

EASTLEIGH BOROUGH COUNCIL

TREE PRESERVATION ORDER NO. 1

(St. Faiths Merton Avenue Chandler's Ford)

THE MAYOR ALDERMEN AND BURGESSES OF THE BOROUGH OF EASTLEIGH acting by the Council ~~in this Order called "the Authority"~~ ^{setting under powers delegated to them by the Hampshire County Council as local planning authority and in pursuance of the powers conferred in that behalf by Section 29 of the Town and Country Planning Act, 1962 and subject to the provisions of section 13 of the Forestry Act, 1951 hereby} make the following Order:

1. IN THIS ORDER

"the Act" means the Town and Country Planning Act, 1962;

"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; a 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 Minister of Land and Natural Resources.

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 out down, top lop or wilfully destroy or cause or permit the cutting down, topping lopping or wilful destruction of any trees 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 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 ~~to 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

(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 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 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. 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

8. Subject to the provisions of this Order, any person who has suffered damage or has incurred expenditure in consequence of any refusal 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 damage or expenditure

Provided that no compensation shall be payable in respect of damage suffered or expenditure incurred 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

9. In assessing compensation payable under the last preceding Article or under Section 22 of the Act as applied by this Order account shall be taken of :

- (a) any compensation or contribution which has been paid in respect of the same trees under the terms of this or any other Tree Preservation Order under Section 28 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 any injurious affection to any land of the owner which would result from the felling of the trees the subject of the claim
- (b)

10. (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

11. Any question of disputed compensation shall be determined in accordance with the provisions of Section 125 of the Act

12. Any person contravening the provisions of this Order is guilty of an offence under Section 62 of the Act and liable on summary conviction to a fine not exceeding fifty pounds; and if in the case of a continuing offence the contravention is continued after conviction he is guilty of a further offence thereunder and liable on summary conviction to an additional fine not exceeding forty shillings for every day on which the contravention is so continued.

FIRST SCHEDULE

Trees Specified Individually

(encircled in black on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	None	

Trees Specified by Reference to an Area

(within a dotted black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
A1	The several trees of whatever species standing in the grounds of St. Faiths, Merdon Avenue and in the area numbered A1 on the map	

Groups of Trees

(within a broken black line on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	None	
	Woodlands	
	(within a continuous black line on the map)	
<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
	None	

SECOND SCHEDULE

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

(1) to the cutting down, topping or lopping of any tree that is dying or dead or has become dangerous

(2) to the cutting down, topping or lopping of any tree:

- (a) in compliance with an obligation imposed by or under an Act of Parliament
- (b) in pursuance of the power conferred on the Postmaster General by virtue of Section 5 of the Telegraph (Construction) Act, 1908;
- (c) in pursuance of the powers conferred by Section 24 of the Regulation of Railways Act, 1868;
- (d) for the purpose of preventing or abating a nuisance;
- (e) in the case of 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;
- (f) by or at the request of 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;
- (g) 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.

~~Provisions of Part III of the Act as adapted and modified to apply to the Order.~~

Reference of applications to the Minister

~~45. (1) The Minister may give directions to the authority requiring that an application for consent under the Order, or all such applications of any class specified in the directions, shall be referred to the Minister instead of being dealt with by the authority, and any such application shall be so referred accordingly.~~

~~(2) Where an application for consent under the Order is referred to the authority under this section, the provisions of Articles 4 and 5 of the Order shall apply in relation to the determination of the application by the Minister as they apply in relation to the determination of such applications by the Authority:~~

~~Provided that before determining any such application the Minister shall either the applicant or the authority so desire, afford to them an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose.~~

~~(3) The decision of the Minister on all applications referred to him under this section shall be final.~~

Appeals to the Minister

~~23. 16. (1) Where application is made to the authority for consent under the Order and that consent is refused by the authority or is granted by them subject to conditions or where any certificate or direction is given by the authority, then the applicant is aggrieved by their decision on the application, or by any such certificate or if the person directed is aggrieved by the direction, the applicant or that person, as the case may be, may, by notice in writing served within 21 days from the receipt of notification of their decision, certificate or direction, appeal to the Minister.~~

~~(2) When an appeal is brought under this section from a decision certificate or direction of the authority, the Minister may allow or dismiss the appeal or may reverse or vary any part of the decision of the authority, whether or not the appeal relates to that part, or may cancel any certificate or cancel or vary any direction and may deal with an application as if it had been made to him in the first instance and the provisions of the foregoing section shall apply, subject to any necessary modifications in relation to the determination of an application by the Minister under this section as they apply in relation to the determination by the Minister of an application referred to him under that section.~~

~~(3) Unless within two months from the date of receipt of an application for consent under the Order, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either (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 Minister in accordance with the directions given by him under the last foregoing section; the provisions of sub-section (1) of this section shall apply in relation to the application as if the consent to which it relates had been refused by the authority as if notification of their decision had been received by the applicant at the expiration of the said period of two months or the extended period agreed upon aforesaid, as the case may be.~~

Revocation or modification of consent under the Order

~~27. 24. (1) Subject to the provisions of this section, if it appears to the authority that it is expedient that any consent under the Order granted on an application that behalf should be revoked or modified, they may by order revoke or modify the consent to such extent as appears to them to be expedient as aforesaid.~~

~~Provided that no such order shall take effect unless it is confirmed by the Minister, and the Minister may confirm any order submitted to him for the purpose either without modification or subject to such modifications as he considers expedient.~~

THIRD SCHEDULE

Provisions of Parts III and VII of the Act as adapted and modified to apply to this Order.

Reference of applications to the Minister

22-(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.

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

22-(3) Any application in respect of which a direction under this section has effect shall be referred to the Minister accordingly.

22-(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.

22-(5) Before determining an application referred to him under this section the Minister 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 Minister for the purpose.

22-(6) The decision of the Minister on any application referred to him under this section shall be final.

Appeals against decisions.

23-(1) Where an application is made for consent under the Order and that consent is refused by the 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.

23-(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 Minister may allow.

23-(4) Where an appeal is brought under this section 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.

23-(5) Before determining an appeal under this section, the Minister shall, if either the appellant or the authority/desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

23-(7) The decision of the Minister on any appeal under this section shall be final.

Appeal in default of decision

24. 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 -

- (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 Minister in accordance with directions given under section 22 of this Act;

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, a

the case may be.

Power to revoke or modify the consent under the Order

27-(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.

27-(2) An order under this section shall not take effect unless it is confirmed by the Minister; and the Minister may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

27-(3) Where an authority submit an order to the Minister for his confirmation under this section, the authority shall furnish the Minister with a statement of their reason for making the order and shall serve notice on the owner 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 Minister, 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 Minister for the purpose.

27-(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 these operations as has been previously carried out.

27-(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 Minister under sub-section (2) of this section.

Supplementary provisions as to revocation and modification

118-(1) Where any person is affected by an order under section 27 of this Act, or by a notice served on him under sub-section (3) of the said section in a case where the order is not confirmed then, if, on a claim made to the authority within the time and in the manner prescribed by Article 10 of the Order, it is shown that he -

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or stay of operations, as the case may be, or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation, modification, or stay of operations,

the authority shall pay to that person compensation in respect of that expenditure loss or damage.

118-(2) For the purposes of this section any expenditure incurred on matters preparatory to acting on the consent shall be taken to be included in the expenditure incurred in carrying out that work.

118-(3) Subject to the last preceding subsection, no compensation shall be paid under this section in respect of any work carried out in the period after the making of the Order and before the grant of consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done during that period).

DATED this twenty-ninth day of July One thousand nine hundred and sixty-six

THE COMMON SEAL OF THE MAYOR
ALDERMEN AND BURGESSES OF THE
BOROUGH OF EASTLEIGH was hereunto
affixed by Order of the Council
in the presence of :-

L. S.

Signed: W.G. Hickman Mayor

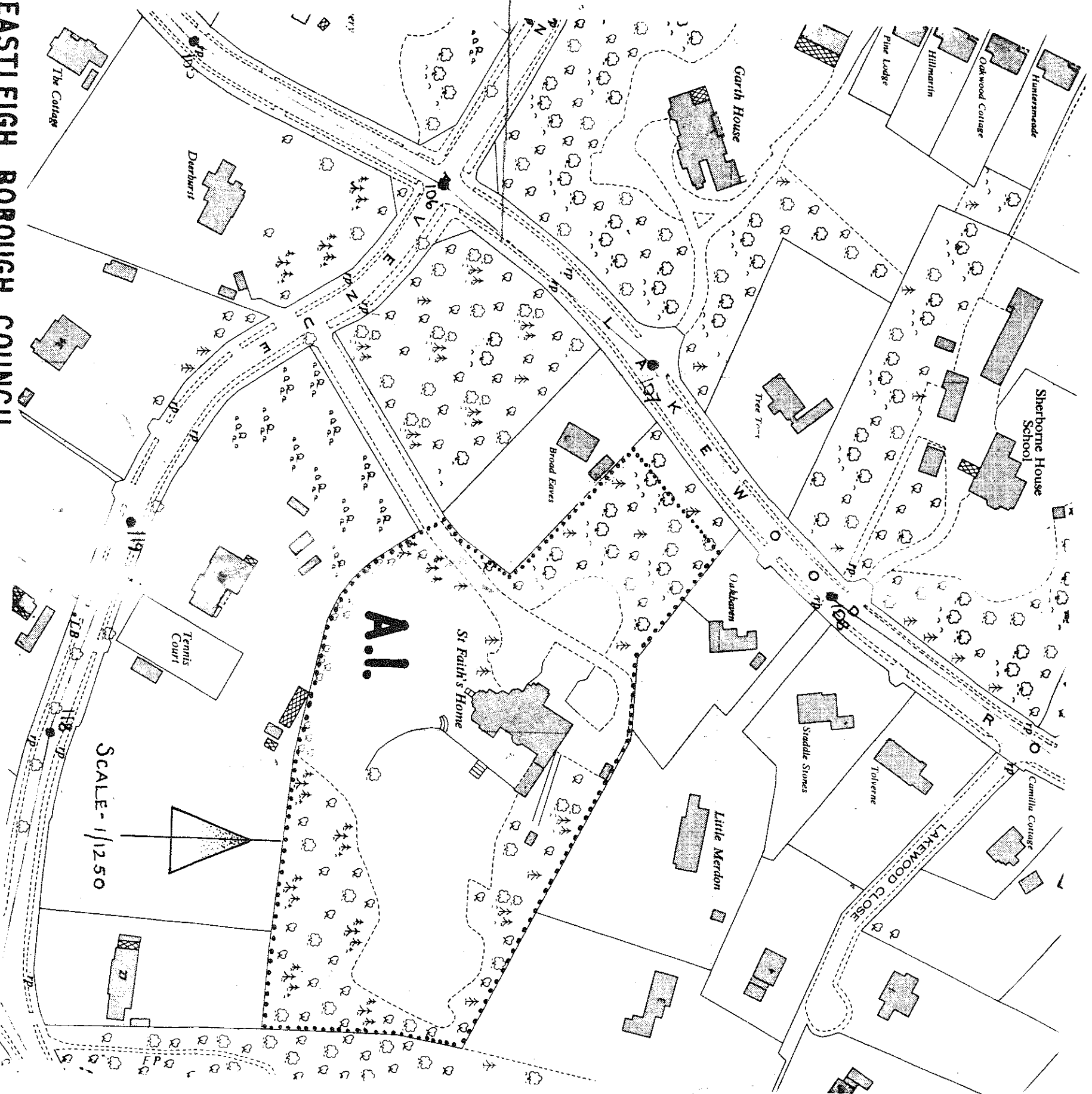
G. W. Nuttall Deputy Town Clerk.

The Minister of Land and Natural Resources in exercise of the powers conferred upon him in that behalf hereby confirms the foregoing order subject to

- (i) the modifications shown in red ink thereon; and
- (ii) the substitution of the provisions annexed hereto and headed 'Third Schedule' for the provisions contained in the Third Schedule thereto

In witness whereof the Official Seal of the Minister of Land and Natural Resources is hereunto affixed on 20th September 1966.

Jean Horsham
L.S. Authorised by the Minister



**EASTLEIGH BOROUGH COUNCIL
TREE PRESERVATION ORDER NO. 1
ST. FAITH'S, MERDON AVENUE, CHANDLERS FORD.**

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