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Town and Country Planning (Tree Preservation)(England)
Regulations 2012

About Me

- I worked in local government for 14 years.
- During this time I dealt with all statutory tree related applications and notifications.
- I currently lead on TPO Appeals, TPO Objections and TPO Compensation Claims.
- I am a member of the Landscape Planning Limited review group, who respond to CLG consultations on changes to legislation and developments affecting trees and landscape.

Planning Acts

Planning Acts as far back as 1909 have made provision for the securing of Amenity. From 1932 there has been explicit protection of trees, and since 1932 the Map and Schedule have been supported by the Provisions and Regulations in force at that time.

The recognition today that trees afford us “pleasant circumstances” simply echoes the Housing and Town Planning Act of 1909. The concept of amenity afforded by trees which Local Planning Authorities are charged to protect for the greater good has been around and enshrined for over 100 years in the Planning system in this country.

TPOs are a Land Charge

It is a serious move by a Local Planning Authority to serve a Tree Preservation Order. Once in place, it means that a Local Authority Search is required to inform a potential purchaser of the existence of the obligations or 'charges' attached to a TPO, which are enforceable against successive owners by local authorities or central government.

A 'charge' describes a burden imposed on land with which successive owners or occupiers of land and/or property must comply. The charges detailed on the Local Land Charges Register would not normally be disclosed by looking at the title deeds or inspecting the land or property itself.

Duty

The duty to protect amenity referred to in s197 and the power to make orders in the interests of amenity in s198 subsections (1), (2), (5) and (7) of the Town and Country Planning Act 1990 remain unchanged.

s192 and s193 of the 2008 Planning Act

s192 of the 2008 Planning Act established the powers to replace:

- The Trees Regulations 1999 (SI 1999 No 1892)
- The Trees (Amendment) Regs 2008 (SI 2008 No 2260)
- The Trees (Amendment) Regs 2008 (SI 2008 No 3202)
- Together with a number of subsections between s198 to s205 of the 1990 Act.

S193 of the 2008 Planning Act establishes that the 2012 Regs place all Orders past and present on the same footing. The provisions in all Orders prior to 6th April 2012 are now omitted.

New TPO Regulations



The new Regs came into force on 06.04.2012.

Henceforward, TPOs will now consist of only the Map and the Schedule.

If there is any discrepancy between the Map and the Schedule, the Map will prevail.

TPOs can no longer be confirmed after 6 months have elapsed.

Simplifications



There are a range of simplifications which are introduced by the new Regs - some good, others not so good.

1. The 2012 Regs have adopted the procedure whereby the service of a new Order will provide immediate provisional protection for 6 months.
2. It will now be at the discretion of the Local Authority to notify interested parties of the service of a new Order.
3. An odd distinction has been made between the former exemptions of dying and dead. It is no longer reasonable to link dying and dead. The circumstances where one is the concomitant of the other are apparently no more.
4. Furthermore, work authorised by virtue of the exemption has to be formally notified.
5. Local Authorities will no longer have the power to modify or revoke previously issued consents and the consent must be implemented within two years.

Bye Bye Article 5s

There is a fundamental change which affects all Orders served before August 1999.

The new Regs now extend the previous approach to compensation claims and Orders served after August 1999 to Orders served before August 1999.

There is no longer any power to serve an Article 5 Certificate.

There is a general right to compensation resulting from losses incurred as a result of a refusal, but provisions apply which are intended to limit the Planning Authority's liability.

Will the Insured Understand?

- All that will now be issued to recipients of new Orders will be the Map and Schedule.
- The “Rules” will be in the Regulations.
- Works receiving consent must be carried out within 2 years.

Questions?