

# Felling licences and Tree Preservation Orders

## Purpose

This Operations Note provides guidance on the interaction of felling applications and licences issued under the Forestry Act 1967, and Tree Preservation Orders (TPOs) made under the Town and Country Planning Act 1990.

## Background

Section 198 of the Town and Country Planning Act 1990 (T&CPA) allows local authorities to protect particular trees and areas of woodland with a TPO, in the interests of amenity.

Where a TPO has been made, the consent of the local authority must be obtained (either directly or via a felling licence application) before the trees can be felled legally under the T&CPA.

Where no exception to the requirement for a felling licence applies, a felling licence is always required to fell trees, under the Forestry Act 1967 (FA). This includes those trees subject to a TPO.

Felling trees subject to a TPO, where a felling licence was required but not obtained, can result in an offence being committed under both the FA and T&CPA.

Those proposing to cut down trees protected by TPO must follow the correct application route in order to avoid committing one or both of these offences.

## Felling licence applications where a TPO already exists

Sections 15 and 17A(4) of the FA govern how felling licence applications that include trees protected by TPOs are processed by the Forestry Commission (FC), when local authorities are allowed to process applications directly under TPO regulations, and the enforcement of restocking available in the event of the unlicensed felling of trees subject to a TPO.

## Felling licence, or application to Local Authority?

Where proposed tree felling is of sufficient volume to require a felling licence and no other exceptions to the need for a felling licence apply (see [Tree felling: getting Permission](#)), a felling licence is the only route to legally fell the trees.

The local authority is not allowed to consider any application made to it to fell trees subject to a TPO (as set out in section 15(5)) if a felling licence under the FA is required.

**The only time a local authority can authorise the felling of TPO trees is:**

- when a FL is not required, or,
- when the FC refers a felling licence application to the local authority for them to process, as set out in section 15(1)(b) of the FA.

## Processing a felling licence application for TPO trees

When processing a felling licence application containing trees subject to a TPO, and where the FC proposes to grant that licence, it will 'give notice' to the local authority, as set out in section 15(1)(a) of the FA.

- If the local authority does not object to the felling proposals within 1 month, the FC will approve the felling licence.
- If the local authority does object (and that objection is not withdrawn), the case is referred to the Minister and dealt with under the T&CPA as if it were an application under the tree preservation regulations.

Alternatively, rather than 'give notice' to the local authority that the FC proposes to grant a licence, it has the power under section 15(1)(b) of the FA to refer the felling licence application to the local authority, which may then grant permission as if it were an application under the tree preservation regulations. This entirely removes the FC from the decision-making process.

Section 15(1) only allows for notices / referrals solely relating to TPO trees.

Section 15(6) of the FA clearly states that a felling licence granted after the date on which a TPO comes into force is sufficient authority to fell trees under the TPO. Assuming that the TPO was in force at the time that the felling licence application was submitted to the FC, the local authority will have had the opportunity to comment on or object to (and potentially veto) the proposed licence (as per sub-sections 15(1)(a) and 15(2)).

## Where a TPO is made while processing a felling application

Section 15(1) of the FA states clearly that the FC must 'give notice' to the local authority where felling licence applications contain trees subject to a TPO at the time the application is made.

Similarly, section 15(6) of the FA clearly states that a felling licence granted after the date on which a TPO comes into force removes the need for TPO consent (and the local authority will have had the opportunity to veto the issuing of such a licence, as set out above).

This creates a period between felling licence application and felling licence approval where, if a TPO is made for the trees subject to the licence application, the FC is not required to notify the local authority of the application, the local authority is not given the opportunity to object to the application, and where the granting of the licence will remove the need to seek TPO consent.

Notwithstanding this, the FC will, where it is aware that a TPO has been made during the processing of a felling licence application, consult with the local authority and offer them an informal opportunity to object to the licence being issued.

Local authorities are advised not to create TPOs during the period in which the FC is processing a felling licence application, as there is a risk that the FC will not be made aware of the local authority doing so.

### TPOs made on trees subject to an approved felling licence

Where a local authority subsequently creates a new TPO on trees subject to an approved felling licence, the licence holder should contact the FC immediately.

The approved felling licence does not remove the need for TPO consent to be given in respect of trees subject to a new TPO, as it was granted prior to the TPO having been made.

It is likely that a new felling licence will be required to ensure that an offence of felling without TPO consent is not committed, but this may vary depending upon the type and extent of the TPO made, and the intended scale of works affecting the trees subject to the new TPO (i.e. whether the works are prohibited activities under the T&CPA, and whether an exemption to work on the TPO tree applies).

Note that, if the intended scale of felling of trees subject to the TPO would ordinarily require a felling licence (for example, is felling more than 5m<sup>3</sup> of timber) then section 15(5) prevents the local authority from directly processing an application for TPO consent. In this circumstance, a new felling licence must be applied for, which upon its approval will remove the need for TPO consent.

### Unlicensed tree felling of trees subject to a TPO

Consider the following scenario:

- Trees subject to a TPO are felled
- The felling was of a scale (>5m<sup>3</sup>) where a felling licence would ordinarily be required (i.e. no other exceptions to the need for a felling licence apply)
- Neither a felling licence, nor local authority consent to fell the trees subject to the TPO (which the LA is unable to lawfully give in this scenario due to the need for a felling licence) is in place

### Offences

Two offences are committed in the above scenario.

An offence is committed in relation to felling without an approved felling licence, where one was required (section 17 of the FA).

In addition to this, despite the local authority being unable to grant TPO consent directly (as section 15 of the FA prevents it from doing so where a felling licence is required), the absence of an approved felling licence means that TPO consent is needed, and therefore an offence is committed under the T&CPA as well.

### Restocking after unauthorised felling

In this scenario, section 17A(4) of the FA stipulates that a Restocking Notice cannot be served by the FC because the TPO was in place before the unlicensed felling occurred,

and the burden of enforcing the replanting or replacement of the trees subject to the TPO instead lies with the local authority under section 207 of the T&CPA (which applies due to a TPO related offence having been committed).

### Criminal investigation of offences

Despite the FC being unable to serve a Restocking Notice, the offence of felling without a felling licence where one was required (as set out within section 17 of the FA), is still committed, and the FC is able to initiate a criminal investigation with a view to taking court proceedings. This can be done in tandem with the local authority, which may wish to initiate its own criminal proceedings for the offence of felling without TPO consent.

Any court proceedings initiated by the FC are independent of any that may be initiated by the local authority as they will be for separate offences. However, this does not prevent both authorities cooperating with each other in relation to the separate proceedings, or that proceedings may not be brought as a joint action.

### Unlicensed felling of trees, subsequently granted a TPO

Following an incident of unlicensed tree felling, it is not uncommon for the local authority to create a TPO on the felled area or on any remaining nearby trees.

Where a TPO is made on trees after the unlicensed felling has occurred, section 17A(4) of the FA has no effect. This means that the FC is still able to serve a Restocking Notice on the felled area and/or initiate its own criminal investigation.

**Regardless of whether or not a TPO is in place, the FC will assess all alleged illegal felling investigations (AIF) according to its standard procedures.**

### Further information

- [Forestry Act 1967](#)
- [Tree felling: getting permission](#)

### Versions

Version 1, issued 15 July 2020