

## HERTSMERE BOROUGH COUNCIL

This Order was confirmed by the  
Hertsmere Borough Council  
without modification  
on the EIGHTH day

of JANUARY in the year 2003

## TREE PRESERVATION ORDER

Town and Country Planning Act 1990

### **The Hertsmere Tree Preservation Order - (Preston Grange, Barnet Road, Potters Bar, Herts.) No. 1067 / 2002**

The Hertsmere Borough Council, in exercise of the powers conferred on them by sections 198, 201 and 203 of the Town and Country Planning Act 1990 hereby make the following Order-

#### **Citation**

1. This Order may be cited as the Hertsmere Tree Preservation Order - (Preston Grange, Barnet Road, Potters Bar, Herts.) No 1067 / 2002.

#### **Interpretation**

2. In this Order "the authority" means the Hertsmere Borough Council and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

#### **Application of section 201**

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on First day of August 2002

#### **Prohibited acts in relation to trees**

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)<sup>1</sup> [or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 5, no person shall-

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

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<sup>1</sup> Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping or lopping trees which are dying, dead or have become dangerous, or the undertaking of those acts 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. Subsection (7) of that section makes section 198 subject to section 39(2) of the Housing and Planning Act 1986 and section 15 of the Forestry Act 1967.

- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application.

### **Application of provisions of the Town and Country Planning Act 1990**

7. (1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).
- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

### **Directions as to replanting**

8. (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.
- (2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.
- (3) A direction under paragraph (1) may include, requirements as to-
- (a) species;
  - (b) number of trees per hectare;
  - (c) the preparation of the relevant land prior to the replanting; and
  - (d) the erection of fencing necessary for the protection of the newly planted trees.

### **Compensation**

9. (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of-
- (a) the refusal of any consent required under this Order; or
  - (b) the grant of any such consent subject to conditions, he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.
- (2) No claim, other than a claim made under paragraph (3), may be made under this article-
- (a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
  - (b) if the amount in respect of which the claim would otherwise have been made is less than £500.
- (3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.
- (4) In any other case, no compensation shall be payable to a person-
- (a) for loss of development value or other diminution in the value of the land;
  - (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in

## SPECIFICATION OF TREES

Trees Specified Individually (encircled in black on the map)

Reference on Map	Description	Situation
T1	LIME	Front Preston Grange, Barnet Road Potters Bar.
T2	OAK	Front Preston Grange, Barnet Road Potters Bar.
T3	LIME	Front Preston Grange, Barnet Road Potters Bar.
T4	ASH	Front Preston Grange, Barnet Road Potters Bar.
T5	LIME	Front Preston Grange, Barnet Road Potters Bar.
T6	LIME	Front Preston Grange, Barnet Road Potters Bar.
T7	ASH	Front Preston Grange, Barnet Road Potters Bar.

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

Reference on Map	Description	Situation
NONE	NONE	NONE

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

Reference on Map	Description including number of trees in the group)	Situation
NONE	NONE	NONE

Woodlands (within a continuous black line on the map)

Reference on Map	Description	Situation
NONE	NONE	NONE

	(b) Omit subsections (2) and (3).
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute—</p> <ul style="list-style-type: none"> <li>(i) "the authority" for "a local planning authority";</li> <li>(ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear;</li> <li>(iii) "consent under such an order" for "planning permission" in the second place where those words appear;</li> <li>(iv) for paragraph (c) substitute— <ul style="list-style-type: none"> <li>"(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</li> <li>(d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority."</li> </ul> </li> </ul> <p>(b) Omit subsection (2).</p> <p>(c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute—</p> <p>"in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—</p> <ul style="list-style-type: none"> <li>(a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;</li> <li>(b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant."</li> </ul> <p>(d) For subsection (4), substitute—</p> <p>"(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."</p> <p>(e) For subsection (5), substitute—</p> <p>"(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question."</p>
Section 79 (determination of appeals)	<p>(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority"</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute—</p> <ul style="list-style-type: none"> <li>(i) "section 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5";</li> <li>(ii) "consent under a tree preservation order" for "planning permission"; and</li> <li>(iii) "the authority" for "the local planning authority and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of sections 65 or 71."</li> </ul> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after "section 78".</p>

- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

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(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served—

- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;
- (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

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## Section 79

(1) On an appeal under section 78 the Secretary of State may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

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(7) Schedule 6 applies to appeals under section 78.