

TOWN AND COUNTRY PLANNING ACT 1971

The North Norfolk District Council

Tree Preservation Order (Kelling)

1984 No 2

XXXXXXXXXXXXXXXXXXXXXX

NOTE: Any person contravening the provisions of this Order by cutting down, uprooting or wilfully destroying a tree, or by wilfully damaging, topping or lopping a tree in such a manner as to be likely to destroy it is guilty of an offence and liable on summary conviction to a fine not exceeding £1000 or twice the sum which appears to the court to be the value of the tree, whichever is the greater, or on indictment to a fine. The penalty for any other contravention of this Order is a fine not exceeding £200 on summary conviction and, in the case of a continuing offence when the contravention is continued after conviction, a person is liable on summary conviction to an additional fine not exceeding £5 for every day on which the contravention is so continued.

If a tree other than one to which an Order applies as part of a woodland is removed, uprooted or destroyed in contravention of an Order or is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by section 60(6) of the Town and Country Planning Act, 1971, relating to trees which are dying or dead or have become dangerous, it is the duty of the owner of the land, unless on his application the local planning authority dispense with the requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can. Except in emergency, not less than 5 days previous notice of the removal etc., should be given to the authority to enable the latter to decide whether or not to dispense with the requirement.

FIRST SCHEDULE

TREES SPECIFIED INDIVIDUALLY

(encircled in black on the map).

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
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None

GROUPS OF TREES

(within broken line on the map).

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
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None

TREES SPECIFIED BY REFERENCE TO AN AREA

(within a dotted black line on the map).

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
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A1

Mixture of deciduous and conifer
trees indicated on plan as A1

North of the A148,
the surrounding area
of Home Place as shown
on the plan as A1

WOODLANDS

(within a continuous black line on the map).

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
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None

SECOND SCHEDULE

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

- (1) the cutting down of any trees 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 or other grant scheme under section 4 of the Forestry Act 1967 except a scheme which applies to a forestry dedication covenant;
- (3) the cutting down, uprooting, 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;

*NOTE: Section 62(1) of the Act 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 Act 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.

THIRD SCHEDULE

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

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.

(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.

Reference of
applications to
Secretary of
State

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.

(2) A direction under this section -

(a) may be given 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.

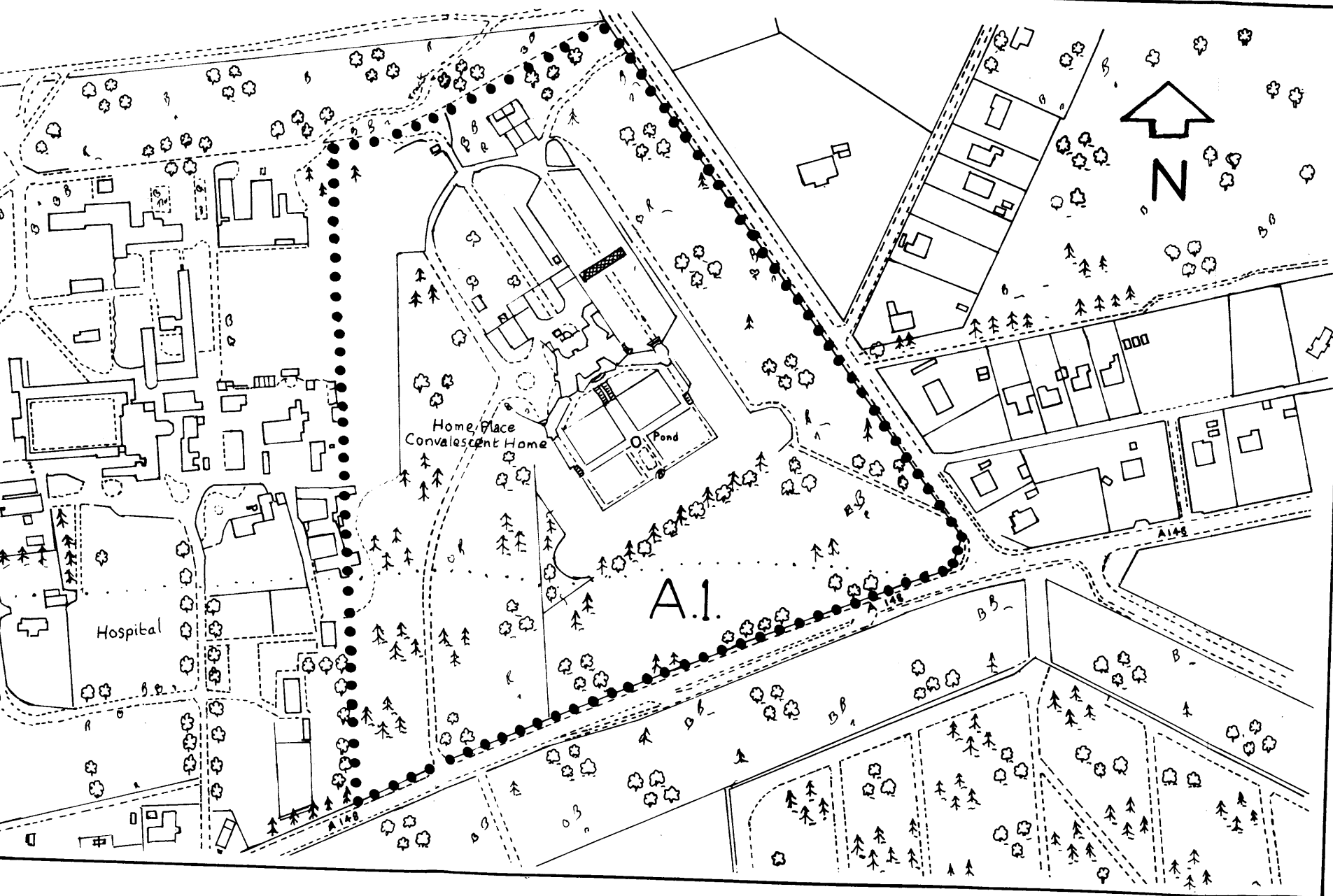
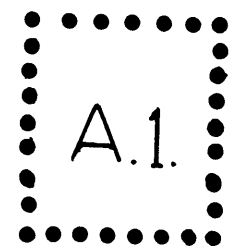
(3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

(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.

(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.

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Area defined



Location Plan

scale 1:2500

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

Appeals
against
planning
decisions.

36. (1) Where an application is made to a local planning authority

(a) for planning permission to develop land;

(b) for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission; or

(c) for any approval of that authority required under a development order,

and that permission, consent, agreement 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.

(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.

(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.

(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.

(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.

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

(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.

(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.

Appeal in
default of
planning
decision

37. Where any such application as is mentioned in section 36(1) of this Act is made to a local planning authority 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.

Power to
revoke or
modify
planning
permission

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.

(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 modifications or subject to such modifications as he considers expedient.

(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.

(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.

Unopposed
revocation or
modification.

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 -

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;

(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.

(3) The authority shall also serve notice to the same effect on the persons mentioned in subsection (1) (a) of this section.

(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 .

(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.

(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.

DATED this *thirteenth* day of *July* 19*84*

THE COMMON SEAL OF THE NORTH
NORFOLK DISTRICT COUNCIL was
hereto affixed in the presence
of:

V. H. BENSLEY

Chairman of the Council

R. V. NASH

District Administrator

L.S.