

435

CUMBERLAND COUNTY COUNCIL.

Town & Country Planning Act, 1947.

CUMBERLAND COUNTY COUNCIL TREE PRESERVATION (No.5)(PORTINSCALE)
ORDER, 1949

THE CUMBERLAND COUNTY COUNCIL (in this Order called "the authority") in pursuance of the powers conferred in that behalf by Section 28 of the Town and Country Planning Act, 1947 (hereinafter called "the Act"), hereby make the following Order:-

1. In this Order "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.

2. Subject to the exemptions specified in the Second Schedule to this Order, no person shall, except with the consent of the authority cut down, top, lop, or wilfully destroy or cause or permit the cutting down, topping, lopping, or wilful destruction of any of the trees specified in the First Schedule hereto shown numbered 1 to 6 on the map annexed hereto; which map shall prevail where any ambiguity arises between it and the specification in the said First Schedule.

3. An application for consent made to the authority under paragraph 2 of this Order shall be in writing stating the reasons for making the application, and shall specify the trees to which the application relates, and the operations for the carrying out of which consent is required, and where necessary for the identification of such trees shall be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

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.

1.

(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 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 that in respect of any trees for which they have so refused or granted consent, that they are satisfied that

(a) other more suitable consents could be granted, and would be so granted under this Order if application were made for the purpose; or

(b) the refusal or condition is in the interests of good forestry or

(c) the trees have an outstanding amenity value.

6. The provisions set out in the Third Schedule to this Order, being the provisions of Part III of the Act as adapted and modified for the purposes of this Order, shall apply in relation to any application made to the authority for consent under the Order and to any decision of the authority thereon.

7. 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 within the time limited for the purpose 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 paragraph 5 of this Order.

8. In assessing compensation payable under the last preceding paragraph, 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 Town and Country Planning Act, 1947, and
- (b) any injurious affection to any land of the owner which would result from the felling of the trees, the subject of the claim.

9. A claim under this Order for compensation shall be made by serving on the authority a notice in writing stating the grounds of the claim and the amount claimed, within six months of the date of the decision of the authority, or of the Minister of Town and Country Planning (hereinafter called "the Minister"), as the case may be, or where an appeal has been made to the Minister against the decision of the authority, of the date of the decision of the Minister on the appeal.

10. Any question of disputed compensation payable in accordance with the terms of this Order shall be determined in accordance with the provisions of Section 110 of the Act.

11. The Tree Preservation Order No.2. made by the authority on the ninth day of February 1949 is hereby revoked.

12. This Order may be cited as "The Cumberland County Council Tree Preservation (No.5) (Portinscale) Order 1949."

FIRST SCHEDULE.

Number on Plan.	Description of Trees.	Location of Trees (O.S. Map 1925 Edition Cumberland Sheets 64, 1 & 5)
1.	Beech	Field No. 639)
2.	Beech	do.) Portinscale,
3.	Twin Sycamores	Field No. 686) near
4.	Beech	do.) Keswick
5.	Beech	do.)
6.	Poplar	do.)

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 trees are situated is operational land as defined by the Act and where works on such land cannot otherwise be carried out; or where the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking.

THIRD SCHEDULE.

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

Reference of applications to the Minister

15(1) The Minister may give directions to the authority requiring that any 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 according

(2) Where an application for consent under the order is referred to the Minister under this section, the provisions of paragraphs 4 ~~to 7~~ ^{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, if 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 the purpose.

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

Appeals to the Minister

16(1) Where application is made to the authority for consent under the Order and that consent is refused by that authority or is granted by them subject to conditions or where any certificate or direction is given by the authority, then if the applicant is aggrieved by their decision on the application, or by any such certificate or direction he may, by notice in writing served within 28 days from the receipt of notification of their decision, certificate or direction, or such longer period as the Minister may allow, 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 vary any certificate or direction, and may deal with the application as if it has been made to him in the first instance, and the provisions of the last foregoing section shall apply, subject to any necessary modifications in relation to the determination of an application by the Minister on appeal 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 subsection (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, and 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 as aforesaid, as the case may be.

Revocation or
Modification of
consent under
the Order

21(1) Subject to the provisions of this section, it appears to the authority that it is expedient that any consent under the Order granted on an application made in 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.

(2) Where an authority submit an order to the Minister for his confirmation under this Section, that authority shall furnish the Minister with a statement of their reasons for making the order and shall serve notice of the making of the Order on the owner of the land, and on any other person who in their opinion will be affected by the order, and if within the period of 28 days from the service thereof any person on whom the notice is served so requires, the Minister shall, before confirming the order, afford to him and to the authority an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose.

(3) The power conferred by this section to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed.

Provided that the revocation or modification of consent shall not affect so much of those operations as has been carried out before the date on which the order was confirmed as aforesaid.

(4) Where a notice has been served in accordance with the provisions of subsection (2) 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 subsection (1) of this Section.

Supplementary
provisions as
to revocation
and
modification

22(1) Where any person is affected by an order under the last foregoing Section, revoking or modifying a consent as confirmed by the Minister, or where any person is affected by a notice served on him under subsection (2) of the foregoing section when the order is not confirmed, then, if on a claim made to the authority within two months of the date of the Minister's decision it is shown that he 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 has otherwise suffered loss or damage which is directly attributable to the revocation, or modification, or stay of operations, the authority shall pay to that person compensation in respect of that expenditure, loss or damage

(2) For the purpose of this section any expenditure incurred on matters preparatory to acting on the consent

shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid, no compensation shall be paid under this section in respect of any work carried out 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 the depreciation in value of any interest in land) arising out of anything done or omitted to be done before the grant of that consent.

Enforcement
of the
preservation
order

23(1) If it appears to the authority that any cutting down, topping or lopping or wilful destruction of trees has been carried out after the coming into operation of the Order without the grant of consent required in that behalf under the Order or that any conditions subject to which such consent was granted have not been complied with, then, subject to any direction given by the Minister, the authority may within one year of such cutting down, topping, lopping or wilful destruction, or such failure or non-compliance as the case may be, if they consider it expedient so to do, in the interest of amenity, serve on the owner of the land on which the trees are situated and on any person entitled to fell trees, a notice under this section.

(2) Any notice served under this section (hereinafter called an "enforcement notice") shall specify the acts alleged to have been done as aforesaid, or, matters in respect of which it is alleged that any such conditions as aforesaid have not been complied with and may require such steps as may be specified in the notice to be taken within such period as may be so specified for securing that operations, in so far as still practicable, shall be carried out in such manner as might have been required had the trees to which the notice relates been the subject of an application for grant of consent under this Order, or for securing compliance with the conditions, as the case may be; and in particular any such notice may, for the purpose aforesaid, require the immediate discontinuance of any cutting down, topping, lopping or destruction of trees.

(3) Subject to the provision of the next following subsection, an enforcement notice shall take effect forthwith.

Provided that -

- (a) if within the period of 14 days after the service thereof, an application is made to the authority under this Order for consent to cut down, top or lop any trees to which the enforcement notice relates, the notice, except in so far as it may require the discontinuance of cutting down, topping, lopping or destruction of trees shall be of no effect pending the final determination of the application, and if and to the extent such consent as aforesaid is granted on that application, the notice shall not take effect;
- (b) if within the period of 14 days after the service thereof an appeal is made to the Court under the following provisions of this section by a person on whom the enforcement notice was served, the notice, except in so far as it may require the discontinuance of cutting down, topping, lopping or wilful destruction of trees shall be of no effect pending the final determination or withdrawal of the appeal

(4) If any person on whom an enforcement notice is served under this section is aggrieved by the notice, he may, at any time within the period mentioned in the last

foregoing subsection, appeal against the notice to a court of summary jurisdiction for the petty sessional division or place within which the land to which the notice relates is situated; and on any such appeal the court -

- (a) if satisfied that consent was granted under this Order for the cutting down, topping or lopping or destruction of the trees to which the notice relates, or that no such consent was required in respect thereof, or that the conditions subject to which consent was granted have been complied with or as the case may be, shall quash the notice to which the appeal relates.
- (b) if not so satisfied, but satisfied that the requirements of the notice exceed what is necessary for compliance with the conditions attached to the consent, or what might have been required had application for consent to the cutting down, topping, lopping or destruction been made in respect of the trees, to which the notice relates, shall vary the notice accordingly;
- (c) in any other case shall dismiss the appeal.

(5) Any person aggrieved by a decision of a court of summary jurisdiction under the last foregoing subsection may appeal against that decision to a court of quarter sessions.

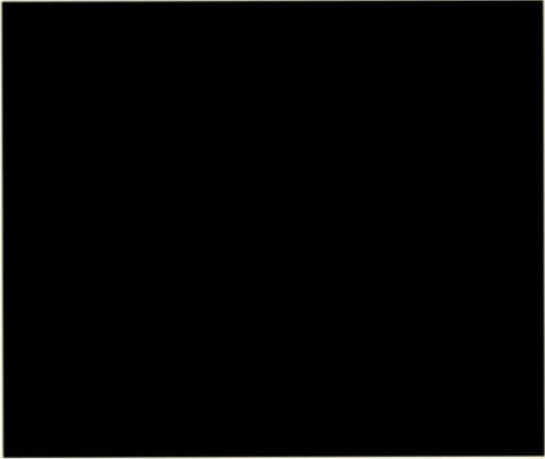
Supplementary
provisions
as to
enforcement

24(1) If within the period specified in an enforcement notice, or within such extended period as the authority may allow, any steps required by the notice to be taken (other than discontinuance of cutting down, topping, lopping or wilful destruction of any trees,) have not been taken the authority may enter on the land on which the trees are situated and take those steps, and may recover as a simple contract debt in any court of competent jurisdiction from the person who is then the owner of the land, the person who is entitled to fell the trees, any expenses reasonably incurred by them in that behalf, and if that person having been entitled to appeal to the court under the last foregoing section, failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the authority upon any ground which could have been raised by such an appeal.

(2) Where a person other than the owner of any land is entitled to fell trees to which an enforcement notice under the last foregoing section relates, any expenses incurred by the owner of such land for the purpose of complying with such enforcement notice and any sum paid by the owner of any land under the foregoing subsection in respect of the expenses of the authority in taking steps required to be taken by such notice shall be deemed to be incurred or paid for the use and at the request of the person entitled to fell trees as aforesaid.

(3) Where by virtue of an enforcement notice, any cutting down, topping, lopping or destruction of trees is required to be discontinued, or any conditions are required to be complied with in respect of any cutting down, topping or lopping, then if any person without the grant of consent in that behalf under this Order, contravenes or permits the contravention of the notice in respect of the aforesaid matters, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds; and if the contravention is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction, to a fine not exceeding twenty pounds for every day on which he continues to contravene the notice.

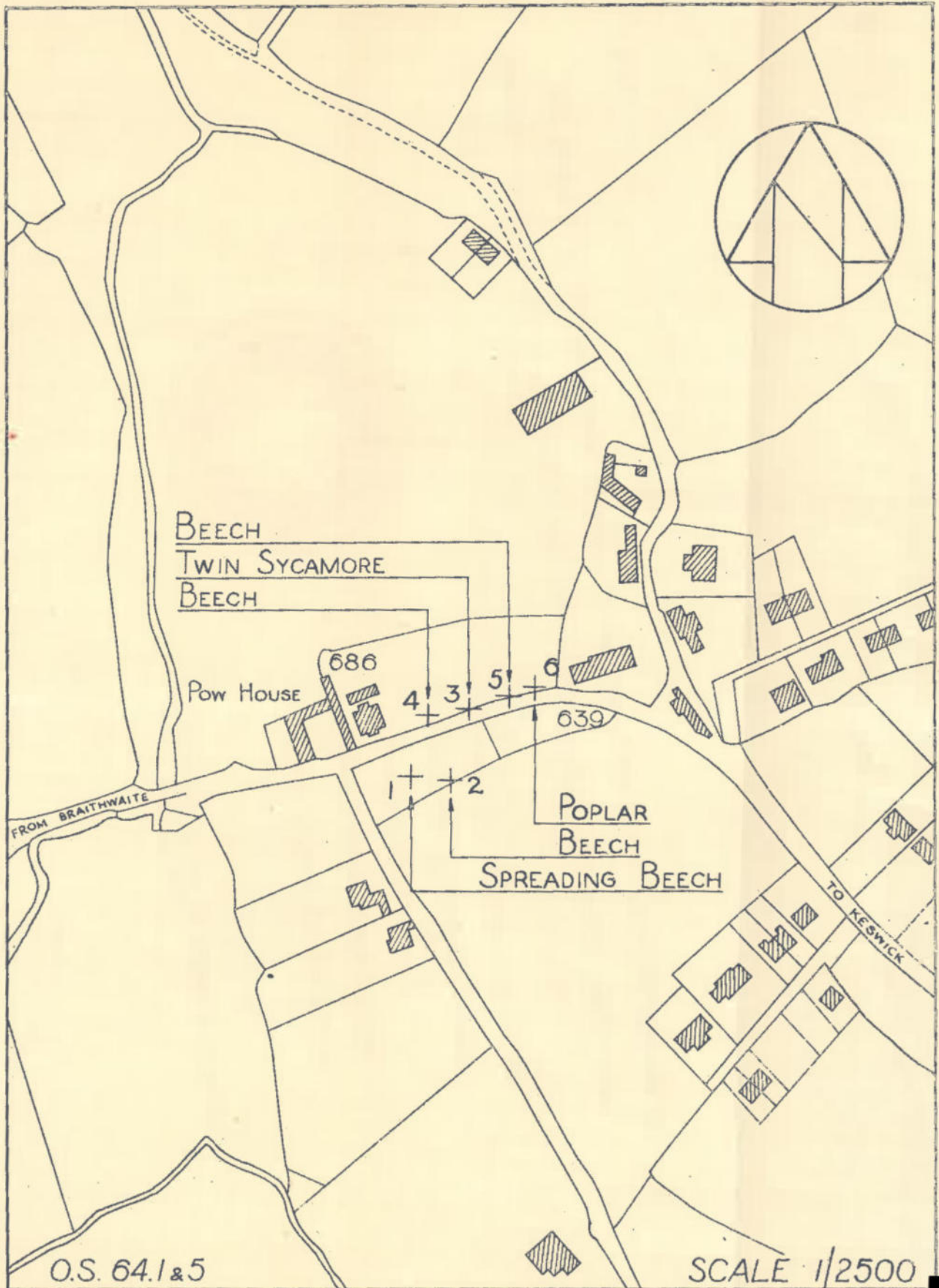
GIVEN UNDER THE COMMON SEAL of the CUMBERLAND COUNTY
COUNCIL this first day of June one thousand nine hundred
and forty nine.



Two Members
of the Council.

861.

Clerk of the Council.



PLAN REFERRED TO IN THE CUMBERLAND COUNTY COUNCIL TREE PRESERVATION [NUMBER 5] ORDER 1949

(10th August, 1949)

B.3648

The Minister of Town and Country Planning in exercise of the powers conferred upon him by subsection (3) of Section 28 of the Town and Country Planning Act, 1947, hereby confirms the above Order.

GIVEN under the Official Seal of the
Minister of Town and Country
Planning this *ten*
day of August, One thousand
nine hundred and forty-nine



Authorised by the Minister to sign in
that behalf

CUMBERLAND COUNTY COUNCIL.

Town and Country Planning Act,
1947 (Section 28)



CUMBERLAND COUNTY COUNCIL
TREE PRESERVATION (No.5)
(PORTINSCALE) ORDER, 1949.
