

## LEAGUE CRICKET CONFERENCE LEGAL UPDATE Autumn 2009

This quarter's theme concerns Trees. Trees are a feature of many cricket grounds. However are Clubs aware of the Regulations which attach to many Trees when it comes to cutting down, topping and lopping?

There are TWO important jurisdictions, each of which are covered in the Quarterly Firstly Trees or Woodland which are the subject of a Tree Preservation Order (TPO)

1.1 The effect of a TPO is to prohibit the cutting down, uprooting, topping, lopping, wilful damage, wilful destruction or cutting of roots, without the Local Authority Consent.

1.2 Each Local Authority (LA) employ a Tree Officer;

1.3 A TPO can be made if in the opinion of the LA it is "expedient in the interests of amenity to make provision for the preservation of trees or woodland"

1.4 The procedure (in brief) for a TPO is that the LA drafts an Order defining the individual tree or group of trees or woodland , and serves this Order with a "Regulation 3 Notice" on the Landowner (ie the Cricket Club) explaining the reasons for making the Order. The land owner must be advised in the Notice that he/she has 28 days in which to respond. Once the Response Period has elapsed, the LA may confirm the TPO or vary its terms and communicate its decision to the Landowner.

1.5 There are Rights of Appeal to the High Court against the Confirmation of a TPO; application must be made within 6 weeks of the Confirmation. Once the TPO is made, it will be registered as a Local Land Charge in the LA Register of the Land

1.6 A Land Owner does not need LA Consent for the activities at 1.1 where: The cutting down or carrying out works on Tree(s) which are dead or dying or become dangerous. However the Land Owner is required to plant a replacement tree in the same place. A Cricket Club in this position however should before doing anything contact the LA Tree Officer giving them at least 5 days notice and should accompany their Notice with an Arborist's Report. The cutting down or carrying out works to abate an Actionable Nuisance- here is a scenario of where the Tree the subject of the TPO is planted on neighbouring land and the branches extend onto the Cricket Club's Ground. The Club, provided it can show that the overhanging branches are causing or there is an immediate risk of their causing "actual foreseeable damage" to its land or persons lawfully on their ground, is entitled to cut the branches which overhang on to its land, provided it returns the branches and any produce

growing from it to the neighbouring owner.

1.7 Otherwise where LA Consent is needed, an application must be made in writing, stating the works to be carried out to the Tree(s) the subject of the TPO, identifying the tree(s) on a Plan and the reasons for the application. The LA will consider "the Amenity Value" of the Tree(s)- the higher the amenity value of the Tree(s) the more stringent the LA are likely to be in deciding whether to give Consent to Proposed Works. The LA can either give consent unconditionally, give consent subject to conditions (such as requiring replacement Tree(s) to be planted or refuse the application. There is a Right of Appeal to the Secretary of State in the last two cases within 28 days of receipt of the LA decision.

Secondly, Trees located on Cricket Grounds which come within a Conservation Area This is likely to affect many more Cricket Clubs than a TPO.

2.1 Conservation Areas are areas of special architectural or historic interest, the character or appearance of which is desirable to preserve or enhance The LA keeps a record of Conservation Areas and it will be registered as a Local Land Charge in the LA Register of every piece of Land within the Conservation Area

2.2 Trees in Conservation Areas are given special protection, which is virtually equivalent to being the subject of TPO in its own right

2.3 A Land Owner (Cricket Club with its own ground) in a Conservation Area which wishes to cut down or carry out any work on a Tree is required to give its LA, 6 (SIX) WEEKS prior notice, called a Section 211 Notice. The purpose is to give the LA chance to consider whether to make the Tree(s) a TPO

2.4 Exemptions from having to give a Section 211 Notice broadly follow that as stated in 1.6 on page 1, but with one important addition namely o Work on a Tree with a diameter not exceeding 75millimeters (or 100mm if the purpose is to cut down trees to improve the growth of others-"thinning")

2.5 The LA cannot give Consent for Intended Works under a Section 211 Notice- its purpose is for the LA to decide whether to make a TPO against the Tree(s) in question, based on its Amenity Value

2.6 If a tree in a Conservation Area is removed, uprooted or destroyed, and a Section 211 Notice has not been served the Landowner is under a duty to replace the Tree with one of the appropriate size and specie- likewise if a Tree is removed because it is dead or dying or dangerous or it is causing a Nuisance

### 3. PENALTIES

3.1 Please remember that a Cricket Club is not a Legal Entity in its own right. Where Liability exists, it is the Officers of the Club who are primarily liable in their own names.

3.2 Anyone who in contravention of a TPO " cuts down uproots or wilfully destroys a Tree in a way that is likely to destroy it" is guilty of a Criminal Offence, punishable with a Fine of up to £20,000.00 (TWENTY THOUSAND POUNDS)

3. Anyone who lops a tree in contravention of a TPO but in a way that is NOT likely to destroy the Tree is guilty of a Criminal Offence punishable by a Fine of up to £2,500 (TWO THOUSAND FIVE HUNDRED POUNDS) NB; LA has 6 months from the date of the offence to bring a Prosecution

4. Anyone who " cuts down uproots or wilfully destroys a Tree in a way that is likely to destroy it" where the Tree is in a Conservation Area, without having first served a Section 211 Notice on the LA is guilty of a Criminal Offence, punishable with a Fine of up to £20,000.00 (TWENTY THOUSAND POUNDS)

5. Anyone who lops a tree but in a way that is NOT likely to destroy the Tree, without having first served a Section 211 Notice on the LA, is guilty of a Criminal Offence punishable by a Fine of up to £2,500 (TWO THOUSAND FIVE HUNDRED POUNDS)

#### A GUIDE IN GOOD PRACTICE

1. Any Land-Owner of a significant area of land, such as a Cricket Club with its ground, should have a Local Authority Search carried out to check whether there are any Local Land Charges registered against their Land. The cost varies around the country, but can be expected to be around £150 to £200 as it will be deemed to be a Search of Non Residential Land. If your Ground is within a Conservation Area or has Tree(s) the subject of a TPO, these will be revealed as Local Land Charges

2. Where a Search reveals that the ground is not within a Conservation Area nor has any Tree(s) or Woodland, the subject of a TPO, then no immediate worries exist.

3. Where a Search reveals that the ground is within a Conservation Area and or has Tree(s) the subject of a TPO, then awareness of what a Club should and should not do, is paramount. Arranging a Meeting with the Council's Tree Officer and Conservation Area Officer is important to agree a Management Policy. Risk Assessment with Trees and Woodland is as vital as it is in terms of Ground and Pavilion Safety. Clubs may seek guidance of an Arborist or Horticulturalist in extreme cases.

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