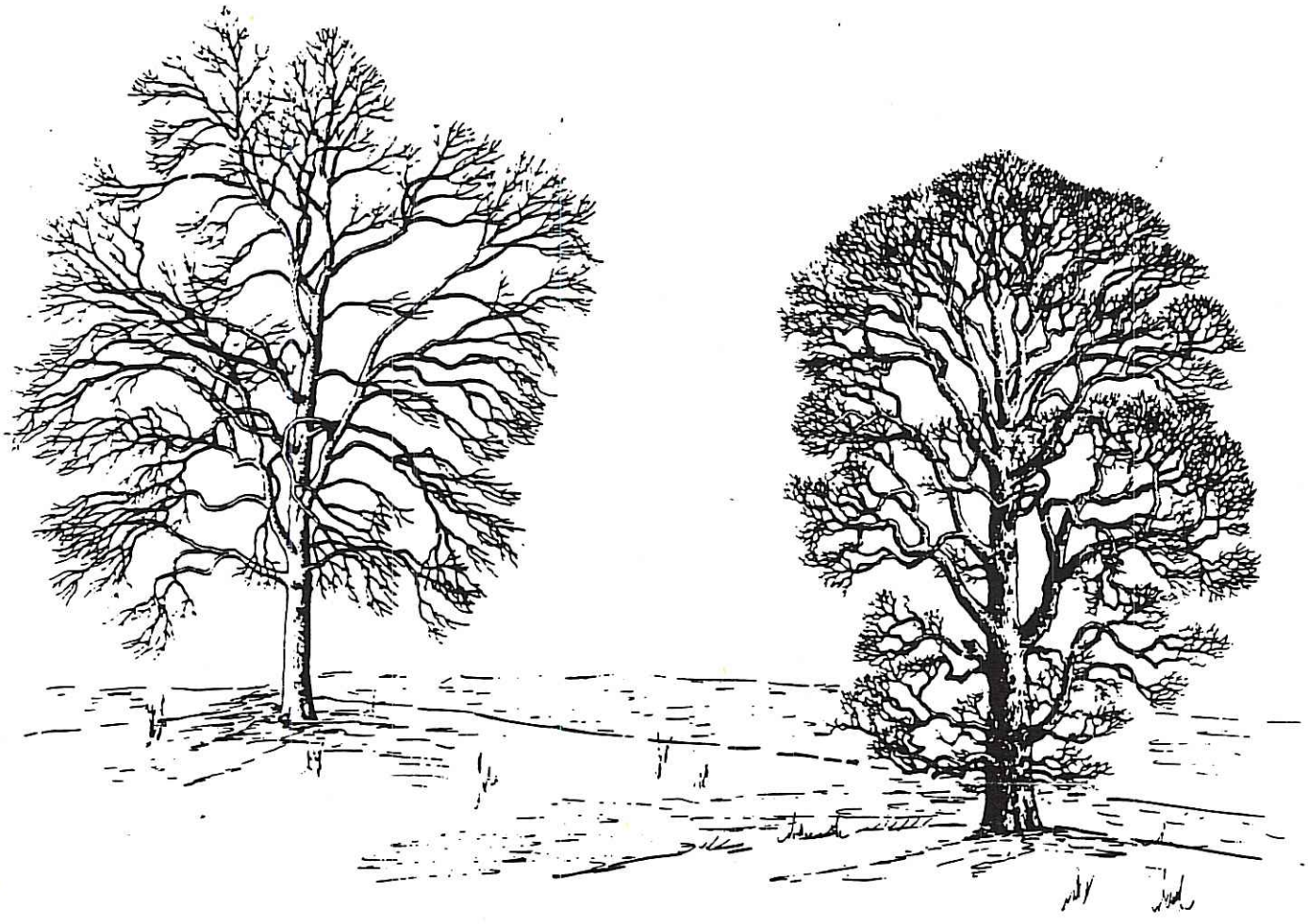
Craven District Council

Austwick Parish

TREE PRESERVATION ORDER
No 65 1990



A. Howell, Clerk of the Council, Council Offices, Granville Street, Skipton.

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER NO. 65 1990 - AUSTWICK

Craven District Council (in this Order called "the authority"), in pursuance of the powers conferred in that behalf by sections 198, 201 and 300 of the Town and Country Planning Act 1990 (and with the consent of the appropriate authority as defined in that Act), and subject to the provisions of the Forestry Acts, 1967 and 1979, hereby makes the following Order:-

1. In this Order -

"the Act" means the Town and Country Planning Act, 1990:

"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 Minister" 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 tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland therein specified, the position of which trees, groups of trees and woodlands is defined 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 said 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 area, 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 <u>not</u> 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 conditions is in the interests of good forestry; or

(b) in the case of trees, other than trees comprised in a group of trees or in a woodland, that the trees have an outstanding or special amenity value; or

(c) in the case of trees which are comprised in a group of trees or in a woodland, that the group of trees or the woodland, as the case may be, has an outstanding or special amenity value,

but a certificate shall not be given in the case of trees falling within (c) above if the application in respect of them has been referred by the Forestry Commissioners under section 15(1)(b) or 15(2)(a) of the Forestry Act 1967.

6. (1) Where a 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 Minister 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 provisions of this Order, replant the said land in accordance with the direction.

(2) Any direction given under para. (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 the National Rivers Authority, by any other authority or former authority (whose functions are now exercised by the National Rivers Authority) who at the time exercised the functions in respect of which the byelaw was made, or by 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 National Rivers 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 198 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 which could have been claimed under any provision relating to the preservation of trees or protection of woodlands contained in an operative scheme under the Town and Country Planning 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 offices of the authority addressed to the Clerk thereof or by sending it by prepaid post so addressed.

(2) The time within which 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 Minister, as the case may be, or where an appeal has been made to the Minister against the decision of the authority, from the date of the decision of the Minister on the appeal.

12. Any question of disputed compensation shall be determined in accordance with the provisions of section 205 of the Act.

13. In accordance with the provisions of section 300 of the Act this Order shall take effect upon the land ceasing to be Crown land or becoming subject to a private interest (whichever first occurs).

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 manner as to be likely to destroy it, is guilty of an offence and liable on summary conviction to a fine not exceeding the prescribed sum (currently £2,000) 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 level 4 on the standard scale (currently £1,000) 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 any tree in respect of which a Tree Preservation Order is for the time being in force is removed, uprooted or destroyed in contravention of the Order or, except in the case of a tree to which the Order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of section 198(6) of the Town and Country Planning Act 1990 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 dispenses with the requirement, to plant another tree of an appropriate size and species at the same place as soon as he reasonably can. Except in emergency, not less than five 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.

In respect of trees in a woodland, it shall be sufficient to replace the trees removed, uprooted or destroyed by planting the same number of trees either on or near the land on which the trees removed, uprooted or destroyed stood or on such other land as may be agreed between the local planning authority and the owner of the land, and (in either case) in such places as may be designated by the local planning authority.

First Schedule

Trees Specified Individually (encircled in black on map)

No. on Map	Description	Situation
T.1	Beech	O.S. Sheet SD 7667 NGR 762 677
T.2	Field Maple	" "
T.3	Beech	" "
T.4	Beech	" "
T.5	Beech	" "
T.6	Sycamore	" "
T.7	Sycamore	" "
T.8	Field Maple	" "
T.9	Beech	" "
T.10	Field Maple	" "
T.11	Larch	" "
T.12	Beech	" "
T.13	Field Maple	NGR 762 676
T.14	Beech	" "
T.15	Silver Birch	" "
T.16	Leyland Cyprus	" "
T.17	Leyland Cyprus	" "
T.18	Corsican Pine	" "
T.19	Sycamore	" "
T.20	Ash	" "
T.21	Ash	" "
T.22	Sycamore	" "
T.23	Corsican Pine	" "
T.24	Corsican Pine	" "
T.25	Horse Chestnut	" "
T.26	Sycamore	" "
T.27	Beech	NGR 761 676
T.28	Silver Birch	" "
T.29	Sycamore	" "
T.30	Horse Chestnut	" "
T.31	Field Maple	" "
T.32	Elm	" "
T.33	Horse Chestnut	" "
T.34	Beech	" "

contd.../

No. on Map	Description	Situation
		O.S. Sheet SD 7667
T.35	Yew	NGR 761 676
T.36	Field Maple	" "
T.37	Beech	" "
T.38	Field Maple	" "
T.39	Sycamore	" "
T.40	Leyland Cyprus	" "
T.41	Beech	NGR 762 676
T.42	Horse Chestnut	" "
T.43	Leyland Cyprus	" "
T.44	Leyland Cyprus	" "
T.45	Leyland Cyprus	" "
T.46	Field Maple	" "
T.47	Yew	" "
T.48	Ash	" "
T.49	Sycamore	" "
T.50	Silver Birch	NGR 762 675
T.51	Sycamore	" "

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

None

Groups of Trees
(within broken black line on map)

Group 1 - Trees consisting of 9 Corsican & Scots Pine	NGR 7627 6773
Group 2 - Trees consisting of 8 Leyland Cyprus	NGR 7628 6770
Group 3 - Trees consisting of 2 Field Maple, 2 Yew, 1 Beech, 2 Ash, 13 Leyland Cyprus,	NGR 7625 6756
Group 4 - Trees consisting of 3 Norway Spruce, 2 Leyland Cyprus, 2 Flowering Cherry, 1 Ash	NGR 7630 6757

Woodlands
(within continuous black line on map)

None

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the authority to

(1) the cutting down of any trees 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 a grant scheme under section 1 of the Forestry Act 1979 except a scheme which applies to a forestry dedication covenant

(3) the cutting down, uprooting, topping or lopping of a tree
(a) by or at the request of the Post Office where the land on which the tree is situated is land which has been acquired for the purpose of the Post Office's undertaking and either works on such land cannot otherwise be carried out or the cutting down, uprooting, topping or lopping is for the purpose of securing safety in the operation of the undertaking; or the lopping in pursuance of the power conferred on any operator of a telecommunications code system by virtue of paragraph 19 of Schedule 2 to the Telecommunications Act 1984;
(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) a holder of a licence issued under Section 6 of the Electricity Act 1989 where such tree is or will be in such close proximity to an electric line or electrical plant within the meaning of Section 64(1) of that Act which is kept installed or is being or is about to be installed by the licence holder as
(A) to obstruct or interfere with the installation maintenance or working of the line or plant or
(B) to constitute an unacceptable source of danger (whether to children or to other persons);
(iii) The National Rivers Authority, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1976, where the tree interferes, or would interfere, with the exercise of any of the functions of such Authority or drainage board in relation to the maintenance, improvement or construction of water courses or of drainage works; or
(iv) the Secretary of State for Defence, the Secretary of State for Transport, the Civil Aviation Authority, or in relation to any airport managed by a company to which any property, rights or liabilities have been transferred in pursuance of a scheme made under section 1 or 15 of the Airports Act 1986, the person for the time being having the management of the airport where in the opinion of such Secretary of State,

Authority or person the tree obstructs the approach of aircraft to, or their departure from, any airport or hinders the safe and efficient use of aviation or defence technical installations;

(c) where immediately required for the purpose of carrying out development authorised by the 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 the following parts of Part III of the Town and Country Planning Act 1990 as adapted and modified to apply to this Order.

75. (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), enure for the benefit of the land and of all persons for the time being interested in it.

77. (1) The Minister 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.
77. (2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.
77. (3) Any application in respect of which a direction under this section has effect shall be referred to the Minister accordingly.
77. (4) Where an application for consent under the Order is referred to the Minister 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.
77. (5) Before determining an application referred to him under this section the Minister shall, if either the applicant or the authority wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
77. (7) The decision of the Minister on any application referred to him under this section shall be final.

78. (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 Minister.
78. (2) A person who has made such an application may also appeal to the Minister if the authority have neither:-

(a) given notice to the applicant of their decision on the application; nor

(b) given notice to him that the application has been referred to the Minister in accordance with directions given under Section 77,

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.
78. (3) 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 Minister may allow.

78. (5) For the purposes of the application of Section 79(1) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.

79 (1) Where an appeal is brought under section 78 from a decision, certificate or direction of the authority, the Minister, 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.
79. (2) Before determining an appeal under section 78, the Minister 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 Minister for the purpose.
79. (5) The decision of the Minister on such an appeal shall be final.

97. (1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an 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.
97. (3) 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.
97. (4) The revocation or modification of consent shall not affect so much of those operations as has been previously carried out.

98. (1) Except as provided in section 99, an order under section 97 shall not take effect unless it is confirmed by the Minister.
98. (2) Where the authority submit such an order to the Minister for confirmation, they shall serve notice on
(a) the owner of the land affected,
(b) the occupier of the land affected, and
(c) any other person who in their opinion will be affected by the order.
98. (3) The notice shall specify the period within which any person on whom it is served may require the Minister to give him an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
98. (4) If within that period such a person so requires, before the Minister confirms the order he shall give such an opportunity both to him and to the authority
98. (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
98. (6) The Minister may confirm an order submitted to him under this section either without modification or subject to such modifications as he considers expedient.

99. (1) This section applies where
(a) the authority have made an order under section 97; and
(b) the owner and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it.
99. (2) Where this section applies, instead of submitting the order to the Minister for confirmation the authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement must specify
(a) the period within which persons affected by the order may give notice to the Minister that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose; and

(b) the period at the expiration of which, if no such notice is given to the Minister, the order may take effect by virtue of this section without being confirmed by the Minister.

99. (3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(b).

99. (4) The period referred to in subsection 2(a) must not be less than 28 days from the date the advertisement first appears.

99. (5) The period referred to in subsection (2)(b) must not be less than 14 days from the expiration of the period referred to in subsection (2)(a).

99. (6) The authority shall send a copy of any advertisement published under subsection (2) to the Minister not more than three days after the publication.

99. (7) If

(a) no person claiming to be affected by the order has given notice to the Minister under subsection (2)(a) within the period referred to in that subsection, and

(b) the Minister has not directed within that period that the order be submitted to him for confirmation,

the order shall take effect at the expiry of the period referred to in subsection (2)(b), without being confirmed by the Minister as required by section 98(1).

99. (8) This section does not apply to an order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Part III, Part VI or Part VII of the Act.

Given under the common seal of Craven District Council this Fourteenth day of September in the year nineteen hundred and ninety

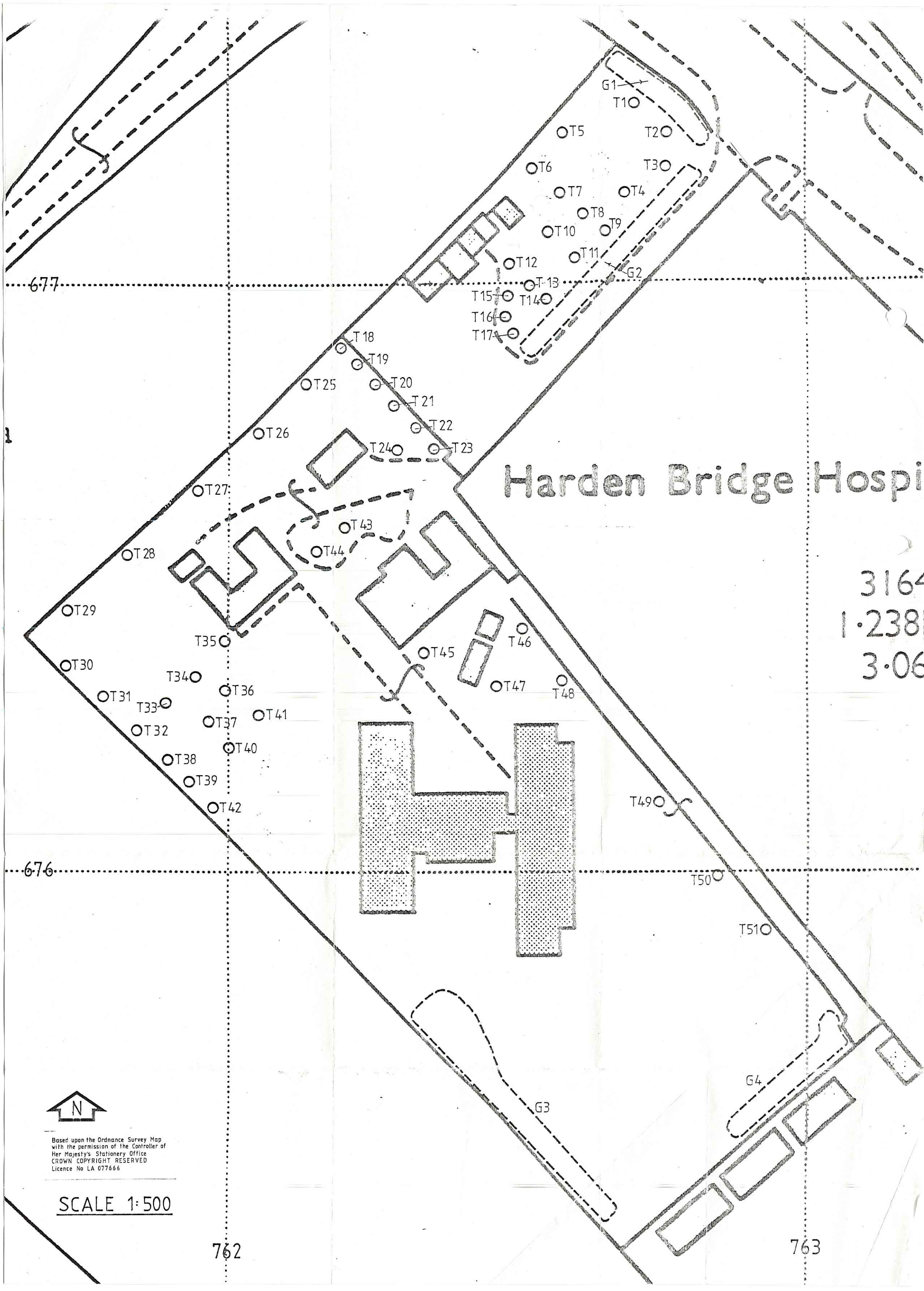
Chairman of the Council

Clerk of the Council

2570

The trees are of considerable aesthetic and amenity value in the landscape, both in their own right and as a setting for an isolated group of hospital buildings, prominently located in otherwise open countryside close to a trunk road, in a designated Area of Outstanding Natural Beauty and adjoining the boundary of the Yorkshire Dales National Park.

Current proposals for the closure of the hospital are likely to lead to the site passing out of Crown ownership and so represent a potential threat to the trees, which accordingly require to be protected from indiscriminate lopping or felling.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