

TREE PRESERVATION ORDER

Portfolio
Ward(s) Affected:

Purpose

To seek authority to confirm Tree Preservation Order No. TPO 01/20 as originally made

Background

1. On 19 March 2020 the Executive Head of Regulatory authorised the making of a Tree Preservation Order (TPO) in accordance with the Scheme of Delegation of functions to Officers.
2. The TPO relates to land known as Land to the east of Heathpark Drive Woodlands Lane Windlesham. The trees protected by the Order are as set out below.

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference	Description	Situation
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on Map

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

Reference	Description	Situation
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on Map

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

Reference	Description	Situation
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on Map

Woodlands

(within a continuous black line on the map)

Reference on Map	Description	Situation
W1	A woodland area of approximately 10.3 Hectares of mature, mixed deciduous broadleaf and coniferous trees namely Scots Pine (Pinus sylvestris) Sweet Chestnut (Castanea sativa), Silver Birch (Betula pendula), Black Pine (Pinus nigra), Mountain Ash (Sorbus aucuparia), Holly (Ilex aquafolium), English Oak (Quercus robur) and Norway Spruce (Picea abies)	See Plan annexed as Appendix 1 to this report

3. The Planning Practice Guidance states that:

“Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future”

4. In this case it was considered expedient to make the TPO in the interests of amenity as the mixed broadleaf and coniferous woodland makes a visually significant contribution to the established landscape character and profile of the area and is visible from adjoining properties and highways. The woodland trees appear outwardly sound and healthy with a reasonable safe useful life expectancy. This mature mixed species woodland is subject to potential development interest and its loss without appropriate controls being in place would impact significantly on the landscape character of the area. Furthermore, a felling licence has been sought for land at Chamness, although subsequently found to be invalid by the Forestry Commission (please see below).
5. The TPO was made on 19 March 2020 and served upon the owners and occupiers of the land, by Recorded Delivery mail, according to the information ascertained by searches of Land Registry and other interested parties, affected by the tree preservation order. A copy of the Order is appended to this report (Appendix B). In accordance with the Town and Country Planning (Tree Preservation) (England) Regulations 2012 these parties were given a minimum of 28 days to object or make written representations about the making of the TPO. At this time the Council were aware that the owner of Woodlands Woodlands Lane had died. Copies of the Order were sent to the property and to his executors by Recorded Delivery mail. These letters were returned by Royal Mail. The Council were subsequently advised that Woodlands Woodlands Lane had been sold. A further search of the Land Registry showed this

registration taking place on 23 March. A copy of the Order was subsequently served by Recorded Delivery mail on the new owner and a financial institution as parties having an interest in the land. These parties were also given a minimum of 28 days to object or make written representations on the making of the TPO.

6. Outline planning permission, 15/0590, was granted on appeal in July 2017 for the development of part of the land the subject of the TPO in question for the erection up to 140 dwellings and community facilities, with associated landscaping, open space, car parking and access from Woodlands Lane, and use of land to provide publicly accessible recreation space (SANG) (Details of access only to be agreed).
7. A reserved matters application, 20/0318/RRM, has been submitted for 120 dwellings and community facilities with associated landscaping, open space, car parking and access from Woodlands Lane and the provision of SANG with associated works (appearance, landscaping, layout and scale being considered) and submission of details to comply with conditions 5 (drainage strategy), 6 (ground investigation in part), 7 (greenfield runoff rates), 8 (surface water management) , 9 (programme of archaeological work), 15 (surface materials), 16 (visibility zones), 18 (travel plan), 19 (finished floor levels), 20 (tree reports), 21 (external lighting), 22 (badger method statement), 23 (landscape and ecological management), 25 (SANG management plan), 26 (bat survey), 27 (dormice survey), 28 (cycle and refuse storage areas), 29 (vehicle and cycle parking provisions) and 32 (sound attenuation) all pursuant to outline planning permission 15/0590 allowed on appeal dated 26 July 2017. This is currently under consideration and will be reported to the Planning Applications committee in due course.

Representations

8. The following objections have been received to the making of this order as follows:

From Charles Church Southern Ltd in respect of the land the subject of outline planning permission 15/0590

- Object in strongest possible terms to the making of the order
- The wording of the paragraph and the whole justification for the order is misleading as follows:
“Part of your justification for the order is “the mature mixed species woodland is subject to a potential development interest and its loss would impact significantly on the landscape character of the area”. This is an incorrect statement, the site the subject to the TPO has an outline planning permission for residential development,... and therefore in accordance with the permission that has been granted, a residential scheme will be delivered on the site, resulting in the loss of much of the woodland area”

- It is not helpful for the general public to think that the TPO is currently proposed will be there in perpetuity as when the reserved matters application currently under consideration is approved this will override the Order;
- Given the comments made the appeal Inspector in respect of landscape character and the contribution the woodland makes to this established character, the proposed additional landscaping and tree planting and the draft Landscape Management Plan (of which a final version has been submitted as part of the reserved matters application) the impact on the established character and profile of the area in which the site is located can be reduced and mitigated without the need for a TPO;
- Reference is made to paragraph 99 of the appeal decision where the Inspector stated that:
“I am satisfied that the loss of some 5ha of mainly coniferous woodland would not lead to adverse impacts on the biodiversity value of the retained woodlands around it”;
- We have not sought to undertake any felling of the trees on site and we will not remove any trees prior to agreement therefore the purpose of the TPO in advance of the reserved matters approval being granted is void;
- A woodland TPO that covers what will be a new housing development is inappropriate in principle as there are issues with general maintenance by future occupiers eg clearance of self seeded trees;
- More appropriate to hold off issuing a TPO until the reserved matters is approved and then an order can be made just for the retaining trees. Whilst a woodland TPO can be amended, it is an unnecessary process to go through when the original order is flawed

From Chris Rook-Blackstone as owners of Chamness Woodlands Lane

- We undertook an extensive tree survey to ascertain the integrity of the trees as part of a risk assessment. A number of trees were deemed unsafe and a number had fallen in the winds of early 2019. It was recommended that thinning the trees would only increase wind load on the remaining trees which had grown tall and spindly. As a result, a full felling licence was sought and approved by the Forestry Commission;
- It is my understanding that with a felling licence agreed that this exempts any subsequent Tree Preservation Orders;

- Request the land at Chamness be removed from TPO 01/20 in light of the approved felling licence which would by default alter the landscape character of the setting.

From Falcon Developments in relation to the land at Chamness

- Before making a TPO it is recommended that the LPA Officer issuing the Order should visit the site of the tree or trees in question to consider whether a TPO is justified. The land at Chamness is private land and there has been no request by the LPA to access the landholding to allow the necessary and correct assessment of the woodland within Chamness including the species, or condition of trees;
- The only public view of the trees at Chamness is from the public highway frontage along Woodlands Lane and therefore a preliminary assessment does not allow sufficient judgement to be made for the inclusion of the land within the Order;
- An application for a Felling Licence was approved by the Forestry Commission on 27 June 2019 application reference 019/1523/2019. The application followed the due consultation process and expires on 27th June 2024. Works approved by the Forestry Commission once a felling licence have been issued only require the Owner to notify the LPA with a copy of the licence and associated maps before felling the trees. The landscape character at Chamness therefore does not accord with the LPA statement, as they can be felled within the timeframe of the licence.

9. An e-mail of support for the making of the Order has been received from Mr Robbins a resident of Heathpark Drive

Response to the Representations / Objections and Justification for the Order

10. With regard to the objection received from Charles Church Southern Limited, it is noted that until the pre-commencement conditions on the outline planning permission and the reserved matters applications are approved there is no lawfully implementable permission. Whilst the principle of tree removal of some 5ha on part of the site the subject of the Order, within their ownership, has been established by the appeal decision in 2017, until the outline permission and reserved matters approval are implemented there is no protection afforded to the existing woodland. Whilst it is welcome to note that the company would not undertake any works to the trees without consultation with the Council there is no requirement on them to do so until the outline permission and reserved matters approval are implemented and the relevant conditions

come into force. As such tree removal could take place within the woodland without further reference to the Council.

11. The making and confirmation of an order does not mean that tree removal will not be permitted. It is a mechanism to ensure that where, as in this case, tree removal and replacement tree planting would be managed in a way to facilitate the development, as and when approved, in the context of good tree management, in the interests of nature conservation/biodiversity and climate change. It is also important to note that with the proposed site layout as set out in the reserved matters application that views of the woodland particularly to the east and to land at Chamness and Woodlands will be opened up and be of significant amenity value to both the emerging character of the area and existing/future residents.
12. By way of information, following completion of the redevelopment of that part of the land that is subject to the proposed residential development, the Council may, if expedient to do so, and on the basis the made order 01/20 as proposed is confirmed, revisit the Order and determine whether a different form of TPO would be appropriate post development for the long-term management of the retained and planted trees.
13. With regard to the objections from Mr Rook-Blackstone and Falcon Developments in respect of land at Chamness it is noted that this land is not subject to any permission for residential development, albeit it is within the housing reserve site as defined by saved policy H8. In this case the Council is of the view that woodland within this part of the land is at risk from development pressures. As such it remains expedient to include this land within the terms of the Order. It is also clear from the application to the Forestry Commission that there is an intention to fell a large number of trees on this land.
14. The Council has been in contact with the Forestry Commission with regard to the felling licence that has been referred to by both parties. It has confirmed by e-mail that due to an error in the application form there is no valid licence in place for the felling of trees on this land. It also confirms that it has advised the potential developer of this. Given this no weight is afforded to the felling licence in these objections.
15. With regard to the query concerning the site visit, the woodland was assessed as an entity and not individual sections as there appears to be little demarcation or definitive boundaries internally within the woodland therefore the assessment was taken as the whole woodland entity. As there are no physical changes throughout the woodland either from a topographic, species or age class there should not be any reasoning why this area should be omitted from the Order given that it part of the greater woodland area.
16. As a general note and as indicated in the PPG the woodland category's purpose is to safeguard a woodland as whole. So it follows that while

some trees may lack individual merit, all trees within a woodland that merits protection are protected. It is also noted that the Council is of the view that the confirmation of the Order would not hinder beneficial woodland management.

Legislation

17. The power to make a TPO arises under Section 198 of the Town and Country Planning Act 1990. Under the Act, local planning authorities may make a tree preservation order if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area. The Act does not define amenity, nor does it prescribe the circumstances in which it is in the interests of amenity to make a tree preservation order. In the Secretary of State's view, a tree preservation order should be used to protect selected trees and woodlands if their removal would have a significant impact upon the local environment and its enjoyment by the public.
18. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 before the local planning authority can confirm a TPO it must first consider any objections or representations duly made in respect of that order. Having considered any objections or representations, the local planning authority may then confirm the order with or without modification or may determine not to confirm the order. In terms of modifications to the order, there is no defined statutory limit on this power, although the Courts have held that this power cannot be used to effectively create a different order from the one originally imposed.
19. As the order contained a direction under Section 201 of the Town and Country Planning Act 1990 it took effect immediately upon the making of the order. If the order is not confirmed within six months of the date upon which it was made, the provisional protection afforded by Section 201 comes to an end. In this instance, the protection will cease to be applicable on 19 September 2020.
20. Once confirmed, the validity of a TPO may not be questioned in any legal proceedings whatsoever, except by way of an application to the High Court under Section 288 of the Town and Country Planning Act 1990 on a point of law within six weeks from the date on which any order is confirmed.

Development Plan Policies and Government Policy

21. Paragraph (iv) of policy CP2 of the Surrey Heath Core Strategy and Development Management Policies Document 2012 states:

"The Borough Council will require development to..."

(iv) Ensure that all land is used efficiently within the context of its surroundings and respect and enhance the quality of the urban, rural, natural and historic environments:...

Paragraph (iv) of policy DM9 of the Surrey HeathCore Strategy and Development Management Policies Document 2012 states: -

“Development will be acceptable where it achieves the following design principles...

(iv) Protect trees and other vegetation worthy of retention and provide high quality hard and soft landscaping where appropriate....

The supporting text explains that trees are an essential feature of the built and countryside environments and that individually or in groups they make a valuable contribution to the visual amenity of the area. On the specific issue of tree preservation orders, the explanatory text to the policy states that an order can be imposed by the Council on individual trees, groups of trees or woodlands where it considers:

- a) that the tree or trees are in good health;
- b) that the tree or trees make a significant contribution to public amenity; and / or
- c) that there is a potential threat to their long term retention

22. The National Planning Policy Framework (NPPF) and Practice Guidance (PPG), referred to paragraph 3 above, and paragraphs 170, 170a and 170 b of the NPPF state:

“Planning policies and decisions should contribute to and enhance the natural and built environment by:

- (a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- (b) recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*”

Options

23. The options available to the Committee are:
- (a) to confirm the Order as originally imposed; or
 - (b) to confirm the Order subject to modifications
 - (c) not to confirm the making of the Order.

Recommendation

24. (a) That Tree Preservation Order 01/20 is confirmed as originally made.

Background Papers: Planning applications 15/0570 and 20/0318/RRM and pre-application submission on land at Chamness

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APPENDIX 1



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APPENDIX 2



SURREY HEATH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER NO 01/20

**LAND TO THE EAST OF HEATHPARK
DRIVE WOODLANDS LANE WINDLESHAM**

**SURREY HEATH BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER (No. 01/20)**

Surrey Heath Borough Council, in exercise of the powers conferred on it 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 Surrey Heath Borough Council Tree Preservation Order Number 01/20.

Interpretation

2. In this Order “the authority,, means Surrey Heath Borough Council 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 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 2012.

Effect

3. Subject to Regulation 4 this Order takes effect provisionally on the date on which it is made.

Prohibited acts in relation to trees

4. Without prejudice to subsections (6) and (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 the exceptions in Regulation 14, 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 except with the written consent of the authority in accordance with Regulations 16 and 17 or the Secretary of State, in accordance with those conditions.

Exemptions

5. (1) Nothing in Regulation 13 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;
 - 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;
 - (bb) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker;
 - (cc) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended(1);
 - (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(2) (procedures for making or confirming certain orders or schemes);
 - (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)(England) Order 2015 as amended 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 development permitted by or under the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended; or
 - (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” shall have the same meanings as in section 72(1) of the Land Drainage Act 1991(3) (interpretation);
- 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 an 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(4) (other powers etc of licence holders - felling and lopping of trees etc).

(2) Where paragraphs (1)(a)(i) or (1)(c) apply, notice in writing of the proposed activities shall be given to the authority—

- (a) in the case of works urgently necessary to remove an immediate risk of serious harm, as soon as practicable after the works become necessary; and
- (b) in any other case at least five working days prior to the date on which the works are to be commenced.

(3) 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(5) (status of certain airport operators as statutory undertakers, etc));
- (c) the holder of a licence under section 6 of the Electricity Act 1989(6) (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(7)) applies;
- (f) a water or sewerage undertaker;
- (g) the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under Chapter I of Part I of the Transport Act 2000(8) (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

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 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).

(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 Regulation 24, a person establishes that loss or damage has been caused or incurred in consequence of—

(a) the refusal of any consent required under these Regulations in respect of 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 a 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 regulation—

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 these Regulations 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 case other 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 that person's 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 these Regulations or the grant of any such consent subject to conditions.
- (5) Subsections (3) to (5) of section 11 of the Forestry Act 1967(1) (terms of compensation on refusal of licence) shall apply to the assessment of compensation under paragraph (3) as they apply to the assessment of compensation where a felling licence is refused under section 10 of that Act(2) (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 these Regulations; 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 condition 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(3) (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 frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry;
- (b) where this paragraph applies, the Forestry Commissioners shall, at the request of the 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 regulation shall be referred to and determined by the Upper Tribunal(4).
- (9) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961(5) (costs for proceedings of Upper Tribunal) and sections 22 (Tribunal Procedure Rules) and 29 (costs or expenses) of the Tribunals, Courts and Enforcement Act 2007 shall apply subject to any necessary modifications and to the provisions of these Regulations.
- (10) This regulation shall not apply to orders to which regulations 26(3) or 26(4) apply.
- (11) In this regulation—
- “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 by section 34 of the Forestry Act 1967(6) (meaning of “owner”).

Dated 19 March 2020

Signed on behalf of Surrey Heath Borough Council

J Rickard

.....

Mrs J Rickard
Head of Regulatory
Surrey Heath Borough Council

Authorised by the Council to sign in that behalf

CONFIRMATION OF ORDER

This Order was confirmed by the Surrey Heath Borough Council without modification on the .

OR - This Order was confirmed by the Surrey Heath Borough Council, subject to the modifications indicated by .

Signed on behalf of the Surrey Heath Borough Council

Signature:.....

Authorised by the Council to sign in that behalf

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by the Surrey Heath Borough Council on .

Signed on behalf of the Surrey Heath Borough CouncilPage Break

SCHEDULE 1

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Trees specified individually
(encircled in black on the map)

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Reference on Map	Description	Situation
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Groups of trees

(within a broken black line on the map)

Reference on Map

Description

Situation

Woodlands

(within a continuous black line on the map)

Reference on Map

Description

Situation

W1

A woodland area of approximately 10.3 Hectares of mature, mixed deciduous broadleaf and coniferous trees namely Scots Pine (*Pinus sylvestris*) Sweet Chestnut (*Castanea sativa*), Silver Birch (*Betula pendula*), Black Pine (*Pinus nigra*), Mountain Ash (*Sorbus aucuparia*), Holly (*Ilex aquafolium*), English Oak (*Quercus robur*) and Norway Spruce (*Picea abies*)

See Plan



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SCHEDULE 2

PART I
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 subsection (1)</p> <p style="padding-left: 40px;">(i)omit</p> <p style="padding-left: 80px;">”, in such manner as may be prescribed by a development order,“,</p> <p style="padding-left: 80px;">”such“ in the second place where it appears, and</p> <p style="padding-left: 80px;">”as may be so prescribed“; and</p> <p style="padding-left: 40px;">(ii)substitute ”matters relevant to tree preservation orders made by the authority“ for ”applications for planning permission“.</p> <p>(b) In subsection (2)</p> <p style="padding-left: 40px;">(i)after ”contain“ insert ”, as regards each such order“; and</p> <p style="padding-left: 40px;">(ii)for paragraphs (a) and (b) substitute</p> <p style="padding-left: 80px;">(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 style="padding-left: 80px;">(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 subsections (3) and (4) (as required by section 198(4)).</p>

<p>Section 70 (determination of applications: general considerations)</p>	<p>(a) In subsection (1)</p> <p>(i) substitute</p> <p>where“</p> <p>”Subject to subsections (1A) and (1B), for ”Where“;</p> <p>”the authority“ for ”a local planning authority“;</p> <p>”consent under a tree preservation order“</p> <p>for</p> <p>”planning permission“ where those words first</p> <p>appear; and</p> <p>”consent under the order“ for ”planning permission“ in both of the other places where</p> <p>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 subsection (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</p> <p>felling is carried out in the course of forestry operations (but may give directions for securing replanting).“.</p> <p>(c) Omit subsections (2) and (3).</p>
<p>Section 75 (effect of planning permission)</p>	<p>(a) In subsection (1) substitute</p> <p>(i) ”Any“ for the words from ”Without“ to ”any“;</p>

	<ul style="list-style-type: none"> (ii) "consent under a tree preservation order" for "planning permission to develop land"; (iii) "the consent" for "the permission"; and (iv) "the land to which the order relates" for "the land". <p>(b) Omit subsections (2) and (3).</p>
<p>Section 78 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) In subsection (1) substitute</p> <ul style="list-style-type: none"> (i) "the authority" for "a local planning authority"; (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear; (iii) "consent under such an order" for "planning permission" in the second place where those words appear; (iv) for paragraph (c) substitute <ul style="list-style-type: none"> "(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 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, ". <p>(b) Omit subsection (2).</p> <p>(c) In subsection (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"> (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

	<p>direction or within such longer period as the Secretary of State may allow;</p> <p>(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.“.</p> <p>(d) For subsection (4), substitute “(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).“.</p> <p>(e) For subsection (5), substitute “(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.“.</p>
<p>Section 79 (determination appeals)</p>	<p>(a) In subsections (1) and (2), substitute “the authority“ for “the local planning authority“.</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute (i) “section 70(1), (1A) and (1B)“ for “sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5“; (ii) “consent under a tree preservation order“ for “planning permission“; and (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 sections 65 or 71.“.</p> <p>(d) Omit subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after “section 78“.</p>

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 each 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.

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- (5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 70

- (1) Subject to subsections (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).

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Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure 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 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,

the applicant may by notice appeal to the Secretary of State.

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(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 mentioned in subsection (3).

(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

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Section 79

(1) On an appeal under section 78 the Secretary of State may

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

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(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

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(7) Schedule 6 applies to appeals under section 78.