

# **CRAVEN DISTRICT COUNCIL**

## **Skipton Parish**

# **TREE PRESERVATION ORDER No. 195 2011**





**Town and Country Planning Act 1990**  
**The Craven District Council Tree Preservation Order No 195, 2011**  
**Skipton Parish**

Craven District Council in exercise of the powers conferred on them by sections 198, 201 and 203 of the Town and Country Planning Act 1990 hereby make the following Order—

**Citation**

1. This Order may be cited as the Craven District Council Tree Preservation Order No 195, 2011 Skipton Parish.

**Interpretation**

2. In this Order “the authority” means Craven District 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.

**Application of section 201**

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly, this Order shall take effect provisionally on 20<sup>th</sup> October 2011.

**Prohibited acts in relation to trees**

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders)(1) or subsection (3) of section 200 (orders affecting land where Forestry Commissioners interested), and subject to article 5, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

**Exemptions**

5.—(1) Nothing in article 4 shall prevent—

- (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary—
  - (i) in the interests of the safe operation of the undertaking;
  - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
  - (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;

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(1) Subsection (6) of section 198 exempts from the application of tree preservation orders the cutting down, uprooting, topping or lopping or lopping trees which are dying, dead or have become dangerous, or the undertaking of those acts in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. Subsection (7) of that section makes section 198 subject to section 39(2) of the Housing and Planning Act 1986 and section 15 of the Forestry Act 1967.



- (aa) the cutting down, topping, lopping or uprooting of a tree 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 (procedures for making or confirming certain orders and schemes);
- (ab) the cutting down, topping, lopping or uprooting of a tree where that work is urgently necessary for national security purposes.
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);
- (e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Development Order) 1995;
- (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in the Land Drainage Act 1991; or
- (g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

(2) In paragraph (1), "statutory undertaker" means any of the following—

- a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,
- a relevant airport operator (within the meaning of Part V of the Airports Act 1986),
- the holder of a licence under section 6 of the Electricity Act 1989,
- a public gas transporter,
- the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of that Act) is applied,
- a water or sewerage undertaker,
- the Civil Aviation Authority or a body acting on behalf of that Authority,

- the Post Office.

### **Applications for consent under the Order**

6. An application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall—

- (a) identify the tree or trees to which it relates (if necessary, by reference to a plan);
- (b) specify the work for which consent is sought; and
- (c) contain a statement of the applicant's reasons for making the application.

### **Application of provisions of the Town and Country Planning Act 1990**

7.—(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part 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 this article, a person establishes that loss or damage has been caused or incurred in consequence of—

- (a) the refusal of any consent required under this Order; or
- (b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article—

- (a) if more than 12 months has elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or



- (b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person—

- (a) for loss of development value or other diminution in the value of the land;
- (b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6(c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;
- (c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
- (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) to (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there were substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article—

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it; and

“owner” has the meaning given to it by section 34 of the Forestry Act 1967.

Dated this 20<sup>th</sup> day of October 2011

The Common Seal of  
Craven District Council  
was hereunto affixed  
in the presence of -

*Amoppett*

Legal Services Manager



# SCHEDULE 1

## Trees Specified Individually (encircled in black on map)

No on Map	Description	Situation	Map Reference
T1	Oak	As shown on attached plan	SD 9929 5187
T2	Hornbeam	As shown on attached plan	SD 9929 5187

## Trees Specified by Reference to an Area (within dotted black line on map)

NONE

## Groups of Trees (within broken black line on map)

NONE

## Woodlands (within continuous black line on map)

NONE

## 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> <ul style="list-style-type: none"> <li>(i) omit— “, in such manner as may be prescribed by a development order,”, “such” in the second place where it appears, and “as may be so prescribed”; and</li> <li>(ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</li> </ul> <p>(b) In subsection (2)—</p> <ul style="list-style-type: none"> <li>(i) after “contain” insert “, as regards each such order”; and</li> <li>(ii) for paragraphs (a) and (b) substitute— <ul style="list-style-type: none"> <li>(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</li> <li>(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.”.</li> </ul> </li> </ul> <p>(c) Omit subsections (3) and (4) (as required by section 198(4)).</p>
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1)—</p> <ul style="list-style-type: none"> <li>(i) substitute— “Subject to subsections (1A) and (1B), where” for “Where”; “the authority” for “a local planning authority”; “consent under a tree preservation order” for “planning permission” where those words first appear; and “consent under the order” for “planning permission” in both of the other places where those words appear;</li> <li>(ii) after “think fit”, insert— “(including conditions limiting the duration of the consent or requiring the replacement of trees)”; and</li> <li>(iii) omit “subject to sections 91 and 92,”.</li> </ul> <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 felling is carried out in the course of forestry operations (but may give directions for securing replanting).”.</p>



	(c) Omit subsections (2) and (3).
Section 75 (effect of planning permission)	<p>(a) In subsection (1) substitute—</p> <ul style="list-style-type: none"> <li>(i) “Any” for the words from “Without” to “any”;</li> <li>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</li> <li>(iii) “the consent” for “the permission”; and</li> <li>(iv) “the land to which the order relates” for “the land”.</li> </ul> <p>(b) Omit subsections (2) and (3).</p>
Section 78 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) In subsection (1) substitute—</p> <ul style="list-style-type: none"> <li>(i) “the authority” for “a local planning authority”;</li> <li>(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</li> <li>(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</li> <li>(iv) for paragraph (c) substitute— <ul style="list-style-type: none"> <li>“(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</li> <li>(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,”.</li> </ul> </li> </ul> <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"> <li>(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;</li> <li>(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.”.</li> </ul>



PART II  
PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990,  
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.

.....

(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).

.....

**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—

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.

.....

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



2.9 The main grants currently available from the Forestry Commission for the planting, restocking or management of woodlands are under the Woodland Grant Scheme. In running their schemes the Forestry Commission have proper regard for environmental and amenity considerations, and proposals are assessed by reference to the UK Forestry Standard, incorporating Forest Guidelines, Forest Practice Guides and other standards of good forestry practice.

2.10 The LPA and the Forestry Commission should, where appropriate, liaise closely. If the Forestry Commission wish to accept an area of land into the Woodland Grant Scheme and that land is already the subject of a TPO, they will consult the LPA. If that land is subsequently accepted into the Scheme any felling in accordance with an approved plan of operations or working plan would override the usual requirement to obtain the LPA's consent under the TPO.<sup>16</sup>

2.11 For their part, LPAs must consult the Forestry Commission (see [Annex 1](#)) before making a TPO on land in which the Commission have an 'interest', as defined in paragraph 2.8 above. If the LPA identify trees which they would have made subject to a TPO but for the Forestry Commission's 'interest' in the land, they may wish to consider asking the Commission to let them know when that 'interest' in the land is likely to cease.

## Local Authority Land

2.12 LPAs may make TPOs in respect of their own trees or trees under their control. Sometimes they acquire land which is already the subject of a TPO. If the LPA (ie any department of the Council as a whole and not just their planning department) propose to cut down or carry out work on protected trees, they may grant themselves consent (for more details see paragraphs [6.76-6.78](#)).<sup>17</sup> In the Secretary of State's view it would very rarely be appropriate for one LPA to make a TPO for trees on land owned by another LPA in their area. Where such a TPO exists the latter would generally have to make an application to the former before cutting down or carrying out work on the trees.

7 See *Bullock v Secretary of State for the Environment* (1980) 40 P&CR 246, where recently coppiced trees were held to be 'trees' under the Act: 'Bushes and scrub nobody I suppose would call 'trees', nor indeed shrubs, but it seems to me that anything which ordinarily one would call a tree is a 'tree' within ... the Act.' (Phillips J.)

8 A view accepted by the Court of Appeal in *Evans v Waverley BC* [1995] 3 PLR 80.

9 See section 97 of the Environment Act 1995 and the Hedgerows Regulations 1997 (SI 1997, No 1160). See also the Department's Guide, *The Hedgerows Regulations 1997: A Guide to the Law and Good Practice*.

10 'Crown land' is defined in section 293 of the Act. Church land is not Crown land.

11 See section 296(2)(a) of the Act.

12 See Part I of the memorandum to DOE Circular 18/84, paragraph 1012.

13 Under section 60 of the National Health Service and Community Care Act 1990.

14 On 1 April 1996, for example (under the Health Authorities Act 1995), regional health authority land was vested in the Secretary of State.

15 See section 200(2) of the Act.

16 See section 200(3) of the Act.

17 See regulation 17 of the 1999 Regulations, which amends the Town and Country Planning General Regulations 1992 (SI 1992, No 1492), bringing to an end the requirement for LPAs to apply to the Secretary of State for consent.

### **REASONS FOR MAKING THE ORDER**

- It is considered that the trees contribute significantly to the visual amenity of the area, and they should be retained and protected during any development of the adjacent property / land.



