



## **Draft Internal Audit Report**

# **Hertsmere Borough Council – Tree Preservation Orders**

**3 October 2012**

**Issued to:** Polly Harris-Gorf – Head of Planning and Building Control  
Mark Silverman – Policy and Transportation Manager  
Sajida Bijle – Director of Resources

**Copied to:**

**Report Status:** Draft Report

**Reference:** M4110/12/003

**Overall Assurance:** Substantial

**INDEX**

<b><u>Section</u></b>	<b><u>Page</u></b>
<b>1. Executive Summary</b>	<b>3</b>
<b>2. Assurance by Risk Area</b>	<b>4</b>
 <b>Appendix A – Management Action Plan</b>	 <b>6</b>
<b>Appendix B - Definitions of Assurance and Recommendation Priorities</b>	<b>15</b>

## 1 EXECUTIVE SUMMARY

### Introduction

- 1.1 A review of Tree Preservation Orders (TPO) has been requested by the Director of Resources at Hertsmere Borough Council (HBC). This will serve to provide independent assurance to the Council that the making and administration of TPO's is compliant with the law.
- 1.2 The law on TPOs is in Part VIII of the Town and Country Planning Act 1990 and in the Town and Country Planning (Trees) Regulations 1999, which came into force on 2 August 1999. The latter were subsequently amended by the Town and Country Planning (Trees)(Amendment no. 2)(England) Regulations 2008. The latest Town and Country Planning (Tree Preservation)(England) Regulations 2012 came into force in April 2012.
- 1.3 A TPO is an order made by a local planning authority (LPA) in respect of trees or woodlands. The principal effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the LPA's consent. LPAs may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area.
- 1.4 The Register of Tree Preservation Orders maintained by HBC indicates that 30 TPO's were made in 2010, two in 2011 and three in 2012 to date.

### Overall Audit Opinion

- 1.5 Based on the work performed during this audit, we can provide overall **substantial assurance** that there is a largely sound system of control, but there are some minor weaknesses, which may put a limited number of the system objectives at risk.
- 1.6 The audit opinion was formed from management assurances given in response to our enquiries, plus examination of appropriate evidence relating to officers and Members expenses.
- 1.7 Please see definitions for the overall assurance levels at Appendix B, as well as the Assurance by Risk Area below.

### Summary of Recommendations

- 1.8 We have made seven recommendations, three classified as Medium and four as Merits Attention to strengthen the internal controls.

1.9 Please see the Management Action Plan at Appendix A for further detail.

### **Annual Governance Statement**

1.10 This report provides a good level of assurance to support the Annual Governance Statement.

## **2 ASSURANCE BY RISK AREA**

2.1 Our specific objectives in undertaking this work, as per the Terms of Reference, were to provide the Council with assurance on the adequacy and effectiveness of internal controls, processes and records in place to mitigate risks in the following areas:

<b>Risk Area</b>	<b>None</b>	<b>Limited</b>	<b>Moderate</b>	<b>Substantial</b>	<b>Full</b>
Register of TPO's (all physical and electronic) – completeness, timeliness, accuracy and validity of the maintenance and administration of the register in compliance with legal requirements.					
Making and confirmation of TPO's in compliance with legal requirements and good practice as published by the Department of Communities and Local Government.					
<b>Overall</b>					

2.2 See definitions for the above assurance levels at Appendix B.

## **3. AUDIT COMMENTARY**

3.1 Paragraphs 3.2 to 3.17 have been included to provide additional commentary on the agreed risk areas as per the Terms of Reference.

### **TPO Register**

3.2 In addition to the risk areas examined (see above table), Internal Audit conducted a review of the nature of the TPO Register maintained under the Council's statutory

duties as the Local Preservation authority (LPA) and requirement to make the register available to the public to view.

- 3.3 The exercise identified that the TPO Register does not reside in one document, but rather comprises of a number of component parts. These are all available to view by the public on request.
- 3.4 The component parts of the TPO Register have been listed below and are as follows:
- a) The TPO Register (Green Folder) containing all entries of TPO's and key milestone and dates,
  - b) The TPO files that are held in lockable cabinets in the Planning Section and are organised by TPO number,
  - c) Leaver arch files the 'Register of Tree Preservation Orders Applications', contain copies of all refusal and consent forms issued,
  - d) Lever arch files containing the Public Register (Section 211 notices), concern applications to carryout works in respect to works on trees in conservation areas or trees that are already subject to a TPO.
- 3.5 In addition to the above the Planning System database holds all details of TPO's. This electronic data does reflect the register, but due to the format is not available to view by the public.

#### Internal Audit Review of TPO Register

- 3.6 Internal Audit conducted detailed testing on the TPO Register to ensure completeness, timeliness, accuracy and validity of the maintenance and administration of the register in compliance with legal requirements.
- 3.7 A review of the TPO Register (Green Folder) was conducted and identified a number of entries that had been changed using correction fluid. As a result, one finding and recommendation (No. 1) is made in the attached Management Action Plan.
- 3.8 A further example which had been brought to the attention of Internal Audit, concerned the use if correction fluid on TPO Register (Green Folder) on the entry for TPO/29/2010. Examination of the relevant page on the TPO (Green Folder) identified that the page had been replaced with a photocopy and could not be subject to scrutiny by Internal Audit. It was also noted that a duplicate page had been created on the TPO (Green Folder) as a result of a page going missing and being rediscovered.
- 3.9 As a result of the above, one and finding and recommendation (no. 2) is made in the attached Management Action Plan.

- 3.10 Entries on the TPO (Green Folder) that had been amended using correction fluid were checked against records held on the TPO Planning Database form 2004 and in each case were found to be accurate and correct. It should be stressed the TPO Register (Green Folder), is only one component of the TPO Register and is mainly used as an internal monitoring document for administration purposes.
- 3.11 Examination of entries on the TPO (Green Folder) identified an error. This was investigated by Internal Audit and clarification of the error sought through examination of the other components of the TPO Register, i.e. hard copy TPO files and the TPO Planning Database. As a result, one finding and recommendation (No. 3) is made in the attached Management Action Plan.
- 3.12 An extract obtained from the TPO Planning database was also examined by Internal Audit and any gaps in data fields were investigated with reference to other components of the TPO Register, as described above.
- 3.13 The exercise resulted in one finding and recommendations (No. 4) being raised in the attached Management Action Plan.
- 3.14 A sample of four 'Confirmed' TPO's was selected at random from the files held by the Planning Department and entries on all components of the TPO Register, both in a hard copy and electronic format were subject to scrutiny.
- 3.15 It was noted during testing that there are inconsistencies in entering dates on the TPO Register (Green Folder and Planning Database) following the issue of Confirmation Letters. As a result, one finding and recommendation (No. 5) is made in the attached Management Action Plan.
- 3.16 A further a sample of two decision notices from the TPO Register of Tree Preservation Order Applications was selected at random from the hard copy file. Testing was done to confirm that accurate supporting data existed electronically on the Planning System database and did not result in any findings in this area.

#### Making and Confirming TPO's

- 3.17 Internal Audit conducted detailed testing to ensure that TPO's had been made and confirmed in compliance with legal requirements and good practice as published by the Department of Communities and Local Government.
- 3.18 A sample of four 'Confirmed' TPO's was selected at random from the files held by the Planning Department and these were tested to determine compliance with the guidance published by the Department of Communities and Local Government.
- 3.19 The exercise identified one instance (TPO/01/2012), where an Emergency TPO had

been served before a site visit had been undertaken.

- 3.20 The Department of Communities and Local Government, paragraph 3.7 states that 'the LPA may in circumstances decide to carry out the visit without entering the land. They may consider that the risk of felling justifies the making of a TPO before they have been able to assess fully the amenity value of the tree. This should not, however, prevent them from making a preliminary judgement on whether a TPO would appear to be justified on amenity grounds, nor from making a more considered assessment before the TPO is confirmed.'
- 3.21 The decision to serve an Emergency TPO before a site visit was done, does not contravene best practice as outlined by the Department of Communities and Local Government.
- 3.22 It was noted during testing and examination of supporting documentation that one instance (TPO/02/2012) had been served, but evidence of Schedule 1 of the TPO had not been copied and placed on file. As a result, one finding and recommendation (No.6) has been raised in the attached Management Action Plan.
- 3.23 It was noted during the review that conversations between Officers and members of the public are not routinely documented. As a result, one further recommendation and finding (No.6) has been raised in the attached Management Action Plan.

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
1.	<p><b>Register of Tree Preservation Orders – Use of Correction Fluid</b></p> <p>Review of the TPO Register (Green Folder) identified a number of entries that had been changed using correction fluid. These had been made as recently as June 2007 and several other instances were identified in November 2006, June 2004 and during the period of the 1980's.</p> <p>Internal Audit recognises that the other components of the register such as the TPO files contain the original copy of the TPO order and confirmation letter to support dates.</p> <p>An explanation of the component parts of the TPO Register has been provided above at Section 3.</p> <p><u>Risk</u></p> <p>Alterations made on a component of the register using correction fluid that is</p>	Merits Attention	The Officer Responsible for making hand written entries on the Register should cross through errors made when entering a correction details, rather than apply correction fluid to entries.	<b>Responsible Officer:</b>	



No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>available to the public to view, exposes the potential for allegations of data manipulation and concealment.</p> <p>Impacts include time and cost of responding to enquires regarding alterations and reduced confidence in the data held on this component of the register.</p>				
2.	<p><b>Register of Tree Preservation Orders – Removal of Documents</b></p> <p>Review of the TPO Register (Green Folder) identified a page that had been replaced by a photocopy. It was also noted that a duplicate page had been created on the TPO (Green Folder), as a result of a page going missing previously and subsequently being rediscovered.</p> <p><u>Risk</u></p> <p>Documents held by the Council that form the component part of the TPO Register</p>	Merits Attention	Consideration should be given to exploring making components of the TPO Register available to the public to view electronically, e.g. via the Council website.	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>are removed by members of the public.</p> <p>Impacts include the loss of documentation required to support the confirmation of a TPO.</p>				
3.	<p><b>Register of Tree Preservation Orders – Accuracy of Entries on Part of Register</b></p> <p>Examination of the hard copy 'Register of Tree Preservation Orders' found an incorrect entry supporting the date that the TPO notice was served (TPO/23/2005). Interrogations of other record sources confirmed that that should have been 11/8/2005 and not 11/8/2004.</p> <p>This was identified as human error is considered to be an isolated historical instance, which had been completed by an officer that has since left. Internal Audit testing found that electronic Planning TPO database had the correct date entered.</p>	<p>Merits Attention</p>	<p>a) The Officer Responsible for making hand written entries on the Register should be reminded of the importance of entering details on the register correctly.</p> <p>b) Corrective action should be taken and the error on the TPO Register (Green Folder) should be corrected.</p>	<p><b>Responsible Officer:</b></p>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p><u>Risk</u></p> <p>Reliance may not be able to be placed on the information presented on the register.</p> <p>Impacts of incorrect information could be given to the public in relation to the TPO concerned.</p>				
4.	<p><b>Register of Tree Preservation Orders – TPO Planning Database Omissions</b></p> <p>Review of sample of data extracted from the Planning System TPO database identified two instances where data was missing on the electronic database.</p> <p>One instance concerned TPO/1022/2000 that did not show an address and a second a TPO/4/1970 did not have an Order date.</p> <p>Internal Audit investigation found that fields can be edited and potentially</p>	Medium	<p>a) Consideration should be given to locking fields on the Planning System database or the incorporation of a user prompt that asks for confirmation that the action of deletion is desired.</p> <p>b) Corrective action should be taken and the TPO Planning database examined in detail and an exercise conducted to</p>	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>deleted in error. This was provided as an explanation for the missing entries, although in both instances records could be found using that TPO reference numbers which correspond to the hard copy register and physical files. Internal Audit testing identified that missing data fields could be found on other components of the TPO Register.</p> <p><u>Risk</u></p> <p>Data held electronically in respect to TPO's is deleted in error.</p> <p>Impacts include the increased time spent referencing other component of the register to fill gaps that exist on the electronic database.</p>		populate missing data fields.		
5.	<p><b>Register of Tree Preservation Orders – Consistency of Date Entries</b></p> <p>Two of the four TPO Register entries tested had 'Order Confirmation Dates'</p>	Medium	A consistent approach should be adopted with regards to the entry	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>entered on the TPO Register (Green Folder) are inconsistent and reflect either the date that the decision to confirm the order was entered on the Planning System or the date of decision as it appears on the letter of Confirmation.</p> <p>The two exceptions are TPO/16/2010 and TPO/2/11, both had the date entered on Register (Green Folder) as the 25/5/2012 and 6/6/2012 on the Confirmation Letter.</p> <p><u>Risk</u></p> <p>Inconsistent data on the hard copy register results in confusion over the deadline to submit appeals to the High Court following confirmation.</p> <p>Impacts include failure to provide correct information concerning appeal rights, resulting in penalties and damage to the Councils reputation.</p>		<p>of Order Confirmation dates on the TPO Register (Green Folder). The date entered should be the same date as entered on the Letter of Confirmation.</p>		

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
6.	<p><b>Making and Confirmation of TPO's – TPO Order Document Completeness</b></p> <p>a) A review of four TPO files identified one instance (TPO/02/2012) where a copy of Schedule 1 had not been placed on file. Discussion with the [REDACTED] did not confirm that this was sent in the first instance. It was mentioned that a duplicate can be produced from the Planning System. The one created from the Planning System was incomplete and did not provide full details of the tree subject to a TPO.</p> <p>b) The same file does not contain a checklist to indicate the date and method of delivery of the TPO.</p> <p>c) The Checklist does not currently contain a section to support the separate component documents that</p>	Medium	<p>a) Officers preparing documents and serving TPO's should be reminded to check all document components that form the TPO Order are complete and have been copied for the file.</p> <p>b) The TPO checklist should be completed in all cases and should be redesigned to include the initials of the officer that has checked the TPO.</p> <p>c) A new section should also be added to indicate that all component parts of the TPO Order have been sent and copied for the file.</p>	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>form the TPO Order.</p> <p><u>Risk</u></p> <p>Tree Preservation Orders are not valid due to incorrect process being followed and tree that should be subject to a Preservation Order are felled or have works carried out on them without consent.</p> <p>The impacts of this could include the Council can be subject to penalties for non-compliance with the regulatory framework and losses appeals to defend a TPO.</p> <p>The removal of trees impacts on amenity value and the local environment and its enjoyment by the public.</p>				
7.	<p><b>Making and Confirmation of TPO's – Documenting Conversations</b></p> <p>Internal Audit has identified that records</p>	Merits	A suitable method of	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>in relation to conversations in respect of TPO's are not entered on the system or recorded using any other method. Instead, the advice is given when a call is received from a customer to 'put it in writing'.</p> <p><u>Risk</u></p> <p>Adequate records do not exist to support telephone conversation between members of the public and the Council. Without a record of conversations in relation to TPO's enquiries no source of reference exists if needed at a latter date, to support advice or information given to the public by the Council, e.g. if a conversation is referred to by an appellant of a TPO .</p> <p>Impact include that on the Council's reputation and staff morale if allegations are made that incorrect information of advice was given to a member of the public involved in a dispute with the Council over a TPO.</p>	Attention	documenting or recording conversations concerning TPO's between officers and customers should be explored and put in practice, e.g. hard copy notes or narrative added on the Planning system to support conversations.		



No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date

Levels of assurance	
<b>Full Assurance</b>	There is a sound system of control designed to achieve the system objectives and manage the risks to achieving those objectives. No weaknesses have been identified.
<b>Substantial Assurance</b>	Whilst there is a largely sound system of control, there are some minor weaknesses, which may put a limited number of the system objectives at risk.
<b>Moderate Assurance</b>	Whilst there is basically a sound system of control, there are some areas of weakness, which may put some of the system objectives at risk.
<b>Limited Assurance</b>	There are significant weaknesses in key control areas, which put the system objectives at risk.
<b>No Assurance</b>	Control is weak, leaving the system open to material error or abuse.

Priority of recommendations	
<b>High</b>	There is a fundamental weakness, which presents material risk to the objectives and requires urgent attention by management.
<b>Medium</b>	There is a significant weakness, whose impact or frequency presents a risk which needs to be addressed by management.
<b>Merits Attention</b>	There is no significant weakness, but the finding merits attention by management.