

# Town and Country Planning Act 1990

## **TPO 333**

### **Tree within the grounds of 61 Whites Road, Farnborough, Hampshire 2001**

*Rushmoor Borough Council*, 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 TPO 333, Tree within the grounds of 61 Whites Road, Farnborough, Hampshire, 2001

#### **Interpretation**

2. In this Order “the authority” means *Rushmoor Borough Council* and unless the context otherwise requires, any reference in this Order to a number section is a reference to the section so numbered in the Town and County 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 24.12.01

#### **Prohibited acts in relation to trees**

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation order)<sup>(c)</sup> or subsection (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.

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<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 that Act.

<sup>(c)</sup> Subsection (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. Subsection (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 Act 1967 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, 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>(a)</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>(b)</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>(c)</sup>.
- (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>(d)</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>(e)</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,

<sup>(d)</sup> See section 263 of the town and Country Planning Act 1990.

<sup>(a)</sup> S.I. 1995/418.

<sup>(b)</sup> 1991 c.59, see section 72.

<sup>(c)</sup> 1989 c.29.

<sup>(d)</sup> 1986 c.31.

<sup>(e)</sup> 1984 c.12.

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.

### **Application 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 1 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).

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

(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.

- (3) A direction under paragraph (1) may include requirements as to –

- (a) species;
- (b) 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.

- (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 or 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.

(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.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 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 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) 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.

**TREE PRESERVATION ORDER 2001 (No. 333)**

**LIST OF ALL PEOPLE SERVED WITH ORDER AND NOTICE**

The Owner/ Occupier  
59, 61, 63 Whites Road  
Farnborough  
Hants

Knellwood Ward Councillors: John Debenham, Roland Dibbs, Patrick Kirby.  
St Marks Ward Councillors Nigel Baines, Geraldine Bullard, John Starling

SCHEDULE 1

Article 4

SPECIFICATION OF TREES

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

Reference on map	Description	Situation
T1	Oak	Back garden 61 Whites Road, Farnborough

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

Reference on map	Description	Situation
[A1]	NONE	
[A2]	NONE	

**Groups of trees**  
(within a broken line on the map)

Reference on map	Description (including a number of trees in the group)	Situation
[G1]	NONE	

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

Reference on map	Description	Situation
[W1]	NONE	
[W2]	NONE	

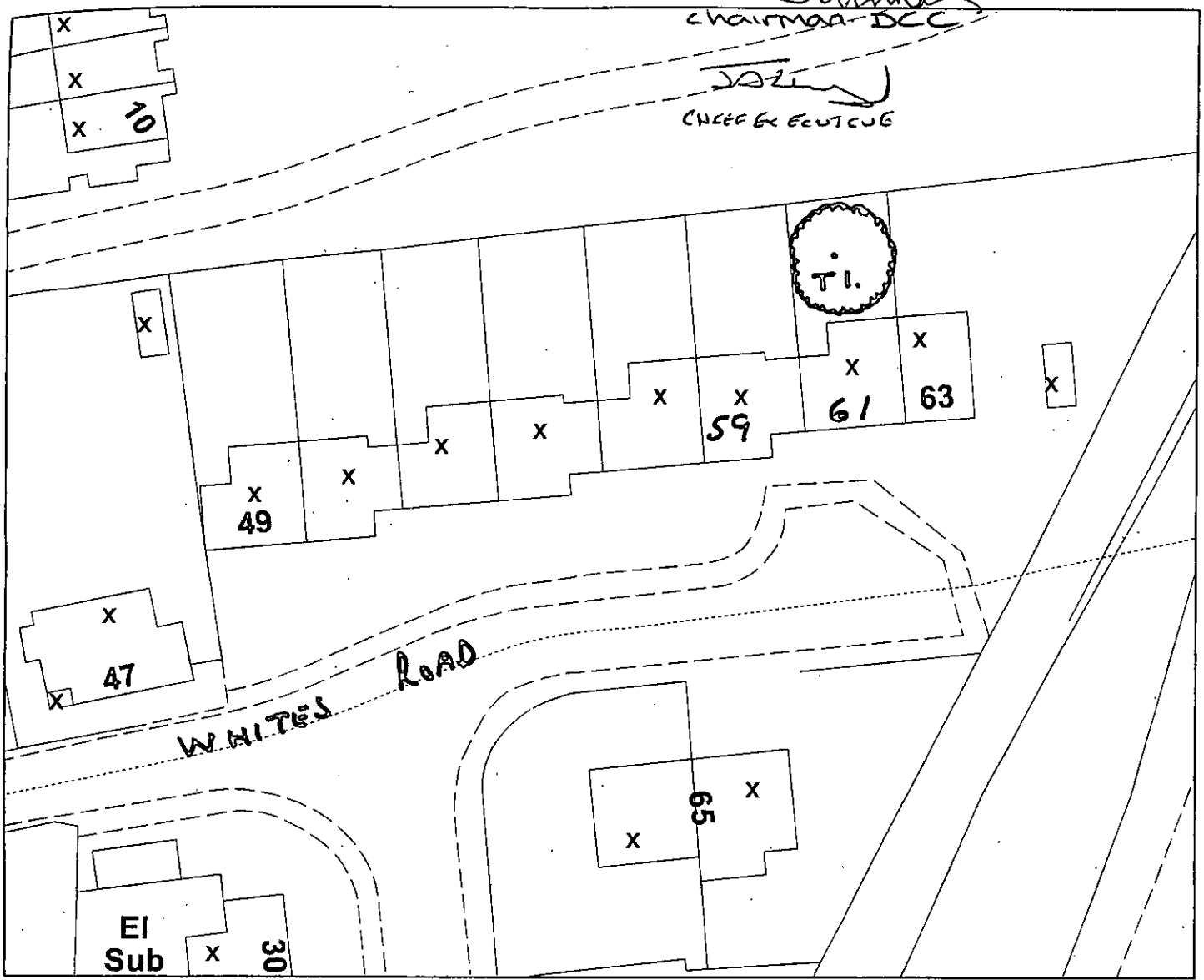
1333

# WHITES ROAD, FARNBOROUGH

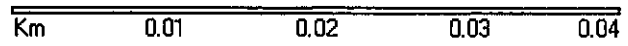


*R J Delaney*  
CHAIRMAN DCC

*J. [unclear]*  
CHIEF EXECUTIVE



### Legend



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Organisation	Rushmoor Borough Council
Department	Parks
Comments	<b>T1.</b> OAK TREE
Date	24 December 2001
SLA Number	1A079197

Dated 24th day of December 2001

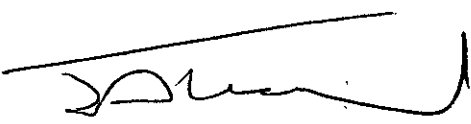
The Common Seal of *Rushmoor Borough Council*  
was hereunto affixed in the presence of -



R J Debenham

.....  
Councillor R J Debenham, Chairman Development Control Committee

188/01



.....  
J A Lloyd, Chief Executive



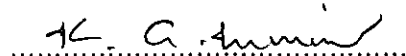
CONFIRMATION OF ORDER 333

2002: Order was confirmed by Rushmoor Borough Council without modification on the 3<sup>rd</sup> day of August

02/214



.....  
Mayor or appropriate Council Member



.....  
Solicitor to the Council