

Dumfries and Galloway Council

**PLANNING SERVICES**

# **Making Tree Preservation Orders**

*Guidance Notes - March 2019*



## Introduction

Section 160 of the Town and County Planning Act provides that authorities can make tree preservation orders (TPOs) within the procedures set out in the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations. TPOs may be made if it appears to the Council that it is “expedient in the interests of amenity” and / or the trees, groups of trees or woodlands “are of cultural or historical significance”. Section 164 of the Act provides authorities powers to vary and revoke TPOs.

The purpose of a TPO is to protect individual trees, groups of trees or woodland that contribute to amenity, for example the character and attractiveness of a locality, or that have cultural or historical significance. Other factors such as wildlife value can be taken into account too. In order for a TPO to be made, trees must normally be in good condition, have a significant life expectancy and should not be dead, dying or dangerous. A TPO gives the Council an opportunity to assess the impact of any proposed work to trees or other operations which may affect them. A TPO is not intended to prevent the sound management of trees and woodlands, but instead it is to allow the Council to control works which affect them.

When a tree is protected by a TPO, the authority’s consent must be obtained before it may be felled, lopped, pruned or otherwise worked on. Certain exemptions apply, such as in the case of dead, dying or dangerous trees. Anyone can apply for TPO consent, and whenever an authority refuses an application, or grants consent subject to conditions, the applicant has a right of appeal.

Trees are a valuable asset. They provide a wide range of social, environmental and economic benefits to our towns and villages, as well as to the wider environment. They can:

- **enhance the setting of important buildings,**
- **soften otherwise hard landscapes,**
- **provide contact with nature,**
- **provide habitat for a wide range of species,**
- **provide shade and shelter from prevailing winds**
- **reduce noise and airborne pollutants**
- **stabilise slopes and embankments**
- **absorb rainwater, reducing the risk of surface water flooding**
- **help mitigate impacts from climate change**

Trees are an important part of our cultural and natural heritage and can act as links to the past or reminders of historic land-use patterns and features.

### Submitting a Tree Preservation Order request

You can request a new Tree Preservation Order if you feel that a particular tree or trees should be protected. The "Request a TPO" form should be completed fully and returned by either email or post. Contact details can be found on the form. Once we have received a request, the tree(s) will be assessed and you will then be notified of our decision on whether a Tree Preservation Order will be put in place.

There is no right to appeal the Council's decision. The Council will endeavour to provide a response within 12 weeks of receipt of a request.

This document is intended to provide a detailed and robust framework for decision making when there are judgements to be made about the making, variation or revocation of a TPO. A system of Evaluation was developed by consultant arboriculturalists CBA Trees on behalf of another local authority and has become widely used as a tested method of evaluation. This is the method Dumfries and Galloway Council has adopted for the assessment of Tree Preservation Orders.



Tree Preservation Order Request Form

Details of person requesting the TPO

Name .....

Address.....

Phone Number ..... Email .....

Details of the trees to be protected

Locations of the Tree/s..... Number of trees .....

Type of tree (if known) .....Owners of the property .....

Reason for the request (amenity value/threat etc) .....

.....

Tree location plan: a sketch plan as example is essential for identification of the trees.



## The System for Evaluation

### Background

A Tree Evaluation Method for Preservation Orders (TEMPO) was developed by CBA Trees as a direct response to the apparent continuing uncertainty about what attributes a tree should have in order to merit statutory protection by TPO. TEMPO is designed as a guide to decision making and is presented on a single side of A4 as an easily completed pro forma. TEMPO is unique in that it is the only method that considers all the relevant factors of the TPO decision-making chain. TEMPO is a three part system: Part 1: Amenity Assessment; Part 2: Expediency Assessment and Part 3: Decision Guide.

There is no statutory definition of a tree. In case law, it has been stated that anything, which would normally be called a tree, is a tree.

### Part 1: Amenity Assessment

This part of the TEMPO is broken down into four sections, each of which is related to suitability for TPO:

- a. **Condition**
- b. **Retention Span**
- c. **Relative public visibility**
- d. **Other factors**

The first three sections form of initial assessment, with trees that pass this going on to the fourth section. Looking at the sections in more detail:

#### Condition

This is expressed by five terms, which are defined as follows:

**Good** – Trees that are generally free of defects, showing good health and likely to reach normal longevity and size of species, or they may have already done so.

**Fair** – They have some defects, which are likely to adversely affect their prospects; their health is satisfactory through intervention is likely to be required. Such trees may not reach their full age and size potential, or if they already have, their condition is likely to decline shortly, or may already have done so. However, they can be retained for the time being without disproportionate expenditure of resources or foreseeable risk of collapse.

**Poor** – Trees in obvious decline, or with significant structural defects requiring major intervention to allow their retention, though with the outcome of this uncertain. Health and/or structural integrity are significantly impaired, and are likely to deteriorate. Life expectancy is curtailed and retention is difficult.

**Dead** – Trees with no indication of life.

**Dying / dangerous** – Trees showing very little signs of life or remaining vitality, or with severe, irremediable structural defects, including advanced decay and insecure roothold. Death or catastrophic structural failure is likely in the immediate future, retention therefore impossible as something worthy of protection.

The scores are weighted towards trees in good condition. It is accepted that trees in fair and poor condition should also get credit, though for the latter this is limited to only one point. Dead, dying or dangerous trees should not be placed under a TPO, hence the zero score for these categories, due to exemptions within the primary legislation. For trees in good or fair condition that have poor form deduct one point. A note on the pro forma emphasises that 'dangerous' should only be selected in relation to the tree's existing context: a future danger arising, for example, as a result of development, would not apply. Thus, a tree can be in a state of collapse but not be dangerous due to the absence of targets at risk.

Where a group of trees is being assessed under this section, it is important to score the condition of those principle trees without which the group would lose its aerodynamic or visual cohesion. If the group cannot be 'split' in this way, then its average condition should be considered. Each of the condition categories is related to TPO suitability.



## Retention span

The reason that this is included as a separate category to 'condition' is chiefly to mitigate the difficulty of justifying TPO protection for veteran trees. For example, it is necessary to award a low score for trees in 'poor condition', though many veteran trees that could be so described might have several decades' potential retention span. This factor has been divided into ranges, which are designed to reflect two considerations:

- It has long been established good practice that trees incapable of retention for more than ten years are not worthy of a TPO (hence the zero score for this category); this also ties in with the R category criteria set out in Table 1 of BS5837:2005
- The further ahead one looks into the future, the more difficult it becomes to predict tree condition: hence the width of the bands increases over time. Scores are weighted towards the two higher longevities (40-100 and 100+), which follow the two higher ranges given by Helliwell. The Arboricultural Association (AA) publishes a guide to the life expectancy of common trees, which includes the following data:
  - o 300 years or more Yew
  - o 200-300 Common [pedunculate] oak, sweet chestnut, London plane, sycamore, limes
  - o 150-200 Cedar of Lebanon, Scots pine, hornbeam, beech, tulip tree, Norway maple
  - o 100-150 Common ash, Norway spruce, walnut, red oak, horse chestnut, field maple, monkey puzzle, mulberry, pear
  - o 70-100 Rowan, whitebeam, apple, wild cherry, Catalpa, Robinia, tree of heaven
  - o 50-70 Most poplars, willows, cherries, alders and birches

The above should be considered neither prescriptive nor exclusive, and it is certainly not comprehensive, though it should assist with determining the theoretical overall lifespan of most trees. However, TEMPO considers 'retention span', which is a more practical assessment based on the tree's current age, health and context as found on inspection.

It is important to note that this assessment should be made based on the assumption that the tree or trees concerned will be maintained in accordance with good practice, and will not, for example, be subjected to construction damage or inappropriate pruning. This is because if the subject tree is 'successful' under TEMPO, it will shortly enjoy TPO protection (assuming that it doesn't already).

If a group of trees is being assessed, then the mean retention span of the feature as a whole should be evaluated. It would not be acceptable, for example, to score a group of mature birches based on the presence of a single young pedunculate oak.

As with condition, the chosen category is related to a summary of TPO suitability.



## Relative public visibility

The first thing to note in this section is the prompt, which reminds the surveyor to consider the 'realistic potential for future visibility with changed land use'. This is designed to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility. The common situation of backland development is one such example.

The categories each contain two considerations: size of tree and degree of visibility. It has not been attempted to be too prescriptive here, as TEMPO is supposed to function as a guide and not as a substitute for the surveyor's judgement. However, it has been found that reference to the square metre crown size guide within the Helliwell System can be helpful in reaching a decision.

Reference is made to 'young' trees: this is intended to refer to juvenile trees with a stem diameter less than 75mm at 1.5m above ground level. The reasoning behind this is twofold: this size threshold mirrors that given for trees in Conservation Areas, and trees up to (and indeed beyond) this size may readily be replaced by new planting.

In general, it is important to note that, when choosing the appropriate category, the assessment in each case should be based on the minimum criterion.

Whilst the scores are obviously weighted towards greater visibility, we take the view that it is reasonable to give some credit to trees that are not visible (and/or whose visibility is not expected to change: it is accepted that, in exceptional circumstances, such trees may justify TPO protection.

Where groups of trees are being assessed, the size category chosen should be one category higher than the size of the individual trees or the degree of visibility, whichever is the lesser. Thus a group of medium trees would rate four points (rather than three for individuals) if clearly visible, or three points (rather than two) if visible only with difficulty.

Once again, the categories relate to a summary of TPO suitability.





### Sub-total 1

At this point, there is a pause within the decision making process: as the prompt under 'other factors' states, trees only qualify for consideration within that section providing that they have accrued at least seven points. Additionally, they must not have collected any zero scores.

The total of seven has been arrived at by combining various possible outcomes from sections a-c.

The scores from the first three sections should be added together, before proceeding to section d, or to part 3 as appropriate (i.e. depending on the accrued score). Under the latter scenario, there are two possible outcomes:

- 'Any 0' equating to 'do not apply TPO'
- '1-6' equating to 'TPO indefensible'

### Other factors

Assuming that the tree or group qualifies for consideration under this section, further points are available for four sets of criteria, however only one score should be applied per tree (or group):

- **'Principle components of arboricultural features, or veteran trees'** – The latter is hopefully self-explanatory (if not, please see 'Veteran Trees: A Guide to Good Management', Helen Read, English Nature 2000). The former is designed to refer to trees within parklands, avenues, collections, and formal screens, and may equally apply to individuals and groups
- **'Members of groups of trees that are important for their cohesion'** – This should also be self-explanatory, though it is stressed that 'cohesion' may equally refer either to visual or to aerodynamic contribution. Included within this definition are informal screens. In all relevant cases, trees may be assessed either as individuals or as groups
- **'Trees with significant historical or commemorative importance'** – The term 'significant' has been added to weed out trivia, but we would stress that significance may apply to even one person's perspective. For example, the author knows of one tree placed under a TPO for little other reason than it was planted to commemorate the life of the tree planter's dead child.

Thus whilst it is likely that this category will be used infrequently, its inclusion is nevertheless important. Once again, individual or group assessment may apply

- **'Trees of particularly good form, especially if rare or unusual'** – 'Good form' is designed to identify trees that are fine examples of their kind and should not be used unless this description can be justified. However, trees which do not merit this description should not, by implication, be assumed to have poor form (see below). The wording of the second part of this has been kept deliberately vague: 'rare or unusual' may apply equally to the form of the tree or to its species. This recognises that certain trees may merit protection precisely because they have 'poor' form, where this gives the tree an interesting and perhaps unique character. Clearly, rare species merit additional points, hence the inclusion of this criterion.

As with the other categories in this section, either individual or group assessment may apply. With groups, however, it should be the case either that the group has a good overall form, or that the principle individuals are good examples of their species.

Where none of the above apply, the tree still scores one point, in order to avoid a zero score disqualification (under part 3).



## Sub-total 2

This completes the amenity assessment and, once again, there is a pause in the method: the scores should be added up to determine whether or not the tree (or group) has sufficient amenity to merit the expediency assessment.

The threshold for this is nine points, arrived at via a minimum qualification calculated simply from the seven-point threshold under sections a-c, plus at least two extra points under section d. Thus trees that only just scrape through to qualify for the 'other factor' score, need to genuinely improve in this section in order to rate an expediency assessment. This recognises two important functions of TPOs:

- TPOs can serve as a useful control on overall tree losses by securing and protecting replacement planting
- Where trees of minimal (though, it must be stressed, adequate) amenity are under threat, typically on development sites, it may be appropriate to protect them allowing the widest range of options for negotiated tree retention

## Part 2: Expediency assessment

This section is designed to award points based on three levels of identified threat to the trees concerned. Examples and notes for each category are:

- 'Immediate threat to tree' – for example, Tree Officer receives Conservation Area notification to fell
- 'Foreseeable threat to tree' – for example, planning department receives application for outline planning consent on the site where the tree stands
- 'Perceived threat to tree' – for example, survey identifies tree standing on a potential infill Plot.

Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO. However, it is not felt necessary to incorporate such considerations into the method, as it is chiefly intended for field use: these other considerations are most suitably addressed as part of a desk study.

As a final note on this point, it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 16, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes.



## Part 3: Decision Guide

This section is based on the accumulated scores derived in Parts 1 & 2, and identifies four outcomes, as follows:

- **Any 0 Do not apply TPO**

Where a tree has attracted a zero score, there is a clearly identifiable reason not to protect it, and indeed to seek to do so is simply bad practice

- **1-6 TPO indefensible**

This covers trees that have failed to score enough points in sections 1a-c to qualify for an 'other factors' score under 1d. Such trees have little to offer their locality and should not be Protected

- **7-11 Does not merit TPO**

This covers trees which have qualified for a 1d score, though they may not have qualified for Part 2. However, even if they have made it to Part 2, they have failed to pick up significant additional points. This would apply, for example, to a borderline tree in amenity terms that also lacked the protection imperative of a clear threat to its retention

- **12-15 Possibly merits TPO**

This applies to trees that have qualified under all sections, but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'

- **16+ Definitely merits TPO**

Trees scoring 16 or more are those that have passed both the amenity and expediency assessments, where the application of a TPO is fully justified based on the field assessment exercise.





### Notation boxes

Throughout the method, notation space is provided to record relevant observations under each section. For local authorities using TEMPO, it may even be helpful to include a copy of the TEMPO assessment in with the TPO decision letter to relevant parties, as this will serve to underline the transparency of the decision-making process.

### Conclusion

TEMPO is a quick and easy means of systematically assessing tree or group suitability for statutory protection. It may be used either for new TPOs or for TPO re-survey, especially where Area TPOs are being reviewed.

From the consultants' perspective, it is also an effective way of testing the suitability of newly applied TPOs, to see whether they have been misapplied, or it can be used to support a request to make a TPO in respect of trees at risk, for example from adjacent development.

TEMPO does not seek to attach any monetary significance to the derived score: the author recommends the use of the Helliwell System where this is the objective.

CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the **FLAC website ([www.flac.uk.com](http://www.flac.uk.com))** and the **Arboricultural Information Exchange [www.aie.org.uk](http://www.aie.org.uk)**



# TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

## SURVEY DATA SHEET & DECISION GUIDE

Date:	Surveyor:	
<b>Tree details</b>		
TPO Ref (if applicable):	Tree/Group No:	Species:
Owner (if known):	Location:	

### REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

#### **Part 1: Amenity assessment**

##### **a) Condition & suitability for TPO**

- |                          |                         |
|--------------------------|-------------------------|
| 5) Good                  | Highly suitable         |
| 3) Fair/satisfactory     | Suitable                |
| 1) Poor                  | Unlikely to be suitable |
| 0) Dead/dying/dangerous* | Unsuitable              |

#### Score & Notes

\* Relates to existing context and is intended to apply to severe irremediable defects only

##### **b) Retention span (in years) & suitability for TPO**

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

#### Score & Notes

\*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

##### **c) Relative public visibility & suitability for TPO**

Consider realistic potential for future visibility with changed land use

- |   |                     |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees  | Highly suitable     |
| 4) Large trees, or medium trees clearly visible to the public       | Suitable            |
| 3) Medium trees, or large trees with limited view only              | Suitable            |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable     |
| 1) Trees not visible to the public, regardless of size              | Probably unsuitable |

#### Score & Notes

##### **d) Other factors**

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

#### Score & Notes

#### **Part 2: Expediency assessment**

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

#### Score & Notes

#### **Part 3: Decision guide**

- |       |                       |
|-------|-----------------------|
| Any 0 | Do not apply TPO      |
| 1-6   | TPO indefensible      |
| 7-11  | Does not merit TPO    |
| 12-15 | TPO defensible        |
| 16+   | Definitely merits TPO |

#### Add Scores for Total:

#### Decision: