Town and Country Planning Act 1990
Nos. 182, 184, 186/188, 190 and 190A Heene Road, Worthing

Insert title of Order (including year)

TREE PRESERVATION ORDER,No.43 of 2003

Insert name of Council The **BOROUGH COUNCIL OF WORTHING** in exercise of the powers conferred on them by sections 198, 201[a] and 203 of the Town and Country Planning Act 1990[b],

Insert name of appropriate authority, hereby make the following Order:-

Citation

Insert title of Order (including year) 1. This Order may be cited as THE BOROUGH COUNCIL OF WORTHING TREE PRESERVATION ORDER No. 43 of 2003

Interpretation

Name of Council making the Order 2. In this Order "the authority" means the BOROUGH COUNCIL OF WORTHING 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 10 November 2003

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)[c] [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.

Exemptions

5. (1) Nothing in article 4 shall prevent-

(a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land [d] of the statutory undertaker and the work is necessary-

(a) Under section 199(1), tree preservation orders generally do not take effect until confirmed, but a direction may be given under section 201 for an order to take provisional effect immediately.

(b) Where the Order is to be made under the sections cited *and* section 300 of the Town and Country Planning Act 1990, all those provisions should be cited, as should the fact of the consent of the appropriate authority. As to the circumstances in which the consent of the Forestry Commission is required (and should be cited) *see* section 200(1) of that Act.

(c) Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping of 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 (c.63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c. 1 0) (licences under that Act to fell trees comprised in a tree preservation order).

(d) *See* section 263 of the Town and Country Planning Act 1990.

(e) SI 1995/418

(i) in the interests of the safe operation of the undertaking;
(ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
(iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995[e];

(b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;

(c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;

(d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);

(e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;

(f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991[a]; or

(g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989[b].

(2) In paragraph (1), "statutory undertaker" means any of the following -

a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
a relevant airport operator (within the meaning of Part V of the Airports Act 1986)[c],
the holder of a licence under section 6 of the Electricity Act 1989,
a public gas transporter,
the holder of a licence under section 7 of the Telecommunications Act 1984 [d] to whom the Telecommunications code (within the meaning of that Act) is applied,
a water or sewerage undertaker,
the Civil Aviation Authority or a body acting on behalf of that Authority,
the Post Office.

Applications for consent under the Order

6. An application for consent for the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall-

(a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
(b) specify the work for which consent is sought; and
(c) contain a statement of the applicant's reasons for making the application.

(a) 1991 c.59, *see* S.72 (b) 1989 c.29 (c) 1986 c.31 (d) 1984 c.12

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 1 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 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 support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
(c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
(d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article-

"development value" means an increase in value attributable to the prospect of development; and, in

relation to any land, the development of it shall include the clearing of it; and

"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

Dated this 10th day of November 2003

(if Council's Standing Orders require *the sealing of such documents.)*

[The Common Seal of the BOROUGH COUNCIL OF WORTHING

was hereunto affixed in the presence of-

W.A. Johnson

ASSISTANT DIRECTOR
(LEGAL SERVICES)

8181

[CONFIRMATION OF ORDER

[This is Order was confirmed by the BOROUGH COUNCIL OF WORTHING
without modification on the 2nd day of March 2004 ~~OR~~

~~[This Order was confirmed by the *(name of Council)* subject to the modifications indicated by *(state how indicated)*
on the day of~~

W.A. Johnson

Authorised by the Council to sign in that behalf

~~**[DECISION NOT TO CONFIRM ORDER**~~

A decision not to confirm this Order was taken by the *(name of Council)*
on the day of

Authorised by the Council to sign in that behalf

[VARIATION OF ORDER

This Order was varied by the *(name of Council)*
on the day of under the reference number

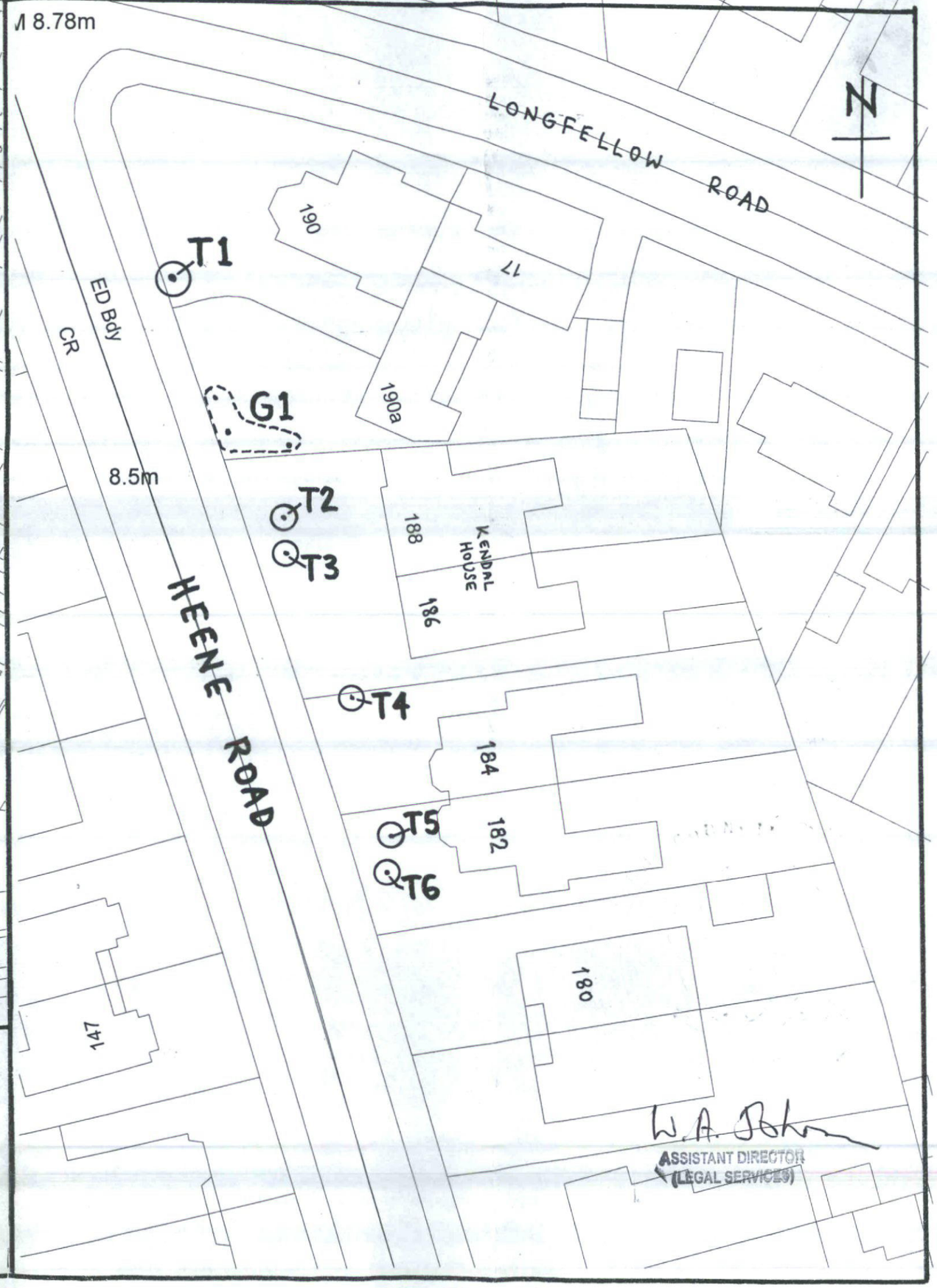
Authorised by the Council to sign in that behalf

[REVOCATION OF ORDER

This Order was revoked by the *name of Council)*
on the day of under the reference number

~~Authorised by the Council to sign in that behalf]~~





THE BOROUGH COUNCIL OF WORTHING
TREE PRESERVATION ORDER No. 43 of 2003

Nos. 182, 184, 186/188, 190 and 190A
HEENE ROAD, WORTHING

Date: November 2003 **Scales: 1:1250 and 1:500** **Drawing No: DC/TPO/2003/043**

SCHEDULE 1 **Article 4**

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on Map	Description	Situation
T1	**Purple Beech** *(Fagus sylvatica* var. 'Purpurea')	**Western perimeter of the grounds of No. 190 Heene Road, adjacent to Heene Road**
T2	**Silver Birch** *(Betula pendula)*	**North-western part of the grounds of Kendal House, 186/188 Heene Road**
T3	**Young's Weeping Birch** *(Betula* 'Youngii')	**Western part of the grounds of Kendal House, 186/188 Heene Road**
T4	**Holly** *(Ilex aquifolium)*	**Northern perimeter, front garden, of No. 184 Heene Road**
T5	**Japanese Maple** *(Acer palmatum)*	**Northern part of the grounds, front garden, of No. 182 Heene Road**
T6	**'Amanogawa' Cherry** *(Prunus* 'Amanogawa')	**Western part of the grounds, front garden, of No. 182 Heene Road**

Groups of Trees
(encircled in black on the map)

Reference on map	Description	Situation
G1	**Group of three trees, consisting of :** **1 Kanzan Cherry** *(Prunus kanzan)* **1 Flowering Crab** *(Malus spp.)* **and 1 Norway Maple** *(Acer platanoides)*	**Western part of the grounds of No. 190A Heene Road**

SCHEDULE 1
SPECIFICATION OF TREES

Article 4

Trees specified individually
(encircled in black on the map)

Reference on Map	*Description*	*Situation**
	See Schedule attached	

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on Map	*Description*	*Situation**
	None	

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

Reference on Map	*Description*	*Situation**
	See Schedule attached	

Woodlands
(within a continuous black line on the map)

Reference on Map	*Description*	*Situation**
	None	

* complete if necessary to specify more precisely the position of the trees.

SCHEDULE 2

Article 7

PART 1

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications

Provisions of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	(a) In subsection (1) - (i) omit- ", in such manner as may be prescribed by a development order,", such" in the second place where it appears, and ,as may be so prescribed"; and substitute "matters relevant to tree preservation orders made by the authority" for "applications for planning permission". (b) In subsection (2)- (i) after "contain" insert ", as regards each such order"; and (ii) for paragraphs (a) and (b) substitute- "(a) details of every application under tile order and of the authority's decision (if any) ill relation to each such application, and (b)a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.". (c) Omit subsections (3) and (4) (as required by section 198(4)).
Section 70 (determination of applications: general considerations)	(a) In subsection (1)- (i) substitute- "Subject to subsections (1A) and (1B), where" for "Where"; "the authority" for "a local planning authority"; "consent under a tree preservation order" for "planning permission" where those words first appear; and "consent under the order" for "planning permission" in both of the other places where those words appear; (ii) after "think fit", insert- "(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and (iii) omit "subject to sections 91 and 92,". (b) After subsection (1) insert- "(IA) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. (IB) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).". (c) Omit subsections (2) and (3).
Section 75 (effect of planning permission)	(a) In subsection (1) substitute- (i) "Any" for the words from "Without" to "ally"; (ii) "consent under a tree preservation order" for "planning permission to develop land"; (iii) " the consent" for "the permission"; and (iv) "the land to which the order relates" for "the land". (b) Omit subsections (2) and (3).
Section 78 (right to appeal against planning decisions and failure to take such decisions)	(a) In subsection (1) substitute- (i) "the authority" for "a local planning authority"; (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear; (iii) "consent under such an order" for "planning permission" ill the second place where those words appear; (iv) for paragraph (c) substitute- "(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 within the date on which the application was received by the authority,". (b) Omit subsection (2) (c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order." substitute- "in writing addressed to tile 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." (d) For subsection (4), substitute- "(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)." (e) For subsection (5), substitute- "(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."
Section 79 (determination of appeals)* *Section 79 was amended by the Planning and Compensation Act 1991 (c. 34), section 18 and Schedule 7, paragraph 19	(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority". (b) Omit subsection (3). (c) In subsection (4), substitute- (i) "section 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5"; (ii) "consent under a tree preservation order" for "planning permission"; and "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 section 65 or 7 I.". (d) Omit subsections (6) and (6A). (e) In subsection (7), omit the words after "section 78".

PART II
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,
AS ADAPTED AND MODIFIED BY PART 1

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part 1 of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order-

(a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and

(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

.....

(5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order-

(a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or

(b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(IB) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

(1) Where the authority-

(a) refuse an application for consent under a tree preservation order or grant it subject to conditions;

(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;

(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.

(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.

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.

(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.

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

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