

# HERTSMERE BOROUGH COUNCIL

## TREE PRESERVATION ORDER

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Town and Country Planning Act 1990

**Tree Preservation Order 400 /1998**

**20a Alexandra Road, Well End, Borehamwood.**

HERTSMERE BOROUGH COUNCIL in this Order called "the authority" in pursuance of the powers conferred in that behalf by Sections 198 and \*201 of the Town & Country Planning Act 1990 and subject to the provisions of the Forestry Acts of 1967 and 1979 hereby make the following order:-

1. In this Order:-

"the Act" means the Town and Country Planning Act 1990

"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 3 years or more; and a mortgagee in possession: "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, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in the woodland therein specified, the position of which trees, groups 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.
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 interests 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.

\* Delete if not applicable

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) the refusal or condition is in the interests of good forestry; or
  - (b) in the case of trees, other than trees comprised in a group of trees or in a woodland, that the trees have an outstanding or special amenity value or;
  - (c) in the case of trees which are comprised in a group of trees or in a woodland that the group of trees or the woodland as the case may be has an outstanding or special amenity value,

but a certificate shall not be given in the case of trees falling within (c) above if the application in respect of them has been referred by the Forestry Commissioners under Section 15 (1) (b) or 15 (2) (a) of the Forestry Act 1967.

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 204 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 or hectare;
  - (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 measure against fire.

7. On imposing any condition requiring the replacement of any tree under Article 4 of this Order, or on giving a direction under Article 6 of this Order with respect to the replanting of woodlands, the authority shall if such condition or direction relates to land in respect of which bylaws made by the Environmental Agency, a drainage board, a drainage authority, a water undertaker or a sewerage undertaker as defined in the Water Act 1989 or any other authority whose functions are exercised by the above bodies, 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 bylaws and that any such condition or direction has effect subject to the requirements of the bylaws, 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 of the Act and of Section 199 of the Town & Country Planning Act 1990 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 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 198 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 or 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 addressing the claim to the authority and leaving it at, or sending it by pre-paid post, to the offices of the authority at Civic Offices, Elstree Way, Borehamwood, Hertfordshire WD6 1WA.  
  
(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 205 of the Act
13. \*(1) The Provisions of Section 201 of the Act shall apply to this Order and shall take effect on the  
  
(2) This Order shall apply to any tree specified in the First Schedule hereto which is to be planted as mentioned therein, as from the time when that tree is planted.

## NOTES

Any person contravening the provisions of this Order by cutting down, uprooting or wilfully destroying a tree, or by wilfully damaging, topping or lopping a tree in such a manner as to be likely to destroy it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the sum of £20,000.00 or on indictment to a fine. The penalty for any other contravention of this Order is a fine not exceeding Level 4 on the standard scale on summary conviction.

### **Replacement of Trees**

Section 206 of the Act places a duty on landowners to replace trees and woodlands in certain circumstances.

Landowners are under a duty to replace the trees other than those categorised as woodlands in the Order if a tree is removed, uprooted or destroyed in contravention of this Order, or if trees are removed, uprooted or destroyed or die at a time when work on the trees is authorised under Section 198 (6) (a) of the Act by virtue of their being dead or dangerous.

Anyone proposing to remove trees under Section 198 (6) (a) of the Act should give the Council 5 days notice before doing so except in cases of emergency.  
The duty on the landowners is:

- (i) to plant another tree
- (ii) of an appropriate size and species
- (iii) at the same place
- (iv) as soon as reasonably possible.

\* Delete as necessary

## **FIRST SCHEDULE**

### **Trees Specified Individually (encircled in black on the map)**

| <b>No. on Map</b> | <b>Description</b> | <b>Situation</b>                |
|-------------------|--------------------|---------------------------------|
| T1                | Wellingtonia       | 20a Alexandra Road, Borehamwood |

### **Groups of Trees (within a broken black line on the map)**

| <b>No. on Map</b> | <b>Description</b> | <b>Situation</b> |
|-------------------|--------------------|------------------|
| None              |                    |                  |

### **Woodlands (within a solid black line on the map)**

| <b>No. on Map</b> | <b>Description</b> | <b>Situation</b> |
|-------------------|--------------------|------------------|
| None              |                    |                  |

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

| <b>No. on Map</b> | <b>Description</b> | <b>Situation</b> |
|-------------------|--------------------|------------------|
| None              |                    |                  |

## **SECOND SCHEDULE**

This order shall not apply so as to require the consent of the authority to:

### **1. FORESTRY AUTHORITY PLAN OF OPERATION**

The cutting down of trees on land subject a Forestry Dedication Covenant agreed under the Forestry Act 1967, or a plan of operation as approved by the Forestry Authority under one of their grant schemes such as the Woodland Grant Scheme

### **2. PLANNING PERMISSION**

The cutting down or carrying out of work on a tree immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part III of the Act or deemed to have been so granted.

If outline planning permission has been granted subject to a condition that the Authority's approval of reserved matters be secured before the development begins, work on trees cannot be said to be "immediately" required for the purpose of the exemption.

**Permitted development rights under the Town & Country Planning General**

**Development Order 1988 do not fall within the exemption.** Anyone proposing, for example, to build an extension to a house under permitted development rights which would require the cutting down of a protected tree would have to obtain consent.

### **3. FRUIT TREES**

The cutting down or carrying out work on fruit trees which are cultivated for fruit production or growing or standing in an orchard or garden.

### **4. AERODROMES OR DEFENCE INSTALLATIONS**

The cutting down or carrying out of work on a tree which obstructs the approach or departure of aircraft from an aerodrome, or hinders the safe and efficient use of aviation or defence technical installations.

### **5. STATUTORY UNDERTAKERS**

The cutting down, uprooting, chopping or lopping a tree in specified circumstances.

Cutting down or carrying out work on a tree under this exemption is only allowed where:

a) the tree is situated on the Undertakers operational land and

b) either:

(i) works on the land cannot otherwise be carried out or

(ii) the reason for the cutting down, lopping etc. is for safety purposes

### **6. POST OFFICE AND TELECOMMUNICATIONS**

There is no specific exemption from the requirement to obtain consent under a TPO conferred on the Post Office or anyone licensed under the Telecommunications Act 1984 to run telecommunications systems.

**7. ELECTRICITY**

In addition to enjoying the same exception as Statutory Undertakers, Electricity Companies and unlicensed holders within the meaning of Part I of the Electricity Act 1989 are given powers to cut down or carry out work on a tree which:

- (i) obstructs the construction of an electric line:
- (ii) or interferes with (or would interfere with) the maintenance or working of an electric line

**8. GAS**

British Gas, when acting as a public gas supplier, are not exempt from the requirement to obtain Authority's consent before carrying out work on protected trees.

**9. WATER**

At present there is no specific exemption from the requirements to obtain the consent of the Authority under a TPO by water and sewerage undertakers, internal drainage boards, drainage authorities or the Environmental Agency.

**10. DEAD DYING OR DANGEROUS TREES**

A TPO does not apply to prevent anyone cutting down or carrying out work on trees which are dying or dead or have become dangerous. 5 days notice is required by the authority before the work commences except in the case of an emergency.

**11. STATUTORY OBLIGATIONS**

A TPO does not apply to prevent a person cutting down or carrying out work on trees in compliance with any obligations imposed by an Act of Parliament

**12. NUISANCE**

A TPO does not apply to prevent a person cutting down or carrying out work on trees as far as may be necessary for the prevention or abatement of a nuisance. The term "nuisance" is used in a legal sense and not in its ordinary everyday sense. However, the TPO does apply to require the authority's consent to cut back encroaching branches or roots which do not give rise for an action for damages.

**13. FELLING LICENCES**

If one of the exemptions set out above does not apply, anyone who proposes to cut down or carry out work on a particular tree must apply to the Authority for consent. The one exception is where an application for the cutting down or uprooting of a tree requires a Felling Licence under the Forestry Act 1967. In these cases an application must be made to the Forestry Authority in the first instance. Full details are available from the Regional Conservancy of the Forestry Authority.

### **THIRD SCHEDULE**

Without prejudice to the following provisions as to the revocation or modification of consent, any consent under the Order, including any direction as to re-planting given by the Authority on the granting of such a consent, shall (except insofar as the consent otherwise provides), endure for the benefit of the land and all persons for the time being interested therein.

#### **1. THE RIGHT OF APPEAL AGAINST LOCAL AUTHORITY DECISIONS**

- 1.1 Please note there is no right of appeal to the Secretary of State against a TPO either when made or confirmed. An appeal may be made following an application to cut down or carry out work on a tree protected by a TPO depending on the authority's decision, or lack of one
- 1.2 The validity of a TPO cannot be challenged in any legal proceedings except by way of application to the High Court on the following grounds:-
- (i) that the TPO is not within the powers of the Act or
  - (ii) that the requirements of the Act and the 1969 Regulations had not been complied with in relation to the TPO.
- 1.3 Please note to be "aggrieved" the applicant should be able to show that he has sufficient direct interest in the matter and the application must be made within 6 weeks of the date of the authority's confirmation of the order.

Note - Any person thinking about making such an application to the High Court is advised to take legal advice about the correct procedure to be followed and the likely costs to be incurred if the application failed.

#### **2. THE RIGHT OF APPEAL AGAINST TREE REPLACEMENT NOTICES**

- 2.1 A person served with a tree replacement notice may appeal to the Secretary of State against it on any of the following grounds:-
- (i) that the provisions of the duty to replace trees or, as the case may be, the conditions of consent requiring the replacement of trees, are not applicable or have been complied with;
  - (ii) that in all the circumstances of the case the duty to replace trees should be dispensed with in relation to any tree;
  - (iii) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
  - (iv) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
  - (v) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.
- 2.2 Where an appeal to the Secretary of State is made, the tree replacement notice does not take effect until the final determination or the withdrawal of the appeal.



## 2.3 How to Appeal

### 2.3.1 An appeal must:

- (i) be made before the tree replacement notice takes effect (the date will be specified in the notice);
- (ii) be made in writing
- (iii) indicate the grounds of the appeal and state the facts on which it is based

There is no fee.

- 2.3.2 The Secretary of State has no discretion to extend the statutory period for making an enforcement appeal, and therefore no jurisdiction to determine late appeals. The appeal must be received by the Secretary of State, or posted in time to be received by him in the ordinary course of post, before the date on which the notice is stated to take effect.

## 2.4 Procedure

- 2.4.1 An appeal must be made by the applicant in writing before the end of the period specified in the notice i.e. before the notice should take effect. That specified period should not be less than 28 days

- 2.4.2 The Secretary of State may correct any defect, error or misdescription in the notice of vary any of its requirements. Before doing so, he must be satisfied that the correction or variation would not cause injustice to the appellant or the Authority. This power does not extend to the correction of notices so fundamentally defective that they must be quashed.

## 2.5 Costs

- 2.5.1 For appeals against tree replacement notices, costs may be awarded in cases dealt with by written representations as well as by hearings and inquiries. An application may be made on the grounds of one of the party's "unreasonable behaviour" which causes unnecessary expense. In the case of a hearing or inquiry, an application should be made to the Inspector appointed to deal with the appeal who will make a recommendation to the Secretary of State. If a hearing or inquiry is cancelled as a result of one of the party's withdrawal, an application should be submitted to the relevant Government Office for the Region. In the case of an appeal dealt with by written representations, all applications should be made to the Government Office.

## 2.6 High Court Challenge

- 2.6.1 The appellant or the Authority may appeal to the High Court against the Secretary of State's decision. This further appeal may only proceed with the leave of the Court and may only be made on a "point of law" arising from the decision. Disputes about the inspecting officer's findings of fact do not amount to valid grounds, nor is the Court likely to consider any new findings of fact.
- 2.6.2 Rules of Court provide that the appeal must be made within 28 days from the date of the decision. The Court has discretion to extend the time limit in exceptional circumstances.
- 2.6.3 If an appeal to the High Court is made, the effect of the tree replacement notice is suspended until:

- (i) the final determination of the proceedings; and
  - (ii) any re-hearing and determination by the Secretary of State.
- 2.6.4 The court has no power to quash the Secretary of State's decision or set aside the tree replacement notice. The power of the Court is limited to referring the matter back to the Secretary of State who, in the light of the Court's opinion, will look again at his decision.
- 2.6.5 Anyone thinking about making an appeal to the High Court is advised to take legal advice about the correct procedure to be followed and the likely costs that would be incurred if the appeal is unsuccessful.
- 3. **APPEALS AGAINST AUTHORITIES REFUSAL TO GRANT CONSENT RIGHT OF APPEAL**
- 3.1 An appeal may be made to the Secretary of State and be brought against any of the following:-
  - (i) the Authority's decision to refuse consent;
  - (ii) the Authority's decision to grant consent subject to conditions;
  - (iii) any Article 5 Certificate issued by the Authority on refusing consent or granting consent subject to conditions;
  - (iv) any Article 6 Direction issued by the Authority on granting consent to fell any part of a woodland; or
  - (v) the Authority's failure to give the applicant notice of their decision within two months from the date they received the application, whereupon it is deemed that consent has been refused. The period of two months may be extended in writing by mutual agreement.
- 3.2 **How to Appeal**
- 3.2.1 An appeal must be made by the applicant in writing within 28 days from receiving the Authority's decision, certificate or direction, although the Secretary of State may allow a longer period. There is no charge, but appeals are expensive to administer, and time-consuming for all concerned. The parties are advised not to rule out further discussions after an appeal has been made; difficulties or misunderstandings can sometimes be resolved even at this stage, leading to the eventual withdrawal of the appeal.
- 3.3 **Procedure**
- 3.3.1 Appeals are handled in the first instance by the appropriate Government Office for the Region. Either party may have the appeal dealt with at a hearing or public local inquiry if they wish
- 3.4 **Written Representations**
- 3.4.1 The written method of dealing with appeals should be a quicker, simpler and cheaper alternative to the hearing/public inquiry method. The Government Office invite the appellant to complete an appeal form. The appellant should make clear what he is appealing against and why. A copy of the completed appeal form is then sent by the Government Office to the Authority, who are asked to provide a statement and relevant background information.

### 3.5 The Authority's Statement

- 3.5.1 Copies of the Authority's statement are served on the appellant

### 3.6 Site Visit

- 3.6.1 After the exchange of written representations, the Government Office arrange for an officer of the Department or an arboriculturist appointed by the Department to visit the appeal site. These inspecting officers, who are impartial, are responsible for producing an independent report on the issues raised to help the Secretary of State determine the case

Note - The Inspecting Officer is usually accompanied by representatives of both parties to the appeal but unaccompanied site visits may be arranged with the consent of both parties.

### 3.7 Hearings and Public Local Inquiries

- 3.7.1 If either party exercises his right to a hearing or a public local inquiry, the Government Office liaise with the Planning Inspectorate, and an Inspector is appointed to hear the case and submit a report to the Secretary of State. Hearings are conducted in accordance with a code of practice, and inquiries are subject to the Town and Country Planning (Inquiries Procedure) Rules 1992

### 3.8 The Secretary of State's Decision

- 3.8.1 The Secretary of State may allow or dismiss the appeal. He may reverse or vary any part of the Authority's decision, cancel any article 5 certificate, or cancel or vary any article 6 direction. He may deal with the application as if it had been made to him in the first instance. The Secretary of State determines the appeal in the light of the inspecting officer's report and the written statements submitted. Decision notices are sent to the appellant and copies to the Authority. Copies are also sent to third parties who submitted their views.

### 3.9 Costs

- 3.9.1 The parties must meet their own expenses if an appeal is dealt with by written representations. In the case of appeals dealt with by hearing or inquiry, application for an award of costs may be made by one party on the grounds of the other party's "unreasonable behaviour" which causes unnecessary expense. An application should be made to the Inspector at the hearing or inquiry, who will make a recommendation to the Secretary of State. If a hearing or inquiry is cancelled as a result of one of the party's withdrawal, an application should be submitted to the relevant Government Office. All applications for costs are determined by the Secretary of State.

### 3.10 High Court Challenge

- 3.10.1 The validity of the Secretary of State's decision on an appeal cannot be challenged in any legal proceedings except by way of application to the High Court. An application may be made on the grounds:

- (i) that the Secretary of State's decision is not within the powers of the Act; or
- (ii) that the requirements of the Act or the TPO have not been complied with in relation to that decision.

- 3.10.2 The High Court may suspend the operation of the Secretary of State's decision until the final determination of the proceedings. The Court may also quash the decision if satisfied that it

is not within the powers of the Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with the requirements of the Act or TPO.

#### **4. ORDERS MODIFYING AND REVOKING CONSENTS**

4.1 A consent attaches to the land rather than to the applicant personally. It would be possible for a landowner to carry out work to trees in accordance with a consent which had been granted to the previous owner unless the consent said otherwise. The authority may make an order modifying or revoking any consent granted.

4.2 The authority can alter the modification or revocation of a consent in 2 ways:

- (i) by referring the order to the Secretary of State for confirmation; or
- (ii) where all parties likely to be affected by the order notify the Authority that they have no objections to it, by bringing the order into effect themselves.

Either way an order has no effect against any work already carried out in accordance with the consent

#### **4.3 Opposed Cases: Orders Confirmed by the Secretary of State**

4.3.1 Under this procedure, the Authority make an order revoking or modifying a consent, and submit it to the appropriate Government Office for the Region together with a statement of their reasons for making the order. They must also serve notice of the order and statement on the owner, occupier and any other person likely to be affected by the order. When this notice has been served, no further work may be carried out under the consent until the decision of the Secretary of State. Any person served with the notice has a right to be heard in respect of the order as long as he makes his request within 28 days from the service of the notice.

#### **4.4 Unopposed Cases: Orders Brought into Effect by the Authority**

4.4.1 This procedure only applies where the owner and occupier of the land and other interested parties inform the Authority in writing that they do not object to the proposed order revoking or modifying a consent. When the Authority have made the order, instead of submitting it to the Secretary of State, they must place an advertisement in a local newspaper, explaining that the order has been made, and specifying:

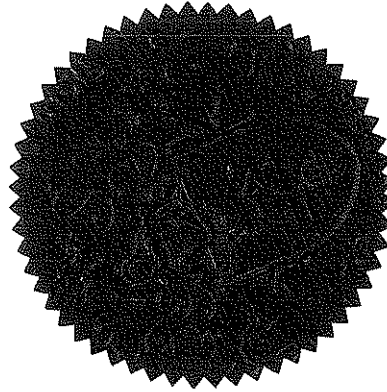
- (i) a date by which anyone affected by the order must request an opportunity to be heard, by writing to the appropriate Government Office for the Region. This date must be no less than 28 days from the date the advertisement appears; and
- (ii) a date on which the order will take effect if no-one writes in accordance with (i). This date must be no less than 14 days from the date given in (i)

4.4.2 The Authority must give notice to the owner, occupier and interested parties (all of whom have already notified the Authority that they have no objections to the order) setting out the same details given in the advertisement. They must also send a copy of the advertisement to the relevant Government Office within 3 days of its publication.

4.4.3 The forms of advertisement and notice which Authorities are required to follow when modifying or revoking planning permissions are prescribed in regulation 17 and schedule 3 of the Town and Country Planning General Regulations 1992. Authorities are not required to follow these forms when ordering the modification or revocation of a consent under a TPO.

- 4.4.4 If no-one has written asking for an opportunity to be heard, and the Secretary of State has not directed that the order be referred to him for confirmation, the order takes effect on the date set out in the advertisement.

**GIVEN** under the Common Seal of the  
**HERTSMERE BOROUGH COUNCIL**  
Twenty First day of January 1998



*Mr Copland*

(In the presence of P.H. Copland)  
**CHIEF EXECUTIVE**