

THE BOROUGH COUNCIL OF HINCKLEY & BOSWORTH (Land at the Doctors Surgery, Back Lane, Market Bosworth) TREE PRESERVATION ORDER 2012

The Borough Council of Hinckley & Bosworth, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 hereby make the following Order:-

Citation

1. This Order may be cited as **The Borough Council of Hinckley and Bosworth (Land at the Doctors Surgery, Back Lane, Market Bosworth) Tree Preservation Order 2012.**

Interpretation

2.
 - (1) In this Order "the authority" means the Borough Council of Hinckley and Bosworth
 - (2) In this Order, unless the context otherwise requires, any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2011.

Effect

3.
 - (1) Subject to article 4, this Order shall take effect provisionally on the date on which it is made.
 - (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) [or subsection (1) of section 200 (orders affecting land where Forestry Commissioners interested)], and subject to article 4, 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 the Schedule to this Order except with the written consent of the authority in accordance with article 5, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Exceptions

4.
 - (1) Nothing in article 3 shall prevent:-
 - (a) the cutting down, topping, lopping or uprooting of a tree:-
 - (i) which is dead;
 - (ii) in compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance;
 - (iii) by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary –
 - (aa) in the interests of the safe operation of the undertaking;
 - (ba) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (ca) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
 - (iv) where that work is required to enable the implementation of an order made or confirmed under paragraph 8(1) or paragraph 15(1) of Schedule 1 to the Highways Act 1980 (procedures for making or confirming orders);
 - (v) where that work is urgently necessary for national security purposes;
 - (vi) where that tree is cultivated for the production of fruit in the course of a business or trade and such work is in the interests of that business or trade;
 - (vii) so far as such work is necessary to implement a planning permission (other than an outline planning permission) or, without prejudice to paragraph (iii)(cc), 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 Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise);

- (viii) by or at the request of the Environment Agency to enable the Agency to carry out the development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;
 - (ix) 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 section 72(1) of the Land Drainage Act 1991 (interpretation); or
 - (b) the removal of dead branches from a living tree;
 - (c) the cutting down, uprooting, topping or lopping of a tree, to the extent that such works are urgently necessary to remove and immediate risk of serious harm, or to such other extent as agreed in writing by the authority prior to the works being undertaken;
 - (d) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit; or
 - (e) without prejudice to sub-paragraph (a)(ii), 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 (other powers etc of licence holders – felling and lopping of trees etc).
- (2) In Paragraph (1), "statutory undertaker" means any of the following:-
- (a) 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;
 - (b) a relevant airport operator (within the meaning of Part V of the Airports Act 1986 (status of certain airport operators as statutory undertakers, etc));
 - (c) the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc);
 - (d) a gas transporter,
 - (e) an operator to whom the telecommunications code (set out in Schedule 2 to the Telecommunications Act 1984) applies;
 - (f) a water or sewage undertaker;
 - (g) the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I Part I of the Transport Act 2000 (air traffic services);
 - (h) a universal postal service provider in connection with the provision of a universal postal service

Applications for consent under the Order

5.

- (1) Subject to the following provisions of this article, an application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which an order is for the time being in force shall:-
- (a) be made in writing to the authority on a form published by the Secretary of State for the purpose of proceedings under these Regulations;
 - (b) include the particulars specified in the form; and
 - (c) be accompanied, whether electronically or otherwise, by:-
 - (i). a plan which identifies the tree or trees to which the application relates;
 - (ii). such information as is necessary to specify the work for which consent is sought;
 - (iii). a statement of the applicant's reasons for making the application; and
 - (iv). appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.
- (2) Where an application is made using electronic communication, the applicant shall be taken to have agreed:-
- (a) to the use of such communication by the authority for the purposes of that application;
 - (b) that the address for these purposes is the address incorporated into, or otherwise logically associated with, that application; and
 - (c) that deemed agreement under this paragraph shall subsist until the applicant gives notice in writing:-
 - (i). withdrawing any address notified to the authority for that purpose; or
 - (ii). revoking the deemed agreement,
 and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given.

Compensation

6.

- (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;
 - (b) the grant of any such consent subject to conditions; or
 - (c) the refusal of any consent, agreement or approval required under such condition, that person 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:-
- (a) they shall not be required to pay compensation to any person other than the owner of the land;
 - (b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and
 - (c) 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 than those mentioned in paragraphs (2) or (3), 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 application and the documents and particulars accompanying it, 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 of the Forestry Act of 1967 (terms of compensation on refusal of licence) 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 of that Act (application for felling licence and decision of Commissioners thereon) as if:-
- (a) for any reference to a felling licence there were substituted a reference to a consent required under this Order; and
 - (b) for the reference to the Commissioners there were substituted a reference to the authority.
- (6) Claims for payment of compensation by virtue of paragraph (1) shall be made in writing to and paid by the authority
- (7)
- (a) This paragraph applies where:-
 - (i). an authority have granted consent under regulation 17(1) and (3) for felling in the course of forestry operations all or any part of a woodland area to which an order applies;
 - (ii). Such consent is granted subject to a conditions under regulation 17(2)(a) requiring trees to be planted; and
 - (iii). The Forestry Commissioners decide not to make a grant or loan under section 1 of the Forestry Act 1979 (finance for forestry) in respect of the planting required by such a condition as is mentioned in paragraph (ii) for the reason that such a condition frustrate the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules of good forestry;
 - (b) Where this paragraph applies, the Forestry Commission shall, at the request of a person under a duty to comply with such a condition as is mentioned in sub-paragraph (a)(ii), give a certificate stating whether they have decided not to make such a grant or loan as is mentioned in sub-paragraph (a)(iii) and, if so, the grounds for their decision.
- (8) Any question of disputed compensation under this article shall be referred to and determined by the Upper Tribunal
- (9) In relation to the determination of any such question, the provision of section 4 of the Land Compensation Act 1961 (costs for proceedings of Upper Tribunal) and sections 22 (Tribunal Procedure Rules) and 29 (costs or expenses) of the Tribunals, Courts and Enforcements Act 2007 shall apply subject to any necessary modifications and to the provisions of the Regulations.
- (10) This article shall not apply to orders to which regulations 26(3) or 26(4) apply.
- (11) In this article:-
- (a) "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
 - (b) "owner" has the meaning given to it by section 34 of the Forestry Act 1967 (meaning of "owner").

Application to trees to be planted pursuant to a condition

7.

In relation to the tree identified in the first column of the Schedule by the letter "C" being a tree to be planted pursuant to a condition under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect from the time when the tree is planted.

Dated this 21st day of June 2012

The Common Seal of the Borough Council of Hinckley and Bosworth
was hereunto affixed in the presence of:-

Authorised Signatory



11145

CONFIRMATION OF ORDER

This Order was confirmed by The Borough Council of Hinckley & Bosworth without modification on the
day of 2012

OR

This Order was confirmed by The Borough Council of Hinckley & Bosworth subject to the modifications
indicated by on the day of 2012

Sign on behalf of the Borough Council of Hinckley & Bosworth

.....

(Authorised signatory)

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by the Borough Council of Hinckley & Bosworth on the
day of 2012

Sign on behalf of the Borough Council of Hinckley & Bosworth

.....

(Authorised signatory)

VARIATION OF ORDER

This Order was varied by the Borough Council of Hinckley & Bosworth on the day of
2012 by a variation order under reference number a copy of which is attached

Sign on behalf of the Borough Council of Hinckley & Bosworth

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(Authorised signatory)

REVOCATION OF ORDER

This Order was revoked by the Borough Council of Hinckley & Bosworth on the day of
2012

Sign on behalf of the Borough Council of Hinckley & Bosworth

.....

(Authorised signatory)

**SCHEDULE
Article 3**

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Black Alder (<i>Alnus glutinosa</i>)	Land at Doctors Surgery, Back Lane, Market Bosworth

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

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
A1		

Groups of trees
(within a red lined area on the map)

<i>Reference on map</i>	<i>Description (including number of trees in the group)</i>	<i>Situation</i>

Woodlands
(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
W1		

Doctors Surgery

Market Bosworth



GIS by ESRI (UK)



Scale : 1:1250

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Organisation	Hinckley & Bosworth Borough Council
Department	Planning
Comments	Not Set
Date	20 June 2012
SLA Number	n/a