CHERTSEY URBAN DISTRICT COUNCIL

TREE PRESERVATION ORDER NO. 7

TOWN AND COUNTRY PLANNING ACT, 1947

WHEREAS, by an Agreement under their Common Seal made on
the eighth day of July 1948 the County Council of the
Administrative County of Surrey as the Local Planning
Authority under the Town and Country Planning Act, 1947,
in respect of the said County did in pursuance of their
statutory powers delegate to the Chertsey Urban District
Council the functions of the said County Council under
Part III of the said Act as specified in such Agreement
and including the power to make and enforce tree
preservation orders in respect of areas within the said
Urban District.

NOW THEREFORE, the CHERTSEY URBAN DISTRICT COUNCIL (in this
Order called "the authority") in pursuance of the
powers conferred in that behalf by Section 28 of the Town
and Country Planning Act 1947 (hereinafter called "the Act")
and delegated to the Authority as aforesaid hereby make the
following Order:-

1. In this Order "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 mortgagee in
possession.

2. Subject to the exemption specified in the Second
Schedule to this Order, no person shall, except with the
consent of the authority cut down, top, lop, or wilfully
destroy or cause or permit the cutting down, topping,
lopping, or wilful destruction of any part of the woodland
areas specified in the First Schedule hereto, shown
numbered and coloured green on the map annexed hereto;
which map shall 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 paragraph 2 of this Order shall be in writing stating
the reasons for making the application, and shall specify
the woodland area(s) to which the application relates and
the operations for the carrying out of which consent is
required, and where necessary for the identification of such
woodland area(s) shall be accompanied by a map or plan
of a size or on a scale sufficient for the purpose.

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 as the authority may think fit, or may refuse
consent.

Provided that where the application relates to any
woodland area specified in the First Schedule to this
Order, the authority shall grant consent in accordance
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.

(2) Where an application for consent under this Order relates to any woodland area specified in the First Schedule to this Order, the Minister of Housing and Local Government (hereinafter called "the Minister") may direct the authority to consult the Forestry Commission before deciding such application.

(3) 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 directions as to replanting of woodland areas, and any compensation awarded in consequence of such decision; and every such register shall be available for inspection by the public at all reasonable hours.

5. Where an application for consent under this Order relates to felling any part of a woodland area, the authority, having regard to the need for bringing the amenity and forestry aspects of the woodland area into a proper relation, may draw up a plan of forestry operations for the woodland area, and incorporate it in the decision on the application and such plan may include provisions deferring felling for a specified period or periods.

6. Where the authority refuse consent under this Order or grant such consent subject to conditions, they may, when refusing or granting consent certify that in respect of any woodland area for which they have so refused or granted consent, that they are satisfied that

(a) there were suitable consents could be granted, and would be so granted under this Order if application were made for the purpose; or
(b) the refusal or condition is in the interests of good forestry; or
(c) in the case of trees or groups of trees comprised in a woodland area, the trees have an outstanding amenity value; or
(d) there is a special amenity served by the woodlands other than amenity in relation to the woodland character of the neighbourhood.

7. (1) Where any part of a woodland area is felled in accordance with consent granted under this Order the owner of the land on which the woodland is situated shall subject to any directions that may be given by the authority replant that part;

Provided that:

(a) where the Minister considers it expedient to dispense with any such requirement as to replanting he may, at any time, do so to such extent as he may think fit upon representation being made to him for the purpose by either the authority or the owner,
(b) where any part of a woodland area is so felled for the purpose of enabling development to be carried out in accordance with a permission
to develop land under Part III of the Act, it shall not be necessary to replant that part.

(2) Where consent is granted under this Order to fell any part of a woodland area, the authority may give directions to the owner of the land on which the woodland is situated as to the manner in which that part should be replanted and any such directions may include requirements as to

(a) species;
(b) planting distances;
(c) the erection and maintenance of fencing necessary for protection of the replanted part;
(d) the preparation of ground, draining, removal of brushwood, lop and top; and
(e) protective measures against fire.

8. The provisions set out in the Third Schedule to this Order, being the provisions of Part III of the Act as adapted and modified for the purposes of this Order, shall apply in relation to any application made to the authority for consent under the Order and to any decision of the authority thereon.

9. Subject to the provisions of this Order, any person who has suffered damage or has incurred expenditure in consequence of any refusal or consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim within the time limited for the purpose 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 woodland area the subject of a certificate in accordance with paragraph 6 of this Order.

10. In assessing compensation payable under the last preceding paragraph, account shall be taken of

(a) any compensation or contribution which has been paid in respect of the same woodland areas under the terms of this or any other Tree Preservation Order under Section 28 of the Town and Country Planning Act, 1947, 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 woodlands, the subject of the claim, and regard shall be had to any plan of forestry operations drawn up under paragraph 5 of this Order.
11. A claim under this Order for compensation shall be made by serving on the authority a notice in writing stating the grounds of the claim and the amount claimed, within six months of 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, of the date of the decision of the Minister on the appeal.

12. Any question of disputed compensation payable in accordance with the terms of this Order shall be determined in accordance with the provisions of Section 110 of the

**FIRST SCHEDULE.**

<table>
<thead>
<tr>
<th>No. on Plan</th>
<th>Description of Woodland areas</th>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>W1</td>
<td>Mixed growth including: Beech, Birch, Chestnut, Coniferous, Oak.</td>
<td>An area lying within 125 feet of the centre of the carriage on the north side of Chobham Road extending from a position approximately 400 yards west of the junction of Foxhills Road and Chobham Road in a westerly direction for a distance of approximately 167 yards.</td>
</tr>
<tr>
<td>W2</td>
<td>Mixed growth including: Beech, Birch, Chestnut, Coniferous, Oak.</td>
<td>An area lying within 75 feet of the centre of the carriage on the north side of Chobham Road extending from a position approximately 567 yards west of the junction of Foxhills Road and Chobham Road in a westerly direction for a distance of approximately 723 yards.</td>
</tr>
</tbody>
</table>

**SECOND SCHEDULE.**

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

(1) to the cutting down, topping or lopping of any tree that is dying or dead or has become dangerous;

(2) to the cutting down, topping or lopping or any woodland area,

(a) in compliance with an obligation imposed by or under an Act or Parliament;
(b) in pursuance of the power conferred on the Postmaster General by virtue of Section 5 of the Telegraph (Construction) Act, 1908;
(c) in pursuance of the powers conferred by Section 24 of the Regulation of Railways Act, 1868;
(d) for the purpose of preventing or abating a nuisance.
shall be written in the case of a statutory undertaker where the land on which the woodland areas are situated is operational land as defined by the Act and where works on such land cannot otherwise be carried out or where the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking.

THIRD SCHEDULE.

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

15(1) The Minister may give directions to the authority requiring that any application for consent under the Order, or all such applications of any class specified in the directions, shall be referred to the Minister instead of being dealt with by the authority, and any such applications shall be referred accordingly.

(2) Where an application for consent under the Order is referred to the Minister under this Section, the provisions of paragraphs 4 to 7 of the Order shall apply in relation to the determination of the application by the Minister as they apply in relation to the determination of such applications by the authority:

Provided that before determining any such application the Minister shall, if either the applicant or the authority so desire, afford to them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(3) The decision of the Minister on all applications referred to him under this Section shall be final.

16(1) Where 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, then if the applicant is aggrieved by their decision on the application, or by any such certificate or direction he may, by notice in writing served within 28 days from the receipt of notification of their decision, certificate or direction, or such longer period as the Minister may allow, appeal to the Minister.

(2) When an appeal is brought under this section from a decision, certificate or direction of the authority, the Minister may allow or dismiss the appeal or may reverse or vary any part of the decision of the authority, whether or not the appeal relates to that part, or may vary any certificate or direction, and may deal with the application as if it had been made to him in the first instance, and the provisions of the last foregoing section shall apply, subject to any necessary modifications in relation to the determination of an application by the Minister on appeal under this section as they apply in relation to the determination by the Minister of an application referred to him under that section.
(3) Unless within two months from the date of receipt of an application for consent under the Order, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority shall 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 the directions given by him under the last foregoing section the provisions of subsection (1) of this 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 expiration of the said period of two months or the extended period agreed upon as aforesaid, as the case may be.

21(1) Subject to the provisions of this section if it appears to the authority that it is expedient that any consent under the Order granted on an application made in that behalf should be revoked or modified, they may by order revoke or modify the consent to such extent as appears to them to be expedient as aforesaid:

Provided that no such order shall take effect unless it is confirmed by the Minister, and the Minister may confirm any order submitted to him for the purpose either without modification or subject to such modifications as he considers expedient.

(2) Where an authority submit an order to the Minister for his confirmation under this section, that authority shall furnish the Minister with a statement of their reasons for making the order and shall serve notice of the making of the Order on the owner of the land, and on any other person who in their opinion will be affected by the Order, and if within the period of 28 days from the service thereof any person on whom the notice is served so requires, the Minister shall, before confirming the Order, afford to him and to the authority an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose.

(3) 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 carried out before the date on which the order was confirmed as aforesaid.

(4) Where a notice has been served in accordance with the provisions of subsection (2) 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 (1) of this Section.
Supplementary provisions as to revocation and modification.

22(1) Where any person is affected by an order under the last foregoing section, revoking or modifying a consent as confirmed by the Minister or where any person is affected by a notice served on him under subsection (2) of the foregoing section when the order is not confirmed, then, if on a claim made to the authority within two months of the date of the Minister's decision, it is shown that he has incurred expenditure in carrying out work which is rendered abortive by the revocation, or modification, or stay of operations, as the ease may be, or has otherwise suffered loss or damage which is directly attributable to the revocation, or modification, or stay of operations, the 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 on matters preparatory to acting on the consent shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid, no compensation shall be paid under this section in respect of any work carried out before the grant of consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of the depreciation in value of any interest in land) arising out of anything done or omitted to be done before the grant of that consent.

23(1) If it appears to the authority that any cutting down, topping or lopping or wilful destruction of woodland areas has been carried out after the coming into operation of the Order without the grant of consent required in that behalf under the Order or that any conditions subject to which such consent was granted have not been complied with or that in respect of any part of a woodland area there has been a failure to replant or to comply with any directions as to replanting given by the authority, then, subject to any direction given by the Minister, the authority may within one year of such cutting down, topping, lopping or wilful destruction, or such failure or non-compliance as the case may be, if they consider it expedient so to do, in the interest of amenity, serve on the owner of the land on which the woodland areas are situated and, except in the matter of replanting woodland areas, on any person entitled to fell trees, a notice under this section.

(2) Any notice served under this section (hereinafter called an "enforcement notice") shall specify the acts alleged to have been done as aforesaid, or, matters in respect of which it is alleged that any such conditions as aforesaid have not been complied with, or in that respect there has been a failure to replant or to comply with any directions as to replanting, as the case may be; and may require such steps as may be specified in the notice to be taken within such period as may be so specified for securing that operations, in so far as still practicable, shall be carried out in such manner as might have been required had the woodland areas to which the notice relates been the subject of an application for grant of consent under this Order, or for securing compliance with the conditions or for securing replanting or compliance with the
direction as to replanting, as the case may be, and in particular any such notice may, for the purpose aforesaid, require the immediate discontinuance of any cutting down, topping, lopping or destruction of woodland areas; or of any replanting operations.

(3) Subject to the provision of the next following subsection, an enforcement notice shall take effect forthwith.

Provided that -

(a) if within the period of 14 days after the service thereof, an application is made to the authority under this Order for consent to cut down, top, lop, or to fell any woodland area to which the enforcement notice relates, the notice, except in so far as it may require the discontinuance of cutting down, topping, lopping, or destruction of woodland areas, shall be of no effect pending the final determination of the application, and if such consent as aforesaid is granted on that application, the notice shall not take effect;

(b) if within the period of 14 days after the service thereof an appeal is made to the Court under the following provisions of this section by a person on whom the enforcement notice was served, the notice, except in so far as it may require the discontinuance of cutting down, topping, lopping or wilful destruction of woodland areas shall be of no effect pending the final determination or withdrawal of the appeal.

(4) If any person on whom an enforcement notice is served under this section is aggrieved by the notice, he may, at any time within the period mentioned in the last foregoing subsection, appeal against the notice to a court of summary jurisdiction for the petty sessional division or place within which the land to which the notice relates is situated; and on any such appeal the Court -

(a) if satisfied that consent was granted under this Order for the cutting down, topping, lopping or destruction of the woodland areas to which the notice relates, or that no such consent was required in respect thereof, or that the conditions subject to which consent was granted have been complied with or that there had not been a failure to replant, or to comply with any directions as to replanting as the case may be, shall quash the notice to which the appeal relates;

(b) if not so satisfied, but satisfied that the requirements of the notice exceed what is necessary for compliance with the conditions attached to the consent, or what is necessary to comply with directions in regard to replanting, or what might have been required had application for
...
In pursuance of a Resolution of the Meeting

of the Chertsey Urban District Council held on the 2

day of March, 1952, the Common Seal was hereunto

affixed in the presence of:

[Signature]
Chairman of the Council.

[Signature]
Clerk of the Council.
HLG 2756

The Minister of Housing and Local Government in exercise of the powers conferred upon him by subsection (3) of Section 28 of the Town and Country Planning Act, 1947, hereby confirms the above Order, subject to the following modifications:

1. For paragraph 6 there shall be substituted the following paragraph:

"6. 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 woodland area or part of an area or tree or trees in any such area contained for which they are so refusing or granting consent that they are satisfied:

(a) that such area or part or tree or trees has or have an outstanding amenity value; or

(b) that there is a special amenity served by such area or part or tree or trees other than amenity in relation to the woodland character of the neighbourhood."

2. In the proviso to paragraph 9 after the words "woodland area" there shall be inserted the words "or part of an area or tree or trees".

GIVEN under the Official Seal of the Minister of Housing and Local Government this twentieth day of May One thousand nine hundred and fifty-two

Assistant Secretary
Ministry of Housing and Local Government
The Government is carrying out a review of tree preservation policy and legislation. The review will take into account, inter alia, the implications of the recent decision of the Court of Appeal in the case of Bell v Canterbury City Council.

In the Canterbury case, the Court of Appeal upheld a decision of the Land Tribunal about on which payment of compensation should be assessed following refusal by a local planning authority to consent to the felling of woodland protected by a tree preservation order. The particular case related to an application for felling which had as its object the proposed conversion of the woodland to agricultural use. The Court confirmed the Tribunal's award, which was based on the value of the woodland as agricultural land. Accordingly, fears have been expressed that the potential costs of compensation will place in jeopardy the effectiveness of tree preservation orders applying to woodlands, both where application to fell is made under the tree preservation order and where an application to the Forestry Commission for a felling licence is passed to the local authority to be decided under the tree preservation order.

To meet these concerns two changes are being made to present arrangements relating to such applications:

(a) **Where an application for a felling licence under the Forestry Act 1967 is required**

The felling of trees is controlled by the Forestry Commission in exercise of its powers under the Forestry Act 1967. Subject to certain exceptions (which exempt most private and small scale felling), a licence from the Commission is normally required to fell growing trees which are 8 centimetres or more in diameter (measured 1.3 metres from the ground) or, in the case of coppice or underwood, 15 centimetres or more in diameter.

Where a felling licence is required, then even though the trees may be covered by a Tree Preservation Order, application for a licence to fell must be made to the Forestry Commission under Section 9 of the 1967 Act. In accordance with Section 15(1)(b) of the 1967 Act the Commission's practice has been to refer such applications, with its comments, to the local authority by whom the order had been made for decision under tree preservation legislation; and entitlement to compensation in those circumstances is determined by the tree preservation order under the powers provided by section 174 of the Town and Country Planning Act 1971. It is, nonetheless, within the statutory discretion of the Commission to consider such applications and, where they consider it appropriate to refuse such an application, they may do so without reference to the local authority. The Forestry Commission have agreed that they will themselves determine future applications to fell trees protected by a tree preservation order where either the stated purpose is to convert the land to agricultural use after felling or in any other case where the applicant has not stated an intention to continue to use the land as woodland.
In considering such applications the Commission will be guided by its general presumption against the granting of felling licences to convert woodland to agricultural use, and will also take amenity considerations into account. Where the Commission refuses a licence, liability for compensation will rest with the Commission. Section 11 of the 1967 Act provides that the basis of such compensation shall be any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber concerned. In the exceptional case where the Commission proposes to grant consent, Section 15(1)(a) of the Forestry Act 1967 would apply and the Commission would give notice in writing to the relevant local authority, who would have a statutory right to object to the proposal. Where such an objection is not withdrawn Section 15(2)(a) of the 1967 Act provides that the Commission shall refer the application to the Secretary of State to be dealt with under tree preservation legislation.

Where an application for a felling licence is accompanied by proposals for appropriate replacement planting, or, in the case of coppice woodland, for its continuing maintenance as woodland, the Forestry Commission will follow the same practice as hitherto and refer the application to the local authority which made the tree preservation order. The application will then be considered under tree preservation legislation. If the local authority decides to refuse the application, compensation may be payable. However under section 174 of the 1971 Act the amount of compensation will represent only the actual loss or damage caused or incurred as a result of refusal. In the circumstances envisaged this could be expected to be the net profit forgone by the owner through being prevented from felling and replanting rather than, as it was in the Canterbury case, the value the land would have had in agricultural use.

(b) where an application for a felling licence under the Forestry Act 1967 is not required

In this type of case which includes a good deal of immature coppice woodland, application for consent to fell trees protected by tree preservation orders must be made to the local authority who made the order. Where it refuses an application for clear-felling to convert the land to agricultural use, the basis of valuation adopted in the Canterbury case would render the authority liable to payment of compensation based on the value of the land in agricultural use.

To provide local authorities with an appropriate discretion in this matter, the new Town and Country Planning (Tree Preservation Order) (Amendment) Regulations 1988: S.I. No. 963 amend Article 5 of the form of tree preservation order so as to bring woodlands within the scope of that article and enable a local planning authority to issue a certificate where it considers that the trees in a woodland are of outstanding or special amenity value. If a certificate is issued, no compensation will be payable. The effect of the amendment is that trees in woodlands for which a felling licence is not required are now to be treated in the same way as any other trees covered by a tree preservation order.

-5-
Any new tree preservation order made by a local planning authority should be in the amended form. The Officers have given consideration to which of the Council's existing tree preservation orders on woodlands ought to be varied under section 287 of the Town and Country Planning Act 1971 to reflect Article 5 as amended. Subsequently, in all cases where they receive an application to fell under an order containing the modified form of Article 5, the Council will wish to consider whether, on refusal or grant of conditional consent, certification would be appropriate in the circumstances of the case.

An applicant may appeal to the Secretary of State against such certification, in the same way as against refusal of consent to an application to fell. The appeal will normally be decided on the basis of written representations but both the applicant and the authority have a right to a public local inquiry or hearing.

As a matter of good practice, local authorities should, wherever possible, give reasons to applicants in their decision letters when refusing consent to fell or, as the case may be, giving a certificate under Article 5 of the Tree Preservation Order. Equally the Secretaries of State wish to reiterate that consideration should be given by local authorities to the importance to be attached to the management of woodlands. It is to be expected that trees must, from time to time, be felled in the interests of good management. Accordingly, in considering applications under tree preservation orders in respect of normal coppicing or thinning operations, these factors should be taken into account.

OFFICERS' RECOMMENDATION that -

the following Tree Preservation Orders be varied under section 287 of the Town and Country Planning Act 1971 to reflect Article 5 as amended:-

i) Guildford Road/Chobham Road, Ottershaw (TPO No. 5)

ii) Longcross Road, Accommodation Road, Stonehill Road, Lyne (TPO No. 6)

iii) Chobham Road, Ottershaw (TPO No. 7)

iv) Lyne Place Manor, Lyne (TPO No. 74)

v) Orchard Way, Addlestone (TPO No. 99)

vi) Black Lake Farm, Egham (TPO No. 110)

(TO RESOLVE)

Background Papers: -

Letter from DoE regarding Tree Preservation Orders on Woodlands (Borough Secretary's file 54.11)
Tree Preservation Order No. 7.