

Approved 15/8/73.

Confirmed 11/1/74. ^{TRB 50}

CITY AND ROYAL BURGH OF EDINBURGH



Town and Country Planning (Scotland) Act 1972

THE CITY OF EDINBURGH (29 SOUTH OSWALD ROAD)
TREE PRESERVATION ORDER 1973

The Corporation of the City of Edinburgh (in this Order referred to as "the local planning authority"), in exercise of the powers conferred on them by section 58 of the Town and Country Planning (Scotland) Act 1972 (hereinafter referred to as the "Act") and of all other powers enabling them in that behalf, hereby make the following Order:—

1. No person shall, except with the consent of the local planning authority, cut down, top, lop or wilfully destroy or cause or permit the cutting down, topping, lopping or wilful destruction of any of the trees and groups of trees specified in the First Schedule hereto, the positions of which trees and groups of trees are indicated, numbered and coloured on the map or plan annexed and signed as relative hereto.

Provided that nothing in this Order shall prohibit the felling or lopping of any tree if such felling or lopping:—

- (a) is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the local planning authority as soon as may be after the necessity for the operations arises; or
- (b) is carried out in compliance with any obligation imposed by or under any Act of Parliament; or
- (c) is immediately required for the purpose of carrying out development authorised by a 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.

2. The provisions of this Order shall be without prejudice to the provisions of Sections 60 and 99 of the Act (which provide respectively for the replacement of trees and for default powers and appeals) and Section 15 of the Forestry Act 1967 (which relates to applications made to the Forestry Commissioners for felling licences in respect of trees to which a tree preservation order relates).

3. Any application for the consent of the local planning authority under paragraph 1 of this Order shall be in writing and shall specify the trees, groups of trees and woodlands to which the application relates and the operations for the carrying out of which that consent is desired and shall where necessary for the identification of such trees, groups of trees or woodland areas be accompanied by a map or plan of a size or scale sufficient for the purpose.

4. The provisions set out in the Second Schedule to this Order, being provisions of Part III of the Act relating to planning permission and to applications for such permission adapted and modified as shown in the said Schedule, shall apply in relation to any consent under this Order and to applications therefor.

5. Subject to the provisions of this Order, any person who has suffered damage or has incurred expenditure in consequence of any refusal of consent under this Order or of any grant of such consent subject to conditions, shall, if he makes a claim within the time limited for the purpose of the Order, be entitled to recover from the authority compensation in respect of such damage or expenditure.

6. 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 trees or woodland areas under the terms of this or any other Tree Preservation Order under Section 58 of the Act, or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) (Scotland) 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 (Scotland) Act 1932; and

(b) any injurious affection to any land of the owner which would result from the felling of the trees or woodlands, the subject of the claim.

The Secretary of State for Scotland in exercise of the powers conferred on him by Section 58(4) of the Town and Country Planning (Scotland) Act 1972 hereby confirms the foregoing order subject to the following modifications:-

1. In paragraph 3 after the words "of a size or", there shall be added the words "on a"
2. For the whole of paragraph 5 there shall be substituted the words
- "5. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal of consent under this Order or of any grant of 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 loss or damage".
3. For the whole of paragraph 11 there shall be substituted the words
- "11. The local planning authority hereby direct that the provisions of Section 59(2) of the Act as substituted by Para 3 of Schedule 11 to the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the Secretary of State for Scotland) shall apply to this Order with effect from the date hereof."
4. In the Second Schedule in section 32(4) for the words "provisions of subsection 26(1)", there shall be substituted the words "provisions of section 26(1)"
5. In the Second Schedule in section 34(a) for the words "that their decision", there shall be substituted the words "of their decision".
6. In the Second Schedule in section 153(3) after the words "Subject to subsection there shall be added the number "2".

Given under the Seal of the
Secretary of State for Scotland
this eleventh day of January
nineteen seventy four.

J.H. V. S. G.

Assistant Secretary

7. A claim under this Order for compensation shall be made by serving on the local planning 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 local planning 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 local planning authority, of the date of the decision of the Secretary of State on the appeal.

8. Any question of disputed compensation payable in accordance with the terms of this Order shall be determined in accordance with the provisions of Section 168 of the Act.

9. Under the Provisions of Section 98 of the Act any person who in contravention of this Order cuts down or wilfully destroys a tree or lops a tree in such a manner as to be likely to destroy it, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250 or twice the sum which appears to the Court to be the value of the tree, whichever is the greater. Other contraventions of this Order carry with them on summary conviction a fine not exceeding £50. If in the case of a continuing offence the contravention is continued after the conviction the offender shall be guilty of a further offence and be liable on summary conviction to an additional fine not exceeding £2 for each day on which the contravention is continued.

10. Where any part of a woodland area specified in the First Schedule hereto is felled in the course of forestry operations permitted by or under this Order the owner or owners of the land shall carry out such replanting as the local planning authority may require under this Order and if any question arises between the authority and the said owner or owners as to whether any such requirement is reasonable having regard to the particular circumstances of the case or to any other material considerations the question shall, on the application of either party, be determined by the Secretary of State whose decision shall be final.

11. The local planning authority hereby direct that the provisions of Section 59 of the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the Secretary of State for Scotland) shall apply to this Order, with effect from the date hereof.

Dated this 22nd day of August 1973.



EDWARD G. GLENDINNING, *Town Clerk.*
Clerk to the Local Planning Authority.

[SCHEDULES

**FIRST SCHEDULE
TREES TO WHICH THIS ORDER REFERS.**

<i>Colour on map</i>	<i>Description</i>	<i>Area in acres</i>	<i>Situation</i>	<i>Ownership</i>
Blocked in yellow green	Trees and groups of trees consisting of Corsican pine, cedar, yew, cypress, juniper, Thuya, larch, poplar, birch, ash (Pendulous), lime, sycamore, oak, beech, elm, Norway maple, holly, horse chestnut, hawthorn, prunus and Malus.	3.92	Situating in the grounds of 29 South Oswald Road, bounded on the north by South Oswald Road, on the east by the garden ground of 27 South Oswald Road, 26 Mortonhall Road and 35 Mortonhall Road, on the south by the railway line, and on the west by the garden ground of 31 South Oswald Road and South Oswald Road, being part of two areas of ground described in Disposition by Andrew Usher with consent of Marion Blackwood Murray or Usher for her right of liferent to Jessie Dick and Elsie Saunders equally dated 13th and 14th and recorded in the Division of the General Register of Sasines for the County of Edinburgh on 24th all days of May 1920	The Salvation Army Trustee Company, 101 Queen Victoria Street, London

SECOND SCHEDULE.

Provisions of Part III of the Act relating to planning permission and to applications for such permission applicable with adaptations and modifications to any consent under the Order and to applications therefor.

(The provisions adapted or modified are printed in italics.)

26. (1) Subject to the provisions of this and the next following section, where an application is made, to the local planning authority for *any consent under the order*, that authority in dealing with the application shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations and may (a) grant *consent* either unconditionally or subject to such conditions as they think fit, or (b) may refuse *consent*. Determina-
tion of
applications.

31. (2) *The local planning authority shall keep . . . a register containing information . . . with respect to all applications made to them for consent under orders made under section 58 of the Act, including information as to the nature of the application, the decision thereon, and any compensation awarded in consequence of such decision; and such register shall be available for inspection by the public at all reasonable hours.*

.....
32. (1) The Secretary of State may give directions to the local planning authority requiring a particular application for *consent under the order, or applications of a class specified in the direction*, to be referred to him instead of being dealt with by the local planning authority, and any such application shall be so referred accordingly. Reference of
applications
to Secretary
of State.

(4) . . . Where an application for *consent under the order* is referred to the Secretary of State under this section, the . . . provisions of subsection 26 (1) above shall apply, with any necessary modifications, as they apply to an application for *such consent* which falls to be determined by the local planning authority.

(5) Before determining an application referred to him under this section . . . the Secretary of State shall, if either the applicant or the local planning 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.

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

Appeals
against
refusal of
consent or
conditional
consent.

33. (1) Where an application is made to the local planning authority *for consent under the order . . .* and that *consent* is refused by that authority, or is granted by them subject to conditions the applicant if he is aggrieved by their decision, may, by notice *in writing served within twenty-eight days from the receipt of notification of their decision . . .* appeal to the Secretary of State.

(3) Where an appeal is brought under this section from a decision of the local planning authority the Secretary of State . . . may allow or dismiss the appeal or may reverse or vary any part of the decision of the local planning authority, whether or not the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance, *and the provision of the last foregoing section shall apply, subject to any necessary modifications, in relation to the determination of an application by the Secretary of State on appeal under this section as they apply in relation to the determination by the Secretary of State of an application referred to him under that section.*

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the local planning authority to which the appeal does not relate he shall give notice of his intention to the local planning authority and to the applicant and shall afford to them an opportunity to make representations in regard thereto:

34. . . . Unless within *two months from the date of the 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 local planning authority, the local planning authority either:—

(a) give notice to the applicant that 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 by him under section 32 above;

the provisions of the last foregoing section shall apply in relation to the application as if the *consent* to which it relates had been refused by the local planning authority, and as if notification of their decision had been received by the applicant at the end of the *said period of two months* or at the end of the said extended period, as the case may be.

Power to
revoke or
modify
consent
under the
Order.

42. (1) If it appears to the local planning authority having regard to the development plan and to any other material considerations that it is expedient to revoke or modify any *consent* granted on an application made *under the Order* they may subject to the following provision of this section by order revoke or modify the *consent* to such extent as (having regard to those matters) they consider expedient.

(2) . . . 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.

(3) Where *the* local planning authority submit an order to the Secretary of State for his confirmation under this section, *they* shall serve notice on the *owners, lessees and occupiers* of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (not being less than *fourteen* 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 local planning authority, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) The power conferred by this section to revoke or modify *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 these operations as has been carried out before the date on which the order was confirmed as aforesaid.

153. (1) Where *consent* is revoked or modified by an order made under *the last foregoing section*, . . . then if, on a claim made to the local planning authority in writing within *the period of six months from the date of the confirmation of the order by the Secretary of State*, it is shown that any person interested in the land:—

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification, 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 in the preparation of plans for the purposes of any work or upon other similar matter preparatory thereto shall be taken to be included in the expenditure incurred in carrying out that work: Compensation where *consent* revoked or modified.

(3) Subject to subsection of this section 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 depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that *consent*.

Temporary provisions pending approval of plans.

Schedule 4, paragraph 6. Where, *under the foregoing provisions* of this *Order* the local planning authority are required to have regard to the provisions of the development plan in relation to the exercise of any of their functions, then, in relation to the exercise of those functions during any period before such a plan has become operative with respect to the district of that authority, *the authority* :—

- (a) shall have regard to any directions which may be or have been given to them by the Secretary of State as to the provisions to be included in such a plan; and
- (b) subject to any such directions, shall have regard to the provisions which in their opinion will be required to be so included for securing the proper planning of their district.



**EDINBURGH CORPORATION
 TREE PRESERVATION ORDER
 29 SOUTH OSWALD ROAD**

THIS IS THE MAP OR PLAN
 REFERRED TO IN THE
 CITY OF EDINBURGH
 (29 SOUTH OSWALD ROAD)
 TREE PRESERVATION ORDER
 1973.

TOWN CLERK

drg. no. 9255

scale 1:500

CITY OF EDINBURGH
 10 CANAL STREET
 EDINBURGH