

TOWN AND COUNTRY PLANNING ACT 1971

SOUTH KESTEVEN DISTRICT COUNCIL

BOURNE (FOREST/WOODLAND AVENUES) TREE PRESERVATION ORDER 1978

The South Kesteven District Council (in this order called "the Authority") in pursuance of the powers conferred in that behalf by Section 60 of the Town and Country Planning Act 1971 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 1971;
"owner" means the owner in 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, and "the Secretary of State" means the Secretary of State for the Environment.

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 trees specified in the First Schedule hereto, the position of which trees is specified 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 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 operations 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 areas, and shall not impose conditions on such consent requiring replacement or replanting.

NOTE: If it is desired to fell any of the trees included in this order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made NOT to the authority for consent under this order but to the Conservator of Forests for a licence under that Act (Section 15(5)).

(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 conditions 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 woodlands, that the trees have an outstanding or special amenity value.

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 replanting.

the authority shall give to the owner of the land on which that 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 provision of this order and Section 175 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 the 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 or a drainage 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 or drainage 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 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 preceding 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 60 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 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 the 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 office of the authority addressed to the Secretary thereof or by sending it by prepaid post so addressed.

(2) The time within 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 179 of the Act.

13. (1) The provisions of Section 61 of the Act shall apply to this order and the order shall take effect on

(2) This order shall apply to any tree specified in the First Schedule hereto, which is to be planted as mentioned therein, as from the time when that tree is planted.

"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 fine not exceeding £400 or twice the sum which appears to the court to be the value of the tree, whichever is the greater, or on indictment to a fine. The penalty for any other contravention of this order is a fine not exceeding £200 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 a tree other than one to which an order applies as part of a woodland is removed, uprooted or destroyed in contravention of an order or is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by Section 60(6) of the Town and Country Planning Act 1971 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

Trees Specified Individually

<u>No. on map</u>	<u>Description</u>	<u>Situation</u>
T1	Chestnut	To the north of Plot 18
T2	Chestnut	Within Plot 18
T3	Lime	Within Plot 18
T4	Lime	On the west side of the
T5	Lime	public footpath leading
T6	Lime	northwards from Forest View
T7	Lime	and at the rear of the
T8	Chestnut	residential plots fronting
T9	Lime	Woodlands Drive.
T10	Lime	
T11	Lime	
T12	Lime	
T13	Chestnut	On verge

Ordnance Survey Sheet TF 0820/0920
Scale 1/2500, Part OS 4943

Groups of Trees

~~Group 1 consisting of Walnut, At the north-east corner of~~
~~4 small Chestnuts Woodlands Avenue~~
~~2 Medium Chestnuts~~

Trees Specified by Reference to an Area

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 Postmaster General by virtue of Section 5 of the Telegraph (Construction) Act 1908;
 - (b) by or at the request of -
 - (i) a statutory undertaker 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) an electricity board within the meaning of the Electricity Act 1947, where such tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act 1882 or interferes or would interfere with the maintenance or working of any such line;
 - (iii) a river authority established under the Water Resources Act 1963 or a drainage board constituted or treated as having been constituted under the Land Drainage Act 1930 where the tree interferes or would interfere with the exercise of any of the functions of such river authority or drainage board in relation to the maintenance, improvement or construction of watercourses or of drainage works; or
 - (iv) the Minister of Defence for the Royal Air Force or the Secretary of State for Trade and Industry where in the opinion of such Minister or Secretary of State the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinder the safe and efficient use of aviation or defence technical installations.

- (c) Where 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.
- (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 Part III of the Act as adapted and modified to apply to this order.

33. (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.

35. (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.

Reference of applications to the Secretary of State.

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

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

35. (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.

35. (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.

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

36. (1) Where an application is made to the authority for consent under the order and that consent is refused by that 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.

Appeals against decisions.

36. (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.

36. (3) 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.

36. (4) 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.

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

37. Where an application for consent under the order is made to the authority, then unless within two months from 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 -

Appeal in
default of
decision.

- (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 35 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 period of two months, or at the end of the said extended period, as the case may be.

45. (1) If it appears to the authority that it is expedient to revoke or modify any consent under the order granted on 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.

Power to revoke
or modify
consent under
the order.

45. (2) (Subject to the provisions of Section 46 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 modification as he considers expedient.

45. (3) Where an authority submit 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.

45. (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.

45. (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.

46. (1) The following provisions shall have effect where the local planning authority have made an order (hereinafter called "such order") under Section 45 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 the 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.

Unopposed
revocation
or
modification
of consent.

46. (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 an 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.

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

46. (4) The authority shall send a copy of any advertisement published under sub-section (2) above to the Secretary of State, not more than three days after the publication.

46. (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 be 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 45(2) of the Act.

46. (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 III, Part IV or Part V of the Act.

GIVEN under the Seal of the South Kesteven District Council
the 19th day of October 1978

THE COMMON SEAL of
SOUTH KESTEVEN DISTRICT COUNCIL)
was hereunto affixed
in the presence of:



Secretary


Departments of the Environment and Transport
East Midlands Regional Office (PLANNING)

Cranbrook House Cranbrook Street Nottingham NG1 1EY

Telex 377681

Telephone 0602 46121 ext 407

 SOUTH KESTEVEN
 DISTRICT COUNCIL
 23 NOV 1979
 RECEIVED

Secretary
 South Kesteven District Council
 St Vincents
 Grantham
 Lincolnshire
 NG31 9EJ

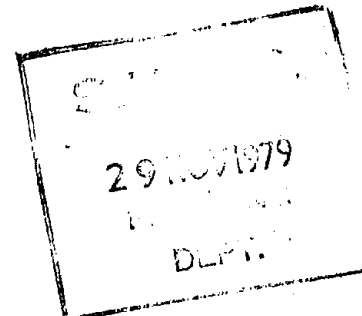
 Your reference MLH/T.2/1/26

Our reference EMP/5314/146/5

Date 22 November 1979

Sir

TOWN AND COUNTRY PLANNING ACT 1971
 SOUTH KESTEVEN DISTRICT COUNCIL
 BOURNE (FOREST/WOODLAND AVENUES)
 TREE PRESERVATION ORDER 1978



1. I am directed by the Secretary of State for the Environment to refer to the above named Order and to the objection made by Mr P Tory to the inclusion therein of Trees T2 and T3.
2. The written representations made in support of the objection have been considered together with your Council's observations. An officer of the Department has visited the site.
3. Mr Tory's objection was based mainly on the following grounds:-
 - (a) Chestnut tree T2 is poorly formed and weak and should be replaced by trees more suited to the site.
 - (b) Lime tree T3 is close to Mr Tory's house and is likely to cause foundation damage, this has been confirmed by an expert. Replacement trees which are more suited to the site, are already planted.
4. The trees to which the objection relates are located at Bourne, a small market town in south Lincolnshire, and are situated in the rear garden of a recently constructed house No 6 Woodland Avenue.
5. The inspecting officer found the following:-

Tree T2 - a Horse Chestnut, approximately 30 feet in height with a maximum spread of about 20 feet and a trunk diameter of some 1 foot 3 inches, that has a full but rather narrow shape.

Tree T3 - a Lime, approximately 35 feet in height, with a trunk that bifurcates at about 5 feet above ground level. Despite the fact that some of its lower branches have been removed it is generally in good shape.

6. Having regard to objection (a) the inspecting officer has reported that although the Horse Chestnut, T2, is not an outstanding specimen, he could find no evidence to suggest that it has any weakness but it does make a worthwhile contribution to the amenities of its location. Consequently the view is held that this objection is insufficient to justify excluding the tree from the Order.

7. Turning to objection (b), whilst it is considered that the likelihood of structural damage being caused to Mr Tory's property is remote, it is accepted that a Lime tree can grow to a considerable size and, as is suggested by the County Forestry Officer, may become too large for its garden location. However as this situation is clearly appreciated by the Council, who are required to give consideration to such matters when deciding an application for permission to fell, and as the inspecting officer has reported that the tree is of amenity value, the view is held that at the present time it is worthy of the protection that an Order provides.

8. Although no objection has been made to the inclusion of Group G1, the inspecting officer has reported that 4 of the 7 trees included have been felled and that of the 3 remaining one has a poor shape and another is not worthy of preservation. In the circumstances therefore the opinion is held that Group G1 should be excluded from the Order.

9. For the reasons given above the Secretary of State has decided to confirm the Order subject to the modification that Group G1 be excluded.

10. The confirmed Order is enclosed and attention is drawn to the requirements of Regulation 9 of the Town and Country Planning (Tree Preservation Order) Regulations 1969.

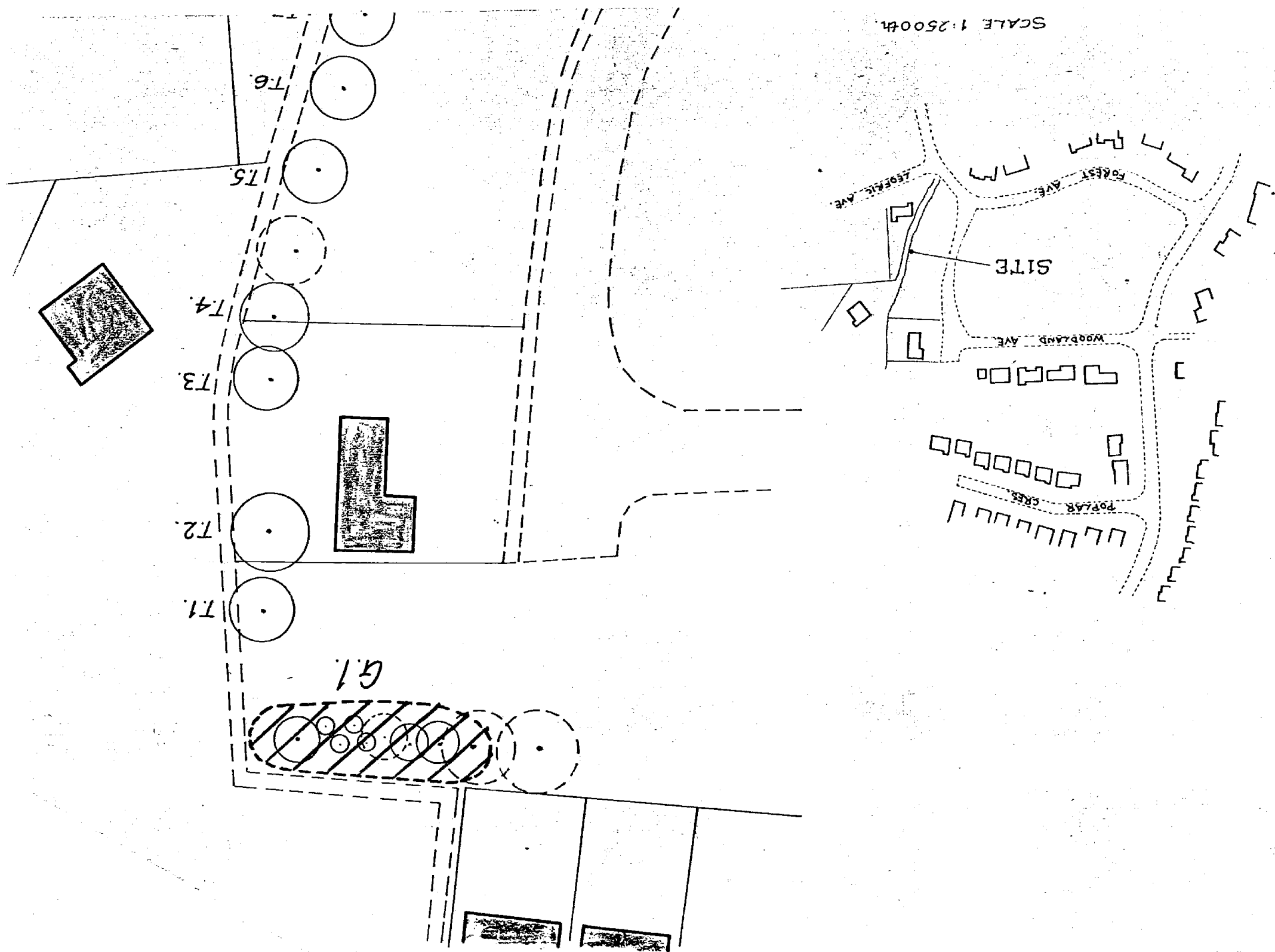
11. Section 245 of the Town and Country Planning Act 1971 provides that if a person is aggrieved by any Order of a description which includes the present Order on the grounds that it is not within the powers of the Act, or that any of the relevant requirements have not been complied with and the interests of the applicant have been substantially prejudiced thereby, he may within 6 weeks from the date on which the Order is confirmed apply to the High Court to quash the Order. The relevant requirements are any requirements of the Act of 1971 or of the Tribunals and Inquiries Act 1971 or of any Order, regulations, or rule made under either of those Acts which are applicable to this Order. A similar right of appeal is given by the Section to the local authority directly concerned with the order.

12. A copy of this letter has been sent to Mr P Tory.

I am Sir
Your obedient.Servant

D N COE
Authorised by the Secretary of State
to sign in that behalf

SCALE 1:2500th



FIRST SCHEDULE

Trees Specified Individually

<u>No. on map</u>	<u>Description</u>	<u>Situation</u>
T1	Chestnut	To the north of Plot 18
T2	Chestnut	Within Plot 18
T3	Lime	Within Plot 18
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T5	Lime	public footpath leading
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T7	Lime	and at the rear of the
T8	Chestnut	residential plots fronting
T9	Lime	Woodlands Drive.
T10	Lime	
T11	Lime	
T12	Lime	
T13	Chestnut	On verge

Ordnance Survey Sheet TF 0820/0920
Scale 1/2500, Part OS 4943

Groups of Trees

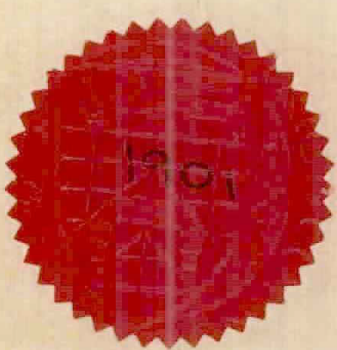
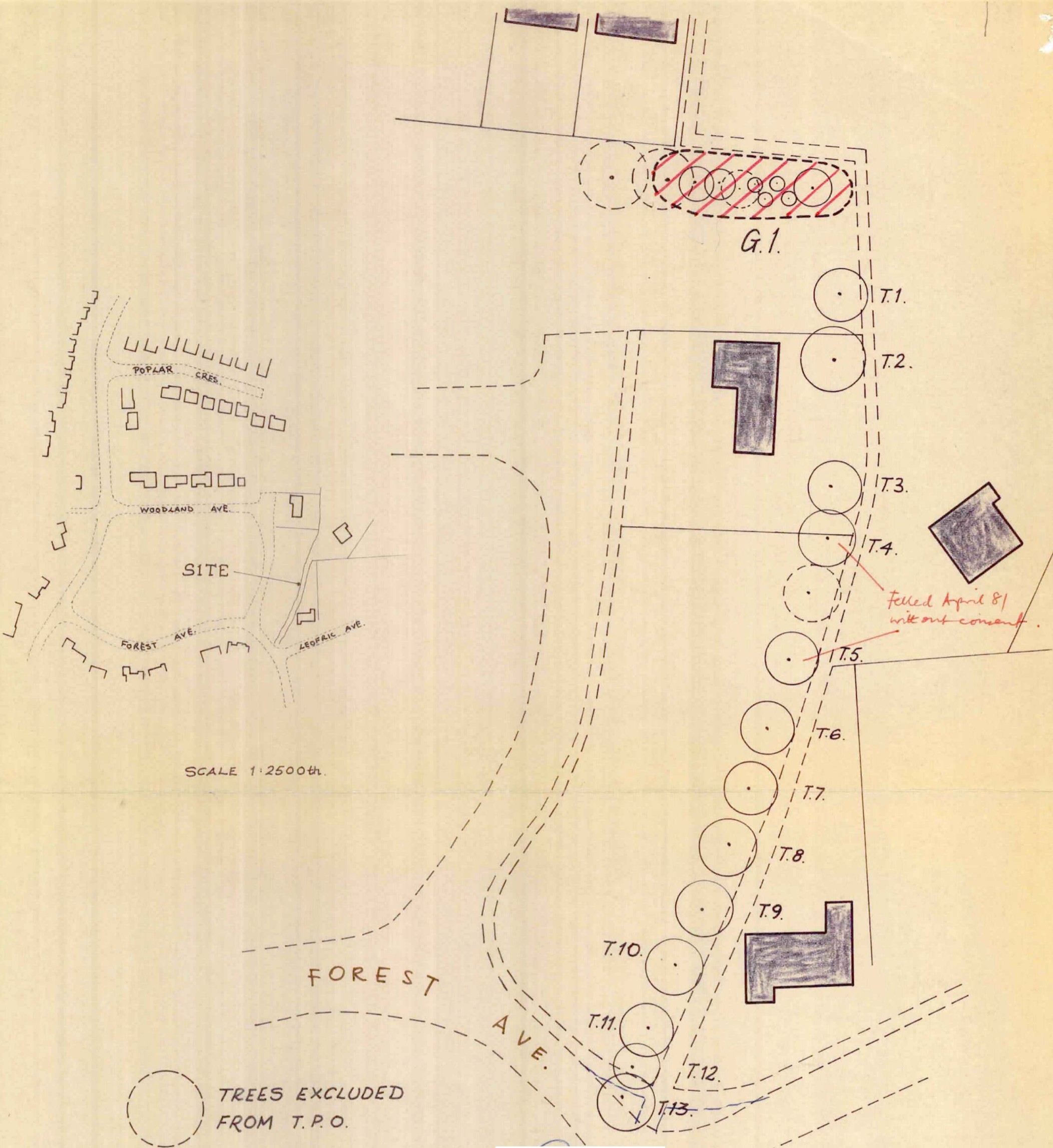
~~Group 1 consisting of Walnut, At the north-east corner of~~
~~4 small Chestnuts Woodlands Avenue~~
~~2 Medium Chestnuts~~

Trees Specified by Reference to an Area

NONE

Woodlands

NONE



MAP REFERRED TO IN THE BOURNE (FOREST AVE./WOODLAND AVE.) T.P.O. 1978