TOWN AND COUNTRY PLANNING ACT 1990

THE WANSBECK DISTRICT COUNCIL

(SCHALKSMUHLE ROAD)

TREE PRESERVATION ORDER 1996

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The Wansbeck District Council in this Order called "the Authority" in pursuance of the powers conferred in that behalf by Sections 198 and 201 of the Town and Country Planning Act 1990 and subject to the provisions of the Forestry Act 1967 hereby make the following Order:-

1. In this Order -

"The Act" means the Town and Country Planning Act 1990

"Owner" means the owner of fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years; 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 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, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful 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 operation 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 condition, 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 a group of trees or in a woodland, that the trees have an outstanding or special amenity value;

(c) in the case of trees which are in a group of trees or in a woodland, that the group of trees or the woodland, as the case may be, has an outstanding or special amenity value,

but a certificate shall not be given in the case of trees falling within (c) above if the application in respect of them has been referred by the Forestry Commissioners under Section 15(1)(b) or 15(2)(a) of the Forestry Act 1967;

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 Secretary of State dispense with the replanting,

the Authority shall give to the owner of the land on which the 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 and Section 204 of the Act, 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 lop and top; and

(e) protective measures against fire.

7. On imposing any condition requiring the replacement of any tree under Article 4 of this 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, a drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment 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, the drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment 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 and of Section 199 of the Town and Country Planning Act 1990 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 loss or damage in consequence of any refusal (including revocation or modification) 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 loss or damage;

Provided that no compensation shall be payable in respect of loss or damage suffered 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 preceeding 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 198 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 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 Secretary of State, as the case may be, or where an appeal has been made to the Secretary of State against the decision of the Authority from the date of the decision of the Secretary of State on the appeal.

12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 203 of the Act.

13. The provisions of Section 201 of the Town and Country Planning Act 1990 shall apply to this Order and the Order shall take effect on the 8th day of March 1996

14. This Order may be cited as the Wansbeck District Council (Schalksmuhle Road) Tree Preservation Order 1996.

GIVEN under the Common Seal of the District Council of Wansbeck this 8 day of March 1996.

NOTE: Any person contravening the provisions of this Order by cutting down, uprooting or wilfully destroying a tree, or by wilfully damaging, topping or lopping a tree in such a manner as to be likely to destroy it is guilty of an offence and liable on summary conviction to a find not exceeding £20,000 or, on conviction on indictment, to a fine determined by the court with regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence. The penalty for any other contravention of this Order is a fine not exceeding £2,500 on summary conviction and, in the case of a continuing offence when the contravention is continued after conviction, a person is liable on summary conviction to an additional fine not exceeding £5 for every day on which the contravention is so continued.

If the tree other than one to which an Order applies as part of a woodland is removed, uprooted or destroyed in contravention of an Order is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by Section 198(6) of the Act relating to trees which are dying or dead or have become dangerous, it is the duty of the owner of the land, unless on his application the local Planning Authority dispense with the requirement to plant another tree of appropriate size and species at the same place as soon as he reasonably can. Except in emergency, not less than 5 days previous notice of the removal etc should be given to the Authority to enable the latter to decide whether or not to dispense with the requirement.

FIRST SCHEDULE

The plan referred to is at a scale of 1:1250 and is based on a 1:2500 Northumberland Edition of 1961, Sheet No NZ 2582SE. The trees are situated in between Schalksmuhle Road and Oakapple Close, Bedlington within the District of Wansbeck in the County of Northumberland.

TREES SPECIFIED INDIVIDUALLY

(Encircled in black on the map)

No. on Map	Description	Situation
T1	Sycamore	The tree is situated approx. 9 metres west of the south east corner of 1 Oakapple Close and 0.7m north of the footpath along Schalksmuhle Road.
T2	Sycamore	Approx 7m west of T1
T3	Sycamore	Approx 7m west of T2
T4	Sycamore	Approx 7m west of T3
T5	Sycamore	Approx 7m west of T4
T6	Sycamore	Approx 7m west of T5
T7	Sycamore	Approx 7m west of T6
T8	Sycamore	Approx 7m west of T7
T9	Sycamore	Approx 7m west of T8
T10	Sycamore	Approx 7m west of T9
T11	Sycamore	Approx 7m west of T10
T12	Sycamore	Approx 7m west of T11
T13	Sycamore	Approx 7m west of T12
T14	Sycamore	Approx 7m west of T13
T15	Sycamore	Approx 7m west of T14
T16	Maple	Approx 7m west of T15
T17	Sycamore	Approx 23m west of T16
T18	Sycamore	Approx 8m west of T17
T19	Sycamore	Approx 12m west of T18 and in the front garden of Plot 21 Oakapple Close.
T20	Sycamore	Approx 10m west of T19 and in the front garden of Plot 21 Oakapple Close.
T21	Sycamore	Approx 10m west of T20 and in the front garden of Plot 21 Oakapple Close.
T22	Sycamore	Approx 23m north west of T21 and in the front garden of Plot 27 Oakapple Close.
T23	Cherry	Approx 9m east of the south west T22 corner of the curtilage of 69 Glebe Road and in the rear garden of Plot 58 Oakapple Close.

TREES SPECIFIED BY REFERENCE TO AN AREA

NONE

GROUP OF TREES

NONE

WOODLANDS

NONE

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, or other grant scheme under Section 4 of the Forestry Act 1967, except a scheme which applies to a forestry dedication covenant;

(3) the cutting down, uprooting, topping or lopping of a tree:

(a) in pursuance of the power conferred on the Post Office by virtue of Section 5 of the Telegraph (Construction) Act 1908

(b) by or at the request of -

(i) a statutory undertaker or holder of a licence under Section 6(1) of the Electricity Act 1989 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) a licence holder within the meaning of Part I of the Electricity Act 1989 where such tree obstructs the construction by the licence holder of any electric line within the meaning of Part I of the said Act of 1989 or interferes or would interfere with the maintenance or working of any such line;

(iii) the National Rivers Authority, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1991 and the Conservators of the River Thames, or the Lee Conservancy Catchment Board, where the tree interferes or would interfere with the exercise of any of the functions of such river authority, drainage board, the Conservaters of the River Thames, or the Lee Conservancy Catchment Board, in relation to the maintenance, improvement or construction of water courses or of drainage works; or

(iv) the Minister of Defence for the Royal Air Force, the Minister of Technology or the Board of Trade where in the opinion of such Minister or Board the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;

(c) 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:

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

THIRD SCHEDULE

Provisions of the following parts of

(a) Part III of the Town and Country Planning Act 1962 and

(b) Section 80 of the Town and Country Planning Act 1968

as adapted and modified to apply to this Order.

(a) PART III OF THE TOWN AND COUNTRY PLANNING ACT 1962

21. (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the Authority on the granting of such consent, shall (except in so far as the consent otherwise provides) ensure for the benefit of the land and of all persons for the time being interested therein.

22. (1) The Secretary of State 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.

22. (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

22. (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

22. (4) Where an application for consent under the Order is referred to the Secretary of State 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.

22. (5) Before determining an application referred to him under this section the Secretary of State 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 Secretary of State for the purpose.

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

23. (1) Where an application is made to the Authority for consent under the Order and that consent is refused by the 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 Secretary of State.

23. (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 Secretary of State may allow.

23. (4) Where an appeal is brought under this section from a decision, certificate or direction of the Authority, the Secretary of State, 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.

23. (5) Before determining an appeal under this section the Secretary of State 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 Secretary of State for the purpose.

23. (6) The decision of the Secretary of State on any appeal under this section shall be final.

24. Where an application for consent under the Order is made to the Authority, then unless within two months from the 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 Secretary of State in accordance with directions given under Section 22 above;

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 extended period, as the case may be.

27. (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.

27. (2) Subject to the provisions of Section 99 and 201 of the Act an Order under this Section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such Order submitted to him either without modification or subject to such modifications as he considers expedient.

27. (3) Where an Authority submits an Order to the Secretary of State for his confirmation under this Section, the Authority shall furnish the Secretary of State with a statement of their reason for making the Order and shall serve notice together with a copy of the aforesaid statement on the owner and on the occupier 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 Secretary of State, 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 Secretary of State for the purpose.

27. (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.

27. (5) Where a notice has been served in accordance with the provisions of sub-section (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 Secretary of State under sub-section (2) of this section.

(b) **TOWN AND COUNTRY PLANNING ACT 1968**

80. (1) The following provisions shall have effect where the local Planning Authority have made an Order (hereinafter called "such Order") under Section 27 above revoking or modifying any consent granted on an application made under a Tree Preservation Order but have not submitted such Order to the Secretary of State for confirmation by him and the owner and occupier of the land and all persons who in the Authority's opinion will be affected by such Order have notified the Authority in writing that they do not object to such Order.

80. (2) The Authority shall advertise the fact that such Order has been made and the advertisement shall specify

(a) the period (not less than twenty eight days from the date on which the advertisement first appears) within which persons affected by such Order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and

(b) the period (not less than fourteen days from the expiration of the period referred to in paragraph (a) above) at the expiration of which, if no such notice is given to the Secretary of State such Order may take effect by virtue of this Section and without being confirmed by the Secretary of State.

80. (3) The Authority shall also serve notices to the same effect on the persons mentioned in sub-section (1) above.

80. (4) The Authority shall send a copy of any advertisements published under sub-section (2) above to the Secretary of state, not more than three days after the publication.

80. (5) If within the period referred to in sub-section (2) (a) above no person claiming to be affected by such Order has given notice to the Secretary of State as aforesaid and the Secretary of state has not directed that such Order by submitted to him for confirmation, such Order shall at the expiration of the period referred to in sub-section (2) (b) of this Section take effect by virtue of this Section and without being confirmed by the Secretary of State as required by Section 27 (2) of the Town & Country Planning Act 1962.

80. (6) This Section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Part 111 or Part IV of the Town & Country Planning Act 1990.

THE COMMON SEAL OF WANSBECK

DISTRICT COUNCIL was hereunto

affixed in the presence of:

Chairman Gordon D. H. Cook.

Duly Authorised Officer

218/95

THE WANSBECK DISTRICT COUNCIL
(Schalksmühle Road)
TREE PRESERVATION ORDER, 1995

