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24 DEC 1969

CITY AND ROYAL BURGH OF EDINBURGH

Approved 31/7/69  
Advertised 15/8/69  
Conf. by 2 of State 3/3/70



Town and Country Planning (Scotland) Act, 1947  
Civic Amenities Act, 1967

**THE CITY OF EDINBURGH (No. 14 MERCHISTON  
CRESCENT) TREE PRESERVATION ORDER, 1969**

The Corporation of the City of Edinburgh (in this Order referred to as "the local planning authority") in exercise of the powers conferred on them by section 26 of the Town and Country Planning (Scotland) Act, 1947, hereinafter referred to as "the Act", and of all other powers enabling them in that behalf hereby make the following Order:—

1. No person shall, except with the consent of the local planning 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, the positions of which trees are indicated, ~~shown~~ and coloured on the map or plan annexed and signed as relative hereto, which map or plan shall be preferred where any discrepancy arises between it and the specification in the said First Schedule.

Provided that nothing in this Order shall prohibit the felling or lopping of any tree if such felling or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the local planning authority as soon as may be after the necessity for the operations arises, or if such felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament.

2. The provisions of this Order shall be without prejudice to the provisions of section 15 of the Forestry Act, 1967 (which provides for a licence or direction under that Act being sufficient authority for felling trees) and prohibits the entertainment of certain applications by the local planning authority).

*(which provide respectively for the replacment of trees and for default powers and appeals)*

3. Any application for the consent of the local planning authority under paragraph 1 of this Order shall be in writing and shall specify the trees, groups of trees or woodlands to which the application relates and the operations for the carrying out of which that consent is desired and shall where necessary for the identification of such trees, groups of trees or woodland areas, be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

4. The provisions set out in the Second Schedule to this Order, being provisions of Part II of the Act relating to planning permission and to applications for such permission adapted and modified as shown in the said Schedule, shall apply in relation to any consent under this Order and to applications therefor.

5. 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 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.

6. 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 26 of the Town and Country Planning (Scotland) Act, 1947, or under the terms of any Interim Preservation Order made under section 8 of the Town and Country Planning (Interim Development) (Scotland) 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 (Scotland) 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.

7. A claim under this Order for compensation shall be made by serving on the local planning 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 local planning authority, or of the Secretary of State as the case may be, or where an appeal has been made to the Secretary of State against the decision of the local planning authority, of the date of the decision of the Secretary of State on the appeal.

8. Any question of disputed compensation payable in accordance with the terms of this Order shall be determined in accordance with the provisions of section 105 of the Act.

10. Where any part of a woodland area to which this Order relates is felled in the course of forestry operations permitted by or under this Order the owner or owners of the land shall carry out such replanting as the local planning authority may require under this Order and if any question arises between the authority and the said owner or owners as to whether any such requirement is reasonable having regard to the particular circumstances of the case or to any other material considerations the question shall, on the application of either party, be determined by the Secretary of State whose decision shall be final.

11. The local planning authority hereby direct that the provisions of section 16 of the Civic Amenities Act, 1967 (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the Secretary of State) shall apply to this Order, with effect from the date hereof.

Dated this 31st day of July 1969.

L. S.

(Sgd.) JAMES W. MCKAY, Lord Provost.

(Sgd.) W. BORLAND, Town Clerk.  
Clerk to the Local Planning Authority.

9. Under the provisions of section 26 of the Act as read with section 15 (1) of the Civic Amenities Act 1967, any person who cuts down or wilfully destroys a tree, or tops a tree in such a manner as to be likely to destroy it, shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £250 or twice the sum which appears to the court to be the value of the tree, whichever is the greater. Other contraventions of this order carry with them on summary conviction a maximum fine of £50. In the case of a continuing offence there is an additional fine following on summary conviction not exceeding 40s for every day on which the contravention is continued. [SCHEDULE]



SECOND SCHEDULE.

Provisions of Part II. of the Act relating to planning permission and to applications for such permission applicable with adaptations and modifications to any consent under the Order and to applications therefor.

(The provisions adapted or modified are in italics.)

12. (1) Subject to the provisions of this and the next following section, where application is made to the local planning authority for *any consent under the order*, that authority may grant *consent* either unconditionally or subject to such conditions as they think fit, or may refuse *consent*, and in dealing with any such applications the local planning authority shall have regard to the provisions of the development plan, so far as material thereto, and to any other material considerations.

Applications to local planning authorities for consent.

12. (5) The local planning authority shall keep a register containing information with respect to all applications made to the local planning authority for *consent under orders made under section 26 of the Act*, including information as to *the nature of the application, the decision thereon, and any compensation awarded in consequence of such decision*; and every such register shall be available for inspection by the public at all reasonable hours.

13. (1) The Secretary of State may give directions to the local planning 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 Secretary of State instead of being dealt with by the local planning authority, and any such application shall be so referred accordingly.

Reference of applications to the Secretary of State.

(2) Where an application for *consent under the order* is referred to the Secretary of State under this section the provisions of subsection (1) . . . of the last foregoing section shall apply, subject to any necessary modifications, in relation to the determination of the application by the Secretary of State as they apply in relation to the determination of such an application by the local planning authority.

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

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

• Appeals to  
the Secretary  
of State.

14. (1) Where application is made to the local planning authority for consent under the order . . . and that consent is refused by that authority, or is granted by them subject to conditions, then, if the applicant is aggrieved by their decision, he may, by notice in writing served within *twenty-eight days from the receipt of notification of their decision* . . . appeal to the Secretary of State. . . .

(2) Where an appeal is brought under this section from a decision of the local planning authority, the Secretary of State may allow or dismiss the appeal or may reverse or vary any part of the decision of the local planning authority, whether or not the appeal relates to that part, and deal with the application as if it had 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 Secretary of State on appeal under this section as they apply in relation to the determination by the Secretary of State of an application referred to him under that section:

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the local planning authority to which the appeal does not relate, he shall give notice of his intention to the local planning authority and to the applicant and shall afford to them an opportunity to make representations in regard thereto.

(3) Unless within *two months from the date of the 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 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 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 local planning 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.

19. (1) Subject to the provisions of this section, if it appears to the local planning authority that it is expedient, having regard to the development plan and to any other material considerations that any *consent* 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.

Revocation and modification of consent under the order.

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

(2) Where the local planning authority submit an order to the Secretary of State for his confirmation under this section that authority shall serve notice on the *owners, lessees and occupiers* 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 prescribed in that behalf in the notice (not being less than *fourteen* days from the service thereof) any person on whom the notice is served so requires, the Secretary of State shall, before confirming the order, afford to him, 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.

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

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

20. (1) Where consent is revoked or modified by an order made under the last foregoing section, then, if on a claim made to the local planning authority in writing within *the period of two months from the date of the confirmation of the order by the Secretary of State*, it is shown that any person interested in the land concerned has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, that authority shall pay to that person compensation in respect of that expenditure, loss or damage:

Supplementary provisions as to revocation and modification of consent.

(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 matter preparatory thereto 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 the *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 an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

Temporary provisions pending approval of plan.

33. Where, under the foregoing provisions of this Part of this Act, *the* local planning authority are required to have regard to the provisions of the development plan in relation to the exercise of any of their functions, then, in relation to the exercise of these functions during any period before such a plan has become operative with respect to the district of that authority, *the* authority shall have regard to any directions which may be given to them by the Secretary of State as to the provisions to be included in such a plan, and subject to any such directions shall have regard to the provisions which in their opinion will be required to be so included for securing the proper planning of the said district.

CITY & ROYAL BURGH OF EDINBURGH  
 No. 14 MERCHISTON CRESCENT  
 TREE PRESERVATION ORDER, 1969.



SCALE 1:500



THIS IS THE MAP REFERRED TO IN THE CITY  
 OF EDINBURGH "No. 14 MERCHISTON CRESCENT"  
 TREE PRESERVATION ORDER, 1969.



(Sgd) James W. McKay,  
 Lord Provost.

(Sgd) Thomas G. Glendonning  
 Depute Town Clerk.

W.S. 317 July 1969.

*Edinburgh 14<sup>th</sup> August 1969  
 Certified a true copy  
 Thomas G. Glendonning  
 Depute Town Clerk*

TP O/537

TOWN PLANNING DEPARTMENT  
 CITY CHAMBERS, EDINBURGH  
 JUNE 1969.