

Scotma
21/6/73

Conf. by S.O.S.
Sept 1973

Certified a true copy
T16 44
by [signature]
for Town Clerk

CITY AND ROYAL BURGH OF EDINBURGH



Approved 24.5.73
Adopted 21.6.73
Conf. by S. of State 10.9.73.

Town and Country Planning (Scotland) Act 1972

DICK PLACE

THE CITY OF EDINBURGH (CRAIGMOUNT)
TREE PRESERVATION ORDER 1973

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 58 of the Town and Country Planning (Scotland) Act 1972 (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, groups of trees and woodlands specified in the First Schedule hereto, the positions of which trees, groups of trees and woodlands are indicated, numbered and coloured on the map or plan annexed and signed as relative hereto.

Provided that nothing in this Order shall prohibit the felling or lopping of any tree if such felling or lopping:—

- (a) 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
- (b) is carried out in compliance with any obligation imposed by or under any Act of Parliament; or
- (c) is immediately required for the purpose of carrying out development authorised by a 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.

2. The provisions of this Order shall be without prejudice to the provisions of Sections 60 and 99 of the Act (which provide, respectively for the replacement of trees and for default powers and appeals) and Section 15 of the Forestry Act 1967 (which relates to applications made to the Forestry Commissioners for felling licences in respect of trees to which a tree preservation order relates).

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 and 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 scale sufficient for the purpose.

4. The provisions set out in the Second Schedule to this Order, being provisions of Part III 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 of the 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 or woodland areas under the terms of this or any other Tree Preservation Order under Section 58 of the Act, 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 or woodlands, 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 168 of the Act.

9. Under the Provisions of Section 98 of the Act any person who in contravention of this Order cuts down or wilfully destroys a tree or lops 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 fine not exceeding £50. If in the case of a continuing offence the contravention is continued after the conviction the offender shall be guilty of a further offence and be liable on summary conviction to an additional fine not exceeding £2 for each day on which the contravention is continued.

10. Where any part of a woodland area specified in the First Schedule hereto 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 59 of the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the Secretary of State for Scotland) shall apply to this Order, with effect from the date hereof.

Dated this 24th day of May 1973.

EDWARD G. GLENDINNING,
Town Clerk.

Clerk to the Local Planning Authority.

[SCHEDULES

FIRST SCHEDULE.

TREES TO WHICH THIS ORDER REFERS.

<i>Colour on map</i>	<i>Description</i>	<i>Area in acres</i>	<i>Situation</i>	<i>Ownership</i>
Blocked yellow-green	Trees and groups of trees, composed mainly of ash, sycamore, lime, birch, whitebeam and scots pine, together with other species	8.09	Situated within the grounds of Craigmount, 52 Dick Place, Edinburgh, bounded on the north by Dick Place, on the west by 56 Dick Place and Esdaile School, on the south by 3-10 Grange Loan Gardens and on the east by 46a-50 Dick Place, being part of the subjects described in Disposition by Margaret Kinmont Ross to James Miller & Partners Limited dated 12th and recorded in the Division of the General Register of Sasines for the County of Edinburgh on 30th both days of August 1946	Capital Heritages Ltd., 18 George Street, Edinburgh

SECOND SCHEDULE.

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

(The provisions adapted or modified are printed in italics.)

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

31. (2) *The local planning authority shall keep . . . a register containing information . . . with respect to all applications made to them for consent under orders made under section 58 of the Act, including information as to the nature of the application, the decision thereon, and any compensation awarded in consequence of such decisions: and such register shall be available for inspection by the public at all reasonable hours.*

32. (1) The Secretary of State may give directions *to the local planning authority* requiring a particular application for *consent under the order, or applications of a class specified in the direction*, to be referred to him instead of being dealt with by *the local planning authority*, and any such application shall be so referred accordingly. Reference of applications to Secretary of State.

(4) . . . Where an application for *consent under the order* is referred to the Secretary of State under this section, the . . . provisions of subsection 26 (1) above shall apply, with any necessary modifications, as they apply to an application for *such consent* which falls to be determined by the local planning authority.

(5) Before determining an application referred to him under this section . . . 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.

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

Appeals
against
refusal of
consent or
conditional
consent.

33. (1) Where an 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, the applicant if he is aggrieved by their decision, may, by notice in writing served within twenty-eight days from the receipt of notification of their decision . . . appeal to the Secretary of State.

(3) 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 thereof or not, and may deal with the application as if it had been made to him in the first instance, and the provision 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:

34. . . . 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 that 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 section 32 above;

the provisions of the last foregoing 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 end of the said period of two months or at the end of the said extended period, as the case may be.

Power to
revoke or
modify
consent
under the
Order.

42. (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 consent granted on an application made under the Order they may subject to the following provision of this section by order revoke or modify the consent to such extent as (having regard to those matters) they consider expedient.

(2) . . . 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.

(3) Where the local planning authority submit an order to the Secretary of State for his confirmation under this section, they 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 specified in that 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 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.

(4) 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.

153. (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 six 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:—

- (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 authority shall pay to that person compensation in respect of that expenditure, loss or damage:

(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 taken to be included in the expenditure incurred in carrying out that work:

Compensation where consent revoked or modified.

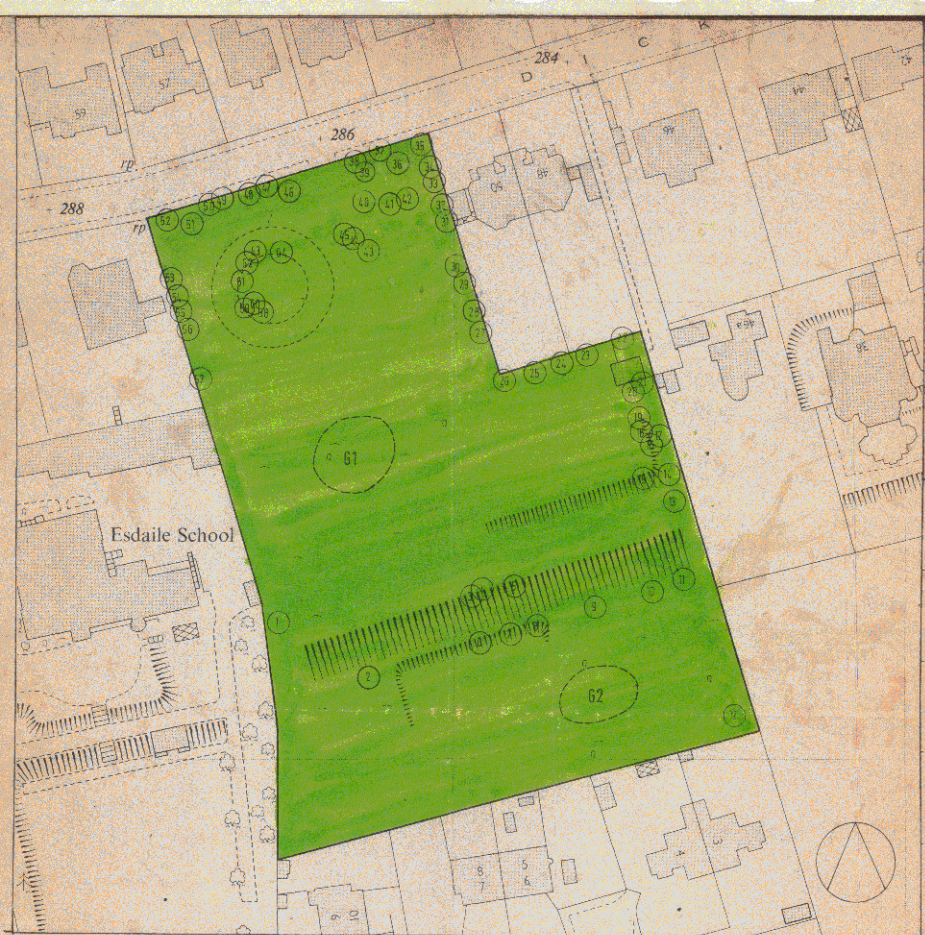
(3) Subject to subsection of this section no compensation shall be paid under this section in respect of any work carried out before the grant of consent which is revoked or modified, or

in respect of any other loss or damage (not being loss or damage consisting of depreciation of the 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 plans.

Schedule 4, paragraph 6. Where, *under the foregoing provisions of this Order* 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 those functions during any period before such a plan has become operative with respect to the district of that authority, *the authority:—*

- (a) shall have regard to any directions which may be or have been given to them by the Secretary of State as to the provisions to be included in such a plan; and
- (b) 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 their district.



**EDINBURGH CORPORATION
TREE PRESERVATION ORDER
CRAIGMOUNT**

THIS IS THE MAP OR PLAN
REFERRED TO IN THE
CITY OF EDINBURGH
CRAIGMOUNT
TREE PRESERVATION ORDER
1972

TOWN CLERK

drg. no. T.P. 1442

scale 1:500

TOWN PLANNING DEPT
18 MARKET STREET
EDINBURGH