APPENDIX 1

PROCESSING NOTIFICATIONS OF TREEWORKS IN CONSERVATION AREAS

In recognition of the special contribution that trees can make to their character and appearance, Section 211 of the Town and Country Planning Act 1990 affords protection to all trees above a certain size in a Conservation Area.

This may seem similar to the protection offered by an area Tree Preservation Order (TPO) in Section 198 of the same Act. However, there are certain distinctions between the two sets of legislation which suggest that separate administrative procedures should be applied. The pertinent differences between the two sets of legislation are highlighted below.

CONSERVATION AREA TREEWORKS

- An owner simply notifies the LPA of the intention to carry out treeworks
- The notice given is 6 weeks
- The LPA response is limited to refusal or consent
- Refusal is by means of serving a TPO
- Consent is valid for 2 years
- Lack of LPA response within 6 weeks is deemed to be consent
- Conditions cannot be attached to the LPA response
- There is no simple form of appeal (see below)

A TPO can still be served outside of the 6 week period. Appeal takes the form of objection to the TPO, or a TPO treeworks application.

TPO TREEWORKS

- An owner applies for permission to carry out treeworks
- 8 weeks is allowed for simple applications, negotiations can extend this
- Permission, if granted, may be partial, or conditional
- No further action need follow a refusal
- Appeal against refusal can be made to the Secretary of State, DETR

From the above, it can be seen that the primary function of Conservation Area tree legislation is to allow the LPA time to assess the effects of a proposal and enact, if deemed necessary, TPO legislation.

Indeed, PPG 15, 'Planning and the Historic Environment' explicitly states that the purpose of Section 211 "is to give the authority an opportunity to consider bringing the tree under their general control by making a tree preservation order in respect of it".

MAKING TPOs

This is a function delegated to the Director of Planning and Technical Services and is based on expert advice on the intrinsic quality of the tree, group or woodland, its role in the local visual amenity, tree health and public safety. This delegated function can be carried out at any time

on trees considered to be at risk, within the district, excepting on Crown Land. Where Conservation Areas are involved, the role of the tree to the character of the Area is also evaluated.

Issuing a TPO relies on efficient interdepartmental working and since the Town and Country Planning (Trees) Regulations1999 came into force, has become more time-consuming as neighbours with a legal interest must also be served the TPO.

CURRENT TREEWORK PROCEDURES

The Conservation Section has been processing treework notifications and applications for the last three years. Prior to that, the administrative processing has been within the Development Control Section and this is reflected in current procedures. TPO treework (POt) applications have, since 1974, been treated as planning applications. This has always worked satisfactorily, due to the similarity in the legislation. With the advent of the computer system, Conservation Area treework (CAt) notifications also began to be processed as planning applications. This has the merit of using existing office procedures and simplicity in maintenance of the statutory public record. However, because of the differences for CAt legislation, problems can and do occur when processing such notifications as planning applications.

CURRENT CAt PROCEDURE

Minor Works

Much garden treework involves minor works to small trees or overlarge hedging plants (and even large shrubs, as "tree" is not defined in law). In practice, regardless of Conservation Area designation, owners often carry out such minor works in the normal course of garden management without consulting the LPA, even though the work may be of a nature to fall within the ambit of the legislation.

If the LPA is notified of such minor garden work, the use of site notices, newspaper advertisements and three week public consultation can appear onerous and cumbersome to the owner. For the Council, there are implications in terms of resources costs and staff time. Up to 30% of CAt notifications fall into this category.

Pre-notification Advice and Negotiations for Cat

Expert advice is given to tree owners wherever possible (approximately 85% of all cases) prior to their making a formal notification, because of the severe limitations on the LPA response (consent or TPO). The bulk of the remaining 15% of cases are notifications via tree surgeons who are aware of the constraints in Conservation Areas and have advised their clients accordingly.

Essentially, as advice has been given and, if necessary, negotiation taken place prior to the notification, an assessment has been made. The case officer should then be in a position to recommend CAt consent or serve a TPO without further ado, once formal notification is made. Tree owners are advised accordingly and this is effective at tempering the more extreme proposals.

The system works efficiently and results in over 99% of notifications being non-contentious as far as the LPA is concerned, that is: only one TPO served per 100 CAt notification where early negotiation has taken place. Therefore, the need to further treat notifications by means of a planning application-style protocol must be questioned, given the resource implications.

Unadvised Notifications

Notifications received without prior consultation are more onerous as there is a time pressure to assess any proposal and issue a TPO, if necessary; and more TPOs are needed. Figures for 1997-1999 illustrate this: 29 notifications were made without prior consultation, 6 resulted in a TPO (20% compared to 1% above).

Public Consultation

The use of a planning application-style protocol allows for a 3 week public consultation period, advertised by site notice and in the local newspaper. By going to public consultation, the work of the LPA is open to public scrutiny.

Even without public consultation, some scrutiny remains as records of all CAt notifications and their outcome are required to be in the public domain: any change in procedure will not affect that condition.

Public consultation also enables individuals to participate in the decision-making process. However, of 376 notifications made between August 1993 and November 1999, only 10 generated public representations. A similarly low number of Parish Council (probably less than 20) representations were made. In fact, in numerous cases Parish Councils rely upon the advice of the case officer. Only two representations (one by a Parish Council, the other by third parties) had an influential role in the outcome of a notification.

Committee Items

Considerable difficulty arises when a notification has been assessed on behalf of the LPA and found to be acceptable, but has generated a third party objection.

Standing Orders require that objections are put to Planning Committee. A CAt notification requires a 3 week public consultation period and allowing one week for its initial processing, it has been found impossible to report a CAt notification to Planning Committee within the statutory protection time of 6 weeks. Therefore, in order to allow an objection to be properly heard, a TPO should be made, irrespective of the officer recommendations, in order to afford the tree protection while the issue is put to the Committee.

If a TPO is served, the matter can become more complex as there is a public consultation period of 28 days in respect of representations for or against the TPO itself. It may then be necessary to go through a convoluted process of separating representations under the two sets of legislation.

However, as mentioned earlier, the fundamental issue is that it is the prerogative of the LPA to serve a TPO based on its own assessment of adverse effect to the visual amenity. Should it also be used as a mechanism to allow a third party objection to be heard by Committee?

In practice, where possible, agreement to await for the Committee decision on a CAt notification is sought. When a TPO is deemed necessary, agreement is then sought to take the original CAt notification forward as a POt application, so as to simplify proceedings. However, procedurally, both forms of agreement are somewhat irregular.

Were the objections which have arisen to have some import, they would be beneficial to the planning process and help inform the manner in which the LPA carries out its assessments. Unfortunately, as the figures above show, the effects of third party representations are, in reality, of little significance compared with the advisory role of the case officer. This may simply reflect the technical complexities of the subject.

TRENDS

CAt notifications have been increasing from an average of 52/year for 1993-1997 to 72/year for 1997-1999 (current estimates for 2000 indicate 72 CAt notifications). TPOs and POt applications made are similarly rising.

Further legislation, such as that proposed for domestic high hedges and an expected requirement to review all existing TPOs when Circular 36/78 is replaced will greatly increase the workload of the officer charged with fulfilling these functions. The need to address Human Rights legislation adds further complexity.

Currently, work related to trees accounts for some 40% of the workload of the Ecology Officer, the remainder being taken up with the provision of advice on landscape, country hedgerow legislation and nature conservation. Landscape and nature conservation in planning are both expanding fields, especially following the Environmental Impact Regulations 1999 and the Habitat Regulations 1994.

COSTS

In 1998 it was estimated that administering each non-contentious CAt notification cost in the region of £50. Since then, reorganisation and computerisation have reduced the cost, possibly by 20%. It is foreseeable that further savings of 50% could be made, particularly if advertisements and site notices are no longer used. At 72 applications a year, this could result in savings of £1440.

BEST VALUE

The Local Government Act 1999 requires Best Value Authorities to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness (DETR Circular 10/99: Local Government Act 1999: Part 1 Best Value).

Circular 10/99 lists five main themes of the White Paper: Modernising Government (March 1999) relevant to Best Value Authorities:

1. ensuring public services respond to the needs of citizens, not the service providers
2. ensuring public services are efficient and of high quality
3. ensuring that policy making is more joined-up and strategic, forward looking and

not reactive to short-term pressures

4 using information technology to tailor services to the needs of users

5 valuing public service and tackling under-representation of minority groups.

The LPA designates Conservation Areas and, in doing so, obliges tree owners to go through the CAt procedure. By having pre-notification negotiations with the LPA, the CAt procedure is simplified to the benefit of all. If that negotiated CAt is then exposed to further scrutiny which results in protracted bureaucratic procedures, is Best Value being achieved?

Benchmarking

An obvious question which arises when considering procedural matters is: how do other authorities manage their CAt notifications? To this end a questionnaire was sent out to other Kent authorities.

Only one other authority in Kent uses the same procedures as DDC and it experiences the same difficulties. There were no other common procedures as each authority followed individual codes of practice: some used public consultation, but with fully delegated powers; others used public consultation (site notices, near neighbour notification) on a seemingly ad hoc basis determined by the case officer; others just consulted Parish Councils, or did not consult externally at all.

In respect of tree owners and tree surgeons, there is a general consensus (based on comments to the case officer over a number of years) that all would welcome a simplification in procedures.

Addressing the Five Themes of "Modernising Government"

1. *This report seeks to rebalance the relationship between citizen and service provider in respect of Cat.*

This report shows clearly that for CAt, in number alone, the relationship with the tree owner, as citizen, is more significant than that with the general public. Of the 376 CAt notifications for the years 1993-1999, probably more than 350 were made by individuals (others being Housing Associations, commercial firms, local authorities etc.), whereas only 10 representations were made by the general public.

The report also shows that the advisory role of the case officer is far more significant than the effects of public representations in determining CAt notifications. Again, this indicates that the important relationship is between the tree owner and the LPA.

It follows that the economy, efficiency and effectiveness of the CAt procedures are best governed by the LPA in relation to the tree owner.

2. *This report highlights inefficiencies in service.*

Current CAt procedures are unnecessarily bureaucratic, resulting in inefficiency of service to tree owners. This bureaucracy has an associated cost, in both material and time, reflected in the economy and effectiveness of service.

The quality of the service, while relatively consistent, is increasingly threatened by growing demands on officer time.

3. *The theme of joined-up policy making is not particularly relevant to this report.*

It is, however, worth noting that works to Highway and DDC trees are increasingly involving wider internal consultation as the benefits of enhanced interdepartmental working become self-evident.

4. *The inefficiency of the service is partly the result of misapplied information technology, which this report seeks to address.*

The computerised development control protocol is inappropriate for CAt.

5. *Public service in CAt is not undervalued; minority groups are unaffected by Cat.*

The British Trust for Conservation Volunteers (BTCV) runs a Tree Warden scheme in Kent in co-operation with Parish Councils. Where Tree Wardens are active in planning matters, their opinions may form the representations made by Parish Councils. One Parish (St Margaret's-at-Cliffe) is particularly active in this respect and its representations constitute the majority of those which have been received in connection with CAt.

Such inputs are valued and this is reflected by LPA representation on the BTCV (Kent) Steering Group (recently forsaken due to workloads), as well as by the voluntary contribution of officer time to attend meetings and the running of training courses for Tree Wardens.

(An ongoing problem is ensuring understanding by Tree Wardens of the severe limitations on the LPA response to CAt notifications.)

Parish Councils, themselves, are not neglected: in 2000 two presentations on tree legislation were made to PCs.

Summary in respect of Best Value

It would appear that changes in procedure to CAt should be undertaken which would accord more closely with the themes relating to Best Value.

HUMAN RIGHTS ACT 1998

It is clear that the Human Rights Act 1998 (HRA) cuts across various aspects of CAt notification procedures. Within that context the following must be weighed:

- The right to a fair hearing (Article 6)
- The right to private and family life (Article 8)
- Freedom of expression (Article 10)
- Protection of property (Article 1 of the First Protocol)

As the HRA gives individuals rights, so it also imposes responsibilities on them. An outcome of this is the concept of proportionality. The HRA does not override primary legislation or its

proper dispensation, but proportionality must also be extended to public authorities and their relationship to the citizen.

HRA and CAt notification

In a Conservation Area, the LPA interfere with Article 1 of the First Protocol in that some control is taken over the right of a person "to the peaceful enjoyment of his possessions" (tree/s). This is permissible as it is enshrined in primary legislation and it is in the public interest.

HRA and Public Representations

By permitting public representations, the LPA is acting in the spirit of Article 10. However, as stated above and in guidance to TPO legislation, the LPA must be acting in the public interest. Specifically, it must consider the public visual amenity which a tree provides. Therefore, unless the public representations are restricted to consideration of the public visual amenity, the LPA should not heed them. However, for 1993-1999 few of those 10 recorded representations met this criterion and, therefore, could be considered to be 'legitimate representations'.

Therefore, for the HRA, it may be argued that the LPA is acting disproportionately in delaying, especially by means of a later withdrawn TPO, a CAt decision on the basis of representations which are not legitimate. If so found, the LPA would be infringing Article 6 which requires a fair and public hearing within a *reasonable* time.

HRA and Minor Works

As mentioned earlier, some 30% of all CAt notifications fall into the category of garden management. That is work that, by and large, could be considered necessary to avoid deterioration of the owner's home environment. Clearly, the less bureaucratic any CAt decision is in this category, the closer the LPA adheres to both Article 8 and Article 1 of the First Protocol.

Summary in respect of HRA

The LPA, acting in the public interest, has a duty to weigh the rights of tree owners and third parties. In the interests of openness, it may be that the LPA disproportionately favours the rights of third parties. The CAt process can be disproportionately bureaucratic in respect of privacy and enjoyment of personal possessions.

OPTIONS

Maintain Status Quo:

This is likely to be untenable when the review of existing TPOs is required. Best Value is not being achieved and HRA concerns will continue.

Remove the necessity for all CAt objections to be put to Planning Committee:

This would be inconsistent in approach to planning matters and would not resolve the issue of Best Value in terms of minor works.

Delegate CAt to the Director of Planning and Technical Services:

There is the precedent for this procedure. It would increase the efficiency of the process and reduce accompanying costs. Officer effectiveness would be enhanced. It would reflect Best Value.

There remains the issue of public participation. This has been seen to add little value and, thus in terms of proportionality, potential conflict with HRA Article 10 is outweighed by closer adherence to Article 6 and Article 1 of the First Protocol. However, it would be desirable to maintain some channel through which participation could take place. Current procedures such as the use of site notices and weekly advertised lists are not universally popular and each has a cost.

Consultation with Parish Councils is more useful. They are be able to make representations and could, if they so wished, advertise the notifications on PC notice boards. The tree warden scheme would continue to encourage those with a general interest in trees to participate in the decision making process.

The Preferred Procedures

With CAt as a delegated function, two separate procedures can be identified:

1. *Where the tree cannot be seen from a public place:*

   In this case the procedure is simple in that the officer, having confirmed that the tree effectively cannot provide a public visual amenity, reports that finding to the Director.

2. *Where the tree is in public view*

   A report is made to the Director and the Town or Parish Council is notified of the CAt and allowed three weeks for comment. Should pertinent responses be made, either a TPO is issued or Chairman and Vice-Chairman are consulted, depending on evaluation of the responses.

The application of such a system would appear to meet the requirements of Best Value and the Human Rights Act while retaining some channel for public participation.