

Useful contacts

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*Basingstoke
and Deane*

Guide to tree preservation orders and compensation

Claims for compensation for loss or damage caused by the refusal or granting of consent subject to conditions in relation to a tree preservation order application

Introduction

Section 203 of the Town and Country Planning Act 1990 provides that a tree preservation order may make provision for the payment of compensation in respect of loss or damage caused by the refusal of consent or the granting of consent subject to conditions.

The courts and the Lands Tribunal have made clear that for compensation to be payable, the following general principles should apply: -

- the item must be the natural or probable consequence of the relevant decision;
- within the contemplation of the authority of the Secretary of State at the time of making that decision;
- quantifiable in money terms; and
- not too remote

The amount of compensation will generally be equal to the amount of the loss and account will be taken of any previous compensation claimed. The following are examples of some compensation claims that led to disputed Land Tribunal cases. Please note that this is not an exhaustive list.

- **The costs of making an appeal** against the local planning authority's refusal or granting consent subject to conditions may be payable. In the event that the appeal decision overturns the local planning authority's decision, no claim can be made.
- **The loss of land value**, which could apply to forestry or development land.
- **The loss of value of trees as timber**
- **Damage to buildings**, in particular subsidence damage. No claim can be made for damage that occurred before the local authority's decision was issued since the need for that work does not arise as a result of the decision. In calculating an award, allowance has to be made for the cost of the work that would have had to be carried out if the tree works had been allowed.
- **The additional costs of carrying out permitted works**, for example by being required to use an Arboricultural Association approved tree work contractor.

Any claim for compensation must be made in writing to the local planning authority within 12 months of the date of the local authority's or the Secretary of State's decision (in the event of an appeal). The terms of what compensation can be claimed will depend on when the tree preservation order affecting your property was served. Each tree preservation order contains the provisions of the extent of any eligibility and the procedure for claiming compensation so it is important to check the order that relates to your property.

There are no rights to compensation for any loss or damage suffered after submitting a six week 'Notice of Intent' to carry out work to trees growing in a conservation area.

Tree preservation orders served before 2 August 1999

Entitlement to claim compensation does not apply if an 'article 5' or 'special amenity' certificate was issued with the decision. The effect of an article 5 certificate is to remove the local planning authority's liability to pay compensation for any loss or damage that arose from their decision. Such certificates should only have been used where the local planning authority was satisfied that the decision was in the interests of good forestry or if the tree, group of trees or woodland in question was of special or outstanding amenity value.

Tree preservation orders served on or after the 2 August 1999

The principal change is that there is no longer an entitlement for the local planning authority to serve an Article 5 certificate. However the entitlement to claim compensation is significantly more limited. The general rule remains that there is an entitlement to claim compensation from the local planning authority for any loss or damage suffered as a result of refusing consent or granting consent subject to conditions.

No compensation is payable for: -

- any claim less than £500;
- any loss of development value or other diminution of the land;
- any item that was reasonably foreseeable on the basis of the documents submitted with the application;
- any loss caused as a result of the claimants failure to take reasonable steps to mitigate the problem (although it has not been defined what constitutes a 'reasonable step'); and
- costs of appealing against the local planning authority's decision.

Forestry operations

Forestry operations are now subject to one compensation scheme under section 11 of the Forestry Act 1967. Generally, the rules are the same as those relating to the Forestry Commission for the refusal of a felling licence. A claim can only be made by the land owner (as defined in s34, Forestry Act 1967). Compensation is not available for the imposition of conditions relating to forestry operations. However, in practice any consent is likely to be subject to a restocking direction and these are dealt with under section 204 of the Town and Country Planning Act 1990.

**IF YOU ARE IN DOUBT, YOU SHOULD SEEK INDEPENDENT
LEGAL ADVICE**