

TOWN AND COUNTRY PLANNING ACT 1971

THE BINGLEY URBAN DISTRICT COUNCIL (WARREN LANE)

NO. 8 TREE PRESERVATION ORDER 1973

The Bingley Urban District Council on behalf of the County Council of the West Riding of Yorkshire in this order called "the authority", in pursuance of the powers conferred in that behalf by section 60 of the Town and Country Planning Act 1971 and subject to the provisions of the Forestry Act 1967, hereby makes the following order:-

1. In this Order -

"the Act" means the Town and Country Planning Act 1971;

"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; 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 Secretary" means the Secretary of State for the Environment.

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, cut down, top, lop or wilfully destroy or cause or permit the cutting down, topping, lopping or wilful destruction of any tree 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 said 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 in 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 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 other than consent for silvicultural thinning 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 Secretary 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 provision of this Order and Section 25 of the Countryside Act 1968, 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. On imposing any condition requiring the replacement of any tree under Article of the Order, or on giving a direction under Article 6 of this Order with respect to the replanting of woodlands, the authority shall if such condition or direction relates to land in respect of which byelaws made by a river authority, a drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment Board restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any such condition or direction has effect subject to the requirements of the river authority, drainage board, the Conservators of the River Thames or the Lee Conservancy Catchment Board under those byelaws and the condition or direction shall have effect accordingly.

8. The provisions set out in the Third Schedule to this Order, being provisions of Part III of the Act and of Sections 46 and 164 of the Town and Country Planning Act 1971 adapted and modified for the purposes of this Order, shall apply in relation thereto.

9. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) 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 loss or damage;

Provided that no compensation shall be payable in respect of loss or damage suffered 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.

10. In assessing compensation payable under the last preceding Article account shall be taken of:

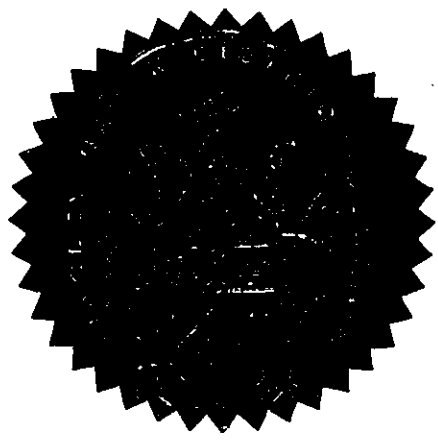
- (a) any compensation or contribution which has been paid whether to the claimant or any other person, in respect of the same trees under the terms of this or any other Tree Preservation Order under section 60 of the Act or under the terms of any Interim Preservation Order made under section 8 of the 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
- (b) any injurious affection to any land of the owner which would result from the felling of the trees the subject of the claim.

11. (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 Secretary, as the case may be, or where an appeal has been made to the Secretary against the decision of the authority, from the date of the decision of the Secretary on the appeal.

12. Any question of disputed compensation shall be determined in accordance with the provisions of section 179 of the Act.

THE COMMON SEAL of The Urban)
District Council of Bingley)
was hereunto affixed this)
Twenty sixth day of)
July 1973 in the)
presence of)



E. Shell
Chairman of the Council

J. G. ...
Clerk of the Council

FIRST SCHEDULE

Trees specified individually
(encircled in black on the map)

| <u>No. on Map</u> | <u>Description</u> | <u>Situation</u> | | | | | |
|-------------------|--------------------|------------------|-------|---------|--------|-----|-----------|
| T.1 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1251 3972 |
| T.2 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1250 3972 |
| T.3 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1249 3971 |
| T.4 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1248 3971 |
| T.5 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1247 3970 |
| T.6 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1246 3970 |
| T.7 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1246 3969 |
| T.8 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1245 3969 |
| T.9 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1243 3968 |
| T.10 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1241 3968 |
| T.11 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1240 3967 |
| T.12 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1240 3967 |
| T.13 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1239 3967 |
| T.14 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1237 3966 |
| T.15 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1237 3965 |
| T.16 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1236 3965 |
| T.17 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1235 3965 |
| T.18 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1234 3965 |
| T.19 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1234 3965 |
| T.20 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1231 3964 |
| T.21 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1230 3963 |
| T.22 | Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1229 3963 |
| T.23 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1229 3963 |
| T.24 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1203 3974 |

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

| | | | | | | | |
|-----|---|------|-------|---------|--------|-----|-----------|
| A.1 | Sycamore, Elm, Chestnut, Beech, Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1218 3982 |
| A.2 | Sycamore, Beech | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1231 3975 |
| A.3 | Sycamore, Beech Lime | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1247 3981 |
| A.4 | Sycamore | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1226 3966 |
| A.5 | Chestnut, Sycamore, Elm, Oak, Lime | O.S. | Sheet | SE.1139 | N.G.R. | SE. | 1195 3973 |
| A.6 | Sycamore, Hawthorn, Weeping Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1214 3956 |
| A.7 | Sycamore, Cherry | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1208 3982 |

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

| | | | | | | | |
|-----|--|------|-------|---------|--------|-----|-----------|
| G.1 | 3 Sycamore 4 Beech 1 Lime 2 Oak | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1201 3971 |
| G.2 | 12 Sycamore 4 Beech | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1213 3967 |
| G.3 | 5 Sycamore 2 Beech 1 Oak 1 Elm | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1220 3963 |
| G.4 | 15 Sycamore 1 Elm 4 Beech | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1201 3959 |
| G.5 | 5 Sycamore 3 Beech 3 Elm | O.S. | Sheet | SE.1239 | N.G.R. | SE. | 1208 3959 |

SECOND SCHEDULE

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

- (1) the cutting down of any tree on land which is subject to a forestry dedication covenant where
 - (a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant and at the time of the cutting down binding on the then owner of the land are fulfilled;
 - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme.
- (3) The cutting down, topping or lopping of a tree exempted from the provisions of this Order by section 60(6) of the Act namely a tree which is dying or dead or has become dangerous, or the cutting down, topping or lopping of which is in compliance with obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance.
 - (4) the cutting down, topping or lopping of a tree
 - (a) in pursuance of the power conferred on the Postmaster General by virtue of section 5 of the Telegraph (Construction) Act 1908;
 - (b) by or at the request of
 - (i) 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;
 - (ii) 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;
 - (iii) a river authority established under the Water Resources Act, 1963, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1930, the Conservators of the River Thames, or the Lee Conservancy Catchment Board, where the tree interferes or would interfere with the exercise of any of the functions of such river authority, drainage board, Conservators of the River Thames or Lee Conservancy Catchment Board in relation to the maintenance, improvement or construction of water courses or of drainage works; or
 - (iv) the Minister of Defence for the Royal Air Force, the Minister of Technology or the Board of Trade where in the opinion of such Minister or Board the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;
 - (c) where immediately required for the purpose of carrying out development authorised by the 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;
 - (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden;

THIRD SCHEDULE

Provisions of the following parts of (a) Part III of the Town and Country Planning Act 1971 and (b) section 80 of the Town and Country Planning Act 1968 as adapted and modified to apply to this Order.

(a) Part III of the Town and Country Planning Act 1971

33. (1) Without prejudice to the provisions of this Part of this Act as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein.

33. (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

35. (1) The Secretary of State may give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to him instead of being dealt with by local planning authorities.

35. (2) A direction under this section -
(a) may be given either to a particular local planning authority or to local planning authorities generally; and
(b) may relate either to a particular application or to applications of a class specified in the direction.

35. (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

35. (4) Subject to subsection (5) of this section, where an application for planning permission is referred to the Secretary of State under this section, the following provisions of this Act, that is to say, sections 26(2) and (7), 27, 29(1) to (3) and 30 (1), shall apply, with any necessary modifications, as they apply to an application for planning permission which falls to be determined by the local planning authority.

35. (5) Before determining an application referred to him under this section, other than an application for planning permission referred to a Planning Inquiry Commission under section 48 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

35. (6) The decision of the Secretary of State on any application referred to him under this section shall be final.

36. (1) Where an application is made to a local planning authority for planning permission to develop land, or for any approval of that authority required under a development order, and that permission or approval is refused by that authority or is granted by them subject to conditions, the applicant, if he is aggrieved by their decision, may by notice under this section appeal to the Secretary of State.

36. (2) Any notice under this section shall be served within such time (not being less than twenty-eight days from the date of notification of the decision to which it relates) and in such manner as may be prescribed by a development order.

36. (3) Where an appeal is brought under this section from a decision of a local planning authority, the Secretary of State, 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 local planning authority, whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance.

36. (4) Before determining an appeal under this section, other than an appeal referred to a Planning Inquiry Commission under section 48 of this Act, the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

36. (5) Subject to subsection (4) of this section, the following provisions of this Act, that is to say, sections 27, 29(1) and (3) and 30(1) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under this section as they apply in relation to an application for planning permission which falls to be determined by the local planning authority.

36. (6) The decision of the Secretary of State on any appeal under this section shall be final.

36. (7) If before or during the determination of an appeal under this section in respect of an application for planning permission to develop land, the Secretary of State forms the opinion that, having regard to the provisions of sections 29(1), 30(1), 67 and 74 of this Act and of the development order and to any directions given under that order, planning permission for that development -

- (a) could not have been granted by the local planning authority; or
- (b) could not have been granted by them otherwise than subject to the conditions imposed by them,

he may decline to determine the appeal or to proceed with the determination.

36. (8) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by or under any other provision of this Act.

37. Where an application is made to a local planning authority for planning permission, or for any approval of that authority required under a development order, then unless within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning 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 Secretary of State in accordance with directions given under section 35 of this Act,

the provisions of section 36 of this Act shall apply in relation to the application as if the permission or approval to which it relates had been refused by the local planning authority, and as if notification of their decision had been received by the applicant at the end of the period prescribed by the development order, or at the end of the said extended period, as the case may be.

45. (1) If it appears to the local planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part of this Act, the authority, subject to the following provisions of this section, may by order revoke or modify the permission to such extent as (having regard to those matters) they consider expedient.

45. (2) Except as provided in section 46 of this Act, an order under this section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

45. (3) Where a local planning authority submit an order to the Secretary of State for his confirmation under this section, the authority shall serve notice on the owner and on the occupier of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person and to the local planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

45. (4) The power conferred by this section to revoke or modify permission to develop land may be exercised -

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place;

Provided that the revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(b) Town and Country Planning Act 1971

46. (1) The following provisions shall have effect where the local planning authority have made an order under section 45 of this Act but have not submitted the order to the Secretary of State for confirmation by him, and -

- (a) the owner and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order; and
- (b) it appears to the authority that no claim for compensation is likely to arise under section 164 of this Act on account of the order.

46. (2) The authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify -

- (a) the period (not being less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
- (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this subsection) at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section and without being confirmed by the Secretary of State.

46. (3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1)(a) of this section, and the notice shall include a statement to the effect that no compensation is payable under section 164 of this Act in respect of an order under section 45 of this Act which takes effect by virtue of this section and without being confirmed by the Secretary of State,

46. (4) The authority shall send a copy of any advertisement published under subsection (2) of this section to the Secretary of State, not more than three days after the publication.

46. (5) If within the period referred to in subsection (2)(a) of this section no person claiming to be affected by the order has given notice to the Secretary of State as aforesaid, and the Secretary of State has not directed that the order be submitted to him for confirmation, the order shall, at the expiration of the period referred to in subsection (2)(b) of this section, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 45(2) of this Act.

46. (6) This section does not apply to an order revoking or modifying a planning permission granted or deemed to have been granted by the Secretary of State under this Part of this Act or under Part IV or V thereof; nor does it apply to an order modifying any conditions to which a planning permission is subject by virtue of section 41 or 42 of this Act.

164. (1) Where planning permission is revoked or modified by an order under section 45 of this Act, (other than an order which takes effect by virtue of section 46 of this Act and without being confirmed by the Secretary of State), then if, on a claim made to the local planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person interested in the land -

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

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

164. (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

164. (3) Subject to subsection (2) of this section, no compensation shall be paid under this section in respect of any work carried out before the grant of the permission 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 before the grant of that permission.

164. (4) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted for development of the land of any class specified in Schedule 8 to this Act.

164. (5) In this Part of this Act any reference to an order under section 45 of this Act includes a reference to an order under the provisions of that section as applied by section 51(2) of this Act.

NOTES:

If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made not to the authority for consent under this Order but to the Conservator of Forests for a licence under that Act (section 15(5)).

Any person contravening the provisions of this Order is guilty of an offence under subsection (1) of section 102 of the Act and liable on summary conviction to a fine not exceeding two hundred and 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 two pounds for every day on which the contravention is so continued. Under sections 13, 14 and 15 of the Civic Amenities Act 1967 if a tree is wilfully cut down or destroyed, or if topping or lopping is carried out in such a way as to be likely to destroy the tree the fine is £250 or twice the value of the tree whichever is the greater. If a tree other than one which is part of woodland is removed or destroyed in contravention of the Order it is the duty of the owner of the land, unless on his application the local authority dispense with the requirement, to plant another tree of appropriate size and species, at the same place as soon as he reasonably can.

Section 13(1) of the Civic Amenities Act 1967 requires, unless on the application of the owner the local authority dispense with the requirement, that any tree removed or destroyed under section 60(6) of the Town and Country Planning Act 1971, shall be replaced by another tree of appropriate size and species. In order to enable the local planning authority to come to a decision, on whether or not to dispense with the requirement, notice of the proposed action should be given to the local planning authority which except in a case of emergency shall be of not less than five days.