

08/00098/1G

# City of Bradford Metropolitan District Council

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## Memo

### Legal and Democratic Services

To: For Circulation See Below

Development & Regulatory Law Team  
City Hall  
Bradford  
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BD1 1HY  
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Ref:

From: Carole Barrott  
Legal Officer  
Development & Regulatory Law Team

Date: 28 April 2009

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### TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 201 LAND AT BRUNSWICK ROAD GREENGATES BRADFORD - TREE PRESERVATION ORDER

The above Tree Preservation Order was confirmed on 28 April 2009. Please find attached a copy for your records.

*C. E. Barrott*

C E Barrott

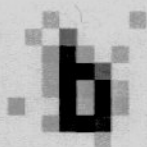
Enc

Arboricultural Technician  
Development Services Tree Section  
Department of Regeneration  
3<sup>rd</sup> Floor, Jacobs Well

Land Charges Manager  
Local Land Charges Unit Team  
4<sup>th</sup> Floor, City Hall

MADE ON: 08/01/09.  
CONFIRMED: 28/04/09.  
REGISTERED: 16/01/09  
TP412460

(70342.M3)  
G:\DEVELOPMENT\STDS\TP17.DOT(September 2007)



**TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999  
AS AMENDED BY THE TOWN AND COUNTRY PLANNING (TREES)  
(AMENDMENT) (ENGLAND) REGULATIONS 2008**

**TOWN AND COUNTRY PLANNING ACT 1990**

**THE LAND AT BRUNSWICK ROAD GREENGATES BRADFORD**

**TREE PRESERVATION ORDER 2009**

**CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

The City of Bradford Metropolitan 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 land at Brunswick Road, Greengates, Bradford Tree Preservation Order 2009.

**Interpretation**

2. In this Order "the authority" means the City of Bradford Metropolitan 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 8<sup>th</sup> January 2009.

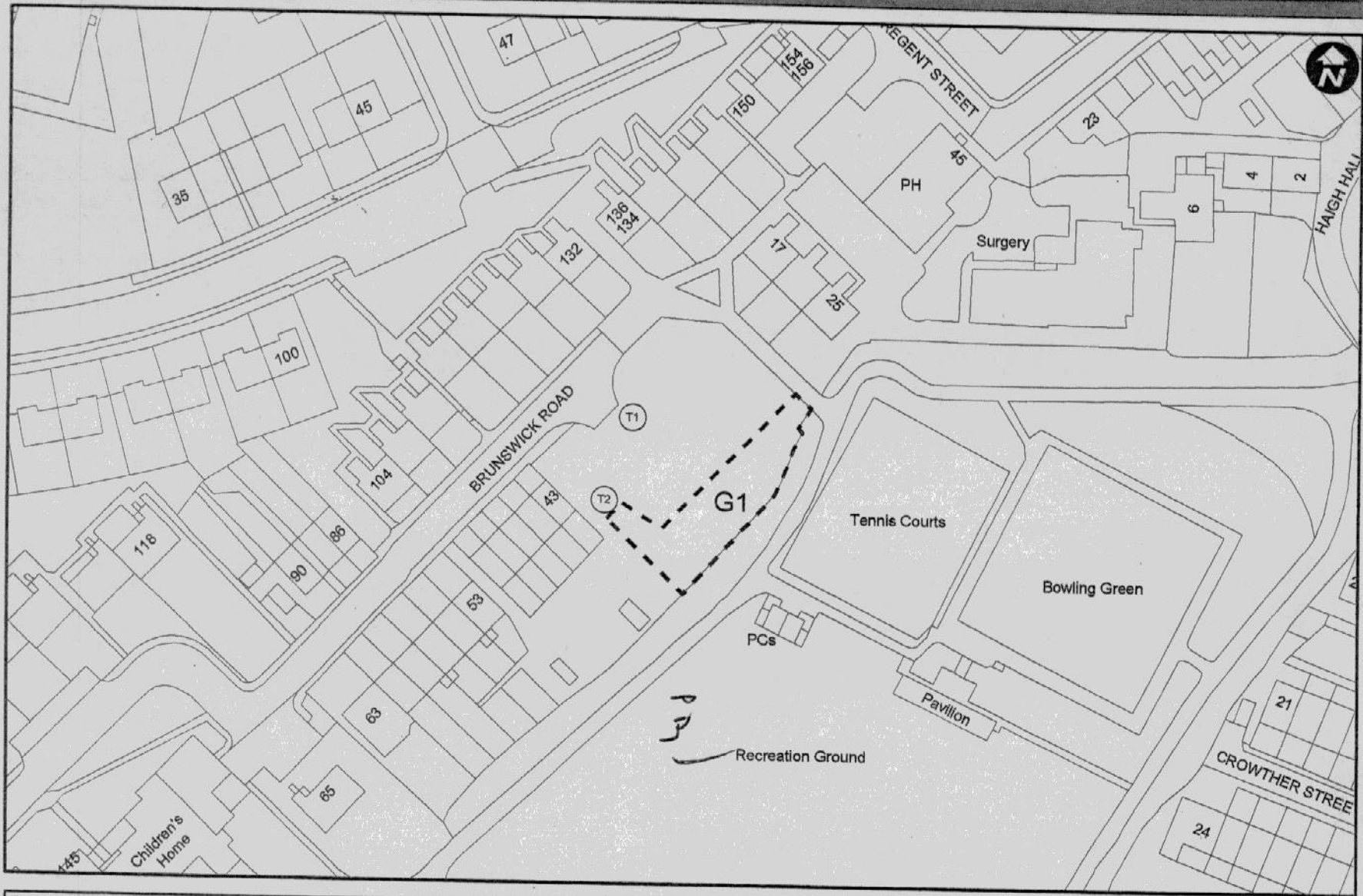
**Prohibited acts in relation to trees**

4. Without prejudice to Sub-Sections (6) and (7) of Section 198 (power to make tree preservation orders) and Sub-Section (1) 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 ofany 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,

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

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 have 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 application and the documents and particulars accompanying it, 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 advert 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) Sub-Sections (3) to (5) of Section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the



Tree Preservation Order  
 No. 08/00098/IG  
 Land at Brunswick Road  
 Greengates  
 Bradford

**DEPARTMENT OF REGENERATION**  
 Jacobs Well  
 Bradford  
 BD1 5RW



OS Ref : SE1837  
 Reproduced from the Ordnance Survey map with  
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Scale 1:1000

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 8<sup>th</sup> day of January 2009.

**THE COMMON SEAL of CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** was hereunto affixed in the presence of:-

*PD*

Authorised by the Assistant Director Corporate Services (City Solicitor)

91511

**CONFIRMATION OF ORDER**

This Order was confirmed by the City of Bradford Metropolitan District Council without modification on the 28<sup>th</sup> day of April 2009

OR

This Order was confirmed by the City of Bradford Metropolitan District Council, Subject to the modifications indicated by , on the day of

**THE COMMON SEAL of CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** was hereunto affixed in the presence of:-

*Schengway*

Authorised by the Assistant Director Corporate Services (City Solicitor)

91796

**DECISION NOT TO CONFIRM ORDER**

A decision not to confirm this Order was taken by City of Bradford Metropolitan District Council on the            of

**THE COMMON SEAL of CITY  
OF BRADFORD METROPOLITAN  
DISTRICT COUNCIL** was hereunto  
affixed in the presence of:-

Authorised by the  
Assistant Director Corporate Services (City Solicitor)

**VARIATION OF ORDER**

This Order was varied by the City of Bradford Metropolitan District Council on the  
day of                            under the reference number

**THE COMMON SEAL of CITY  
OF BRADFORD METROPOLITAN  
DISTRICT COUNCIL** was hereunto  
affixed in the presence of:-

Authorised by the  
Assistant Director Corporate Services (City Solicitor)

**REVOCATION OF ORDER**

This Order was revoked by the City of Bradford Metropolitan District Council on the  
day of                            under the reference number

**THE COMMON SEAL of CITY  
OF BRADFORD METROPOLITAN  
DISTRICT COUNCIL** was hereunto  
affixed in the presence of:-

Authorised by the  
Assistant Director Corporate Services (City Solicitor)

**SCHEDULE 1****SPECIFICATION OF TREES****Trees specified individually**  
(encircled in black on the map)

Reference on map	Description	Situation
T1	Norway Maple	418753 437216
T2	Sycamore	418748 437201

**Trees specified by reference to an area**  
(within a dotted black line on the map)

Reference on map	Description	Situation
	None	

**Group of trees**  
(within a broken line on the map)

Reference on map	Description (including number of trees in the group)	Situation
G1	32 Ash 20 Sycamore	418770 437201

**Woodlands**  
(within a continuous black line on the map)

Reference on map	Description	Situation
	None	

**SCHEDULE 2****PART 1**

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 Sub-Section (1):-</p> <p>(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</p> <p>(ii) Substitute “matters relevant to tree preservation orders made by the authority” for “applications for planning permission”.</p> <p>(b) In Sub-Section (2):-</p> <p>(i) after “contain” insert “, as regards each such order”, and</p> <p>(ii) for paragraphs (a) and (b) Substitute:-</p> <p>“(a) details of every application under the order and of the authority’s decision (if any) in relation to each such application, and</p> <p>(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”.</p> <p>(c) Omit Sub-Sections (3) and (4) (as required by Section 198(4)).</p>
Section 70 (determination of applications:	(a) In Sub-Section (1):-



general considerations)	<p>(i) Substitute:-  “Subject to Sub-Sections (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;</p> <p>(ii) after “think fit”, insert:-  “(including conditions limiting the duration of the consent or requiring the replacement of trees)”, and</p> <p>(iii) omit “Subject to Sections 91 and 92.”,</p> <p>(b) After Sub-Section (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)”.</p> <p>(c) Omit Sub-Sections (2) and (3).</p>
Section 75 (effect of planning permission)	<p>(a) In Sub-Section (1) Substitute:-</p> <p>(i) “Any” for the words from “Without” to “any”,</p> <p>(iv) “consent under a tree preservation order” for “planning permission” to develop</p>

	<p>land”,</p> <p>(v) “the consent” for “the permission”; and</p> <p>(vi) “the land to which the order relates” for “the land”.</p> <p>(b) Omit Sub-Sections (2) and (3).</p>
<p>Section 78 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) In Sub-Section (1) Substitute:-</p> <p>(i) “the authority” for “a local planning authority”;</p> <p>(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</p> <p>(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</p> <p>(iv) for paragraph (c) Substitute:-</p> <p>“(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</p> <p>(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 authority was received by the authority”.</p> <p>(b) Omit Sub-Section (2).</p> <p>(c) In Sub-Section (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>

	<p>(a) in respect of a matter mentioned in any of paragraphs (a) to (c) of Sub-Section (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;</p> <p>(b) in respect of such a failure as is mentioned in paragraph (d) of that Sub-Section, 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."</p> <p>(d) For Sub-Section (4), Substitute:-  “(4) The appellant shall serve on the authority a copy of the notice mentioned in Sub-Section (3).”.</p> <p>(e) For Sub-Section (5), Substitute:-  “(5) For the purpose of the application of Section 79(1), in relation to an appeal made under Sub-Section (1)(d), it shall be assumed that the authority decided to refuse the application in question.”.</p>
Section 79 (determination of appeals) (a)	<p>(a) In Sub-Sections (1) and (2), Substitute “the authority” for “the local planning authority”.</p> <p>(b) Omit Sub-Section (3).</p> <p>(c) In Sub-Section (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</p>

	<p>(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 Section 65 or 71."</p> <p>(d) Omit Sub-Sections (6) and (6A).</p> <p>(e) In Sub-Section (7), omit the words after "Section 78".</p>
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## 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 Sub-Sections (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 of 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 as consent otherwise provides) ensure 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 Sub-Section (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 Sub-Section, 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 Sub-Section (3).
  - (5) For the purposes of the application of Section 79(1), in relation to an appeal made under Sub-Section (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 Sub-Section (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.