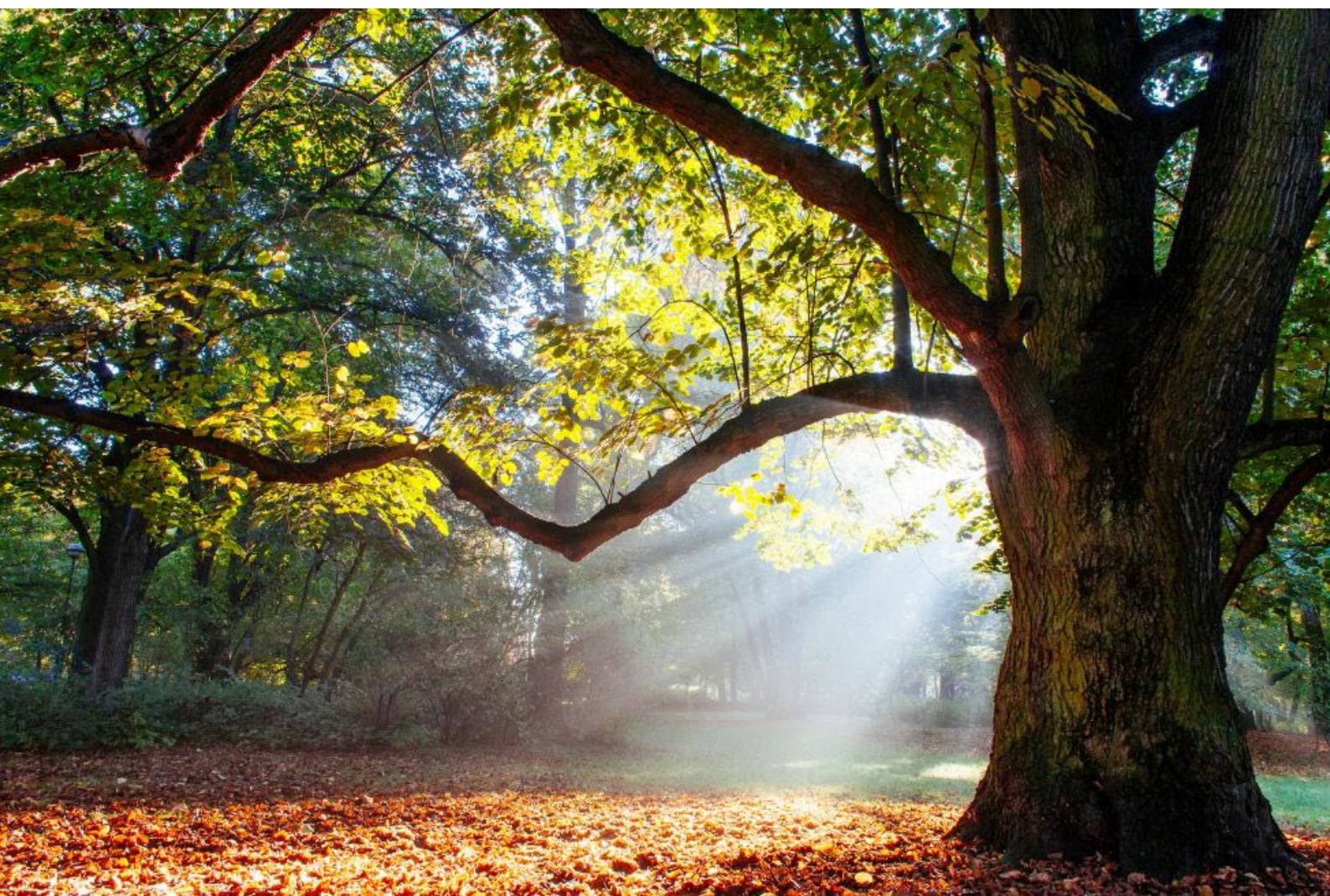




Strengthening Our Roots

An overview report by the
Northern Ireland Public Services Ombudsman
on **Tree Protection** in the planning system



The Role of the Ombudsman

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act) and includes a discretionary power to undertake investigations on her Own Initiative, with or without a prior complaint(s) being made.

Under Section 8 of the 2016 Act the Ombudsman may launch an investigation where she has reasonable suspicion that there is systemic maladministration or that systemic injustice has been sustained (injustice as a result of the exercise of professional judgement in health and social care).

In order to make a determination on reasonable suspicion, the Ombudsman initially gathers information relating to an issue of concern. This may include desktop research, contact with the body concerned, the use of a strategic inquiry, consultation with Section 51 bodies, etc. The Ombudsman assesses this information against her published Own Initiative Criteria¹ in order to decide whether or not to proceed with an investigation.

Where the Ombudsman determines that an issue has not met her published criteria, but she considers that an overview of her actions in considering an investigation could provide learning, she may determine it appropriate to provide any relevant organisations with an overview report.

What is Maladministration and Systemic Maladministration?

Maladministration is not defined in the legislation but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Systemic maladministration is maladministration which has occurred repeatedly in an area or particular part of the public service. Systemic maladministration does not have to be an establishment that the same failing has occurred in the 'majority of cases', instead it is an identification that an issue/failing has repeatedly occurred and is likely to occur again if left unremedied; or alternatively, an identification that a combination or series of failings have occurred throughout a process which are likely to occur again if left unremedied.

¹ [Own Initiative Criteria](#)

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Executive Summary

Within the planning system in Northern Ireland, the Department for Infrastructure (the Department) and local councils have statutory duties to consider the protection of trees. The effective promotion, administration and enforcement of tree protection is critical to long term strategies to improve the social, environmental and economic well-being of our areas and people. Trees have a key role not only in increasing biodiversity and combating climate change but are also increasingly recognised for the value they add to homes and public spaces and for their wide ranging benefits to public health.

Within recent years much attention has been given to the importance of planting more trees, and I welcome the many initiatives that have been undertaken in this area. There is however also a need for a renewed focus on recognising our existing trees as valuable infrastructure assets which need to be carefully managed and protected. The importance of protecting trees is even more critical given that it has been established that Northern Ireland ranks amongst the worst in the world for biodiversity loss², is one of the lowest in Europe for woodland cover³ and is likely to fall short of its 2050 net zero emissions target.⁴

In July 2022 I wrote to the Department and all eleven councils to advise that concerns had been raised with my Office indicating potential systemic maladministration in how public bodies fulfil their duties to protect trees within the planning system. I had also noted ongoing and significant public confidence issues, including community distress, consistently reported in the public domain. This included concerns about the extent that works to 'protected' trees (including the removal of) were granted and that adequate enforcement action was not being taken in response to wilful destruction.

I shared with the Department and councils a proposal to investigate using my own initiative powers. I requested information from the Department and each council to help inform my decision making in this matter. Whilst I have chosen not to proceed to full investigation at this time, the information gathered during the proposal stage was comprehensive and has allowed me to draw out significant observations and recommendations.

The **Principles of Good Administration** are the standards by which I expect public bodies to deliver good administration. The first principle is **getting it right** and in [Section 1](#) I set out the main strategies, policies and procedures which I have been advised are currently in place to deliver council functions to protect trees. Whilst some councils have developed comprehensive strategies to align their actions in this important area of planning this is not yet evident in all council areas. There is also an absence of procedural guidance to supplement the legislative framework around tree protection, which I consider is necessary to ensure consistency in decision making processes and to promote the application of good practice. I further consider that the Department has a greater role to play in developing regional guidance and in facilitating the sharing of best practice.

² A [2021 NHM & RSPB study](#) ranks Northern Ireland as 12th lowest, out of 240 countries/territories, for biodiversity intactness.

³ 9% Northern Ireland, 19% Scotland, 15% Wales, 10% England. *National Statistics on Woodland* produced by Forest Research, approved by UK Statistics Authority, 16 June 2022. Available from: [Woodland Statistics](#). EU-27 averages at 40%. [Woodland cover targets.pdf \(defra.gov.uk\)](#)

⁴ [Advice Report: The path to a Net Zero Northern Ireland](#), March 2023.

In [Section 2](#), I outline how Tree Preservation Orders (TPOs) are administered and the variation in the number of TPOs requested and approved across council areas. A TPO is an order made by a planning authority which provides statutory protection to specific trees, groups of trees or woodlands. Whilst recognising this continues to be an evolving area of expertise, further work is required by both the Department and councils to establish how best to assess the 'amenity' value of a tree when considering the use of TPOs. This should include councils documenting a clear methodology and exploring better use of valuation software in this process. The Department should also issue guidance on the key TPO terms contained within the legislation.

Within this section I also note the potential for greater **openness and transparency** through increased electronic mapping of TPOs and provision of online access to the TPO registers. Council websites should provide clear information about the process that members of the public can follow to request a TPO, and the schemes of delegation should outline where the decision making on making TPOs sits within the council.

Similarly, there is the opportunity for increased transparency about the granting of works to protected trees. Within [Section 3](#), I outline the variation in the volume of applications made and approved across the region. Councils should consider the potential of publishing details of the applications and decision making to increase accountability and public confidence. The introduction of community notification for residents likely to be affected, which is a procedure recommended in England, should also be examined as a way of improving engagement in the planning system.

When considering how application for works are processed, it is important that councils clarify the circumstances in which independent evidence is required to support the applications for work and the parties responsible for obtaining it. **Being customer focused** involves public bodies explaining clearly what they expect of a service user as well as what is expected from the public body. Consistency of approach in processing applications for works could be further supported by all councils having standardised forms available online and signposting the use of the planning portal.

To comply with the principle of **acting fairly and proportionately**, the actions and decisions of public bodies should be free from interests that could prejudice their actions and decisions. Within [Section 4](#), I considered how councils approach cases in which the council wishes to carry out work to a protected tree on land which it owns, and the processes used to investigate where a council is suspected of a breach. The responses highlighted the variation in council awareness and interpretation of the governing legislation and best practice in this area. Department and councils should agree clear procedural guidance to comply with the legislation and to ensure potential conflicts of interest are being appropriately managed.

The need for adequate oversight and engagement between the Department, councils and statutory undertakers in respect of the removal of protected trees on operational land is discussed in [Section 5](#). Public bodies must work effectively together to mitigate against adverse impact, but also proactively communicate with the public on why, and how, the work is being undertaken.

When taking decisions, public bodies should ensure that the measures taken are proportionate to the objectives pursued. Taking appropriate enforcement action, to prevent or remedy harm, is central to the effectiveness and credibility of the planning system and to meeting the principle of **putting things right**.

Within [Section 6](#), the figures gathered regionally provide insight into the level of enforcement action taken in respect of reported breaches of planning control concerning protected trees. Out of 369 tree protection breaches reported to councils over a three year period, only one resulted in formal enforcement action being taken. No cases were brought to court. I have not carried out an analysis of the individual decision making however the low level of enforcement activity should be a concern for councils as they seek to improve the environmental quality of their area.

The figures further showed that nearly one fifth of the overall number of cases were closed as 'not expedient', indicating that a breach was established but that the council decided not to take further action having applied the 'expediency test'. I have recommended an examination of these cases to establish if the approaches taken are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. Council enforcement strategies should also provide clear information on the 'expediency test' and ensure there is sufficient oversight when enforcement decisions are taken under delegated authority.

I also recommend that the Department collate, monitor and publish enforcement data specific to tree protection enforcement cases to further enhance scrutiny at a regional level.

In adhering to the principle of **seeking continuous improvement**, public bodies should actively seek and welcome all feedback to improve their public service delivery. I was pleased to note that whilst all councils asserted that they meet their obligations to protect trees, several welcomed the proposal as an opportunity to review policies and practice for potential improvements.

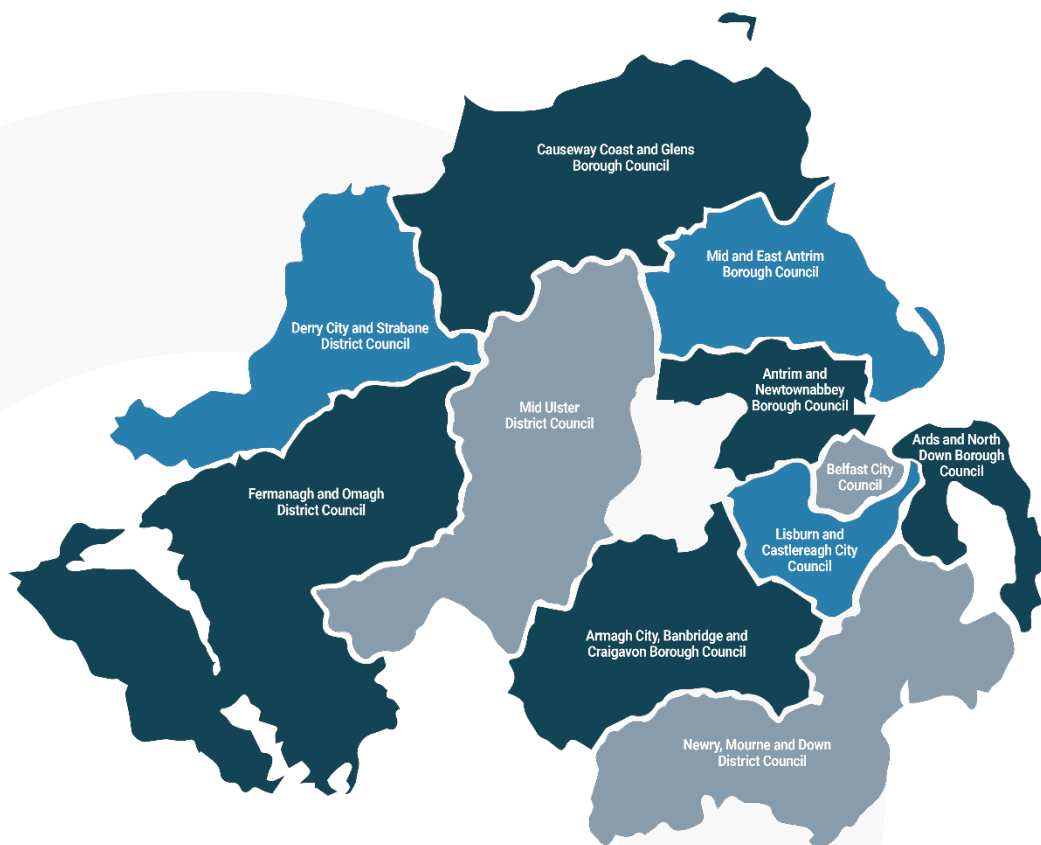
Having considered the responses to my investigation proposal I have made 26 recommendations for improvement which I have shared with the Department and councils. I am mindful that some councils have already implemented a number of the recommendations and I have highlighted examples of existing good practice. I am hopeful my report will make a positive contribution to the protection of trees within the Northern Ireland planning system. If required, I may choose to reassess this issue in the future.

The Statutory Duty to Protect Trees

The Planning Act (Northern Ireland) 2011 (the 2011 Act) introduced a new two-tier system for the delivery of planning functions in Northern Ireland. This system, which came into effect in April 2015, resulted in the majority of planning functions passing from the former Department of the Environment (DoE) to local councils.

The eleven local councils have responsibility for delivering most operational planning functions including the determination of planning applications and the investigation of alleged breaches of planning control. The Department for Infrastructure (the Department) was established in 2016 and has responsibility for regional planning policy and legislation as well as monitoring and reporting on the performance of local councils. It also has certain reserve enforcement powers and can make planning decisions in respect of regionally significant and 'called-in' planning applications.

Figure 1: A map of the 11 local councils in Northern Ireland

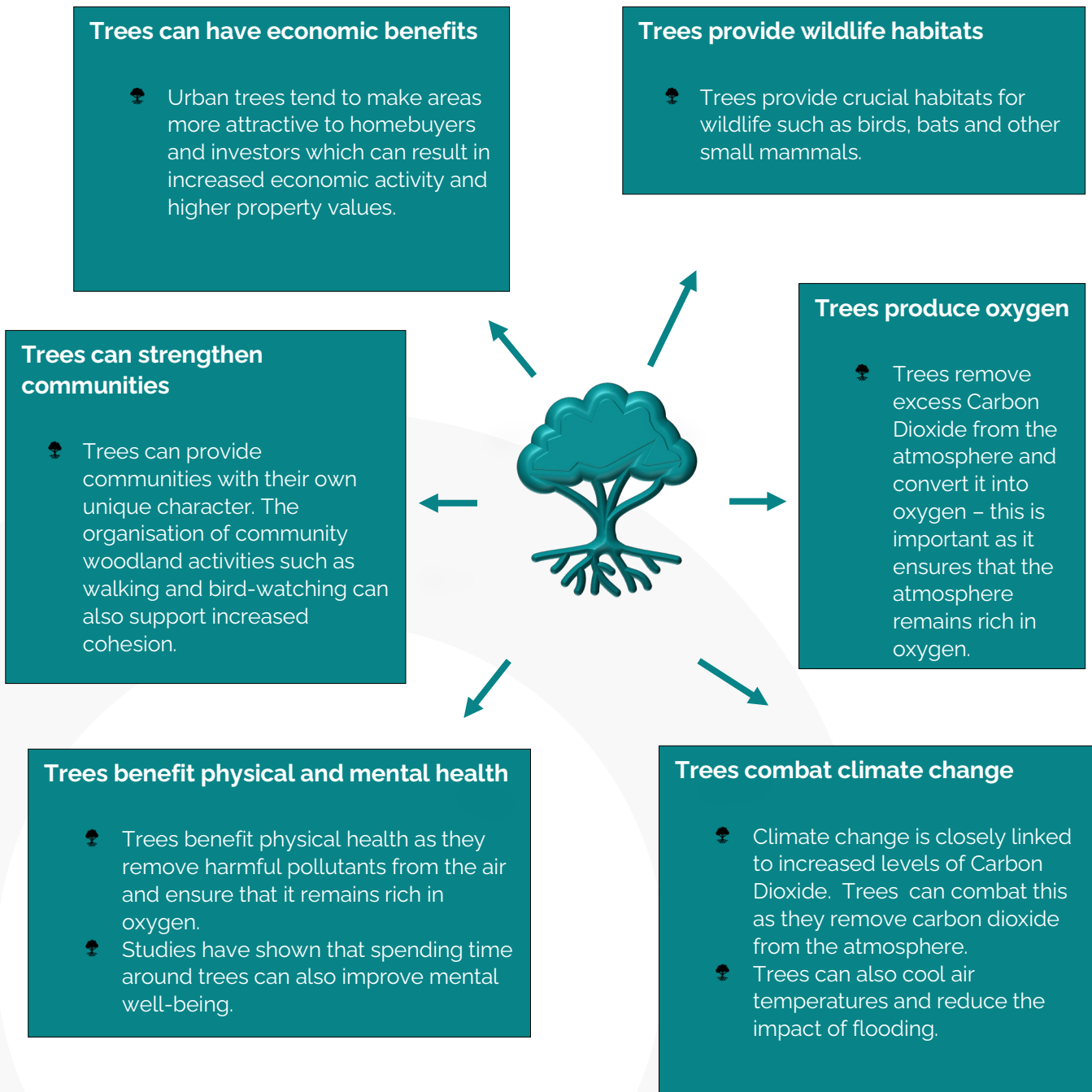


The 2011 Act places statutory duties on councils and the Department to make adequate provision for the protection of trees, where appropriate, within the planning system.⁵ It is vital that these duties are fully understood and implemented. This means that councils should protect existing trees, as well as promoting further planting of trees. Trees provide many

⁵ [Planning Act \(Northern Ireland\) 2011, Chapter 3, s.121-128](#)

important benefits for both members of the public and the natural environment. Key benefits include the fact that they provide habitats for wildlife, play a significant role in combating climate change and bring important advantages for public health.⁶

Figure 2: The Benefits of Trees



⁶ A 2021 study carried out by Forest Research found that trees provide significant benefits for wellbeing & estimated that the mental health benefits associated with visits to UK woodlands save £185 million in mental health treatment costs annually. [Valuing the mental health benefits of woodlands \(forestresearch.gov.uk\)](https://www.forestresearch.gov.uk/valuing-the-mental-health-benefits-of-woodlands)

It is recognised that not all trees are considered as requiring statutory protection and that there is a need to scrutinise and prioritise the protection of trees determined to be of greater value. This continues to be an evolving area of expertise. Native trees, for example, are thought to be more beneficial for biodiversity than non-native trees.⁷ Areas of ancient woodland are also extremely valuable natural assets which are of greater environmental benefit than younger trees.⁸

The importance of public bodies upholding and promoting their responsibilities to protect trees is further reinforced by the growing concerns in relation to the current state of Northern Ireland's trees and woodland areas. Northern Ireland is one of the least wooded areas in Europe⁹ and it has the lowest density of woodland coverage in the United Kingdom.¹⁰ It was also recently ranked the 12th worst out of 240 countries in terms of biodiversity loss.¹¹ Within the last Biodiversity Strategy¹² for Northern Ireland, it was highlighted that land use change and development has a major impact on biodiversity. The important role which planning controls and policy play in mitigating against biodiversity loss was also emphasised. Northern Ireland's comparatively low level of woodland cover and lack of biodiversity therefore reinforces how important it is for planning authorities to take proactive steps to protect the region's existing tree assets.

The planning system in Northern Ireland currently protects trees in three main ways:

1. Tree Preservation Orders

Tree Preservation Orders (TPOs) are statutory protections afforded to trees under the 2011 Act.¹³ The 2011 Act gives local councils the 'discretionary' power to make TPOs where they consider that it is 'expedient in the interests of amenity'. Whilst the making of new TPOs primarily sits under the remit of councils, the Department also retains the power to make them in certain circumstances. The 2011 Act is supplemented by The Planning (Trees) Regulations (Northern Ireland) 2015 (the 2015 Regulations) which set out the form which TPOs should take along with the procedures to be followed when making, confirming and revoking TPOs.¹⁴

A TPO can be applied to a single tree or a group of trees. Whilst the issuing of a TPO is discretionary, where one is made the planning authority has a duty to enforce it. If a tree is protected by a TPO it is necessary to apply for consent from the council or, in some circumstances, the Department before carrying out any felling or pruning work. Breach of a TPO is a criminal offence which can result in a fine of up to £100,000 on summary conviction or an unlimited fine on conviction on indictment.¹⁵

2. Conservation Areas

Conservation Areas are areas designated by planning authorities as having special architectural or historic interest. Trees located in conservation areas receive similar protection to those

⁷ [Biodiversity: why native woods are important - Woodland Trust](#)

⁸ [Ancient woodland, ancient trees and veteran trees: advice for making planning decisions - GOV.UK \(www.gov.uk\)](#)

⁹ The Woodland Trust reports that Northern Ireland has just over 8.7% woodland cover [Our Work in Northern Ireland - Woodland Trust](#) compared to a European average of 40% - see [Woodland cover targets Detailed evidence report.pdf \(defra.gov.uk\)](#)

¹⁰ [State of the UK's Woods and Trees 2021 \(woodlandtrust.org.uk\)](#), pg.29

¹¹ [2021 NHM & RSPB study](#)

¹² The former Department of the Environment published a [Biodiversity Strategy for Northern Ireland](#) in July 2015 in compliance with The Wildlife and Natural Environment Act (Northern Ireland) 2011 (WANE). WANE places a duty on all public bodies to conserve biodiversity when exercising their functions ([s.1](#)).

¹³ [Planning Act \(Northern Ireland\) 2011, s.122 -124](#)

¹⁴ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015](#)

¹⁵ [Planning Act \(Northern Ireland\) 2011, s.126 \(1\)](#)

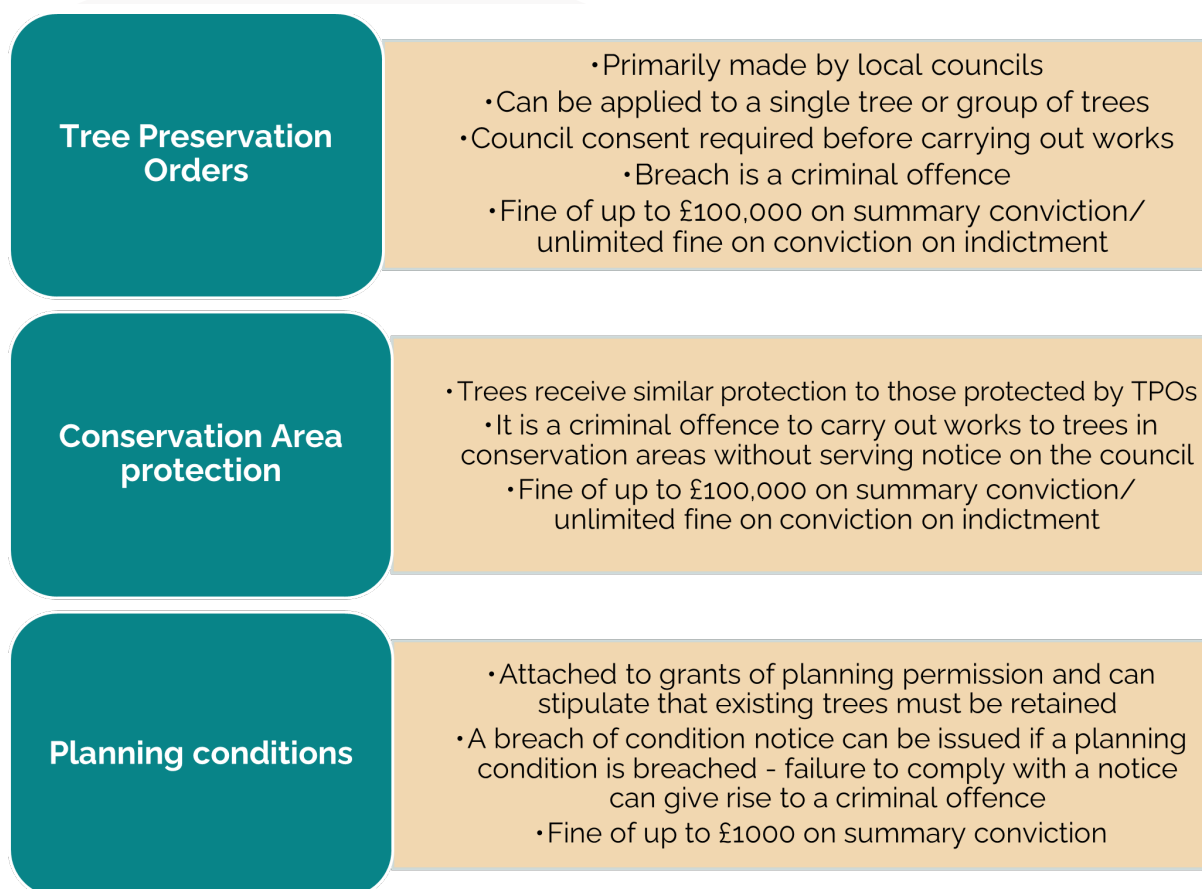
which are protected by TPOs. It is a criminal offence to carry out works to trees in conservation areas without first serving notice on the council or, in certain circumstances, the Department.¹⁶ If the council or the Department objects to any proposed works, it can make a formal TPO to protect the tree(s).

3. Planning Conditions

Trees can also be protected by planning conditions attached to grants of planning permission.¹⁷ A planning condition may, for example, stipulate that an existing tree or trees must be retained. Breach of a planning condition protecting trees is not a criminal offence. If a breach is identified a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice can however give rise to a criminal offence which is punishable by a fine of up to £1000 on summary conviction.¹⁸

It is notable there is a considerable penalty variation between breaches of TPOs and planning conditions, with the maximum fine for a breach of a TPO significantly higher than a breach of a planning condition notice. Given the differing levels of protection, planning authorities should carefully consider in each case whether a planning condition or TPO provides the most effective safeguard. It is not considered reasonable to use planning conditions as the means to secure long term protection of trees, where TPOs are available for this purpose.

Figure 3: The three main ways in which the Northern Ireland planning system protects trees



¹⁶ [Planning Act \(Northern Ireland\) 2011, s. 127 \(1-4\)](#)

¹⁷ [Planning Act \(Northern Ireland\) 2011, s.121](#)

¹⁸ [Planning Act \(Northern Ireland\) 2011, s.152](#)

Section 1:

Strategies, Policies and Procedures

1.1 The Councils

All eleven councils were asked to provide my Office with copies of the policies and procedures which they have in place to fulfil their duties to effectively promote, administer and enforce the protection of trees.

Whilst recognising the autonomy of each council to develop local policy, the responses highlighted several points of concern including an absence of strategies in some council areas and a lack of procedural guidance to underpin key functions. This section will set out my observations in respect of:

- (i) Local Development Plans;
- (ii) Strategies;
- (iii) Schemes of Delegation; and
- (iv) Procedural Guidance.

(i) Local Development Plans

The 2011 Act requires each council to prepare its own Local Development Plan (LDP).¹⁹ A council's LDP is intended to be a 15-year framework which sets out a vision for how the council area should look in the future in terms of the type and scale of development. The legislation requires each LDP to be made up of a Plan Strategy and a Local Policies Plan. Whilst it was originally anticipated that it would take approximately three years for councils to complete their LDPs, it is concerning to note that none of the LDPs have been completed despite the passage of more than eight years.²⁰

It is concerning to note that none of the LDPs have been completed despite the passage of more than eight years.

In its recent review of Planning in Northern Ireland, the Northern Ireland Audit Office (NIAO) commented on the lack of progress made in completing LDPs and made a recommendation in relation to reviewing timetables for completion and streamlining the remaining steps of the process.²¹

The Department has advised my Office that it is currently bringing forward a Planning Improvement Programme in conjunction with the councils, involving specific actions which seek to improve and streamline the current LDP process.

¹⁹ [Planning Act \(Northern Ireland\) 2011, Part 2](#)

²⁰ The former DOE's *Strategic Planning Policy for NI* (2015) set out an indicative timeframe for the completion of LDPs - [Strategic Planning Policy Statement for Northern Ireland \(SPPS\)](#) (infrastructure-ni.gov.uk), pg.30

²¹ [NIAO Report - Planning in NI.pdf](#) (niauditoffice.gov.uk) – see LDP recommendation on pg.26

Most of the councils referred to their LDPs when providing copies of their policies and procedures to protect trees. Some of the councils shared copies of their draft Plan Strategies²² and I welcome the fact that most appear to be including information in relation to the protection of trees within these strategies. I consider that the LDPs present a good opportunity for councils to set out a long-term vision for how they will balance development with the need to protect trees and woodland within the council area. However, it is not possible to comment substantively on the effectiveness of the Plan Strategies as, to date, most have not been adopted by the councils.

It should also be noted that most of the councils also referred to using regional planning guidance to assist them in setting planning conditions to protect trees, which I will discuss further in section 1.2. A number of councils provided my Office with sample planning conditions used to protect trees.

I further note that councils have signalled their intent to bring forward Supplementary Planning Guidance as part of the LDP process. I welcome that Belfast City Council recently published 'Trees and Development' planning guidance to supplement policies in its LDP, to support its aims to 'protect, promote and preserve' trees.²³

(ii) Strategies

TREE AND WOODLAND STRATEGIES

Alongside local plans, the development of Tree and Woodland Strategies are a way in which councils can set out across functions their long-term approach for managing the trees within their council area. Four councils currently have such strategies, or supporting policies, in place.²⁴ Whilst these strategies do not solely relate to the protection of trees, most contain some information in relation to the approaches which the councils are currently taking in this area. For example, one council stated that it only carries out tree works where necessary whilst another stated that it avoids the unnecessary removal or disfigurement of trees with 'amenity' or high wildlife value.

4 councils currently have tree strategies. 7 councils do not have tree strategies however 2 currently have draft tree strategies.

I note that Belfast City Council undertook considerable public consultation to inform its recently launched tree strategy and I welcome the level of detail it contains, as well as its commitment to protecting Belfast's tree population.

The remaining seven councils do not have tree strategies in place however two are currently working on draft tree strategies.²⁵ I would encourage the councils which do not currently have tree strategies in place to consider the benefits of developing one. I would also encourage councils which do have tree strategies to review their strategies to ensure they are comprehensive. The strategies should include the different functions of the council to ensure

²² Three councils have adopted their Plan Strategies since my initial enquiries – Fermanagh & Omagh District Council in March 23, Belfast City Council in May 23 and Lisburn & Castlereagh City in September 23.

²³ [Trees and Development \(belfastcity.gov.uk\)](https://www.belfastcity.gov.uk/trees-and-development)

²⁴ Ards and North Down Borough Council has published a [Tree and Woodland Strategy](#), Armagh City Banbridge & Craigavon Borough Council has published a [Tree Management Policy](#), Lisburn and Castlereagh City Council adopted a new [Tree and Woodland strategy](#) on 7 February 2023. Belfast City Council's [Tree Strategy](#) was launched on 5th October 2023.

²⁵ Newry Mourne and Down District Council stated that it was preparing a draft tree strategy which would be published for consultation. Causeway Coast and Glens Borough Council also provided me with a copy of its draft Tree Risk Management Plan.

priorities in this area are aligned. For example, the role of enforcement activity to remedy and prevent harm should be sufficiently valued in the context of protecting tree stock, biodiversity and public health.

I note that one council included the appointment of a Tree Officer as one of the proposed actions within its tree strategy and within their responses to my investigation proposal, six councils referred to having designated Tree Officers. The appointment of Tree Officers appears to be increasingly common across the councils with the aim to promote the protection of trees.

It is also critical that within their strategies councils consider how effectively they are communicating with the public in this important area. Ten of the eleven councils currently have dedicated tree preservation sections within their websites. Whilst it is encouraging that the majority of councils do provide online information in this area, it is concerning that one council does not and I would urge it to rectify this as soon as possible. Throughout this report I highlight several areas and make recommendations for increased availability of information to the public.

ENFORCEMENT STRATEGIES

An effective enforcement strategy is key to remedying, and indeed preventing, harm to trees already subject of protection through planning conditions, TPOs or location within a conservation area. A planning enforcement strategy sets out a council's enforcement objectives as well as how breaches of planning control are investigated. These strategies also outline how the investigation of enforcement complaints are prioritised.

All of the councils have Planning Enforcement Strategies

All of the local councils have planning enforcement strategies in place. They are very similar in content and, whilst none are specific to trees, all of the council strategies refer to TPO breaches when outlining enforcement priorities. It is notable that all of the councils give complaints about alleged TPO breaches the highest possible priority for investigation. I will however set out several significant concerns I have identified in respect of 'Enforcement Activity' later in this report within [Section 6](#).

(iii) Schemes of Delegation

Under the 2011 Act, it is a statutory requirement for councils to have schemes of delegation for planning.²⁶ Schemes of delegation outline which decisions are made by the Planning Committee and which are delegated to council officers.

There is variation across the councils in relation to how decisions around TPOs are made.

Whilst all of the local councils have developed their own schemes of delegation, there is some variation in relation to the decision-making mechanisms which councils are employing around TPOs. Some councils delegate all decision-making in this area to council officers whereas others require their Planning Committees to play a role in certain aspects of TPO decision-making.

²⁶ [Planning Act \(Northern Ireland\) 2011, s.31](#)

The wording of some of the schemes of delegation has however the potential to cause confusion. Of the three councils whose Planning Committees retain decision making functions for making TPOs, it is not clear from the schemes if the Planning Committees review *all* requests for TPOs or only those which council officers recommend are made.²⁷ It is also not clear how they would operate where there is a need to act quickly to protect trees. Open and transparent information about the process is necessary not only for Committee and council officers to ensure procedural compliance, but also to instil public confidence in the process.

It is also notable that, within their schemes of delegation, two councils refer to delegating functions which they do not possess. Both of these councils state that they delegate the revocation of TPOs to council officers however this runs contrary to the 2011 Act which does not extend this power to local councils. Whilst I note that the Department, in its 2022 Review of the Implementation of the 2011 Act, indicated that it intended to bring forward proposals to permit councils to vary or revoke TPOs, this is not currently enacted in law.²⁸

I would encourage all councils to review their schemes of delegation to ensure that they are satisfied that decision making processes on TPOs are given the appropriate priority. Councils should also ensure that their schemes are clear and accurate.

(iv) Procedural Guidance

The responses to my investigation proposal indicate that there is variation regarding the extent to which councils have developed procedural guidance to supplement the legislative framework around trees subject to TPOs and conservation area protection. Whilst it is correct that the governing statutory instruments set out the legal obligations the planning authorities must comply with, policies and procedures are necessary to outline the practical steps required to fulfil these duties. Procedural guidance helps to provide clarity and consistency in the process and supports good administration to help get decisions right.

Although some of the councils provided copies of procedural guidance documents, it is of concern that other councils do not appear to have developed any of their own procedural guidance. It is also worth highlighting that some of the guidance documents provided are outdated and contain inaccuracies. For example, a procedural document in place within one of the councils dates back to 2010 and contains incorrect references to the Department being the primary decision maker in relation to applications for works to protected trees. In another council, guidance which purports to demonstrate their procedures for dealing with applications for works to protected trees on council owned land fails to refer to the Department's decision-making role in these cases.

I consider this further evidence of why it is important that councils supplement the legislative framework in this area with up to date guidance and I strongly encourage all councils to take steps to implement detailed and accurate written procedures.

²⁷ For example, in response to an individual complaint made against a council to this Office, the council stated that 'a decision not to place a TPO does not have to go to the Planning Committee.' The wording of the Council's Scheme of Delegation could however be interpreted that *all* requests for TPOs are considered and determined by the Committee.

²⁸ [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](#) – p.66.

1.2 The Department

It is notable that in response to my queries some councils referred to a lack of regional support from the Department. One council referred to a lack of support in relation to tree preservation work, and another stated that there was a 'significant gap' in regional advice and guidance. Reference was also made to a loss of expertise and resource following the transfer of planning powers to local councils.

In response to my investigation proposal, the Department was asked to provide details of the guidance which it provides to support local councils in relation to the protection of trees. Some of the guidance relied upon by the Department as being available for councils is significantly outdated and does not reflect the transfer of planning powers to the councils.

This section will outline my observations in respect of the Department's:

- (i) Guidance specific to the protection of trees;
- (ii) Regional planning guidance and policies; and
- (iii) Enforcement Practice Notes.

(i) Guidance specific to the protection of trees

In response to asking what guidance is provided to councils, the Department provided two pieces of guidance which focus on the protection of trees. Both of these documents were issued by its predecessor department, the Department of the Environment (DOE):

- Tree Preservation Orders: A Guide to Protected Trees²⁹ (the 2011 guidance), and
- Trees and Development: A Guide to Best Practice³⁰ (the 2003 guidance).

The 2011 guidance is specific to TPOs and covers a number of areas including the criteria used to assess a potential TPO and how TPOs are processed. The 2003 guidance focuses on the value of trees and how they can be accommodated in the construction process. The following areas of concern have been identified in relation to these documents:

1. **The guidance is outdated** – neither of the documents have been updated to reflect the legislative and departmental changes which have occurred since their original publication. The 2011 guidance, for example, contains several inaccurate references to the now non-existent DOE having primary responsibility for making TPOs and processing applications for works to protected trees. It has not been updated to reflect the fact that these powers now sit primarily with the local councils.
2. **The guides are aimed at members of the public rather than the councils** – although the Department highlighted these documents as being guidance which they provide to support local councils, it is clear the guides are primarily written for members of the public³¹ and developers rather than councils. Given the intended reader is the general public, it is even more concerning that the information presented is inaccurate.

²⁹ [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](http://infrastructure-ni.gov.uk)

³⁰ [Trees and Development - A Guide to Best Practice \(infrastructure-ni.gov.uk\)](http://infrastructure-ni.gov.uk)

³¹ The 2011 guidance opens with the statement, 'This leaflet is intended to provide advice for tree owners, conservation groups and the general public on protected trees.'

The Department's failure to provide an updated guide, providing clear information on the current roles and duties of the Department and councils, has the potential to cause confusion. It may further risk creating a perception that it does not view the protection of trees as an area of priority within the planning system.

I note that both guides contain explanatory notes (dated 2019) that existing guidance within the documents will cease to have effect once the councils have adopted their Plan Strategies, yet only three councils have adopted their strategies to date. Adoption across the remaining councils is likely to take some time yet. Notwithstanding that the current guides may cease to have effect, I am of the view that given its oversight and monitoring remit, the Department should have a continued role to develop best practice guidance in this area to support councils.

I also note that the Department has not developed any internal procedural guidance specific to its own responsibilities and duties within the regime to supplement the legislative framework, for e.g., should the Department be asked to revoke or amend a TPO. Nor did it issue procedures by which a council must seek consent from the Department for works, an area of concern which I discuss further within [Section 4](#).

I encourage the Department to 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. A number of councils referred to participating in a council-wide Tree Forum or 'working group' following its establishment in 2017 until 2019 when meetings were postponed due to the COVID-19 pandemic and a redirection of resources. I have been advised that a meeting of this group has been recently reconvened. I welcome this development and consider that a regional Tree Forum with representatives from both the Department and the councils may be beneficial in strengthening relationships and knowledge sharing.

(ii) Regional planning guidance and policies

In addition to the 2003 and 2011 guides outlined, the Department also provided my Office with a number of wider regional guidance documents and policies in respect of land use and planning development. Most of the councils referred to using these guidance and policy statements to assist them in setting planning conditions to protect trees. It is worth noting that some of these documents will also cease to have effect once the councils adopt their Plan Strategies whereas others will remain in force.³²

³² Guidance which will cease to have effect:-

- [PPS 2: Natural Heritage \(infrastructure-ni.gov.uk\)](#) (2013)
- [Planning Policy Statement 6 \(PPS 6\): Planning, Archaeology and the Built Heritage \(infrastructure-ni.gov.uk\)](#) (1999)
- [PPS 6 Addendum: Areas of Townscape Character \(infrastructure-ni.gov.uk\)](#) (2005)

Guidance which will remain in force:-

- [best_practice_guidance_pps23.pdf \(infrastructure-ni.gov.uk\)](#) (2014)
- [Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside \(infrastructure-ni.gov.uk\)](#) (2012)
- [Creating Places - Achieving Quality in Residential Environments \(infrastructure-ni.gov.uk\)](#) (2000)

In responding to my investigation proposal, the Department also referred to the Strategic Planning Policy Statement³³ (SPPS) for Northern Ireland which aims to consolidate existing planning policies and provides further information in relation to the transitional arrangements which are in place pending councils adopting their Plan Strategies.

Whilst the wider regional guidance documents do refer to the need to protect trees and woodland areas, they are very broad in scope and do not go into the specifics of how trees can be protected. Similarly to the 2003 and 2011 guidance referred to above, the wider regional guidance documents are dated and, when read in isolation from the SPPS, they do not reflect the transfer of planning powers to the local councils.

(iii) Enforcement Practice Notes

The Department has also published four enforcement practice notes which are designed to guide planning officers through the enforcement process.³⁴ These practice notes deal primarily with procedural matters whilst also setting out good practice. They are not specific to the protection of trees but they do provide councils with general guidance which can be applied to the investigation of alleged tree protection breaches. Enforcement Practice Note 3 is particularly useful as it provides guidance in relation to the stages which councils should follow when carrying out enforcement investigations.³⁵ The guidance was developed in 2016 and I note there are no enforcement practice notes, or guidance issued, which outlines the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. I will discuss this issue further in [Section 4](#).

³³ [Strategic Planning Policy Statement for Northern Ireland \(SPPS\) \(infrastructure-ni.gov.uk\) \(2015\)](#)

³⁴ [Enforcement Practice Notes | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

³⁵ [Enforcement Practice Note 3 Investigative Approaches \(infrastructure-ni.gov.uk\)](#)

Section 1 Recommendations: Strategies, Policies and Procedures

Recommendation 1: 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.

Recommendation 2: 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.

Recommendation 3: 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 planning conditions to best secure the long term protection of trees.

Recommendation 4: 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.

Recommendation 5: 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 supporting 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.

Section 2: Tree Preservation Orders

The 2011 Act provides a discretionary power for councils to make a TPO to protect a specific tree or woodland from deliberate or wilful damage. Members of the public can submit requests for TPOs to their local councils. TPOs can also be initiated by the councils themselves and the Department has the power to make TPOs in consultation with the appropriate council.³⁶

From my enquiries I have established that across the region there are variations in how TPO records are maintained by councils, and the level of information is made available to the public. There are also variations in the processes to request a TPO and in the rates of requests received.

This section will set out my observations in respect of:

- TPO records (The Orders, Registers and Mapping);
- TPO requests and approval rates across the councils;
- Criteria for making TPOs; and
- Processes for requesting TPOs.

2.1 TPO records

THE ORDERS

It is imperative that councils make and maintain accurate TPO records so that they can easily identify protected trees to process applications for works, investigate potential breaches and monitor their overall approach to tree preservation.

The 2015 Regulations³⁷ set out the form that an Order must take. When a TPO is made it should include the following information:

- The total number of tree(s) protected by an order; and
- A map showing the precise location of the protected tree(s).

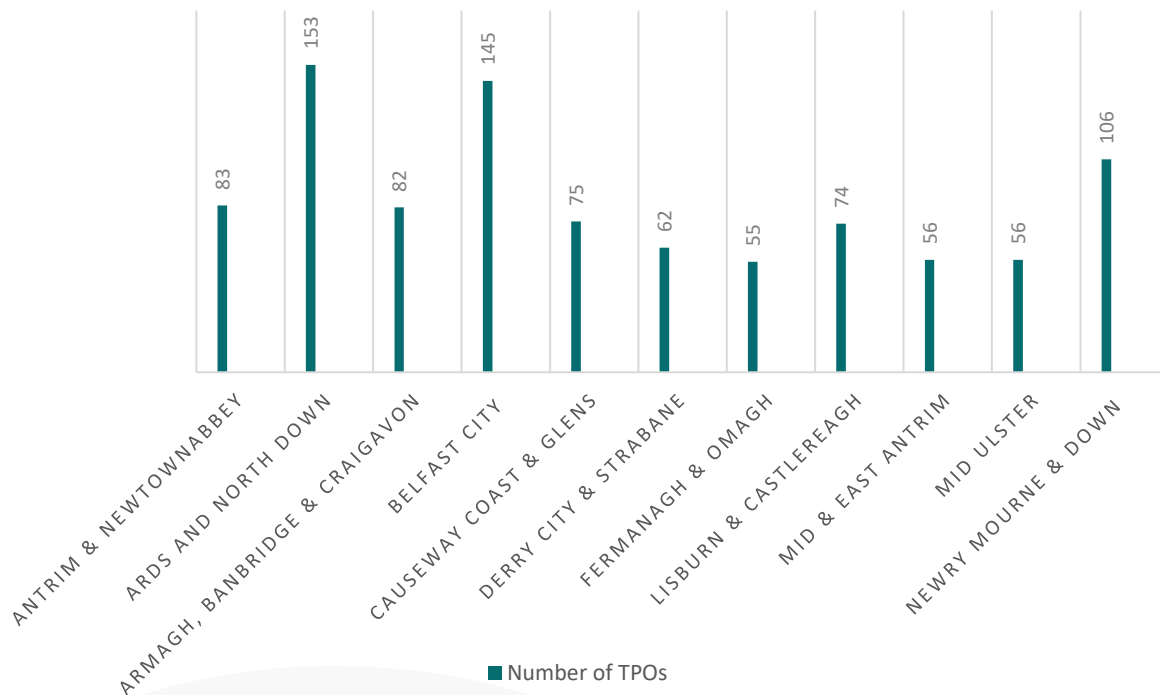
It is also good practice to regularly review the TPOs in place and evidence that the tree(s) still requires protection, for example, with an up-to-date health and condition survey.

I established from my enquiries that there were 947 TPOs in place throughout Northern Ireland in July 2022. The numbers varied across the councils, ranging from 55 in one council area to 153 in another.

³⁶ [Planning Act \(Northern Ireland\) 2011, s.124\(1\)](#)

³⁷ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015, S.2.](#)

Figure 4: The number of TPOs in place across the council areas in July 2022



As part of my investigation proposal, I also asked each of the councils to clarify how they maintain their TPO records. Most of the councils indicated that they maintain their records on their TPO registers. It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas.

The councils were also asked to confirm how often they review their TPO records. There was variation in the responses received with some councils appearing to be more proactive in their reviews than others.

- **One council did not refer to carrying out any reviews** of its TPO records.
- **Two councils** stated that they **only review individual TPO records upon receipt of specific requests** such as applications to carry out works.
- **Eight councils** indicated that they have **carried out wider, proactive reviews** of all of their TPO records however the majority of these reviews appear to have been one-off exercises rather than part of a rolling review programme.

Within their responses to my investigation proposal, two councils raised concerns in relation to whether some of the TPOs which they inherited from the former DOE were legally sound. It has been suggested that some inherited TPOs had not been confirmed by the DOE. One of the two councils advised it has now rectified the issues it identified, and the other council remains in the process of doing so. This highlights the importance of ensuring there is clear procedural guidance to follow in respect of making TPOs and that records are subject to regular review.

I am concerned that the issues identified by the two councils around inherited TPOs may be a wider problem and I am not satisfied this matter has been adequately addressed at a regional level. A failure to tackle this issue has the potential to negatively impact on the regulation of works to protected trees and taking enforcement action against breaches.

I would strongly encourage all councils to carry out detailed reviews of their TPO records to ensure that all TPOs in place remain valid. Councils should also ensure that their reviews of TPO records are not stand-alone exercises and that they form part of an ongoing programme of review and monitoring of their approach to tree preservation. Councils should support the regular review of records, and adequacy of information available, by carrying out site visits to check on the health of the protected trees, or indeed whether they have been subject of harm since the order was put in place.

TPO REGISTERS AND MAPPING

It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas. A council's TPO register must also be available for inspection by the public at all reasonable hours.³⁸ When responding to my investigation proposal, the majority of councils confirmed that they have physical TPO registers which can be made available for public inspection at their offices.

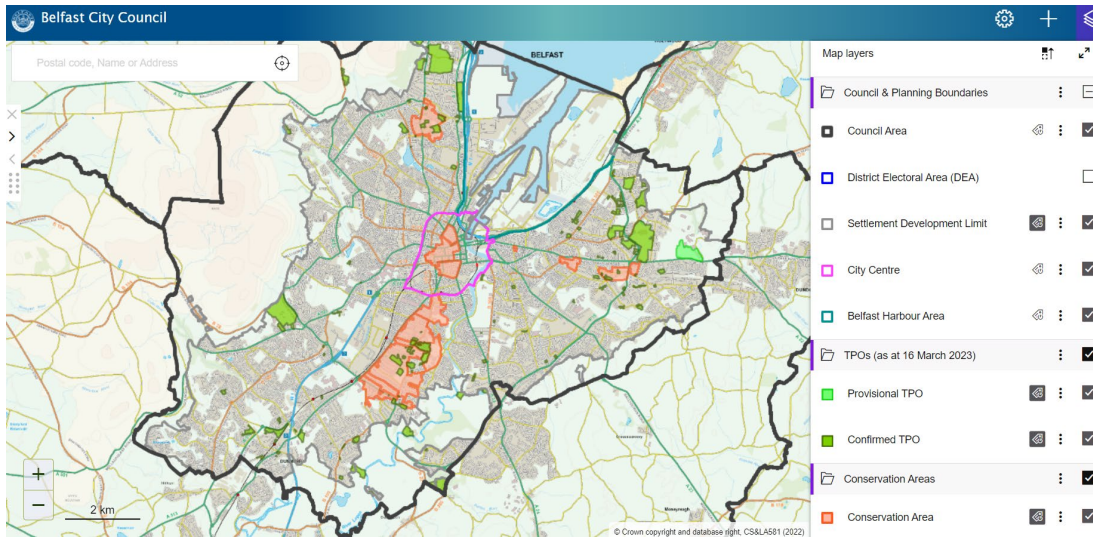
I also made enquiries to establish if councils had mapped the TPOs within their area and what information they make available online. It should be noted that the 2004 Environmental Information Regulations made it a statutory requirement for public authorities to progressively make environmental information that they hold available by electronic means which are easily accessible.³⁹ Accessibility of this information to the public is critical in making sure they are alert to the protections that are in place, both to ensure that they do not carry out unauthorised works and to support the reporting of breaches.

Nine out of the eleven councils have created interactive Geographic Information System (GIS) maps which display the locations of TPOs within their council areas. Six of these nine councils signpost to their maps within the tree preservation sections of their websites however the other three councils do not. Two out of these three councils advised my Office that they do not make their maps available to the public as they are for internal use only. Of the two councils which do not currently have GIS maps, one has advised that it hopes to develop one at some stage this year.

³⁸ It is a requirement under s.242 of the 2011 Act that councils keep a planning register(s). Most of the councils set out how their registers can be accessed within their Statements of Community Involvement.

³⁹ [The Environmental Information Regulations 2004, s.4 \(1\)](#)

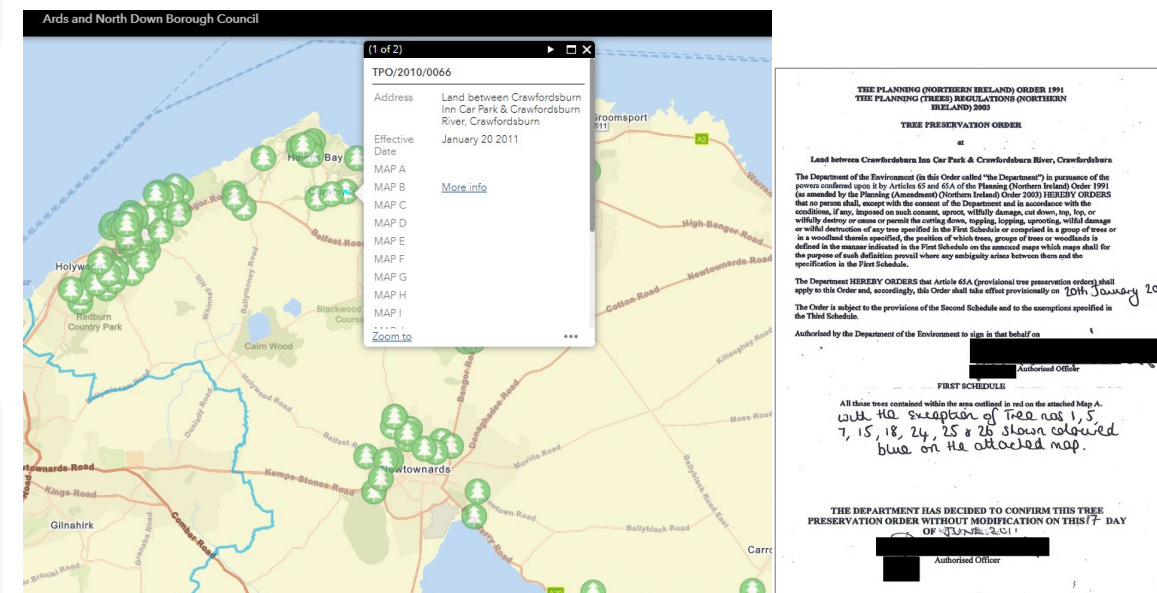
Figure 5: Belfast City Council's GIS Map (accessed 23/05/23)



There is also some variation across the councils in the information which they include within their interactive maps. Whilst all of the maps display the locations of TPOs within the council area, only three also highlight conservation areas.

I note however that only one council's map includes the facility to review the original documentation and maps associated with each TPO. The provision of this documentation online is an example of good practice. I am of the view that it would be beneficial for all councils to electronically map the TPOs within their area and provide online access to the TPO register and associated documentation.

Figure 6: Ards and North Down Borough Council's GIS Map (accessed 20/07/23)

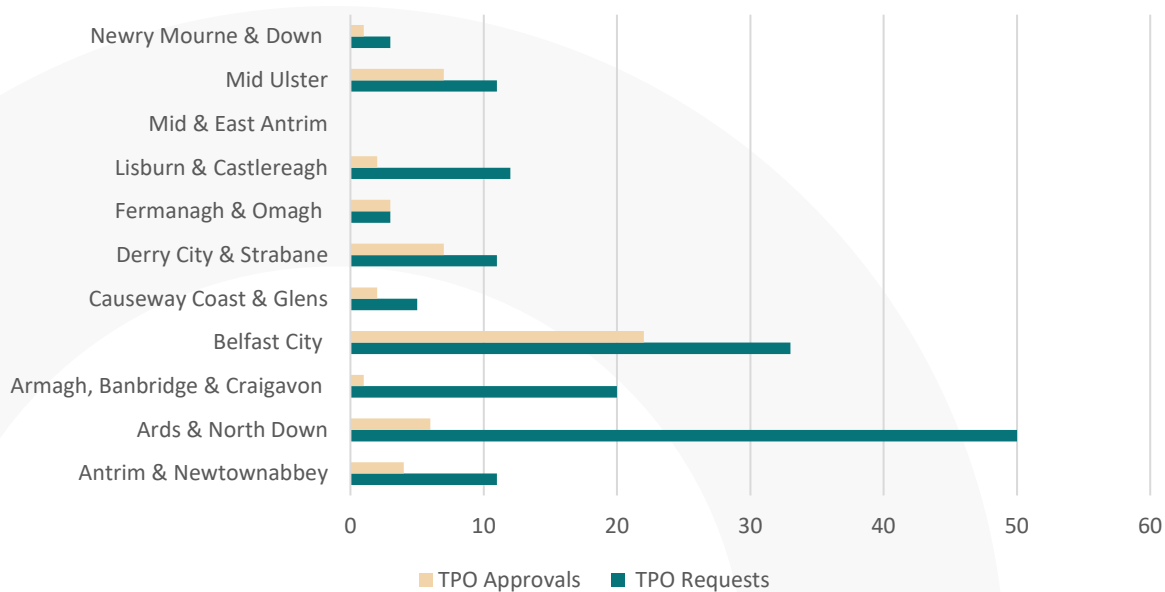


I am further of the view that a regional map may also be beneficial. I have been advised by the Department that it has engaged with the Woodland Trust on this matter. Working with interested parties, the Department as the duty bearer should take the lead in developing a regional map which displays the locations of all TPOs in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

2.2 TPO requests and approval rates across the councils

There is variation across the councils regarding the number of TPO requests which are received; one council reported receiving 50 requests within the last three years whilst another council did not receive any. Differences have also been identified in relation to council approval rates for TPO requests ranging from 10% to 88%. Although variation across the councils is to be expected and not in itself a cause for concern, the level of variation may benefit from having increased scrutiny and guidance at regional level.

Figure 7: Council TPO requests and approvals over a 3-year period during 2019-2022



2.3 Criteria for making TPOs

The 2011 Act provides councils with the power to make TPOs where they feel it is 'in the interests of amenity'. The term 'amenity' is not defined in the legislation and the Department has not provided any recent guidance in relation to how it should be interpreted. The former DOE did however publish a list of criteria for assessing the merits of imposing TPOs as part of its 2011 guidance.⁴⁰

⁴⁰ See [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk), pg.4

Figure 8: Criteria published by the DOE in 2011 for assessing the merits of imposing TPOs

Within their responses to my investigation proposal, most of the councils referred to using this criteria when assessing whether or not to impose TPOs. Whilst the criteria remains valid, I note there is limited guidance provided about the factors to consider under each criterion. It may therefore be beneficial for councils to work together to further develop and document the methodology (including the potential use of valuation software⁴¹) that they use to assist in assessing the 'amenity' value of trees.

I consider that the Department also has an important role to play in providing further guidance for councils in relation to the definition of the term 'amenity' so that an appropriate methodology to assess trees is developed and applied by councils. When responding to the Department's Call for Evidence regarding its Review of the Implementation of the 2011 Planning Act, a number of councils highlighted the need for further guidance from the Department in relation to the term 'amenity'. In its response, the Department committed to considering whether there is a need for it to provide further guidance in relation to 'certain TPO terms'.⁴² The Department has not published any further guidance or provided an update in relation to its progress.

⁴¹ Some of the councils are already familiar with this type of software and methodology. In its 2022 study of Belfast's Urban Forest Belfast City Council, for example, made use of i-tree software & the CAVAT methodology – see [Belfast Technical Report \(treeconomics.co.uk\)](#)

⁴² [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](#), pg.65-66

2.4 Processes for Requesting TPOs

Some of the councils do not provide any information on their websites detailing the processes which should be followed by members of the public who wish to submit requests for TPOs. It is notable that the councils with no information on their websites about how to request a TPO are those which received the lowest number. Other councils do provide information however, in some cases, the detail provided is limited and does not outline the type of evidence which is required to support a request for a TPO. Only one of the councils has the facility for online submission of TPO requests via its own website and it is worth noting that this facility was only recently introduced.

None of the councils currently include any information within the TPO sections of their websites on the use of Northern Ireland's new planning portal for the online submission of TPO requests.⁴³ The new planning portal was launched by the Department in December 2022 and is currently being used by all of the councils apart from Mid Ulster. It has the functionality to accept online requests for TPOs. This development should help to standardise the TPO request process across the councils however it is disappointing that none of the councils have updated their websites to include information in relation to this new process. I would encourage all of the councils to review the content of their websites to ensure that clear and accurate information is being provided in relation to the processes which members of the public can follow when requesting TPOs. All methods for requesting TPOs, including the new online process, should be highlighted.

Councils should also ensure that, as well as dealing with requests from members of the public for TPOs, appropriate consideration is given to the initiation of TPO requests by council officers with responsibilities in this area. A proactive approach should be taken by councils to identifying trees which could benefit from protection and a strategy for identifying appropriate trees could be set out within a council's wider tree strategy.

⁴³ Northern Ireland's new planning portal launched on 5 December 2022. It replaces the old planning portal and is currently being used by 10 out of the 11 councils. Mid Ulster launched its own separate portal in June 2022.

Section 2 Recommendations: Tree Preservation Orders

Recommendation 6: 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.

Recommendation 7: 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.

Recommendation 8: 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.

Recommendation 9: Councils should develop and document the methodology (including the potential use of valuation software) used to assess the 'amenity' value of trees.

Recommendation 10: 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.

Recommendation 11: 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.

Section 3: Applications for Works to Protected Trees

If a tree is protected by a TPO it is necessary to apply to the relevant council or, in certain circumstances, the Department for consent to carry out any felling or pruning work. The council or the Department has a range of options which are:

- grant full permission for the works;
- grant permission subject to conditions; or
- refuse consent.

There are however some exemptions to seeking consent, for example, it is not necessary to seek permission for works to trees which are dead or have become dangerous.⁴⁴ The owner must however ensure they have proof that the tree is dead or dangerous, and it is recommended that they make the relevant planning authority aware of the proposed works prior to them being carried out.

The process is also slightly different for trees located in conservation areas as notice of any proposed works must be served on the council or, in some cases, the Department; if the council or the Department objects to the proposed works, a TPO can be made to protect the tree(s).

I have identified examples of both good practice and concern in this area. This section will set out my observations in respect of:

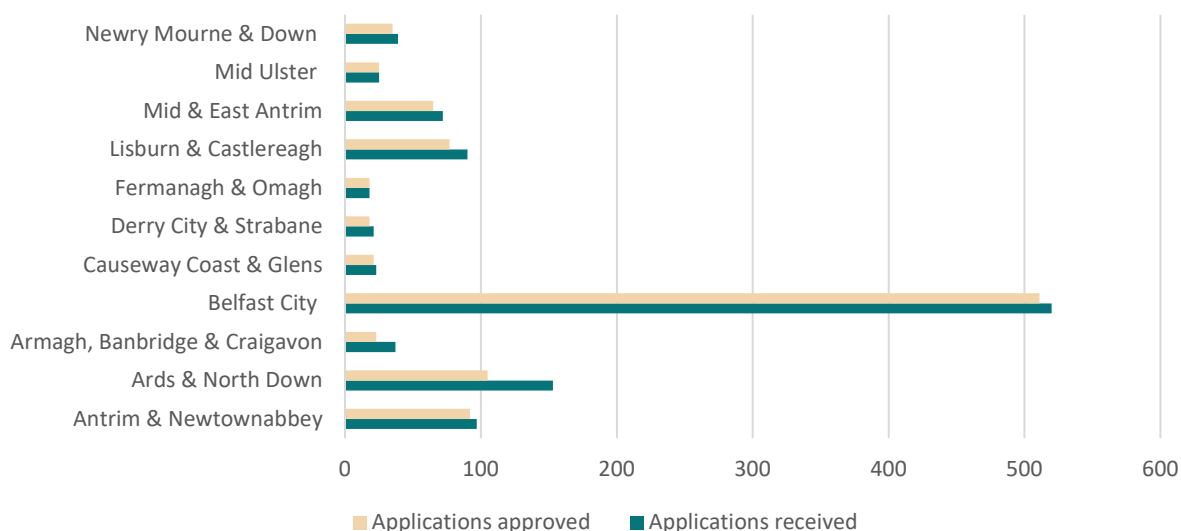
- Level of applications and approval rates across the councils;
- Processes for applying for works to protected trees;
- The use of independent evidence to support applications for works to protected trees; and
- Publication and notification procedures.

3.1 Level of applications and approval rates across the councils

There is variation across the councils in relation to the number of applications for works to protected trees which they are receiving with some councils receiving far greater numbers than others. One council reported receiving 520 applications within the last three years whereas another council received just 18. There is less disparity in relation to approval rates for these applications as these are high across the majority of the councils, ranging from 73% to 100%.

⁴⁴ [Planning Act \(Northern Ireland\) 2011, s.122 \(5\)](#)

Figure 9: Applications for works to protected trees which were received and approved by councils over a three-year period during 2019-2022



The following key trends have been identified from the figures reported by the councils over a three year period during 2019-22:

- **Four councils** reported **approval of all** of their decided applications.
- **Five councils** reported **approval of 90% and over** of their decided applications.
- The remaining **two councils** reported **approval of more than 70%** of their decided applications.
- The **average approval rate** across the councils during this time period was **93%**.

3.2 Processes for applying for works to protected trees

Decision making on works to protected trees is a delegated function⁴⁵ which means that for the most part council officers, and not the planning committee, will grant or refuse the applications. Within the responses to my investigation proposal, the councils provided information in relation to how they process applications for works to protected trees. Further information was also obtained from the council websites. I have identified some concerns about the variation of the level of information made available to the public on the need to apply for works to protected trees and the accessibility of the process.

⁴⁵ 8 councils clearly state within their schemes of delegations that this is a delegated function. The other 3 councils don't directly comment within their schemes of delegation.

Whilst most of the councils provide information on their websites detailing the processes which members of the public should follow when submitting applications for works to protected trees⁴⁶ some councils provide more detail than others. For example, some provide information in relation to the different procedures which apply dependent upon whether a tree is protected by a TPO or located within a conservation area whereas others do not highlight any differences. It is disappointing to note that two councils do not publish any information on their websites in respect of this matter.

Nine of the councils have developed their own application forms which applicants are required to complete when applying to carry out works to protected trees, however only seven councils make these forms available online. Furthermore, only two councils currently have facilities on their websites for online submission. Whilst it is encouraging that these councils have this facility, it is surprising that none of the other councils provide this as an option. It is also notable that only one council website directs applicants to the new planning portal which has the functionality to accept online applications for works to protected trees.

3.3 The use of independent evidence to support applications for works to protected trees

Concerns have also been raised with my Office in relation to councils approving applications for works to protected trees (including the felling of trees) without independent evidence to support the need for the works. Evidence to support an application could include for example, an arboricultural report assessing the health and condition of a tree, if reported to be of risk to the public or surrounding property.

The responses to my investigation proposal indicate that there is variation in the approaches being taken by the councils in this area.

- **Two councils** indicated that they **always require independent evidence** in support of applications for works to protected trees.
- **Two councils** stated that **they require independent evidence in the majority of cases**.
- The remaining **seven councils did not address** this within their responses to my investigation proposal.

⁴⁶ 9 of the 11 councils provide information on their websites in relation to submitting applications for works to protected trees.

A review of the different application forms for works which are currently being used by the councils provides some further insight into the varied approaches being taken.

- **Five** of the application forms list the circumstances in which independent evidence **'must be provided'**.
- **One** application form lists the circumstances in which independent evidence should **'usually'** be provided.
- **One** application form states that independent evidence **'may be requested'**.
- **One** application form states that independent evidence is **'strongly encouraged'**.
- One application form **does not make any reference** to independent evidence.

Whilst the information available indicates that there may be some variation in the approaches councils are taking to the use of independent evidence, it has not been possible to reach any firm conclusions in relation to how the councils are acting in practice. It is my view that the councils need to review and provide clarity in relation to the circumstances in which they require independent evidence to be provided in support of applications for work to protected trees. Councils should also clarify whether the onus to provide independent evidence is always placed on the applicant or whether there are situations in which the councils themselves will obtain their own independent evidence whilst assessing applications.

Given the lack of clarity about the gathering and use of independent evidence to support applications, the high approval rates for works are a matter of concern. In my view, works to protected trees should be fully supported by independent evidence to ensure it is in the wider public interest.

3.4 Publication and notification procedures

PUBLICATION

Whilst I note that there is no statutory requirement to publish pending or concluded applications for works, I would encourage councils to explore the potential of making this information publicly available in an accessible format. It is common practice for local authorities in England to publish applications for works to protected trees via their online planning registers.⁴⁷ This enables members of the public to view copies of application forms, supporting evidence and details of decisions. If local councils published similar information, it might serve to increase transparency around decision making in this area.

⁴⁷ Of a sample of 10 local authorities in England, 9 published applications for works on their online planning registers. It is worth noting that s.12 of the [The Town and Country Planning \(Tree Preservation\)\(England\) Regulations 2012](#) places a duty on local authorities to keep planning registers which include 'details of every application under an order and of the authority's decision'. The former Ministry of Housing, Communities and Local Government published guidance in 2014 which encouraged local authorities to make their registers available online: [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#) (para 77).

I welcome the recent motion⁴⁸ passed by Ards and North Down Council 'for transparency and in response to growing public interest' for regular reports to be made to the Planning Committee to include:

- The number of applications for works to protected trees;
- Whether granted or refused; and
- The basis for the decision making.

Consideration was also to be given by the Council to uploading these details to the planning portal or its website to ensure public access. I note reports have since been submitted to the Planning Committee and are available on the website⁴⁹, however navigating access is difficult. The details do not appear to have been uploaded on the planning portal. The reports also do not outline the basis for the decision made.

I note that none of the other councils publish any details of pending or concluded applications for works to protected trees.

NOTIFICATION

It is also notable that none of the councils have processes in place for notifying local residents of pending applications for works to protected trees. Whilst it is a statutory requirement to notify any affected persons of the making of a TPO, there is no statutory requirement to notify affected persons of proposed works to protected trees.⁵⁰ Councils should explore whether it would be possible to introduce community notification procedures for residents likely to be affected by proposed works to protected trees. In England, whilst there is no statutory notification procedure for proposed works to protected trees, the government has issued guidance which recommends that local authorities consider displaying site notices or notifying affected residents where they are likely to be affected by an application or where there is likely to be significant public interest.⁵¹

Notifying local residents of proposed works which are likely to impact upon them could increase transparency and bolster community engagement in the application process. There has been considerable criticism of the lack of community engagement in Northern Ireland's planning system⁵² and the Department itself has recognised that reform is required.⁵³ The Department potentially has a role to play in producing best practice guidance for councils around notification procedures.

⁴⁸ [Ards & North Down Planning Committee Minutes, 1 March 2022](#)

⁴⁹ [Planning Committee \(06/12/2022\)](#) (ardsandnorthdown.gov.uk), p77-78. [Planning Committee \(07/03/2023\)](#) (ardsandnorthdown.gov.uk), p52-53.

⁵⁰ [s.3 of the 2015 Regulations](#) places an obligation on councils to notify interested persons of the making of a TPO and allow a 28 day period during which objections and representations can be submitted.

⁵¹ [Tree Preservation Orders and trees in conservation areas - GOV.UK](#) (www.gov.uk), para 77.

⁵² In its 2022 report, the Open Government Network was critical of the NI planning system's lack of meaningful engagement with local communities, describing it as a system which 'has evolved to prioritise efficiency and growth above community needs or environmental sustainability' (pg.5) [NIOGN-OLG-REPORT.pdf](#) (opengovernment.org.uk).

⁵³ In its 2022 report, the DFI's Planning Engagement Partnership set out 8 recommendations to enhance the quality and depth of community engagement in both local and regional planning – see [Planning Your Place: Getting Involved - March 2022](#) (infrastructure-ni.gov.uk).

Section 3 Recommendations: Applications for Works to Protected Trees

Recommendation 12: Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.

Recommendation 13: 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.

Recommendation 14: 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.

Recommendation 15: Councils should explore the potential to publish details of applications for works to protected trees in an accessible format.

Recommendation 16: Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.

Recommendation 17: 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).

Section 4: Protected Trees on Council Owned Land

If a protected tree is located on council owned land, this can result in a situation where the council itself is the applicant in a tree works request or suspected of a tree protection breach. It is crucial that cases where the council is in this position are dealt with transparently and that conflicts of interest are avoided or adequately managed. The processes and decision making in these cases must also be perceived as fair to ensure that public confidence is not negatively impacted.

I have identified a number of concerns in respect of:

- Cases in which the council is the applicant in a tree works request; and
- Cases in which the council is suspected of a breach of tree protection.

4.1 Cases in which the council is the applicant in a tree works request

If a council wishes to carry out work to a protected tree on land which it owns, it must seek consent from the Department rather than approving an application for works itself. This is a statutory requirement under Regulation 10 of the Planning General Regulations (Northern Ireland) 2015 which states that councils cannot seek consent from themselves.⁵⁴

The responses to my investigation proposal highlighted that there is variation across the councils in relation to their awareness and interpretation of Regulation 10. Whilst some councils do appear to be aware of the need to refer, others seem to have been either unaware of or not applying Regulation 10 correctly.

- **One council does not appear to be aware of Regulation 10** and advised that it refers applications for works to protected trees on council owned land to its own senior officers or the Planning Committee.
- **Two councils** were aware of Regulation 10 but their responses to my proposal indicate that they are **not applying it correctly in practice**. One of these councils incorrectly referred to the fact that Regulation 10 only applies if a protected tree is located within a conservation area.
- **Six councils** do seem to have the **correct understanding** of the implications of Regulation 10. However, it is notable that one council stated that it only recently became aware of Regulation 10 when the Department highlighted it in connection with a high-profile case in which the council was seeking to remove a number of trees within a conservation area on council owned land.
- **Two councils did not address the approach** which they take to Regulation 10 within their responses to my investigation proposal.

⁵⁴ Regulation 10 states - *Where an interested council is seeking a consent of a council under Parts 3, 4 (except chapters 1 and 2 of that Part) or 5 (except sections 157 to 163) of the 2011 Act other than planning permission to develop land or a consent to display an advertisement pursuant to regulations made under section 130 and that council is itself the council by whom such consent would be given, it shall make an application for such consent to the Department.* [The Planning General Regulations \(Northern Ireland\) 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

This variation in council approaches is concerning and supports the need for the Department to provide clarity. It further demonstrates the importance, as outlined in [Section 1](#), of having clear procedural guidance that underpins the legislative framework. The Department should work with the councils on developing clear procedural guidance in relation to the processes which councils should follow when they wish to carry out works to protected trees on their own land.

4.2 Cases in which the council is suspected of a breach of tree protection

The councils were also asked to clarify whether they followed any different processes if the council itself was suspected of involvement in a tree protection breach. Whilst a number of the councils did not clearly address this within their responses to my investigation proposal, amongst those that did, the majority referred to following the same processes regardless of who was suspected of the breach. Only two of the councils made reference to referring enforcement cases involving the council to the Department.

- **Six councils** stated that they **follow the same processes** regardless of who is suspected of the breach.
- **Two councils** made reference to **referring these cases to the Department** however it was notable that only one of these councils indicated that this was common practice; the other council suggested that referral to the Department was optional.
- **Three councils did not clearly address** this issue within their responses.

Whilst there is no statutory requirement for enforcement cases involving the councils to be referred to the Department, I recognise and support the introduction of a mechanism to investigate these cases to manage potential conflicts of interest, whether real or perceived. I consider that there is a need for the Department to explore with the councils how best independent investigation of a reported or suspected breach by councils of tree preservation could be achieved. There is also the need for the Department to consider and set out the procedures to be followed where the Department is suspected of a breach, and how to introduce a mechanism to manage conflict of interests in such circumstances.

Section 4 Recommendations: Protected Trees on Council Owned Land

Recommendation 18: 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.

Recommendation 19: 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.

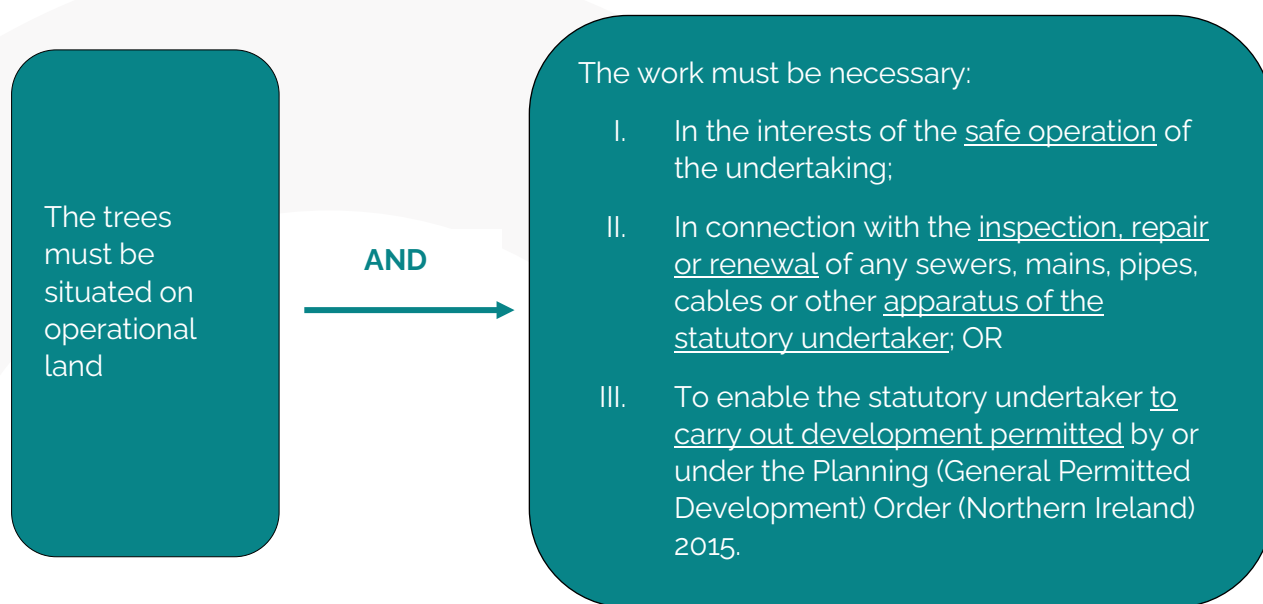
Section 5: Statutory Undertakers

Statutory undertakers are bodies and organisations which have been given statutory powers to carry out certain public functions. Examples include transport providers and utility companies.⁵⁵ Concerns have been raised with my Office in relation to statutory undertakers removing protected trees and the oversight of their actions.

5.1 Statutory undertakers: the legislation

There are legislative provisions which enable statutory undertakers to remove protected trees without consent in certain circumstances. Schedule 3 of the 2015 Regulations enables statutory undertakers to carry out works to protected trees without council consent in specific circumstances. The trees must be situated on operational land and the work must be necessary for either safety reasons, in connection with the inspection, repair or renewal of apparatus or to enable a statutory undertaker to carry out permitted development.⁵⁶

Figure 10: The circumstances in which statutory undertakers can carry out work to protected trees without consent



⁵⁵ s.250 of the 2011 Planning Act provides a definition of a statutory undertaker - [Planning Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#)

⁵⁶ [2015 Regulations – Sch 3, s.2\(b\) \(i\)-\(iii\)](#)

Whilst the legislative framework sets out the circumstances in which statutory bodies can act, I am concerned there may be a lack of guidance between statutory undertakers and planning authorities to underpin this important area. I consider that effective engagement in this matter is critical as the work carried out by statutory undertakers is often significant in scale with the potential to adversely impact on the biodiversity of an area and public confidence. For example, it was reported that Translink proposed to remove 141 trees, including some protected trees, at Carnalea train station, Bangor for safety reasons.⁵⁷ There is therefore an onus on public bodies to examine and consult on how they can best carry out work which may necessitate the removal of trees and how any harmful impact may be mitigated.

5.2 Guidance and monitoring

I note that the Department has not issued any guidance for statutory undertakers in relation to how the Schedule 3 exemptions should be interpreted. Whilst I recognise that there are situations in which statutory undertakers are justified in removing protected trees, I consider that there is a need for direction from the Department in relation to best practice in this area. It is notable that guidance has been issued in other jurisdictions. In England, the former Ministry of Housing, Communities and Local Government included guidance on exceptions for tree works carried out by statutory undertakers within its 2014 guidance document on tree protection. This guidance is fairly brief but it does advise statutory undertakers to liaise with local authorities prior to carrying out any work to protected trees.⁵⁸

The Department should also consider whether it could play a role in the oversight and monitoring of the activities of statutory undertakers in relation to the removal of protected trees across the region.

5.3 Engagement and co-operation

Councils also have a role to play in ensuring that they engage with statutory undertakers in relation to tree protection issues. It is unclear to what extent engagement and co-operation takes place, in particular where a statutory undertaker considers consent is not required for works, and I would encourage the councils and statutory undertakers to consider how it can be better facilitated. I welcome the fact that Belfast City Council has set out a number of actions aimed at increasing co-operation with utilities providers within its tree strategy. The actions put forward include the setting up of engagement workshops, the provision of training and the implementation of a tree charter.⁵⁹ This type of co-operation is to be encouraged as it provides councils with a good opportunity to promote the importance of tree protection to statutory undertakers.

⁵⁷ [Reaction to the removal of 141 trees in Carnalea \(greenparty.org\)](https://www.greenparty.org.uk/news/2018/04/11/141-trees-removed-in-bangor)

⁵⁸ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304843/Tree_Preservation_Orders_and_trees_in_conservation_areas.pdf) – para 85

⁵⁹ [Belfast City Council Tree Strategy - Utilities Cooperation](#)

Section 5 Recommendations: Statutory Undertakers

Recommendation 20: 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.

Recommendation 21: Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.

Section 6: Enforcement Activity

Planning authorities have a duty to investigate reports of alleged breaches of planning control and take formal enforcement action where it is appropriate to do so. Under the 2011 Act, local councils have primary responsibility for planning enforcement within their council areas. The Department retains certain reserve enforcement powers and is also responsible for monitoring the performance of the councils.

It is important to note that the powers available to planning authorities to take enforcement action are discretionary, and where a breach is established, the authority must consider whether it is 'expedient' to take formal action. Whilst 'expediency' in planning is not defined, the concept is described within departmental guidance as a test of whether the activity is '*causing unacceptable harm to the environment and/or public amenity, having regards to the provisions of the local development plan and to any other material considerations*'.⁶⁰

Taking enforcement action which is proportionate to the seriousness of the breach, including the extent of the harm caused, is central to the effectiveness and credibility of the planning system. Whilst planning enforcement is intended to be remedial rather than punitive, it is critical that it is robust in its response and that the interests of the environment and the public are not marginalised. It is also important to highlight that unlike some other breaches of planning control, where unauthorised works to protected trees are carried out, including removal, it is not possible for the breach to be fully rectified.

It is of note that over recent years, a number of local authorities in Great Britain, have pursued significant prosecutorial action in respect of breaches of tree protection. This has included considering how the offenders (landowners and contractors) benefited from the proceeds of the crime, as well as the harm caused by the planning breach.⁶¹ In contrast if enforcement is not taken seriously by local councils, or is perceived as not being taken seriously, both the effectiveness and public confidence in the planning system is undermined.

Concerns were raised with my Office that local councils appear to be reluctant to take enforcement action where tree protection breaches have been identified. I requested that all eleven councils provide relevant data on the action taken over a three year period in respect of reported tree protection breaches. This section will set out my observations and recommendations in respect of:

- Council enforcement powers in tree protection cases;
- Recent trends in tree protection enforcement cases;
- Cases closed as 'Not Expedient';
- Council enforcement strategies and procedures; and
- Monitoring of Tree Protection Enforcement Activity by the Department.

⁶⁰ [Enforcement Practice Note 1 Introduction to Planning Enforcement \(infrastructure-ni.gov.uk\)](#)

⁶¹ See [Landowner and contractor fined £255,000 for tree destruction | Enfield Council](#) and [Homeowner Fined Under Proceeds Of Crime Act For Cutting Back Tree - Timms Solicitors \(timms-law.com\)](#)

6.1 Council enforcement powers in tree protection cases

The councils have various strong enforcement powers available to them under the 2011 Act and this section will briefly outline the main enforcement powers which can be used in tree protection cases.⁶²

TPOs

Councils can pursue prosecutions against individuals found to be in breach of TPOs. Contravention of a TPO by undertaking unauthorised works is identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence which is punishable by a fine of up to £100,000 on summary conviction or an unlimited fine on indictment.

Councils also have the responsibility to enforce measures, subject to a TPO, for the landowner to replace trees by planting a tree or trees of a specified size and species. Where this is not complied with within the specified period, councils have the power to enter onto land to replant trees subject of the TPO and recover costs.

CONSERVATION AREA PROTECTION

Councils can also pursue prosecutions for breaches of conservation area protections. Breach of a conservation area protection by undertaking unauthorised works is also identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence punishable by the same penalties which apply to TPO breaches.

Councils also have the responsibility to serve a notice on a landowner to replant a tree or trees of an appropriate size and species in the same space in a conservation area.

PLANNING CONDITIONS

Breach of a planning condition which protects trees is not a criminal offence in itself. If a breach has been identified, a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice is a criminal offence which is punishable by a fine of up to £1000 on summary conviction.

6.2 Recent trends in tree protection enforcement cases

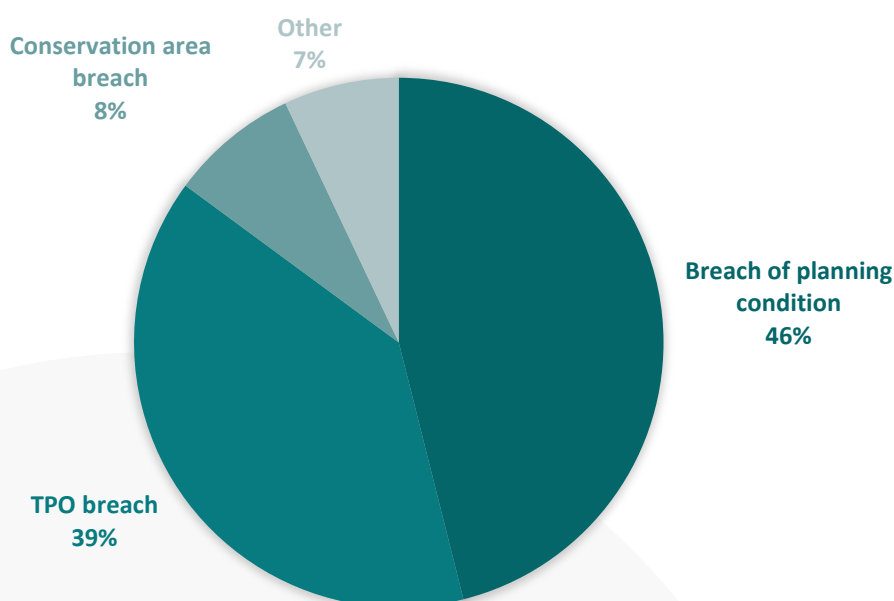
The responses to my investigation proposal highlighted a number of trends in relation to the type and outcome of tree protection enforcement cases which were reported to the councils over a three year period, during 2019-2022. It should be noted that this data is not available centrally and had to be collated from each of the councils individually.

⁶² [Planning Act \(Northern Ireland\) 2011, s.126, 127, 152, 164, 166 & 167](#)

TYPES OF CASES

From the data provided to my Office, it was identified that 369 tree protection breaches were reported to the councils over the three year period. The most commonly reported breaches were in relation to alleged contraventions of planning conditions with 170 reported in total. 144 of the cases which were reported related to alleged breaches of TPOs and 29 were in relation to alleged breaches of conservation area protections.

Figure 11: Breakdown of type of tree protection cases opened by councils over the three-year period during 2019-2022



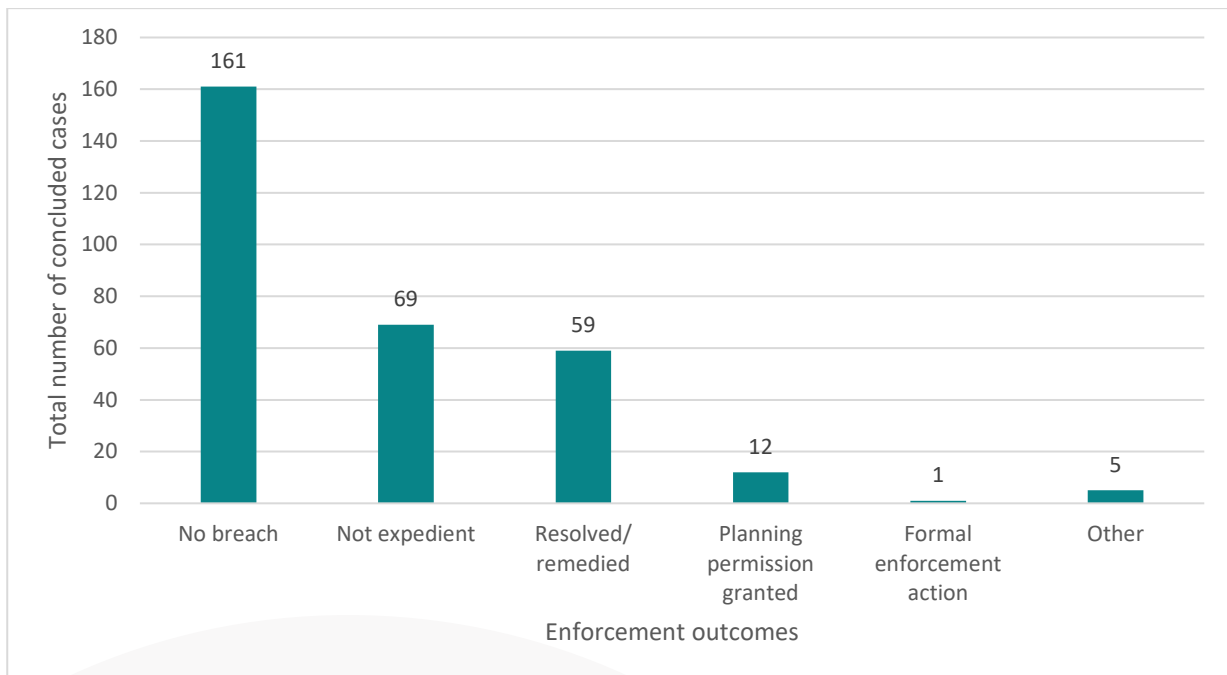
OUTCOMES

The most frequently reported outcome in tree protection enforcement cases was a finding of no breach which was reported in 52% of cases. The second most common outcome which was reported in 22% of cases was a conclusion that it would not be 'expedient' to investigate the alleged breach any further. This was followed closely by 18% of cases which were classified as remedied or resolved.

Formal enforcement action⁶³ was only reported to have been taken in one case (a breach of condition notice was issued) and none of the councils have pursued any prosecutions within a three year period. The fact that only one council has taken formal enforcement action has the potential to support concerns about the approach of councils in this area, however this cannot be determined without review of the casework.

⁶³ The issuing of an Enforcement Notice or the service of a Breach of Conditions Notice. Failure to comply with either constitutes an offence.

Figure 12: Breakdown of council enforcement outcomes in tree protection cases over a three-year period during 2019-2022



6.3 Cases closed as 'Not Expedient'

When considering the overall outcome trends, it is worth noting that nearly one fifth of the overall number of tree protection cases were closed as 'not expedient', with percentage variation between the type of breaches reported.

Over a three year period:

- 15% of reported planning conditions breaches;
- 22% of reported TPO breaches; and
- 42% of reported conservation area breaches resulted in a 'not expedient' outcome.

This area is of particular interest, as having determined this category of outcome, it is indicative the council has established a breach but having applied the expediency test has decided not to take further action. The level of tree protection cases determined as 'not expedient' appears to sit somewhat at odds with the priority outwardly stated by councils to be given to the protection of trees. I consider that it would be valuable for the Department and councils to examine the recorded considerations and develop an analysis of whether the reasoning is in keeping with best practice in enforcement guidance and council priorities.



Furthermore, given the 'direct offence' nature of TPO and conservation area breaches, it would be useful to establish the extent to which 'expediency' should be applied and whether there are repeat issues that could be identified and acted upon. For example, whether the maintenance of records including identifying that orders had not been confirmed by the DOE (as outlined in [Section 2](#)), or a potential lack of public knowledge about the processes to apply for works to trees (as outlined in [Section 3](#)) are repeat factors.

I also consider that it would be valuable to include analysis of the small number of 'other' outcomes, in which various descriptions of outcomes were presented. It was concerning that in one reported TPO breach, the closure category of 'immune' was used when this is not an outcome that is applicable to a 'direct offence'.

There is also a notable variation across the councils in relation to the proportion of cases with the outcome 'not expedient'. One council reached this outcome in 38% of its cases whereas 3 others reported a significantly smaller proportion of 'not expedient' outcomes at just 12%. Given this level of variation I recommend that when examining the recorded reasoning and overall analysis for 'not expedient' outcomes, that the Department and councils consider whether there are differences in council approaches to apply the expediency test.

The analysis of 'not expedient' and 'other' outcomes in reported breaches of tree protection cases may also contribute to work recommended by the NIAO in the area of planning enforcement. Within its 2022 review of planning in Northern Ireland, the NIAO examined overall trends in all enforcement cases across Northern Ireland between 2015-2020.⁶⁴ It noted a substantial variation in percentages of outcome type across councils (including non-expedient cases) and recommended that the Department and the councils carry out further investigations to ensure that enforcement cases are being processed consistently in Northern Ireland.

6.4 Council enforcement strategies and procedures

As outlined in [Section 1](#), all councils have planning enforcement strategies in place and have the autonomy to set local priorities. In addition to identifying areas of concern from the data provided on enforcement activity, I note several issues that require further consideration in respect of council enforcement strategies and procedures, specific to tree protection and wider enforcement policy and practice.

FACTORS TO BE TAKEN INTO ACCOUNT WHEN ASSESSING EXPEDIENCY

Expediency is a key concept within planning enforcement as councils only take enforcement action when they consider that it is expedient to do so. Within the enforcement strategies reviewed by my Office, it is noted that some of the councils refer to factors taken into account when assessing expediency, whereas others do not. I would encourage all councils to review their strategies to ensure clear information is provided on the expediency test, including the range of factors taken into account when assessing whether or not to take enforcement action.

⁶⁴ [NIAO Report - Planning in NI.pdf \(niauditoffice.gov.uk\), p.32-34](#)

SIGN OFF PROCEDURES FOR 'NOT EXPEDIENT' DECISIONS

None of the councils include any detail within their enforcement strategies in relation to their sign off procedures for 'not expedient' decisions. It is not clear if senior or other verifying council officers are involved in signing off or reviewing these decisions. Given the level of discretion in this area, I would encourage all councils to consider whether there is sufficient oversight of 'not expedient' decisions within their strategies and procedures.

Although not specific to breaches of tree protection, it is of note that I reported earlier this year on an enforcement planning case in which I found that the council did not document full and accurate reasons on why it did not consider it expedient to take enforcement action which I considered was maladministration.⁶⁵

TREE SPECIFIC ENFORCEMENT POLICIES

The local council enforcement strategies are broad in scope and cover all areas of planning enforcement. I note that some local authorities in England have implemented enforcement policies specific to tree protection to supplement the main council planning enforcement strategy and I would encourage local councils to consider whether it may be beneficial to implement similar policies.

REPORTING TREE PROTECTION BREACHES

Despite having these significant enforcement powers to protect trees, I note that only five of the councils reference within their tree preservation sections that it is a criminal offence to carry out works to protected trees without consent, whereas others do not make any reference to the consequences of breaches. Furthermore, none of the councils publish any information within the tree preservation sections of their websites regarding the processes which members of the public should follow when reporting suspected tree protection breaches. Whilst most of the councils do publish information in relation to the reporting of general planning breaches within the planning enforcement sections of their websites, I consider that it is important to also include or signpost this information within the tree preservation sections of their websites.

I also note that the new planning portal has the functionality to accept online planning enforcement complaints⁶⁶ and some councils do refer to this within the planning enforcement sections of their websites. I would encourage all of the councils to ensure that they highlight or signpost this functionality within the tree preservation sections of their websites.

⁶⁵ [NIPSO s44 Investigation Report ref 202002188 – 30 March 2023](#)

⁶⁶ [Northern Ireland Public Register \(planningsystemni.gov.uk\)](#)

6.5 Monitoring of Tree Protection Enforcement Activity by the Department

As part of its oversight and monitoring role, the Department currently publishes quarterly and annual statistical bulletins which contain data in relation to a number of aspects of planning including the following data on enforcement cases⁶⁷:

- The number of enforcement cases opened by councils;
- The number of enforcement cases closed by councils;
- The number of enforcement cases concluded by councils;
- Enforcement case conclusion times;
- The percentage of enforcement cases closed by councils within 39 weeks; and
- The number of court actions taken by councils (including a breakdown of prosecutions and convictions).

This data is broken down by council area and, whilst it is useful for identifying broad overall trends, it is limited by the fact that it is not broken down by types of enforcement case. The Department do not collate or publish enforcement data which is specific to tree protection cases. I note that an Assembly Question seeking to establish regional enforcement figures on reported tree protection breaches was not answered, as the figures were available only at council level.⁶⁸

The Department should consider routinely collating and publishing enforcement data which is specific to tree protection cases. As well as making it easier for the Department to carry out its monitoring role, the availability of this data may also serve to increase public confidence that enforcement in this area is being taken seriously.

⁶⁷ [Planning activity statistics | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

⁶⁸ See AQW6798/12-22 - [Written Questions Search Results \(niassembly.gov.uk\)](#)

Section 6 Recommendations: Enforcement Activity

Recommendation 22: 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.

Recommendation 23: 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.

Recommendation 24: Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.

Recommendation 25: 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.

Recommendation 26: The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.



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