers.

Stop notices and temporary stop notices were an effective tool but rarely used when a condition has been breached. The Council has to take into account possible costs associated with the notice if stopping development was found to have been misguided. Officers preferred to negotiate with the developer to correct issues on site. Information needed to be reported to the Council as soon as possible to limit any damage.

Ideally, a review of the entire district should be undertaken to identify which trees need protection within built up areas. However, this would be very staff intensive and unless it could be undertaken in one go, trees could be put in danger in advance of the review.

Consideration of trees in planning applications

The Forum examined planning processes in detail –

Planning applications are initially assessed by the planning team who look at the constraints to the development/issues to be considered. This includes determining, using the mapping system, whether the proposal is in a Conservation Area and if the site includes trees with a Tree Preservation Order or mature trees. The application form includes a section for completion by the applicant, which specifically asks for information on trees within the proposed development site.

The planning team's next step in processing an application is to register it on the planning on-line system. At that point, second checks are made including whether trees within the area are protected. There is opportunity at this stage to contact the developer to find out about their plans on how they proposed to deal with the trees on site.

This detail informs the site visit by the planning officer during which further data on trees can be gathered. The planning officer might think it appropriate to seek professional input from the arboricultural team. It is standard procedure for the planning officer to alert an arboricultural officer when the proposed development site includes TPO protected trees. An arboricultural officer assesses the value of the trees in accordance with the recommendations of British Standard BS 5837:2012, their contribution to the Green infrastructure (GI) and their value to ecosystem services. Where trees have merit but do not have protection and are vulnerable to development, the officer has the opportunity to decide whether it is appropriate to protect the trees.

The consultation period on an application gives further opportunity for issues to be raised including concerns about the potential impact of the development on trees. However, there is often a public assumption that trees are under threat from a proposed development and ask for the tree to be protected. However, a planning application does not necessarily mean that trees are under threat. The arboricultural officers determine whether the tree is under threat, if the tree is a good specimen, of value to the area and is worthy of added protection. The officers try to find out the underlying cause of the public concern on a case-by-case basis.

The planning team encourage developers to seek pre-application advice. Constraints and opportunities to development, including trees on the site, are broadly considered at this stage.

The developer could be advised that they should submit a full tree survey with their application.

In making their recommendations, planning officers always try to accommodate the advice given by the arboricultural officers and use this in their negotiations with the applicant. For example, they might negotiate a reduction in the size of the development or slightly re-site it to protect the trees. An ideal outcome is to allow the development to retain the suitable trees on site, which along with new planting should be appropriately protected. The making of TPOs on existing trees and new planting is an option to augment protection.

However not all trees within a development site are protected as other factors are taken into account. The value of the tree is considered in a wider context - the requirement for the developer to replace the tree with new specimens may have longer-term benefits to the area. Similarly, significant planning gain might outweigh retention and protection of the tree. Replanting specifications are decided on a case-by-case basis depending on the site, appropriateness and current health of the existing tree.

The Forum was regularly reminded of the important emphasis on canopy cover and that areas with the lowest canopy cover should be targeted as a way of expanding existing habitats.

The value of trees within a development was emphasised; the Council strives to include green infrastructure whenever possible as trees help to create a desirable environment. When trees are retained or added to an urban landscape, consideration must include ongoing and future maintenance, where they are to be sited and the choice of species to minimise root systems interfering with pathways, services and drainage. There are good working examples in the Trees in Towns/Townscape documents of good design and how to include trees in urban settings. Appropriate supplementary planning advice will be addressed when the Local Plan has been adopted to avoid the current necessity of planners being obliged to negotiate with developers on a site-by-site basis.

Enforcement

Although successful prosecution could be a useful deterrent, in taking a case, the Council is required to comply with specific codes. It will only prosecute if such action is in the public interest (including cost:benefit analysis) and if there is sufficient evidence that the removal of the tree(s) has caused harm to the amenity – taking into account the value of the trees in a wider context. Successful prosecution requires details of the trees before they were felled. The review of whether or not to prosecute is made in-house. The process should be reviewed in conjunction with that of monitoring and an explicit strategy and guidance produced.

Resources within the Arboricultural Team

The Forum did not in any way criticise the arboricultural team but recognised that they were struggling with workload and capacity. The Systems Thinking work being undertaken within the service should identify what additional resources are needed. It would also help to look for potential timesavings to free up officers.

A special item request has been included for consideration in the draft 2015/16 budget – a Tree Inspections Officer to manage the Council's own responsibilities – trees in Council-owned

parks, nature reserves and housing land. The intention is to recruit for a flexible resource but for the officer to have specialist arboricultural knowledge and experience.

The Landscape Architect who had left the Council in April 2014 had yet to be replaced. Discussions undertaken with a neighbouring authority to share a replacement post had not been successful. The job specification had been reviewed and the post advertised. Although some applications included their own landscape design, a council officer is needed to assess the schemes and negotiate the best solution in terms of the environment and aesthetics. The officer also checks that the schemes have been implemented and offers specialist advice on individual applications and green infrastructure.

Greater involvement of ward members and local councils in monitoring process

Members recognised the importance of local environmental groups and tree wardens. An approach could be to ask communities to produce a local document on worthy trees in their area, which would add to the district's data on trees and log their value in terms of ecosystem services.

Adopted Village Design Statements have been used to give supplementary planning advice – this information is now included within the Neighbourhood Planning process. Neighbourhood plans should take account of the area's tree population and identify local needs and opportunities to maintain and improve the quality and quantity of tree cover.

A number of local councils had achieved Quality Status and therefore dealt with applications for work to trees based on advice from the arboricultural service. This resource-intensive arrangement should be reviewed, as it did not take any of the work burdens from the arboricultural team. In addition, not all of the decisions taken by the local councils followed advice given by officers; there had been appeals against decisions where a tree of poor quality had been approved for protection.

Local councils, ward members and others could help to monitor development and alert the council when action was needed.

The importance of adopting a monitoring policy in relation to tree and landscape conditions was recognised. The updating of tree and landscape related planning conditions should also be undertaken, guided by a review of current best practice.

The Council needed to decide what should be monitored; the resultant Tree Enforcement Policy could then be used by local councils and ward members for their involvement and assistance.

Planning on-line guidance

The Forum considered national guidance notes for applications for tree works (either works to trees subject to a tree preservation order (TPO) and/or notification of proposed works to trees in conservation areas). The Forum felt that the document could be reviewed so that it could be better understood by the public and contractors. It should include information about action take in respect of illegal removal or lopping/topping of trees. Local guidance with examples would be more helpful.

On-line advice could be more 'joined-up' across the Council (Streetscene, Planning and Legal); work was already being progressed to achieve this. The Systems Thinking review would help to identify a better understanding of what the Council was trying to achieve and this in turn would inform what advice needed to be given and the way this was delivered. The on-line advice would be helpful for the public and officers, with potential for self-help and consequent freeing up of arboricultural officer time.

Guidance helped to determine the value of trees and how to retain their aesthetic value in the landscape and if they are to be removed, how they should be replaced. A stronger policy on integrating trees within developments and guidance to show how this can be delivered benefit would be useful.

When the Local Plan had been agreed, the Planning Policy Team would work on delivering guidance and support documents to help in the delivery of strategic policies.