

T R E E P R E S E R V A T I O N O R D E R

TOWN AND COUNTRY PLANNING ACT, 1971

WETHERBY RURAL DISTRICT (BARDSEY)

TREE PRESERVATION ORDER NO. 6 1972

The County Council of the West Riding of Yorkshire (in this Order called "the authority") in pursuance of the powers conferred in that behalf by Sections 60 and 61 of the Town and Country Planning Act, 1971 and subject to the provisions of the Forestry Act, 1967, hereby makes the following order:-

1. In this Order

"the Act" means the Town and Country Planning Act, 1971;

"owner" means the owner in fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years; lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more; and a mortgage in possession, and "the Secretary of State" means the Secretary of State for the Environment.

2. Subject to the provisions of this Order and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the authority and in accordance with the conditions, if any, imposed on such consent, cut down, top lop or wilfully destroy or cause or permit the cutting down, topping, lopping or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or area of trees or in a woodland therein specified, the position of which trees, group of trees, areas of trees and woodlands is defined in the manner indicated in the said First Schedule on the map annexed hereto which map shall, for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

NOTE: If it is desired to fell any of the trees included in this Order whether included as trees, areas of trees, groups of trees or woodlands and the trees are trees for the felling of which a licence is required under the Forestry Act, 1967, application should be made not to the authority for consent under this Order but to the Conservator of Forests for a licence under that Act (Section 15 (5)).

3. An application for consent made to the authority under Article 2 of this Order shall be in writing stating the reasons for making the application, and shall by reference if necessary to a plan specify the trees to which the application relates, and the operations for the carrying out of which consent is required.

4. (1) Where an application for consent is made to the authority under this Order, the authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof), as the authority may think fit, or may refuse consent:

Provided that where the application relates to any woodland specified in the First Schedule to this Order the authority shall grant consent so far as accords with the principles of good forestry, except where, in the opinion of the authority, it is necessary in the interest of amenity to maintain the special character of the woodland or the woodland character of the area, and shall not impose conditions on such consent requiring replacement or replanting.

(2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of the application, the decision of the authority thereon, any compensation awarded in consequence of such decision and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

5. Where the authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied:

- (a) that the refusal or condition is in the interests of good forestry; or
- (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

6. (1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless:--

- (a) such consent is granted for the purpose of enabling development to be carried out in accordance with a permission to develop land under Part III of the Act, or
- (b) the authority with the approval of the Secretary of State dispense with replanting

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where such a direction is given and the part is felled the owner shall, subject to the provision of this Order and section 62 of the Act, replant the said land in accordance with the direction.

(2) Any direction given under paragraph (1) of this Article may include requirements as to:-

- (a) species;
- (b) number of trees per acre;
- (c) the erection and maintenance of fencing necessary for protection of the replanting;
- (d) the preparation of ground, draining, removal of brushwood, lop and top; and
- (e) protective measures against fire

7. On imposing any condition requiring the replacement of any tree under Article 4 of the Order, or on giving a direction under Article 6 of this Order with respect of the replanting of woodlands, the authority shall if such condition or direction relates to land in respect of which byelaws made by a river authority, a drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment Board restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any such condition or direction has effect subject to the requirements of the river authority, drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment Board under those byelaws and the condition or direction shall have effect accordingly.

8. The provisions set out in the Third Schedule to this Order, being provisions of Part III and Section 164 of the Act adapted and modified for the purposes of this Order, shall apply in relation thereto.

9. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the authority within the time and in the manner prescribed by this Order, be entitled to recover from the authority compensation in respect of such loss or damage:

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any trees the subject of a certificate in accordance with Article 5 of this Order.

10. In assessing compensation payable under the last preceding Article account shall be taken of:

- (a) any compensation or contribution which has been paid whether to the claimant or any other person, in respect of the same trees under the terms of this or any other Tree Preservation Order under section 60 of the Act or under the terms of any Interim Preservation Order made under section 8 of the Town and Country Planning (Interim Development) Act, 1943, or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodlands contained in an operative scheme under the Town and Country Planning Act, 1932, and

(b) any injurious affection to any land of the owner which would result from the felling of the trees the subject of the claim.

11. (1) A claim for compensation under this Order shall be in writing and shall be made by serving it on the authority, such service to be effected by delivering the claim at the offices of the authority addressed to the Clerk thereof or by sending it by prepaid post so addressed.

(2) The time within which any such claim shall be made as aforesaid shall be a period of twelve months from the date of the decision of the authority, or of the Secretary of State, as the case may be, or where an appeal has been made to the Secretary of State against the decision of the authority, from the date of the decision of the Secretary of State on the appeal.

12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 179 of the Act.

13. The provisions of Section 61 of the Act shall apply to this Order and the Order shall have effect on the *24th day of May, 1972*.

NOTE: Any person contravening the provisions of this Order is guilty of an offence under Section 102 of the Act and liable on summary conviction to a fine not exceeding 250 pounds or twice the sum which appears to the Court to be the value of the tree whichever is the greater and if in the case of a continuing offence the contravention is continued after the conviction the offender shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding two pounds for each day on which the contravention is so continued. If a tree other than one which is part of woodland is removed or destroyed in contravention of the Order it is the duty of the owner of the land, unless on his application the local authority dispense with the requirement, to plant another tree of appropriate size and species, at the same place as soon as he reasonably can.

Given under the Seal of the County Council of the West Riding of Yorkshire
the *23rd* day of *May* in the year One thousand
nine hundred and seventy-two.

The Common Seal of the County Council
of the West Riding of Yorkshire was
hereunto affixed in the presence of:-

L. Handaker.

The Member of the County Council having
the custody of the Key of the Common Seal

P. J. Butcher
4/6
Clerk of the County Council.



Wetherby Rural District
Tree Preservation Order No. 6, 1972
First Schedule

Trees Specified by Reference to an Area
(within a dotted black line on the map)

A1

The several Horse Chestnut, Poplar, Ash, Beech, Oak, Weeping Elm, Birch, Wellingtonia, Sycamore Lawson Cypress, Yew, Copper Beech, Corsican Pine, Scots Pine, Sikto Spruce, Birl Cherry, Weeping Ash, Cherry, (geane) standing in the area numbered A1 on the map.

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the authority to
(1) the cutting down of any tree on land which is subject to a forestry dedication covenant where

- (a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant and at the time of the cutting down binding on the then owner of the land are fulfilled
- (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.

(2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodland scheme.

* (3) the cutting down, topping or lopping of a tree exempted from the provisions of this Order by section 60(6) of the Act namely a tree which is dying or dead or has become dangerous, or the cutting down, topping or lopping of which is in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance.

(4) the cutting down, topping or lopping of a tree

(a) in pursuance of the power conferred on the Postmaster General by virtue of section 5 of the Telegraph (Construction) Act, 1908;

(b) by or at the request of

(i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;

(ii) an electricity board within the meaning of the Electricity Act, 1947, where such tree obstructs the construction by the Board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act, 1919 and the Electric Lighting Act, 1882 or interferes or would interfere with the maintenance or working of any such line;

*NOTE: Section 62(1) of the Act, requires, unless on the application of the owner the local authority dispense with the requirement, that any tree removed or destroyed under section 60(6) of the Town and Country Planning Act, 1971, shall be replaced by another tree of appropriate size and species. In order to enable the local planning authority to come to a decision, on whether or not to dispense with the requirement, notice of the proposed action should be given to the local planning authority which except in a case of emergency shall be of not less than five days.

(iii) a river authority established under the Water Resources Act, 1963, a drainage board constituted or treated as having been constituted under the Land Drainage Act, 1930, the Conservators of the River Thames, or the Lee Conservancy Catchment Board, where the tree interferes or would interfere with the exercise of any of the functions of such river authority, drainage board, Conservators of the River Thames or Lee Conservancy Catchment Board in relation to the maintenance, improvement or construction of water courses or of drainage works; or

(iv) the Minister of Defence for the Royal Air Force, the Secretary of State for Trade and Industry where in the opinion of such Minister or Secretary of State the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;

- (c) where immediately required for the purpose of carrying out development authorised by the planning permission granted on an application made under Part III of the Act, or deemed to have been so granted for any of the purposes of that Part;
- (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden;

THIRD SCHEDULE

Provisions of the following parts of Part III of the Town and Country Planning Act, 1971 as adapted and modified to apply to this Order.

35.(1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.

Reference of applications to Secretary of State

(2) A direction under this section -

(a) may be given either to a particular local planning authority or to local planning authorities generally; and

(b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

(4) Subject to subsection (5) of this section, where an application for planning permission is referred to the Secretary of State under this section, the following provisions of this Act, that is to say, sections 26(2) and (7), 27, 29(1) to (3) and 30(1), shall apply, with any necessary modifications, as they apply to an application for planning permission which falls to be determined by the local planning authority.

(5) Before determining an application referred to him under this section, other than an application for planning permission referred to a Planning Inquiry Commission under section 48 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(6) The decision of the Secretary of State on any application referred to him under this section shall be final.

36.(1) Where an application is made to a local planning authority for planning permission to develop land, or for any approval of that authority required under a development order and that permission or approval is refused by that authority or is granted by them subject to conditions, the applicant, if he is aggrieved by their decision, may by notice under this section appeal to the Secretary of State.

Appeals
against
planning
decisions

(2) Any notice under this section shall be served within such time (not being less than twenty-eight days from the date of notification of the decision to which it relates) and in such manner as may be prescribed by a development order.

(3) Where an appeal is brought under this section from a decision of a local planning authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the local planning authority, whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance.

(4) Before determining an appeal under this section, other than an appeal referred to a Planning Inquiry Commission under section 48 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(5) Subject to subsection (4) of this section, the following provisions of this Act, that is to say, sections 27, 29(1) and (3) and 30(1) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under this section as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.

(6) The decision of the Secretary of State on any appeal under this section shall be final.

(7) If before or during the determination of an appeal under this section in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 29(1), 30(1), 67 and 74 of this Act and of the development order and to any directions given under that order, planning permission for that development -

- (a) could not have been granted by the local planning authority; or
- (b) could not have been granted by them otherwise than subject to the conditions imposed by them,

he may decline to determine the appeal or to proceed with the determination.

(8) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by or under any other provision of this Act.

37. Where an application is made to a local planning authority for planning permission, or for any approval of that authority required under a development order, then unless within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either -

Appeals in
default of
planning
decision

- (a) give notice to the applicant of their decision on the application; or
- (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 35 of this Act,

the provisions of section 36 of this Act shall apply in relation to the application as if the permission or approval to which it relates had been refused by the local planning authority, and as if notification of their decision had been received by the applicant at the end of the period prescribed by the development order, or at the end of the said extended period, as the case may be.

45. (1) If it appears to the local planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part of this Act, the authority, subject to the following provisions of this section, may by order revoke or modify the permission to such extent as (having regard to those matters) they consider expedient.

Power to
revoke or
modify
planning
permission

(2) Except as provided in section 46 of this Act, an order under this section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

(3) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, the authority shall serve notice on the owner and on the occupier of the land affected and on any other person who in the opinion will be affected by the order; and if within such period as may be specified in that notice (not being less than twenty eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person and to the local planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(4) The power conferred by this section to revoke or modify permission to develop land may be exercised -

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place:

Provided that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(5) If within the period referred to in subsection (2)(a) of this section no person claiming to be affected by the order has given notice to the Secretary of State as aforesaid, and the Secretary of State has not directed that the order be submitted to him for confirmation, the order shall, at the expiration of the period referred to in subsection (2)(b) of this section, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 45(2) of this Act.

(6) This section does not apply to an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part of this Act or under Part IV or V thereof; nor does it apply to an order modifying any conditions to which a planning permission subject by virtue of section 41 or 42 of this Act.

164.(1) Where planning permission is revoked or modified by an order under section 45 of this Act, (other than an order which takes effect by virtue of section 46 of this Act and without being confirmed by the Secretary of State), then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person interested in the land -

Compensation
where planning
permission
revoked or
modified

- (a) has incurred expenditure in carrying out works which is rendered abortive by the revocation or modification;
or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any work carried out before the grant of the permission which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be

done before the grant of that permission.

(4) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted for development of the land of any class specified in Schedule 8 to this Act.

(5) In this Part of this Act any reference to an order under section 45 of this Act includes a reference to an order under the provisions of that section as applied by section 51(2) of this Act.