



## **Draft Internal Audit Report**

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

**16 November 2012**

<b>Issued to:</b>	Polly Harris-Gorf – Head of Planning and Building Control Mark Silverman – Policy and Transportation Manager Sajida Bijle – Director of Resources Glen Wooldrige – Director for Environment
<b>Report Status:</b>	Draft Report – Private and Confidential
<b>Reference:</b>	M4110/12/003
<b>Overall Assurance:</b>	Substantial

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## 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 and that the register complies in all material aspects with the legislation, 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 tree preservation orders.
- 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 six recommendations, one classified as Medium and five 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 (physical and electronic records) – 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 3.19 have been included to provide additional commentary on the agreed risk areas as per the Terms of Reference.

The Council's TPO Register – compliance with legislation and good practice

- 3.2 Internal Audit has been asked to comment on the existence and format of the TPO register maintained under the Council's statutory duties as the Local Planning Authority (LPA), its availability for the public to view, and to confirm whether it complies in all material respects with legislative requirements.
- 3.3 The law on TPOs is in Part VIII of the Town and Country Planning Act 1990 ('the Act') and in the Town and Country Planning (Trees) Regulations 1999 ('the 1999 Regulations') which came into force on 2 August 1999. The 'Tree Preservation Orders: A guide to the Law and Good Practice', or "Blue Book", published in 2000, brings together the Department of Communities and Local Government's guidance and policy advice on the subject of TPO's. It is the latter that Internal Audit utilised as the basis for its work on the TPO Register.
- 3.4 The preface to the "Blue Book" states that "...local planning authorities can run the system in line with good administrative practice. Authorities are not required to follow the advice given; the Guide imposes no new burdens on them. But for many authorities the Guide is a useful point of reference which is relevant to their day-to-day work."
- 3.5 Internal Audit concurs with Planning management that the TPO Register is comprised of a series of files for each individual TPO, containing details of the Order, subsequent applications, appeals, correspondence, plans and other relevant documentation. These are filed by TPO number going chronologically back to the 1960s, rather than by address, which would be less practical as the same TPO can cover multiple addresses. These TPO files are maintained in lockable cabinets within the Planning team, but are available to view, as relevant and appropriate, should a request be made concerning a particular TPO.
- 3.6 There is a 'Green Folder', entitled 'Register of Tree Preservation Orders', which is not part of the statutory register, and which contains individual sheets headed 'Hertsmere Borough Council - Register of Tree Preservation Orders'. Each individual sheet contains data on key milestones and dates, including the unique TPO number, the date of making the order, objections received (28 days from the date of the notice) and date of confirmation. 'The Green Folder' serves as a summary, or index, for the individual TPO files described at paragraph 3.5, and has been provided to the public when a request has been made to view the Council's register. The 'Green Folder' should not be viewed as standing in isolation, nor should it be viewed as "the Register", despite the title on the folder and constituent sheets, as it is an integral part of a wider system of files. A finding on the 'Green Folder' has been raised in the attached Management Action Plan at Appendix A.
- 3.7 In addition to the above, the Planning System database (on Microsoft Access) is also

used for internal purposes to maintain data on TPO's. This electronic data duplicates that held on the 'Green Folder' and the individual TPO files, but due to technological and security limitations with the database, is not made available to view by the public. It is understood that new case management software for the entire Planning and Building Control Unit is being installed in 2013, and this may facilitate changes to the way that the TPO register is made available to the public in the future.

- 3.8 Planning also maintain lever arch files, entitled 'Register of Tree Preservation Orders Applications', which contain hard copies of all refusal and consent forms issued. These files serve internal departmental administrative purposes, and do not constitute part of the TPO Register.
- 3.9 Under paragraph 9.10 of the "Blue Book", LPA's are required to keep available for public inspection a register of all section 211 notices. The Council maintains separate lever arch files containing the Public Register (Section 211 notices), and these are not, and should not, be considered part of the TPO Register. Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls, but the Town and Country Planning Act 1990 also makes special provision for trees in conservation areas which are not the subject of a TPO. Under section 211 anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the LPA six weeks' prior notice (a 'section 211 notice').
- 3.10 Internal Audit has concluded that the Council's TPO register complies in all material respects with the legislation and the "Blue Book". Paragraphs 3.21 and 3.43 of the "Blue Book" both indicate that the LPA must make a copy of the TPO available for public inspection at the offices of the LPA, and it is noted that the Council makes these available on request.
- 3.11 Paragraph 6.43 of the "Blue Book" states that the "... LPA are required to keep a register of all applications for consent which must be made available to the public at all reasonable hours. The register should include details of every application under the TPO and the LPA's decision." Paragraph 7.15 indicates that the "... LPA should, when they receive an appeal decision, record the outcome on the public register which they are required to keep." This information is maintained on the individual TPO files, which form part of the Council's TPO Register.

#### Comparison of TPO Register with other Councils

- 3.12 Internal Audit enquiry of the Planning department at Welwyn Hatfield Borough Council indicated that members of the public making enquires to view the TPO Register are directed to the Council's website. Locations of TPOs have been entered on to the Council's Geographical Information System (GIS) accessible through the Planning pages on the Council's website. Searches can be performed using area maps, or directly using the TPO number, if known.

- 3.13 TPO files containing documentation linked to the individual Orders are not presently available to view using the GIS system, but electronic scanned files exist on Welwyn Hatfield Borough Council's Planning system, which can be provided on request. Work is in development to make electronic files available via the GIS system in the near future. It was stated that TPO files will have all personal data removed, before these are made available to the public due to the requirements of the Data Protection Act 1998.
- 3.14 Planning Management has stated that Hertsmere Borough Council's tree officers, who are shared with Aylesbury Vale District Council (AVDC), have advised that the Council's TPO Register is maintained in the same manner as that at AVDC i.e. a series of files for each TPO containing details of the Order, subsequent applications and appeals, etc.
- 3.15 A finding, for consideration, on making the TPO Register available electronically available via the Council's website has been raised in the attached Management Action Plan at Appendix A.

#### Making and Confirming TPO's

- 3.16 Internal Audit conducted detailed testing on a sample of four TPO's to ensure that these had been made and confirmed in compliance with legal requirements and good practice as published by the Department of Communities and Local Government (DCLG).
- 3.17 The testing identified one instance where an emergency TPO had been served before a site visit had been undertaken. Internal Audit was requested to comment on the validity of actions taken in this case, and whether it contravened legislation and best practice.
- 3.18 The "Blue Book" states at paragraph 3.7 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.'
- 3.19 The decision to serve an emergency TPO before a site visit was done, in this instance did not contravene best practice as outlined by the DCLG.

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
1.	<p><b>Making the 'Green Folder - Register of Tree Preservation Orders' available for viewing by the public</b></p> <p>The Council maintains a 'Green Folder', entitled 'Register of Tree Preservation Orders', which contains individual sheets headed 'Hertsmere Borough Council - Register of Tree Preservation Orders'.</p> <p>'The Green Folder' serves as a summary, or index, for the individual TPO files comprising the TPO Register, and has been provided to the public when a request has been made to view the Council's register.</p> <p>As described at paragraph 3.6 in the main body of the report, the 'Green Folder' should not be viewed as standing in isolation, nor should it be viewed as "the Register", despite the title on the folder and constituent sheets, as it is an integral part of a wider system of files.</p>	Merits Attention	<p>Internal Audit recommends that members of the public are clearly informed as to the nature and purpose of the 'Green Folder', entitled 'Register of Tree Preservation Orders', when provided access as part a request to view the Council's TPO Register.</p> <p>The public should be made aware that, where required and appropriate, they should request access to the individual TPO files for full documentation linked to an entry in the 'Green Folder'.</p> <p>Planning should also give consideration to renaming the 'Green Folder' to avoid any misinterpretation or</p>	<b>Responsible Officer:</b>	



No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<u>Associated risk</u>  The title of the folder and its contents may be misleading to members of the public, who are provided with the 'Green Folder', when making a request to view the TPO Register, and may be unaware that the TPO Register is in fact comprised of a large number of individual files linked to the entries in the 'Green Folder'. This may contribute to misunderstanding and miscommunication with the public.		misunderstanding linked to the impression that it is in fact the TPO Register.		
2.	<b>Maintenance and administration of the 'Green Folder - Register of Tree Preservation Orders'</b>  <u>1. Use of correction fluid</u>  Review of the 'Green Folder' identified that there were a number of historic entries that had been changed using correction fluid. Internal Audit found no evidence that this has not been done since 2007.	Merits Attention	The officer responsible for making hand written entries in the 'Green Folder', entitled 'Register of Tree Preservation Orders' should cross through errors made when correcting information,	<b>Responsible Officer:</b>	

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	<p>The use of correction fluid was particularly common in the 1980's, and was considered a normal response to error correction.</p> <p>Internal Audit enquiry of Planning and Human Resources indicated that only three officers have been responsible for maintenance of the 'Green Folder' and the individual TPO files comprising the TPO Register from 2005 to date. These include the [REDACTED] from 2005 to January 2011, the [REDACTED] (later [REDACTED]) from January 2011 to October 2011, and [REDACTED] from November 2011 to date.</p> <p><u>2. Removal and duplication of pages</u></p> <p>Review of the 'Green Folder' identified that one page had been replaced by a photocopy when the folder had been viewed by a member of the public, and</p>	<p>Merits Attention</p>	<p>rather than apply correction fluid to entries.</p> <p>Consideration should be given to making components of the TPO Register available to the public to view electronically, e.g. via the Council website. See</p>		

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	<p>that there was a separate duplicate page that had been produced as a result of a page going missing previously and subsequently being rediscovered.</p> <p><u>3. Accuracy of entries (1)</u></p> <p>Examination of the 'Green Folder' found that there was an incorrect entry supporting the date that the TPO was certified and the notice served. This had no bearing on the validity of the TPO.</p> <p>Review of the actual TPO on the individual TPO file confirmed that the date should have been 11/8/2005, and not 11/8/2004. This was also confirmed through review of the Planning database (Access), which had the correct date entered.</p> <p>This was identified as human error and is considered to be an isolated historical instance, which had been completed by an officer that has since left the Council.</p>	Merits Attention	<p>recommendation three below.</p> <p>a) The officer responsible for making hand written entries in the 'Green Folder', entitled 'Register of Tree Preservation Orders' should be reminded of the importance of entering details on the register correctly.</p> <p>b) Corrective action should be taken and the errors on the 'Green Folder' should be adjusted, using the guidance above so that the correction is transparent.</p> <p>c) Periodic review of the 'Green Folder' should be conducted by an officer independent of its maintenance as part of a</p>		

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	<p><u>4. Accuracy of entries (2)</u></p> <p>Internal Audit testing of a sample of four TPO's identified that two had Letters of Confirmation whose dates did not correspond with entries on the 'Green Folder'. This did not affect the validity of the TPOs.</p> <p><u>Associated risks</u></p> <p>Alterations or anomalies on documents made available to the public to view can lead to confusion on the part of anyone requesting to view them. Impacts include time and cost of responding to enquires regarding alterations and reduced confidence in the data held.</p> <p>As the 'Green Folder' has been made available to the public to view, the public may not be able to place reliance on the information presented therein. This may affect decision making by external users of the information, and impact on the</p>		<p>quality control process to ensure that it complies with expected standards.</p>		

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	Council's accountability and reputation.				
3.	<p><b>Electronic or web-based TPO Register</b></p> <p>The Council's TPO Register is a paper based system maintained in a number of files and folders in lockable cabinets within the Planning team.</p> <p>Internal Audit enquiry of a neighbouring authority (Welwyn Hatfield Borough Council) indicated that they are in the process of introducing an electronic, web-based TPO Register accessible through their Council website. Please see paragraphs 3.12 to 3.15 in the main body of the report for further detail.</p> <p><u>Associated risk / opportunity</u></p> <p>There is an opportunity to free up valuable storage, and rationalise the number of paper documents held by placing TPO records online where they are available to members of the public at all times, including outside of normal</p>	Merits Attention	Consideration should be given to making the TPO Register available electronically through the Council's website in a similar manner to planning applications.	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>office hours.</p> <p>It is important to inject a note of caution to this, in that records may need to be cleansed of personal data that may lead to an infringement of the Data Protection Act 1998, prior to being made available to the general public through the Council's website.</p>				
4.	<p><b>Omissions of data from the Planning database (Access)</b></p> <p>Review of a sample of data extracted from the Planning database (Access) identified two instances of missing data from fields linked to individual TPO's. Both instances were over 10 years old.</p> <p>One TPO had an empty address field, while the other did not have an Order date.</p> <p>Internal Audit investigation found that fields can be edited and potentially</p>	<p>Merits Attention</p>	<p>a) Consideration should be given to locking fields on the Planning database (Acolaid), 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 on the identified missing data, and consideration should be given to an examination of</p>	<p><b>Responsible Officer:</b></p>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>deleted in error. This was provided as an explanation for the missing entries.</p> <p>The missing entries did not compromise adequate cross-referencing to other TPO data sources, especially the individual TPO file, and the missing data was available on the 'Green Folder' and the individual TPO file .</p> <p><u>Associated risks</u></p> <p>Reports generated from the Planning database (Access) may be incomplete and inaccurate, not serve the purpose intended, and obtaining missing data from paper files may be difficult and time-consuming.</p> <p>Data held electronically in respect of TPO's may be deleted in error.</p>		<p>the Planning database (Access) to identify the number of missing data fields and populate these as necessary.</p>		

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
5.	<p><b>Making and Confirmation of TPO's – Completeness of the TPO</b></p> <p>Internal Audit review of a sample of four TPO files, all of which were found to be valid and correctly served, identified:</p> <p>a) One instance where notice of the TPO had been served, but a copy of Schedule 1 had not been placed on the individual TPO file forming part of the TPO Register. Discussion with the [REDACTED] did not confirm that this was actually sent out. However, the information on the schedule was itself clearly recorded on the TPO plan and the TPO was valid. It was mentioned that a duplicate schedule can be produced from the Planning System, however the one created from the Planning database (Access) was incomplete and did not provide full details of the tree subject to a TPO.</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>b) The same file does not contain a TPO 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 form the TPO.</p> <p><u>Risk</u></p> <p>Tree Preservation Orders have the potential to be invalid due to incorrect process being followed.</p>				
6.	<p><b>Making and Confirmation of TPO's – Documenting Conversations</b></p> <p>Internal Audit has identified that conversations between officers and members of the public are not routinely documented, even for contentious or controversial TPO's, with records not maintained and entered on the Planning database (Access) or recorded using any</p>	Merits Attention	A suitable method of 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	<b>Responsible Officer:</b>	

No.	Finding / Associated Risk	Priority	Recommendation	Management Response	Target Date
	<p>other method.</p> <p>It was noted that the advice generally given when a call is received from a customer, is to 'put it in writing'.</p> <p><u>Risk</u></p> <p>Adequate records may not exist to support telephone conversation between members of the public and the Council, and no source of reference will exist if needed at a later date, to support advice or information given to the public by the Council.</p> <p>There may be an impact on the Council's reputation and staff morale if allegations are made that incorrect information or advice was given to a member of the public.</p>		system to support conversations.		

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.