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| <b>REPORT SUBJECT:</b>     | <i>South Bucks District Council – TPO Statistics and enforcement</i>           |
| <b>REPORT OF:</b>          | <i>Cllr John Read - Portfolio holder for Planning and Economic Development</i> |
| <b>RESPONSIBLE OFFICER</b> | <i>Cathy Gallagher – Interim Head of Planning and Economic Development</i>     |
| <b>REPORT AUTHOR</b>       | <i>Darran Eggleton – Planning Enforcement Manager</i>                          |
| <b>WARD(S) AFFECTED</b>    | <i>Report applies to whole district</i>  |

### 1. Purpose of Report

This report sets out how alleged unauthorised tree work is investigated, the volume of cases investigated and the expediency of appropriate enforcement action is duly considered. All cases involve the Councils tree officer in providing arboricultural advice on the works undertaken. The report also sets out the current number of TPO's in the district as well as the determining factor when deciding whether or not to take formal enforcement action.

#### **RECOMMENDATION**

That the Committee note the volume, process and outcome of cases investigated.

### 2. Executive Summary

Due to the manner in which planning enforcement cases have been historically logged on the team database, specific case information and precise case numbers over a number of years is difficult to extract. The content of this report therefore predominantly refers to data over the past 5 years unless it states otherwise.

Within that 5-year period, South Bucks District Council received and investigated 180 allegations of unauthorised works to trees. These cases included all alleged works to trees including TPO trees, trees in Conservations Areas, Protected Woodlands, Hedgerows, non-compliance with tree conditions etc.

The team has analysed the data over that 5 year period and identified that 55 of those 180 cases related to allegations of unlawful works to TPO tree or trees in a conservation area.

### 3. Case review and analysis

A review of the 55 cases has been undertaken and a summary of which can be found at appendix 1.

Having reviewed the reasons for closure in the 55 relevant cases it is apparent that the majority of cases investigated turned out to be where no breach of planning control is occurring. In fact, over 55% were not a breach of planning control. The reasons cited vary but most relate to planning permission already being granted for the works or the trees in questions not covered by TPO.

Members will note from table 1 below that 19 cases of the 55 were closed due to the matter not being expedient to pursue. The reasons cited appear in column 8 of the table in appendix 1 and vary considerably. Further commentary on expediency follows further in this report.

Table 1

|                          | 2015-16   | 2016-17  | 2017-18  | 2018-19   | 2019-20   | <b>Total</b> |
|--------------------------|-----------|----------|----------|-----------|-----------|--------------|
| No Breach                | 5         | 2        | 4        | 8         | 11        | <b>30</b>    |
| Not expedient            | 9         | 4        | 2        | 2         | 2         | <b>19</b>    |
| Breach Resolved          | 0         | 2        | 0        | 1         | 1         | <b>4</b>     |
| No Further Action        | 0         | 0        | 1        | 0         | 0         | <b>1</b>     |
| Still being investigated | 0         | 0        | 0        | 0         | 1         | <b>1</b>     |
| <b>Total</b>             | <b>14</b> | <b>8</b> | <b>7</b> | <b>11</b> | <b>15</b> | <b>55</b>    |

#### 4. Investigation Process

Upon receipt of an allegation of unlawful work to a protected tree, the planning enforcement team log details of the allegation on the council's database. All cases involving the alleged unauthorised works to a protected tree are given top priority and, once a desktop triage has taken place, the site is visited the same day. In most cases the site will be visited jointly by a Planning Enforcement Officer and a Tree Officer and the visit will be undertaken as a matter of urgency.

Upon arrival at the site, officers assess the work that has been undertaken and begin a "who, why what, where and when" investigation to establish if the work being carried out is unlawful. If officers consider that a criminal offence is likely to have been committed, Officers will caution those responsible at the site and gather evidence, of the offence. If no one is on site officers will ascertain land owner information from the Land Registry and contact the land owner. Any information gathered from the site visit including written statements and photography are appropriately recorded as part of the site investigation.

At this point the tree officer will consider whether the trees are actually protected by a Tree Preservation Order or whether the works undertaken are exempt/exception as outlined under the Town and Country Planning Regulations 2012. The Officers will start to form an opinion as to the best next steps as part of the investigation. Notwithstanding any offences being committed, the main point for consideration is whether, had an application been submitted prior to the works taking place, that application would have been refused. This assessment forms an integral element to consider in the investigation and it helps inform Officers with regards to next steps of this investigation as part of expediency tests.

In most cases, officers will instruct that all works will be ceased until the matter can be concluded.

The next steps may be one or more of a number of different options. These are:

- No further action (no breach or not expedient to pursue)
- Warning letter (not expedient to pursue)
- Replacement tree planting agreement (or notice)
- Formal legal action (prosecution)

Officers will investigate the circumstances around the tree works and will try to identify the persons responsible. In some cases, officers will carry out a recorded interview with the tree surgeons and/or the land owner.

The officers will then move to pursuing one or more of the above next steps.

### **Conservation Area Trees**

Trees with a diameter of over 75mm measured at 1.5m from the ground are protected by the conservation area in so far as any works require a six weeks written notice to the Council to consider whether a new Tree Preservation Order should be made prior to any tree work is undertaken. There are a number of exceptions to this requirement as outlined in the Town and Country Planning Regulations 2012.

In order to fell or carry out works to a tree situated within a Conservation Area, the owner should submit a six weeks written notice (application) to the Council. It is worth noting at this point that the Council only have 2 options upon determining such an application. Those options are to either raise no objection or to impose a Tree Preservation Order. In order to impose a Tree Preservation Order, the tree must have appropriate amenity value. In many cases trees may not be deemed to be of high amenity value.

### **Blanket TPO's**

South Bucks District Council has 1075 Tree Preservation Orders. Many of these Orders are known as Area (blanket) designated Orders covering large areas of land. In such areas, prior consent is required to fell any tree. However, it should be noted that when assessing the impact of a felled or pruned tree, the officers must consider the amenity value of that felled tree and effect on the surrounding area. The other point for members to note is that trees which were not present at the time of the Order being served by the council are not covered within the protection of the Order so not all trees within large sites are legally protected.

### **Reaction to a felled tree and formal legal action**

Once the Council is aware of an unlawful felling/pruning of a protected tree and there is sufficient evidence to meet the evidential and public interest tests formal legal action must be commenced within the statutory time period set out in the legislation.

Of the 55 cases TPO or Conservation Area allegations logged and investigated over the past 5 years, 14 were founded allegations where officers established that unauthorised tree works had taken place. Of those 14 cases, legal advice was sought on 4 cases but none were pursued to formal action. A breakdown and analysis of those forwarded to the legal department can be found at Table 2 below.

**Table 2**

| Case reference | Date case received | Date case Closed | Alleged breach reported   | Case status | Reason for closure | Legal consulted  | Notes   |
|----------------|--------------------|------------------|---|-------------|--------------------|--|---|
| EN/18/2290     | 11/12/2018         | 20/02/2019       | without planning permission, the reduction in height of a tree within a conservation area | CLOSED      | Not expedient      | Y - high potential for legal challenge which Council would likely lose     | Planning permission granted for 50% reduction contrary to Tree officer recommendation of 30%.                         |
| 17/10082/ENTPO | 04/04/2017         | 14/02/2018       | Without Consent, unauthorised works to trees inside a Conservation Area.                  | CLOSED      | No further action  | Y - TPO prosecution pack requested, no formal instructions were then given | Prosecution became time barred and the case therefore closed  |
| 15/10110/ENTPO | 02/07/2015         | 20/10/2016       | Alleged felled protected cedar tree.  | CLOSED      | Not expedient      | Y - advised not to prosecute   | PACE interview undertaken, replanting works agree to be carried out   |
| 15/10195/ENTPO | 12/11/2015         | 21/12/2017       | Alleged removal of Douglas Fir (SBDC TPO No 12, 2002)                                     | CLOSED      | Not expedient      | Y - advised not to prosecute   | insufficient evidence to pursue and the case is now time barred from prosecution, In the meantime a replanting agreed |

Whilst there have been no legal actions pursued in relation to unlawful felling of trees in at least the last 5 years, members should note that formal legal action does not necessarily go hand in hand with the unlawful felling of a protected tree. Ultimately, the investigation and amenity value of the tree is duly considered to determine the appropriate action.

### **Replacement Tree**

Notwithstanding any offences committed, if a protected tree is removed uprooted or destroyed, the owner of the land has a legal duty to replace the tree under s206 and s213 of the Act. If satisfactory replacement is not carried out, the Council can serve a formal Replanting Notice under Section 207 requiring the replacement to be carried out in a specified timeframe. Failure to comply with the Notice will give the Council the powers to carry out the works under s209 of the Act and recover the costs.

### **Going forward.**

Any allegations of tree works will continue to be given the highest priority and investigated within 24 hours of receipt. This investigation will continue to be jointly undertaken by the planning enforcement and tree officers, with the tree officers providing expert arboricultural advice.

Members can be assured that where unacceptable works to a tree(s) have taken place, and it is expedient to pursue action, and it is in the public interest to do so, then the Council will pursue offenders in the strongest possible terms and will seek to recover any financial costs incurred in doing so.

**Request for TPO**

As trees grow, they gain amenity value in their locality and despite their value and appreciated aesthetics, they may not have protection from felling. However, the Council must still justify imposing a Tree Preservation Order. The Council will only make a Tree Preservation Order if it can be demonstrated that the tree is 'at risk' and that the tree is worthy of protection. The tree must be able to be seen from a public place and that its removal or pruning would significantly harm the appearance of the area. Any trees subject to a request for a new Tree Preservation Order will be inspected by the tree officer and an amenity value assessment (size, form, condition, suitability) will be undertaken. If a new TPO is recommended by the tree officer this assessment/recommendation is passed to a delegated officer to determine decision accordingly.

**5. Options**

Not applicable.

**6. Corporate Implications**

*Not applicable*

**8. Links to Council Policy Objectives**

Not applicable

**9. Next Step**

Once approved, this report and appendices will be published on the website.

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| <b>Background Papers:</b> | N/A |
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