

08/07/2005

**THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE  
(42 FRONT STREET, EARSDON) TREE PRESERVATION ORDER 2005**

The Council of the Borough of North Tyneside in exercise of the powers conferred on them by Sections 198 [201<sup>a</sup>] and 203 of the Town and Country Planning Act 1990<sup>b</sup> hereby make the following Order:-

**Citation**

1. This Order may be cited as the Council of the Borough of North Tyneside (42 Front Street, Earsdon) Tree Preservation Order 2005.

**Interpretation**

2. In this Order "the authority" means the Council of the Borough of North Tyneside 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 8 July 2005

**Prohibited acts in relation to trees**

4. Without prejudice to sub-sections (6) and (7) of Section 198 (power to make tree preservation orders)<sup>c</sup> [or sub-section (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.

<sup>a</sup> 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.

<sup>b</sup> 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 the Act.*

<sup>c</sup> Sub-section (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. Sub-section (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 10) (licences under that Act to fell trees comprised in a tree preservation order).

## 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<sup>d</sup> of the statutory undertaker and the work is necessary:-
  - (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<sup>e</sup>;
- (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<sup>f</sup>; 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<sup>g</sup>.

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<sup>d</sup> See Section 263 of the Town and Country Planning Act 1990.

<sup>e</sup> SI 1995/418.

<sup>f</sup> 1991 c 59, see Section 72.

<sup>g</sup> 1989 c 29.

5.(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<sup>h</sup>;

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<sup>i</sup> 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; or

the Post Office.

#### **Applications for consent under the Order**

6. An application for consent to 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.

#### **Applications 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).

7.(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

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<sup>h</sup> 1986 c 31.

<sup>i</sup> 1984 c 12.

specifying the manner in which and the time within which he shall replant the relevant land.

- 8.(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.
- 8.(3) A direction under paragraph (1) may include requirements as to:-
- (a) species;
  - (b) the 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.

9.(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.

9.(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.

9.(4) In any other case, no compensation shall be payable to a person:-

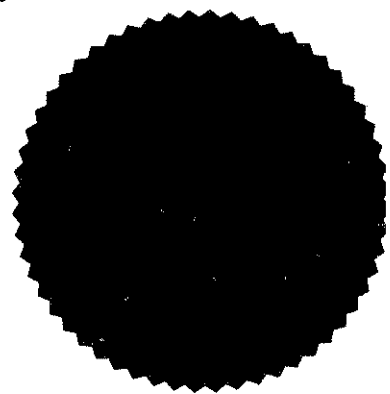
- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with Article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable 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.

9.(5) 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.

THE COMMON SEAL of the )  
COUNCIL OF THE BOROUGH OF )  
NORTH TYNESIDE was hereunto )  
affixed this 8th day of July 2005 )  
in the presence of: )



Chair of the Council *M. Hancock*

*H-M. Coombs*  
**SENIOR ASSISTANT SOLICITOR**  
Head of Legal and Democratic Services

## SCHEDULE 1

### SPECIFICATION OF TREES

The map referred to is a scale of 1/200 taken from the Ordnance Survey based on North Tyneside Council's Geographic Information System (GIS).

The area covered lies to the north of 42 Front Street, Earsdon

The area is wholly in the Borough of North Tyneside.

#### **Trees specified individually** (encircled in black on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Prunus SP	Approximately 7.0m in a north easterly direction from the eastern corner of the house at 42 Front Street, Earsdon

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

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
	None	

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

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
	None	

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

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
	None	

**SCHEDULE 2**

**PART 1**

**PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990  
APPLIED WITH ADAPTATIONS OR MODIFICATIONS**

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In sub-section (1):-</p> <p>(i) omit:-</p> <p>“, in such manner as may be prescribed by a development order,”,</p> <p>“such” in the second place where it appears, and</p> <p>“as may be so prescribed”; and</p> <p>(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In sub-section (2):-</p> <p>(i) after “contain” insert “, as regards each such order”; and</p> <p>(ii) for paragraphs (a) and (b) substitute:-</p> <p>“(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p>(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.”.</p> <p>(c) Omit sub-section (3) and (4) (as required by Section 198(4)).</p>
Section 70 (determination of applications: general consideration)	<p>(a) In sub-section (1):-</p> <p>(i) substitute:-</p> <p>“Subject to sub-sections (1A) and (1B), where” for “Where”;</p>

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
<p>Section 70 (determination of applications: general consideration) <i>(continued)</i></p>	<p>"the authority" for "a local planning authority";</p> <p>"consent under a tree preservation order" for "planning permission" where those words first appear; and</p> <p>"consent under the order" for "planning permission" in both of the other places where those words appear;</p> <p>(ii) after "think fit", insert:-</p> <p>"(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and</p> <p>(iii) omit "subject to sections 91 and 92,".</p> <p>(b) After sub-section (1) insert:-</p> <p>"(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.</p> <p>(1B) 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)."</p> <p>(c) Omit sub-sections (2) and (3).</p>
<p>Section 75 (effect of planning permission)</p>	<p>(a) In sub-section (1) substitute:-</p> <p>(i) "Any" for the words from "Without" to "any";</p> <p>(ii) "consent under a tree preservation order" for "planning permission to develop land";</p> <p>(iii) "the consent" for "the permission"; and</p> <p>(iv) "the land to which the order relates" for "the land".</p> <p>(b) Omit sub-sections (2) and (3).</p>

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
<p>Section 78 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) In sub-section (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 sub-section (2).</p> <p>(c) In sub-section (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 sub-section (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> </ul>

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
<p>Section 75 (right to appeal against planning decisions and failure to take such decisions) (<i>continued</i>)</p>	<p>(b) in respect of such a failure as is mentioned in paragraph (d) of that sub-section, 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.”.</p> <p>(d) For sub-section (4), substitute:-</p> <p>“(4) The appellant shall serve on the authority a copy of the notice mentioned in sub-section (3).”.</p> <p>(e) For sub-section (5), substitute:-</p> <p>“(5) For the purposes of the application of Section 79(1), in relation to an appeal made under sub-section (1)(d), it shall be assumed that the authority decided to refuse the application in question.”.</p>
<p>Section 79 (determination of appeals)<sup>j</sup></p>	<p>(a) In sub-sections (1) and (2), substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit sub-section (3).</p> <p>(c) In sub-section (4), substitute:-</p> <p>(i) “Section 70(1), (1A) and (1B)” for Sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission”; and</p> <p>(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 Section 65 or 71.”.</p> <p>(d) Omit sub-sections (6) and (6A).</p> <p>(e) In sub-section (7), omit the words after “Section 78”.</p>

<sup>j</sup> Section 79 was amended by the Planning and Compensation Act 1991 (c 34), Section 18 and Schedule 7, paragraph 19.

## PART II

### PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990 AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part I 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 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 sub-sections (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.
- (1B) 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) ensure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

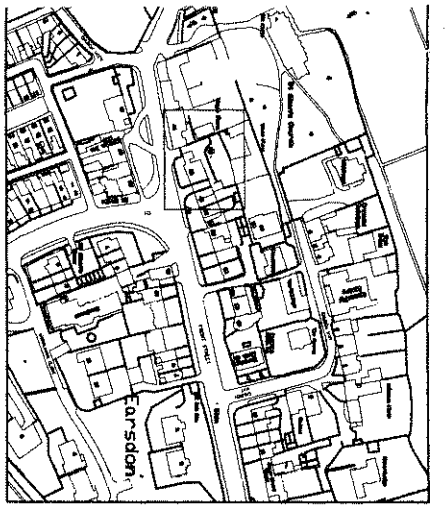
#### Section 78

- (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 applications 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 as mentioned in subsection (3).



Location plan Not to Scale

T1 Prunus sp

NORTH TYNESIDE COUNCIL  
42 FRONT STREET, EARSDON

TREE PRESERVATION ORDER 2005

Environment Regeneration &  
Housing Grants  
Kinross Centre  
Newcastle  
Numbered upon Type  
NET12 SHH

Scale 1:200

NORTH

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West Farm

44

T1

42

40

38

LB 16

The COMMON SEAL of the COUNCIL OF THE  
BOROUGH OF NORTH TYNESIDE was hereunto  
affixed this      day of      2005 in the presence of:-

Chair of the Council

Head of Legal and Democratic Services

*M. Nixon*  
H.M. COMMISS

