

1904

TOWN AND COUNTRY PLANNING ACT, 1962

288

HAMPSHIRE COUNTY COUNCIL

TREE PRESERVATION ORDER NO. 288

HILLAND (NO. 2) HEADLEY

The Hampshire County Council (in this Order called "the Authority") in pursuance of the powers conferred in that behalf by Section 29 of the Town and Country Planning Act, 1962, and subject to the provisions of Section 15 of the Forestry Act, 1967, hereby make the following Orders:-

1. In this Order -

"the Act" means the Town and Country Planning Act, 1962;

"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; a lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more; and a mortgagor in possession; and "the Minister" means the Minister of Housing and Local Government.

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 willfully destroy or cause or permit the cutting down, topping, lopping or willful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a 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.

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 Minister 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 provisions of this Order 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, top 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 to 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 or a drainage 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 or drainage 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 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 damage or has incurred expenditure in consequence of any refusal 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 damage or expenditure.

Provided that no compensation shall be payable in respect of damage suffered or expenditure incurred 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 29 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 Minister, as the case may be, or where an appeal has been made to the Minister against the decision of the authority, from the date of the decision of the Minister on the appeal.

12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 126 of the Act.

13. Any person contravening the provisions of this Order by topping or lopping or causing or permitting the topping or lopping of any tree without the consent of the Authority is guilty of an offence under sub-section (1) of Section 62 of the Act and liable, on summary conviction, to a fine not exceeding £50; and any person contravening the provisions of this Order by cutting down or wilfully destroying a tree or topping or lopping a tree in such a manner as to be likely to destroy it, or causing or permitting the cutting down or wilful destruction of a tree or the topping or lopping of a tree in such a manner as to be likely to destroy it without the consent of the Authority is guilty of an offence under sub-section (1) of Section 62 of the Act and liable, on summary conviction, to a fine not exceeding £250 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 conviction, he is guilty of a further offence thereunder and liable, on summary conviction, to an additional fine not exceeding 40 shillings for every day on which the contravention is so continued.

14. It is hereby directed that the provisions of Section 16 of the Civic Amenities Act, 1967 shall apply to this Order, and that this Order shall take effect provisionally as from the date on which the Order is made and shall continue in force provisionally until the expiration of a period of six months beginning with that date, or until the date on which the Minister confirms the Order or notifies the Authority that he does not propose to confirm it, whichever first occurs.

FIRST SCHEDULE

TREES SPECIFIED INDIVIDUALLY

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	NONE	

TREES SPECIFIED BY REFERENCE TO AN AREA
(within a dotted black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
A.1.	The trees of whatever species standing within the area numbered A.1. on the map.	On the eastern side of Liphook Road, Headley, and forming the grounds of the former house known as 'Hilland', comprising O.S. Plot Nos. 255, 256 and part 254.

GROUPS OF TREES

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	NONE	

WOODLANDS

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	NONE	

NOTE: The Plot Nos. referred to above are those shown on Ordnance Survey Sheet Nos. Hants XXXVI:15 and 16 Edition of 1937.

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 woodlands scheme.
- (3) the cutting down, topping or lopping of a tree -
 - (a) which is dying or dead or has become dangerous;
 - (b) in compliance with an obligation imposed by or under an Act of Parliament;
 - (c) for the purpose of preventing or abating a nuisance;
 - (d) in pursuance of the power conferred on the Postmaster General by virtue of Section 5 of the Telegraph (Construction) Act, 1908;
 - (e) 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; or
 - (iii) a river authority established under the Water Resources Act, 1963, or a drainage board constituted or treated as having been constituted under the Land Drainage Act, 1930, where the tree interferes or would interfere with the exercise of any of the functions of such river authority or drainage board in relation to the maintenance, improvement or construction of water courses or of drainage works;
- (f) 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;

(g) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden;

(h) in pursuance of the powers conferred on the Conservators of the River Thames by virtue of Section 105 of the Thames Conservancy Act, 1932.

THIRD SCHEDULE

Provisions of the following parts of Part III of the Act as adapted and modified to apply to this Order.

22. Reference of applications to the Minister (1) The Minister may give directions to the authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the authority.

(2) A direction under this section 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 Minister accordingly.

(4) Where an application for consent under the Order is referred to the Minister under this section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to an application which falls to be determined by the authority.

(5) Before determining an application referred to him under this section the Minister shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

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

23. Appeals against decisions (1) Where an application is made to the authority for consent under the Order and that consent is refused by that authority or is granted by them subject to conditions, or where any certificate or direction is given by the authority, the applicant, if he is aggrieved by their decision on the application, or by any such certificate, or the person directed if he is aggrieved by the direction, may by notice under this section appeal to the Minister.

(2) A notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as the Minister may allow.

(4) Where an appeal is brought under this section from a decision, certificate or direction of the authority, the Minister, 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 authority, whether the appeal relates to that part thereof or not, or may cancel any certificate or cancel or vary any direction, and may deal with the application as if it had been made to him in the first instance.

(5) Before determining an appeal under this section, the Minister shall, if either the appellant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(7) The decision of the Minister on any appeal under this section shall be final.

24. Appeal in default of decision Where an application for consent under the Order is made to the authority, then unless within two months from the date of receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either -

(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 Minister in accordance with directions given under section 22 of the Act;

the provisions of the last preceding section shall apply in relation to the application as if the consent to which it relates had been refused by the authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

27. Power to revoke or modify the consent under the Order (1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the authority may by order revoke or modify the consent to such extent as they consider expedient.

(2) An order under this section shall not take effect unless it is confirmed by the Minister; and the Minister may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

(3) Where an authority submit an order to the Minister for his confirmation under this section, the authority shall furnish the Minister with a statement of their reason for making the order and shall serve notice on the owner of the land affected, and on any other person who in their opinion will be affected by the Order, and if within the period of twenty-eight days from the service thereof any person on whom the notice is served so requires, the Minister, before confirming the order, shall afford to that person, and to the authority, an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(4) The power conferred by this section to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed.

Provided that the revocation or modification of consent shall not affect so much of those operations as has been previously carried out.

(5) Where a notice has been served in accordance with the provisions of subsection (3) of this section, no operations or further operations as the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Minister under subsection (2) of this section.

THE COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL was herunto)
affixed this ~~14th~~ day)
of ~~April~~ in the year)
nineteen hundred and sixty-)
~~four~~ in the presence of:)

L.S.

TOM Stale

A Member of the County Council

ARTHUR Smyth

Clerk of the County Council

DATED

P. H. Hill

1958

HAMPSHIRE COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT, 1952 -
SECTION 29

TREE PRESERVATION ORDER NO. 288

HILLAND (NO. 2), HEADLEY