

Brighton & Hove City Council

Culture, Economic Development, Tourism & Heritage Committee

Agenda Item 10

Subject: Enforcement of Unauthorised Works to Trees

Date of meeting: 15th June 2023

Report of: Executive Director of Economy, Environment, Culture

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 The report follows a notice of motion at Full Council on the 15 December 2022 which requested a report on local and national planning policy in relation to trees and Tree Preservation Orders (TPOs); and trees that are removed without agreement. In addition, lawful conditions the council can make on applications regarding trees.

1.2 The motion also requested a draft communications plan for residents and developers to support the Council's enforcement approach. The report responds to this and recommends the preparation of a tree enforcement policy for the Arboriculture Team and communications plan once the policy is adopted.

2. Recommendations

2.1 That Committee notes that enforcement of tree issues relating to development sites, including enforcement of planning conditions, is undertaken by the Planning Enforcement Team under the terms of the Planning Enforcement Policy (Appendix 1).

2.2 That Committee notes that the Arboricultural Team undertakes enforcement of tree issues where there are Tree Preservation Orders (TPOs) in place or trees in conservation areas (CA) in locations that are not presently subject to a planning consent.

2.3 That Committee requests officers to develop a draft enforcement policy relating to trees protected by TPOs, breaches of legislation around CA tree works and brings it to City Environment, South Downs and the Sea Committee for adoption followed by a communications plan.

3. Context and background information

3.1 The Notice of Motion from Full Council in December 2022 requested the following:

- Details on the council's and national planning policy in relation to trees with Tree Preservation Orders (TPOs) that are removed without BHCC's permission and lawful conditions the council can make on applications regarding trees;
- A draft communication plan for residents and developers to support the Council's enforcement approach.

Policy Background:

3.2 There are local and national policies and legislation in respect to trees that are outlined in Appendix 2 to this report. National policies provide an overview on protection of trees and local policies provide further detail to ensure trees are protected during development.

Measures available to protect trees:

3.3 There are a number of different measures available to the Council to protect trees and these are covered by two separate services. The Planning Service has enforcement powers to protect trees as part of new development schemes (such as compliance with conditions). The Arboriculture Team has powers to investigate unauthorised works to trees covered by a TPO and to trees in Conservation Areas. This is also discussed below.

Protection of Trees on Development Sites

3.4 Planning is able to attach conditions when granting full planning permission, to ensure trees are protected during development (such as protective fencing for trees). The British Standards Institute Standards BS 5837:2012; Trees provides standards for this in relation to design, demolition and construction and is often used when requiring protection works.

3.5 The Arboriculture Team is consulted on all planning applications that impact on trees including those covered by TPOs and in Conservations Areas. These comments will ensure that the right conditions are attached to permissions and trees are protected. Therefore, although the granting of full planning permission can override a TPO, this will have been considered as part of the planning application. In addition, consent is not required for cutting down or carrying out work on trees, that may be protected, which are dead, dying or have become dangerous.

Trees subject to Tree Preservation Orders

3.6 A Tree Preservation Order is an order made by a local planning authority to protect specific trees, groups of trees or woodlands in the interests of

amenity. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 seek to prevent the cutting down; topping; lopping; uprooting; wilful damage; and wilful destruction of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed.

- 3.7 Expediency is a key test for justifying designation (in the interests of amenity) and relates to significance of impact on the amenity of the area from a tree being cut down or pruned. Amenity considerations take into the account the criteria of visibility; individual impact and wider impact. These powers are exercised by the Arboriculture Team.

Trees in Conservation Areas

- 3.8 The Town and Country Planning Act 1990 also makes special provision for trees in conservation areas which are not the subject of a TPO. Under this legislation, anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the LPA six weeks' prior notice to allow for the Authority to protect the tree with a TPO.

Enforcement (Planning):

- 3.9 If planning permission is granted subject to conditions concerning trees and those conditions (conditions must meet tests in national guidance) are breached - this is a breach of planning control. The investigation and resolution of this will be carried out in line with the Council's adopted Local Planning Enforcement Plan.
- 3.10 Once a breach has been established, it is necessary to consider whether it is expedient (i.e. significant harm is caused) to take enforcement action. In terms of enforcement powers, if a notice is served and is contravened, then this is an offence. As a result, a criminal investigation can be conducted, and it will be considered whether the evidential test has been met and whether it is in the public interest to pursue a prosecution (details in the Local Enforcement Plan).

Enforcement (Arboriculture Team)

- 3.11 The Arboriculture Team are responsible for enforcement action for trees that are subject to a Tree Preservation Order or trees that are protected in Conservation Areas. For example, if works are undertaken to a tree that is subject of a Tree Preservation Order (TPO) without consent. This may be a criminal offence where consent is required. A person is in contravention when it can be proven, beyond reasonable doubt, that they
- cut down, uproot or wilfully destroys a tree; or
 - top, lop or wilfully damage a tree in a way that is likely to destroy it; or
 - causes or permits such activities.
- 3.12 The ability to prosecute such an offence is time limited and there is also a duty requiring landowners to replace a tree removed, uprooted or destroyed in contravention of an Order.

- 3.13 There is not currently a policy in place for investigating such matters and it is therefore proposed that an Arboricultural Team Tree Enforcement Policy is prepared. It will need to go to the City Environment, South Downs and the Sea Committee for agreement. This will sit alongside the existing Planning Enforcement Policy.

4. Analysis and consideration of alternative options

- 4.1 Preparing an Enforcement Policy document that covers unauthorised works to TPO trees would provide the public and the team investigating the alleged breaches more certainty and clarity on the process. Furthermore, it would provide support to a decision made by the team. It is therefore proposed that such a policy is developed and brought to members for agreement.
- 4.2 Not preparing an Enforcement Policy Document will not give certainty to members of the public or clarity over decision making and why a particular decision was made if the outcome was not as the complainant wished.

5. Community engagement and consultation

- 5.1 The principles of the adopted Enforcement Plan was subject to consultation through Members Workshops in February and April 2022.
- 5.2 Any Tree Enforcement Policy prepared by the Arboriculture Team will be subject to consultation. In addition, the proposed communications plan will help to raise awareness of the policy once adopted.

6. Conclusion

- 6.1 The report sets out the differences between enforcement powers between the planning enforcement team and the Arboricultural team. The current Planning Enforcement's Local Enforcement Plan (planning team) helps guide investigations as well as decision making for enforcement cases. Similarly, a policy document for unauthorised works to trees will help guide investigations and potentially more formal action for the Arboricultural Team.
- 6.2 The report recommends the preparation of the enforcement report for the Arboricultural Team. Following adoption of an Enforcement Policy document for unauthorised works to TPO trees, it is recommended that a communications plan is developed jointly between the Arboriculture and the Planning Enforcement teams.

7. Financial implications

- 7.1 There are no direct financial implications arising from recommendations 2.1 and 2.2 of this report which is for noting.
- 7.2 Agreeing to recommendation 2.3 of developing a draft enforcement policy relating to trees protected by TPO will require officer time within the Arboricultural Team to develop the enforcement policy and bring back to a

future committee. It is anticipated officer time would be contained within existing services budgets. Any significant variations to budget will be reported as part of the council's monthly budget monitoring process.

Name of finance officer consulted: John Lack Date consulted: 24/05/2023

8. Legal implications

- 8.1 The are no direct legal implications arising from the first 2 recommendations to this report as they ask members to note them.
- 8.2 Regarding the third recommendation, any policy document compiled by the Council must be in conformity with the Development Plan as a whole and pay heed to national policy and guidance. For tree issues, the relevant legislation has been set out in the body of this report and needs to be followed in any resultant policy.

Name of lawyer consulted: Katie Kam Date consulted (25/05/2023):

9. Equalities implications

- 9.1 The planning enforcement service is complaint led and therefore customers, to an extent, are self-selecting. Similarly, complaints regarding works to TPO trees are customer led. The Local Enforcement Plan was subject to an Equalities Impact Assessment and the TPO Enforcement policy will be subject to an Equalities Impact Assessment as well.

10. Sustainability implications

- 10.1 Development plan policy is subject to a sustainability appraisal. In addition to this sustainability is a material consideration and decisions will be made in this regard.

