

**TOWN AND COUNTRY PLANNING ACT 1990**  
**THE LAKE DISTRICT NATIONAL PARK AUTHORITY (UNDERSCAR MANOR, UNDER**  
**SKIDDAW, KESWICK) (NO. 353) ORDER 2011**

THE LAKE DISTRICT NATIONAL PARK AUTHORITY, 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 Lake District National Park Authority (Underscar Manor, Under Skiddaw, Keswick) Tree Preservation (No. 353) Order 2011.

**Interpretation**

2 In this Order "the authority" means the Lake District National Park Authority 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 31 January 2011

**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;

- (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.

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

7 (1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part I of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

### **Directions as to replanting**

8 (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give to the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to –

- (a) species;
- (b) number of trees per hectare;
- (c) the preparation of the relevant land prior to the replanting; and
- (d) the erection of fencing necessary for the protection of the newly planted trees.

### **Compensation**

9 (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of –

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

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

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

- (a) if more than 12 months 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 avert the loss or damage or to mitigate its extent; or
  - (d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

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


(6) In this article –

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

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

Dated the Thirty First of January Two Thousand and Eleven

Executed as a deed by affixing  
the Common Seal of  
LAKE DISTRICT NATIONAL PARK AUTHORITY  
in the presence of:

Authorised Signatory .....  .....



2066



This Order was confirmed by the  
LAKE DISTRICT NATIONAL PARK AUTHORITY  
without modification on  
Twenty First of July  
Two thousand and Eleven

Authorised Signatory .....



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**SCHEDULE 1**  
**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

Reference on Map	Description	Situation
T1	Redwood	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2687, 2554
T2	Pine	Located in a field on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2685 2559
T3	Pine	Located in a field on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2686, 2564
T4	Oak	Located in the southern corner of a grassed area to the front of Underscar Manor, Underskiddaw, Keswick at OS GR 2688, 2545
T5	Pine	Located in the southern corner of a grassed area to the front of Underscar Manor, Underskiddaw, Keswick at OS GR 2689, 2544
T6	Cherry	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2689, 2556
T7	Oak	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2691, 2557
T8	Larch	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2691, 2560

T9	Oak	Located on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2691, 2560
T10	Beech	Located on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2691, 2562
T11	Pine	Located on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2692, 2563
T12	Oak	Located on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2694, 2566
T13	Oak	Located on the left hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2695, 2566
T14	Pine	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2696, 2565
T15	Sycamore	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2697, 2565
T16	Pine	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2698, 2564
T17	Holly	Located on the right hand side of the drive to Underscar Manor, Underskiddaw, Keswick at OS GR 2699, 2565
T18	Fir	Located in the centre of the turning circle at Underscar Manor, Underskiddaw, Keswick at OS GR 2697, 2565

T19	Yew	Located on the west side of Underscar Manor, Underskiddaw, Keswick at OS GR 2700, 2567
T20	Yew	Located on the west side of Underscar Manor, Underskiddaw, Keswick at OS GR 2701, 2567
T21	Holm Oak	Located on the west side of Underscar Manor, Underskiddaw, Keswick at OS GR 2701, 2566
T22	Irish Yew	Located in the car park adjacent to Oxley's Health Spa at Underscar Manor, Underskiddaw, Keswick at OS GR 2698, 2569
T23	Sycamore	Located adjacent to the parking area on the western side of Underscar Manor, Underskiddaw, Keswick at OS GR 2699, 2563
T24	Sycamore	Located adjacent to the parking area on the western side of Underscar Manor, Underskiddaw, Keswick at OS GR 2699, 2562
T25	Cedar	Located to the south and in front of Underscar Manor, Underskiddaw, Keswick at OS GR 2670, 2560
T26	Pine	Located in a grassed area south west of Underscar Manor, Underskiddaw, Keswick at OS GR 2698, 2562
T27	Ash	Located in a grassed area south west of Underscar Manor, Underskiddaw, Keswick at OS GR 2698, 2561
T28	Fir	Located in a grassed area south east of Underscar Manor, Underskiddaw, Keswick at OS GR 2704, 2558

T29	Spruce	Located in a grassed area south east of Underscar Manor, Underskiddaw, Keswick at OS GR 2705, 2559
T30	Redwood	Located in a grassed area south east of Underscar Manor, Underskiddaw, Keswick at OS GR 2706, 2559
T31	Yew	Located in the garden of Burr Gill, Underskiddaw, Keswick at OS GR 2714, 2563
T32	Yew	Located adjacent to a wall east of Underscar Manor, Underskiddaw, Keswick at OS GR 2711, 2556
T33	Sycamore	Located adjacent to a wall, south east of Underscar Manor, Underskiddaw, Keswick at OS 2710, 2556
T34	Pine	Located adjacent to a wall, south east of Underscar Manor, Underskiddaw, Keswick at OS GR 2707, 2552
T35	Sycamore	Located in a large grass area south of Underscar Manor, Underskiddaw, Keswick at OS GR 2696, 2551

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

Reference on Map	Description	Situation
NONE		

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

Reference on Map	Description	Situation
G1	Group consisting of 1 yew and 1 beech	Located on the right hand side of the drive when you enter the property Underscar Manor, Underskiddaw, Keswick at OS GR 2686, 2552

G2	Group consisting of 1 oak, 1 birch, 3 sycamore, 2 ash and 1 lime	Located on the right hand side of the road leading to the top entrance to Underscar Manor, Underskiddaw, Keswick at OS GR 2680, 2565
G3	Group consisting of 1 lime and 1 ash	Located adjacent to a stream on the right hand side of the road, leading to the top entrance to Underscar Manor, Underskiddaw, Keswick at OS GR 2686, 2568
G4	Group consisting of 7 sycamore, 1 yew, 1 rowan, 1 holly, 1 oak and 1 lime	Located on the left hand side of the drive leading to Underscar Manor, Underskiddaw, Keswick at OS GR 2689, 2558
G5	Group consisting of 3 pine, 3 oak, 2 sycamore, 1 holly and 1 yew	Located on the right hand side of the drive leading to Underscar Manor, Underskiddaw, Keswick at OS GR 2693, 2563
G6	Group consisting of 3 young cedar	Located to the west of Underscar Manor, Underskiddaw, Keswick at OS GR 2698, 2563

### Woodlands

(within a continuous black line on the map)

Reference on Map	Description	Situation
W1	Woodland consisting mainly of pine, spruce, redwood, fir, cypress, yew, larch, ash, holly, birch, sycamore, beech, lime and willow	Located to the eastern and southern parts of Underscar Manor, Underskiddaw, Keswick at OS GR 2679, 2561
W2	Woodland consisting mainly of oak, pine, fir, spruce, beech, holly and ash	Located to the western corner of the property of Underscar Manor, Underskiddaw, Keswick at OS GR 2679, 2561
W3	Woodland consisting mainly of pine, oak, yew, lime, ash, cherry, Holly, sycamore, fir, Spruce, beech and elder	Located to the west of Underscar Manor, Underskiddaw, Keswick adjacent to the car park at OS GR 2695, 2568

**SCHEDULE 2**

**PART I**

**PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1990  
APPLIED WITH ADAPTATIONS OR MODIFICATIONS**

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	<p>(a) In subsection (1) –</p> <p>(i) omit –</p> <p>“ , in such manner as may be prescribed by a development order,” ,</p> <p>“such” in the second place where it appears, and</p> <p>“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 subsection (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 subsections (3) and (4) (as required by section 198(4)).</p>

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 70 (determination of applications: general considerations)	<p>(a) In subsection (1) –</p> <p>(i) substitute –</p> <p>“Subject to subsections (1A) and (1B), where” for “Where”;</p> <p>“the Authority” for “a local planning authority”;</p> <p>“consent under a tree preservation order” for “planning permission” where those words first appear; and</p> <p>“consent under the order” for “planning permission” in both of the other places where those words appear;</p> <p>(ii) after “think fit”, insert -</p> <p>“(including conditions limiting the duration of the consent or requiring the replacement of trees)”;</p> <p>and</p> <p>(iii) omit “subject to sections 91 and 92,”.</p> <p>(b) After subsection (1) insert -</p> <p>“(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”.</p> <p>(c) Omit subsections (2) and (3).</p>

<p>Section 75 (effect of planning permission)</p>	<p>(a) In subsection (1) substitute –</p> <ul style="list-style-type: none"><li>(i) “Any” for the words from “Without” to “any”;</li><li>(ii) “consent under a tree preservation order” for “planning permission to develop land”;</li><li>(iii) “the consent” for “the permission”; and</li><li>(iv) “the land to which the order relates” for “the land”.</li></ul> <p>(b) Omit subsections (2) and (3).</p>
<p>Section 78 (right to appeal against planning decisions and failure to take such decisions)</p>	<p>(a) In subsection (1) substitute –</p> <ul style="list-style-type: none"><li>(i) “the authority” for “a local planning authority”;</li><li>(ii) “consent under a tree preservation order” for “planning permission” in the first place where those words appear;</li><li>(iii) “consent under such an order” for “planning permission” in the second place where those words appear;</li><li>(iv) for paragraph (c) substitute –</li></ul> <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 application was received by the Authority.”</p> <p>(b) Omit subsection (2).</p> <p>(c) In subsection (3) for “served within such time and in such manner as may be prescribed by a development order.” substitute –</p> <p>“in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served –</p> <p>(a) in respect of a matter mentioned in any of</p>

	<p>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;</p> <p>(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."</p> <p>(d) For subsection (4), substitute –</p> <p>"(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)."</p> <p>(e) For subsection (5), substitute –</p> <p>"(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."</p>
<p>Section 79 (determination of appeals)</p>	<p>(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority".</p> <p>(b) Omit subsection (3).</p> <p>(c) In subsection (4), substitute –</p> <p>(i) "section 70(1), (1A) and (1B)" for "sections 70, 72(1) and (5), 73 and 73A and Part I of Schedule 5";</p> <p>(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 subsections (6) and (6A).</p> <p>(e) In subsection (7), omit the words after "section 78".</p>

## 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.

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- (5) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### Section 70

- (1) Subject to subsections (1A) and (1B), where an application is made to the authority for consent under a tree preservation order -
  - (a) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or
  - (b) they may refuse consent under the order.
- (1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.
- (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

.....

### Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) enure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

.....

### Section 78

- (1) Where the authority –
  - (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.

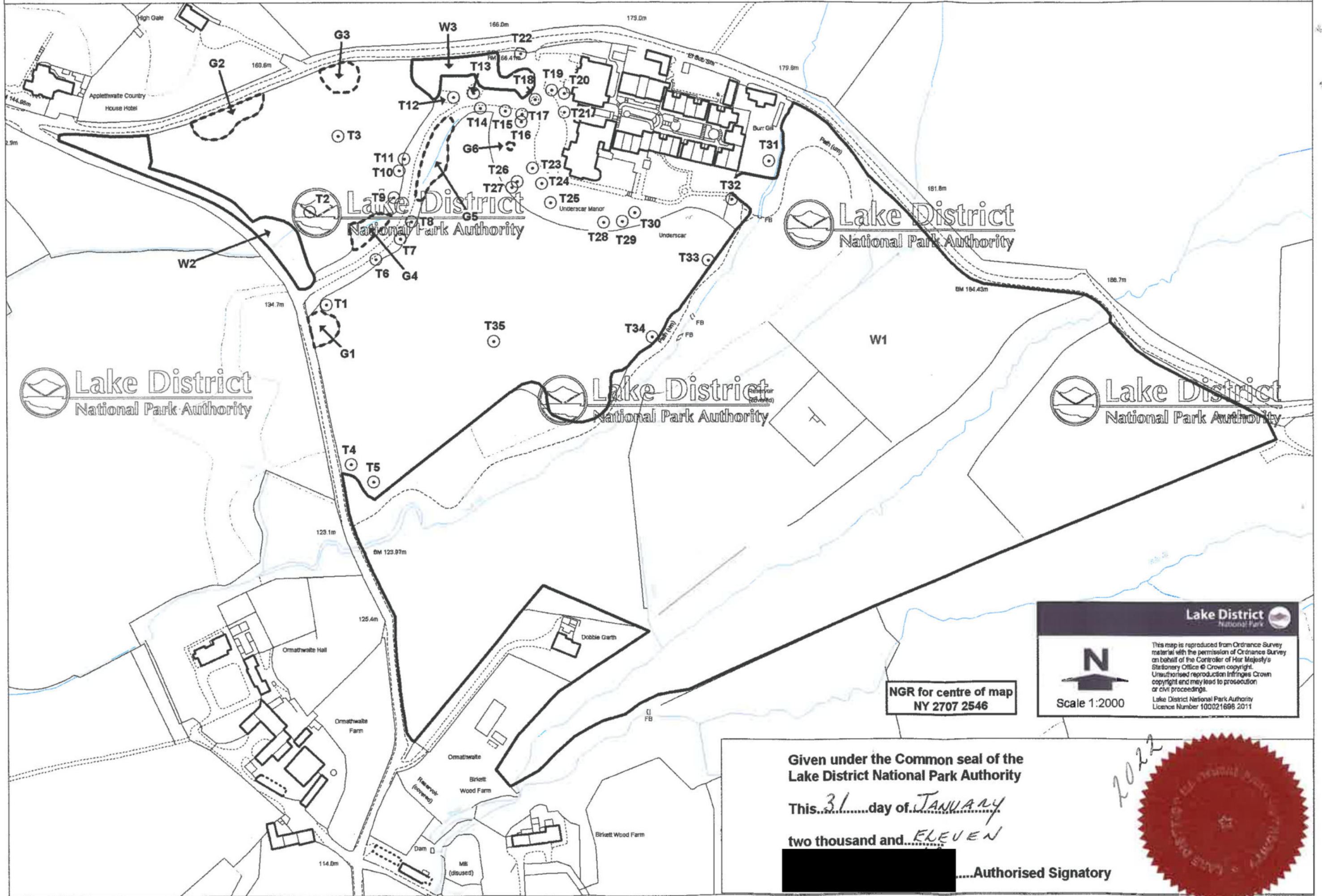
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- (4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent 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.

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

The Lake District National Park Authority (Underscar Manor, Underskiddaw, Keswick) Tree Preservation (No: 353) Order, 2011



NGR for centre of map  
NY 2707 2546

**Lake District National Park**

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Licence Number 100021696 2011



Given under the Common seal of the  
Lake District National Park Authority

This...31...day of...JANUARY...  
two thousand and...ELEVEN



...Authorised Signatory



**DATED**

**31 January**

**2011**

**LAKE DISTRICT NATIONAL PARK  
AUTHORITY**

**TOWN AND COUNTRY PLANNING ACT 1990**

**THE LAKE DISTRICT NATIONAL PARK  
AUTHORITY (UNDERSCAR MANOR, UNDER  
SKIDDAW, KESWICK) (NO. 353) ORDER 2011**

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