



<b>Subject:</b>	NI Public Service Ombudsman – Report on Tree Protection
<b>Date:</b>	14 November 2023
<b>Reporting Officer:</b>	Kate Bentley, Director of Planning and Building Control
<b>Contact Officer:</b>	Keith Sutherland – Development Planning & Policy Manager Dermot O’Kane, Principal Planning Officer

<b>Restricted Reports</b>	
Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

<b>Call-in</b>	
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

<b>1.0</b>	<b>Purpose of Report or Summary of Main Issues</b>
1.1	To inform Members of the recent publication of a Report on Tree Protection matters by the NIPSO and provide comments on the recommendations in respect of both councils and the DfI set out in the report.
<b>2.0</b>	<b>Recommendations</b>
	The committee is requested to note the publication of the NIPSO Report on Tree Protection matters and to note the comments on relevant NIPSO recommendations. A copy of the published NIPSO Report is attached at <b>Appendix 1</b> .
<b>3.0</b>	<b>Main Report</b>
3.1	The Northern Ireland Public Service Ombudsman (NIPSO) wrote to the Department for Infrastructure (DfI) and all councils in July 2023 advising that concerns had been raised with their office about how public bodies fulfil their duties to protect trees within the planning system. NIPSO carried out an ‘own initiative’ investigation and invited public bodies to submit comments and details in response to a number of set questions. The NIPSO has now published her Report, which includes observations and a number of recommendations to DfI and councils.
3.2	The NIPSO Report sets out the legislative context for tree protection in the planning system and is further structured around a number of key headings, each with a corresponding set of recommendations for DfI and / or councils. The headings are: <ul style="list-style-type: none"><li>• Strategies, Policies and Procedures</li><li>• Tree Preservation Orders</li><li>• Applications for Works to Protected Trees</li><li>• Protected Trees on Council Owned Land</li><li>• Statutory Undertakers</li><li>• Enforcement Activity</li></ul>

3.3	<p>The Report recognises good practice and Belfast City Council is specifically referenced a number of times in this regard, including our LDP Supplementary Planning Guidelines on Trees and Development, our recently adopted Tree Strategy alongside our online public mapping of TPOs and conservation areas. It also identifies differences between each council, including in terms of numbers of TPOs, requests for new TPOs and treeworks applications. In this regard, it should be noted that Belfast has the second highest number of existing TPOs and new TPO requests along with the highest number, by a significant margin, of treeworks applications for the investigation period 2019-2022. It should also be recognised that where the Report seeks to highlight issues or concerns in respect of the current processes these are not attributed to specific councils.</p>
3.4	<p>Overall, there are 26 recommendations, eight of which are solely for DfI and these relate mainly to the provision of detailed or updated guidelines on best practice. The remaining recommendations primarily relate to councils or joint working with DfI. As noted above these have been identified generically for all councils irrespective of their current practices or progress in respect of the areas covered in the recommendations.</p>
3.5	<p>The Committee may wish to note that many of the recommendations have already been addressed (or are in the process of being addressed) by the different departments across the council. A table of the recommendations and brief comments are included at Appendix 2 of this report.</p>
3.6	<p>As previously reported, we have taken forward a number of initiatives to ensure that information on protected trees is readily available to interested parties to ensure that decision making, and planning practice is based on an informed and sound evidential footing. A number of these initiatives were reported to Planning Committee on 17th January 2023 as part of an update report on tree protection matters. The quality of this information has been improved significantly following an extensive review of the records that we received from the then Department of the Environment when planning powers were transferred to local government in 2015.</p>
3.7	<p>As a council we have embedded the work to protect and manage trees within our statutory responsibilities and as an enhancement to our public online mapping, for TPOs and conservation areas, additional functionality will be introduced linking the map to statutory documents for each designated TPO. Alongside this enhanced access to information we have also published best practice guidance on the protection of trees which is available on our website and supplements our policies towards trees and other green and blue infrastructure embedded within our adopted LDP Plan Strategy.</p>
<b>4.0</b>	<b>Appendices</b>
	<p><b>Appendix 1 – NIPSO Report: Strengthening Our Roots</b> - An overview report by the Northern Ireland Public Services Ombudsman on Tree Protection in the planning system.</p> <p><b>Appendix 2 – NIPSO Report Recommendations and officer update/comment</b></p>

**Appendix 1 - NIPSO Report**

## Appendix 2 - NIPSO Report Recommendations and Officer Comment

NIPSO Recommendation	Update/comment
<p><b>Recommendation 1:</b> All councils should develop and implement tree strategies which ensure the relevant functions across the council are aligned to the agreed objectives. Councils which already have tree strategies in place should review their strategies to ensure that they are comprehensive.</p>	<p>The BCC Tree Strategy was adopted and published in October 2023 and is available on our website:  <a href="https://www.belfastcity.gov.uk/belfast-tree-strategy">Belfast Tree Strategy (belfastcity.gov.uk)</a></p>
<p><b>Recommendation 2:</b> Councils should review their schemes of delegation for planning to ensure that decision making processes in respect of TPOs are being given the appropriate level of priority and are in line with the objectives set out within tree strategies. Councils should also ensure that their Schemes of Delegation are clear and accurate, including specifying exactly what matters are presented to, and decided by, Committee in this area.</p>	<p>The council has a scheme of delegation in place in accordance with legislative requirements and this is kept under review in discussion with Members. This provides for delegation of powers for tree protection and treeworks applications.</p>
<p><b>Recommendation 3:</b> Councils should ensure that they have their own procedural guidance in place to supplement the legislative framework around trees which are subject to TPOs and conservation area protection. Given the difference in the level of protection afforded, the guidance should also set out clearly the circumstances TPOs should be used instead of, or alongside, planning conditions to best secure the long term protection of trees.</p>	<p>We have produced and published guidance in relation to protected trees. This is available on our website within our wider TPO information page:  <a href="https://www.belfastcity.gov.uk/guide-to-protected-trees">Guide to protected trees (belfastcity.gov.uk)</a></p>
<p><b>Recommendation 4:</b> The Department should update and issue guides regarding the protection of trees, to reflect the current roles and responsibilities of the Department and the councils. The Department should also develop its own procedural guidance on areas in which it has retained responsibilities.</p>	<p><i>This is a Dfl action.</i></p> <p>BCC has already published updated guidance reflecting current responsibilities. BCC would prefer consultation by Dfl in advance of any further regional guidance being introduced.</p>
<p><b>Recommendation 5:</b> The Department should consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. This could include issuing best practice guidance for councils in relation to developing effective Tree Strategies and setting up a regional Tree Forum. The Department and councils should also utilise the agreed mechanism to consider my report and recommendations, and collectively develop an action plan.</p>	<p><i>This is a Dfl action.</i></p> <p>It should be noted that the councils have an established a tree officers' forum and our tree officers are active in this, including hosting the most recent meeting in October 2023.</p>

<p><b>Recommendation 6:</b> Councils should carry out detailed reviews of their TPO records to ensure that all of the TPOs which are in place remain valid. Councils should also ensure that they develop and implement processes for the regular review of their TPO records which should also be supported by carrying out site visits.</p>	<p>A detailed legal review of TPOs inherited from DoE was undertaken and was reported to Members in January 2023. A further review of all TPOs has been undertaken and the results of this will be reported to Members separately. As part of this comprehensive review an ongoing programme for future inspections and assessments has been established.</p>
<p><b>Recommendation 7:</b> All councils should electronically map TPOs and conservation areas within their area and provide the public with online access to the TPO register and associated documentation.</p>	<p>Online mapping of TPOs and conservation areas has been publicly available for a number of years. This was acknowledged by the NIPSO. We are in the process of enhancing this resource to provide public access to the relevant statutory documents.</p>
<p><b>Recommendation 8:</b> The Department should take the lead in developing a regional GIS map showing the locations of all TPOs and conservation areas in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.</p>	<p><i>This is a Dfl action.</i></p> <p>This mapping is already available online for Belfast (see 7 above).</p> <p>Mapping might also be useful at a regional level and our data could be shared should Dfl progress this recommendation.</p>
<p><b>Recommendation 9:</b> Councils should develop and document the methodology (including the potential use of valuation software) used to assess the ‘amenity’ value of trees.</p>	<p>Our published guidance on protected trees (see 3 above) sets out the main considerations for assessing requests. However, regional guidance could be helpful provided Dfl undertakes prior consultation with councils to reflect experience and learning from the delivery of this function.</p>
<p><b>Recommendation 10:</b> In its 2022 Review of the Implementation of the 2011 Act, the Department committed to considering whether there is a need for it to provide further guidance for councils in relation to certain TPO terms. My report also supports the need for further guidance on key terms, and I recommend the Department proceeds to issue this.</p>	<p><i>This is a Dfl action.</i></p> <p>Councils have highlighted the concern (to Dfl and NIPSO) that there are legislative impediments to the power of councils to revoke TPOs and a reluctance of Dfl to assist councils in the revocation / amendment of existing Orders. Dfl has stated it intends to remedy the legislative impediment.</p>
<p><b>Recommendation 11:</b> All councils should review the content of their websites to ensure that they provide clear and accurate information in relation to the processes which members of the public can follow when requesting TPOs. In addition to ensuring the process to request TPOs is accessible to the public, councils should also consider what mechanisms are in place internally to initiate TPO requests effectively.</p>	<p>As stated at 3 above, our website has a TPO information page and additional guidance on TPO requests. An online form is also available for TPO requests.</p>
<p><b>Recommendation 12:</b> Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.</p>	<p>Our TPO information page provides further guidance on applications for works to protected trees. An online form is available for all treeworks applications. We will update the link to the new planning portal, where TPO requests and treeworks applications can now be submitted digitally.</p>

<p><b>Recommendation 13:</b> Councils should review the content of their websites to ensure adequate information is provided to members of the public about the requirement to apply for works to protected trees, how to apply and that the application process is accessible.</p>	<p>See responses to 11 and 12 above.</p>
<p><b>Recommendation 14:</b> Councils should provide clarity in relation to the use of independent evidence to support applications for works to protected trees. The circumstances in which independent evidence is required and the parties responsible for obtaining it should be clarified.</p>	<p>BCC has developed inhouse resources and expertise to ensure full and careful consideration of all treeworks applications. As with other types of statutory processes and application, considerations have to be addressed on a case-by-case basis.</p>
<p><b>Recommendation 15:</b> Councils should explore the potential to publish details of applications for works to protected trees in an accessible format.</p>	<p>There is no provision in statute that would address the basis of this recommendation or the proposed outcomes. It would have significant resource implications and there is no clarity on the likely outcome and benefits to be derived.</p>
<p><b>Recommendation 16:</b> Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.</p>	<p>As 15 above.</p>
<p><b>Recommendation 17:</b> The Department should consider issuing best practice guidance in relation to publication and notification procedures (this could sit within the wider guidance recommended in Recommendation 5).</p>	<p><i>This is a Dfl action.</i></p> <p>Note response to 15 and 16 above.</p> <p>This would require legislative change. Any proposed changes must be subject to prior consultation with councils.</p>
<p><b>Recommendation 18:</b> The Department and councils should agree and issue clear procedural guidance in relation to the processes which councils should follow when they seek to carry out works to protected trees on their own land.</p>	<p>Joint Dfl / Council action.</p> <p>Council officers understand and have followed these processes when there has been a council interest relating to proposed works or changes. It is considered that the process is both clear and has operated satisfactorily.</p>
<p><b>Recommendation 19:</b> The Department should develop a best practice approach on the independent investigation of reported breaches of tree protection by councils. It should update its enforcement practice notes to include the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. The Department should also consider whether further legislation is required in this matter to provide the necessary clarity and independence in the decision making process.</p>	<p><i>This is a Dfl action.</i></p> <p>BCC would welcome the opportunity for Dfl to address this, in consultation with all councils, subject to a clear understanding of the basis of any change and the desired outcomes.</p>

<p><b>Recommendation 20:</b> The Department should issue best practice guidance on the exemptions for statutory undertakers which are contained within Schedule 3 of the 2015 Regulations. Guidance should include that statutory undertakers liaise with the relevant planning authorities prior to carrying out work to a protected tree and comply with best arboricultural practice in undertaking the work. Statutory undertakers should also report when work has been carried out without notification and review whether the work carried out was necessary and undertaken in a way that was least damaging.</p>	<p><i>This is a Dfl action.</i></p> <p>BCC already operates proactively with statutory undertakers to ensure works do not cause undue damage to all trees, including protected trees.</p> <p>See also response to 21 below.</p> <p>Any legislative change or new regional guidance from Dfl should be subject to prior consultation with all councils.</p>
<p><b>Recommendation 21:</b> Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.</p>	<p>Our new Tree Strategy (see 1 above) includes an action to engage with statutory undertakers, including for awareness and training (Action point C3: Utilities Co-operation).</p>
<p><b>Recommendation 22:</b> The Department and councils should examine the reported tree protection breaches closed as ‘not expedient’ and ‘other’, to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.</p>	<p>Joint Dfl/Council action.</p> <p>BCC takes planning enforcement seriously and recently approved a new Enforcement Strategy (September 2023) that clearly references TPO and other tree-related breaches of planning control (see 23 below). In terms of enforcement decision-making, teams in the Planning Service interact and discuss common issues , trends and outcomes.</p> <p>However, BCC will engage with Dfl should it accepts this recommendation and wish to consider aspects in more detail.</p>
<p><b>Recommendation 23:</b> Councils should review their enforcement strategies to ensure clear information is provided on the expediency test and that oversight procedures for ‘not expedient’ decisions are robust.</p>	<p>BCC has recently approved an Enforcement Strategy that sets out procedure for dealing with all potential breaches of planning control, including to protected trees. It also sets out how the council applies the expediency test. The Enforcement Strategy is available in our website:  <a href="https://www.belfastcity.gov.uk/documents/planning-service-enforcement-charter">https://www.belfastcity.gov.uk/documents/planning-service-enforcement-charter</a></p>
<p><b>Recommendation 24:</b> Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.</p>	<p>See 22 and 23 above.</p> <p>Our Enforcement Strategy covers potential tree-related breaches (including at sections 12.14-12.15) and has set unauthorised works to TPO trees as its highest priority.</p>

<p><b>Recommendation 25:</b> Councils should update the tree preservation sections of their websites to highlight that it is a criminal offence to carry out works to protected trees without consent. The websites should also contain clear information on how members of the public can report suspected tree protection breaches.</p>	<p>Our online TPO information page and associated guidance clear states that unauthorised works to protected trees is a criminal offence.</p> <p>Our Enforcement Strategy (section 9) sets out how any suspected breach of planning control should be reported. This is also set out in our website on the Planning Enforcement page:  <a href="https://www.belfastcity.gov.uk/planning-and-building-control/planning/planning-enforcement">https://www.belfastcity.gov.uk/planning-and-building-control/planning/planning-enforcement</a></p>
<p><b>Recommendation 26:</b> The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.</p>	<p><i>This is a Dfl action.</i></p> <p>It is noted that wider issues around monitoring and reporting of planning activities is included as part of the Dfl's ongoing regional planning improvement project.</p>