

IMPORTANT

THIS COMMUNICATION MAY AFFECT YOUR PROPERTY

DATED 18th February 2010

The Borough of Eastleigh

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999**

TREE PRESERVATION ORDER NO. 682

Ullswater Avenue, West End. 2010

TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER 682
As amended by the Town and Country Planning (Trees)(Amendment)(England) Regulations 2008

Town and Country Planning Act 1990
Ullswater Avenue, West End. 2010

The Eastleigh Borough 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 Ullswater Avenue, West End. 2010.

Interpretation

2. In this Order "the authority" means the Eastleigh 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.

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 18th February 2010.

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 (tree preservation orders: Forestry Commissioners), 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;
 - (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);

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 Permitted 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.

6. Article 6 Revoked*

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.

* The Town & Country Planning (Trees) (Amendment) (England) Regulations 1st October 2008, replaced Article 6 (Applications) with Article 9a and Sections 78 and 79 (Appeals) replaced by Part 4 of the above Regulations. Article 9a and Part 4 are appended to the end of this Order.

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

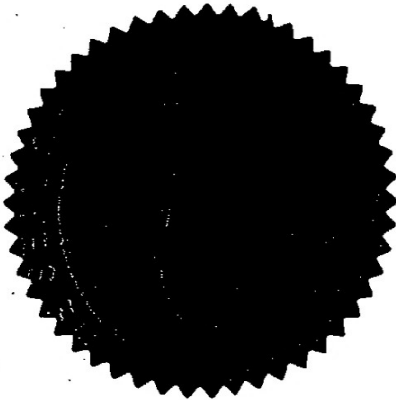
"owner" has the meaning given to it by section 34 of the Forestry Act 1967.

Application to trees to be planted pursuant to a condition

10. In relation to the tree[s] identified in the first column of Schedule 1 by the letter "C", being [a tree] [trees] to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees)), this Order takes effect as from the time when [that tree is planted] [those trees are planted].

Dated this 18th day of *February* 2010

The Common Seal of the Eastleigh Borough Council



was hereunto affixed in the presence of]

AKST, HEAD OF LEGAL AND DEMOCRATIC SERVICES

CONFIRMATION OF ORDER

This Order was confirmed by the Eastleigh Borough Council without modification on the day of

OR

This Order was confirmed by the Eastleigh Borough Council, subject to the modifications indicated by

on the day of

.....
HEAD OF LEGAL AND DEMOCRATIC SERVICES

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Eastleigh Borough Council on the day of

.....
HEAD OF LEGAL AND DEMOCRATIC SERVICES

VARIATION OF ORDER

This Order was varied by the Eastleigh Borough Council on the day of under the reference number

.....
HEAD OF LEGAL AND DEMOCRATIC SERVICES

REVOCATION OF ORDER

This Order was revoked by the Eastleigh Borough Council on the day of under the reference number

.....
HEAD OF LEGAL AND DEMOCRATIC SERVICES

	trees”); and (iii) omit “subject to sections 91 and 92,”. (b) After subsection (1) insert - “(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).”. (c) Omit subsections (2) and (3).
Section 75 (effect of planning permission)	(a) In subsection (1) substitute - (i) “Any” for the words from “Without” to “any”; (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”. (b) Omit subsections (2) and (3).
Section 78 (right to appeal against planning decisions and failure to take such decisions)	(a) In subsection (1) substitute - (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 - “(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,”. (b) Omit subsection (2). (c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” Substitute - “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." (d) For subsection (4), substitute - "(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)." (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."
Section 79 (determination of appeals)	(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority". (b) Omit subsection (3). (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." (d) Omit subsections (6) and (6A). (e) In subsection (7), omit the words after "section 78".

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) endure 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.

.....

(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.

.....

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.

.....

(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.

.....

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

Applications for consent under tree preservation order

9A.—(1) Subject to the following provisions of this regulation, an application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which an order is for the time being in force shall—

(a) be made

- (i) on a form published by the Secretary of State for the purpose of proceedings under these Regulations; or
- (ii) where the authority has consented to applications being made electronically, on a form published electronically by the Secretary of State and provided to the applicant using electronic communication for that purpose;

(b) include the particulars specified in the form;

(c) be accompanied, whether electronically or otherwise, by—

- (i) a plan which identifies the tree or trees to which the application relates;
- (ii) such information as is necessary to specify the work for which consent is sought;
- (iii) a statement of the applicant's reasons for making the application; and
- (iv) appropriate evidence describing any structural damage to property or in relation to tree health or safety, as applicable.

(2) Where an application is made using electronic communication, the applicant shall be taken to have agreed—

(a) to the use of such communication by the authority for the purposes of his application;

(b) that his address for those purposes is the address incorporated into, or otherwise logically associated with, his application; and

(c) that his deemed agreement under this paragraph shall subsist until he gives notice in writing—

- (i) withdrawing any address notified to the authority for that purpose; or
- (ii) revoking that deemed agreement, and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given."

4. In the Schedule (form of tree preservation order)—

(a) omit article 6 (applications for consent under the order); and

(b) in article 9(4)(b) for the words "statement of reasons" to "such statement" substitute "application and the documents and particulars accompanying it".

5. For Part 4 of the Regulations (appeals to be disposed of on the basis of written representations and other documents) substitute—

PART 4

APPEALS

Application of Part 4 and interpretation

11.—(1) This Part applies in relation to every appeal—

(a) under section 78 as applied to applications under orders ("a tree preservation order appeal"); or

(b) against a notice served under section 207(1) ("a tree replacement notice appeal"), which is to be disposed of without a hearing or inquiry to which rules under section 9 (procedure in connection with statutory inquiries) of the Tribunals and Inquiries Act in writing to the authority— come into force.

(2) In this Part—

"appointed person" means a person appointed by the Secretary of State under Schedule 6 to the Town and Country Planning Act 1990 to determine an appeal; "parties" in relation to an appeal, means the appellant and the relevant authority; "preliminary information" means the documents supplied by the relevant authority in accordance with regulation 13; "questionnaire" means a document in the form supplied by the Secretary of State for the purposes of this Part; "relevant authority" in relation to an appeal, means the local planning authority that made the decision (including any failure to determine the application) or served the notice which is the subject of the appeal.

Notice of appeal

12. The appellant shall, at the same time as he gives written notice to the Secretary of State of a tree preservation order appeal or a tree replacement notice appeal, send to the relevant authority a copy of the notice of appeal.

Preliminary Information

13. The relevant authority shall, as soon as practicable after receiving notification of an appeal, send copies of the following to the Secretary of State—

(a) in the case of a tree preservation order appeal—

- (i) the application for consent, where relevant;
- (ii) the decision of the relevant authority, if any, including any condition, certificate or direction made by the authority in relation to the decision.

(b) in the case of a tree replacement notice appeal—

- (i) the notice issued under section 207(1);
- (ii) where the notice has been issued following a failure to plant replacement trees under a condition of consent, the original application and consent;
- (iii) where the notice has been issued as a result of the breach of an order under section 206(1)(a) (removal, uprooting or destruction of tree in contravention of tree preservation order), the date of that breach, if not included in the notice;
- (iv) where the notice has been issued as a result of a failure to replace a protected tree removed under the exemption

in section 206(1)(b) (dying, dead or dangerous trees), the date of the alleged failure, if not included in the notice.

Questionnaire

14.—(1) The Secretary of State shall, as soon as practicable after receipt of the preliminary information, supply a questionnaire to the relevant authority.

(2) The relevant authority shall, within such period as the Secretary of State may specify in writing, being not less than 21 days from the date on which the questionnaire was supplied, submit to her and copy to the appellant a completed questionnaire.

(3) The questionnaire shall state the date on which it is submitted to the Secretary of State.

Further information

15.—(1) The Secretary of State or the appointed person (as the case may be) may in writing require the parties to provide such further information, including any representations, relevant to the appeal as she may specify.

(2) Such information must be provided in writing within such period as the Secretary of State or the appointed person may specify.

Decision

16. Where under regulation 15 information is required to be provided within a specified period, the Secretary of State or the appointed person (as the case may be) may proceed to a decision on an appeal taking into account only such information as has been submitted within the specified period.

Electronic communications

17. Where an appeal is made using electronic communications, the appellant shall be taken to have agreed—

(a) to the use of such communications by the Secretary of State for the purposes of his appeal;

(b) that his address for that purpose is the address incorporated into, or otherwise logically associated with, his appeal; and

(c) that his deemed agreement under this paragraph shall subsist until he gives notice in writing—

(i) withdrawing any address notified to the Secretary of State for that purpose; or

(ii) revoking that deemed agreement, and such withdrawal or revocation shall be final and shall take effect on the date specified by the person in the notice being not less than seven days after the date on which the notice is given."

Eastleigh Borough Council

TPO 682

G1

Westend Copse

Scale 1:1250
Map Ref SU4514NE
Date 18/02/2010



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EASTLEIGH
BOROUGH COUNCIL

Leisure Services

Dated 18th February 2010

EASTLEIGH BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER

relating to TPO 682
Ullswater Avenue, West End. 2010

SCHEDULE I

SPECIFICATION OF TREES

Trees Specified Individually

(Encircled black on the map)

REF. ON MAP	DESCRIPTION OF SPECIES	SITUATION
	None	

Group of Trees

(Within a broken black line on the map)

REF. ON MAP	DESCRIPTION OF SPECIES	SITUATION
G1	5 Silver Birch	On the frontage of 61 - 65 Ullswater Avenue, West End. E445955 N114632 SU4514NE

Area of Trees

(Within a dotted black line on the map)

REF. ON MAP	DESCRIPTION OF SPECIES	SITUATION
	None	

Woodlands

(Within a continuous black line on the map)

REF. ON MAP	DESCRIPTION OF SPECIES	SITUATION
	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)	(a) In subsection (1) - (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 (ii) substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”. (b) In subsection (2) - (i) after “contain” insert “, as regards each such order”; and (ii) for paragraphs (a) and (b) substitute - (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.”. (c) Omit subsections (3) and (4) (as required by section 198(4)).
Section 70 (determination of applications: general considerations)	(a) In subsection (1) - (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; (ii) after “think fit”, insert - “(including conditions limiting the duration of the consent or requiring the replacement of