1973. No. 273 [C]

TOWN AND COUNTRY PLANNING

Planning (Tree Preservation Order) Regulations

REGULATIONS, DATED 15TH AUGUST 1973, MADE BY THE MINISTRY OF DEVELOPMENT UNDER ARTICLES 39, 66 AND 106 OF THE PLANNING (NORTHERN IRELAND) ORDER 1972.

The Ministry of Development, on behalf of the Secretary of State, and in exercise of the powers conferred upon it by Articles 39, 66 and 106 of the Planning (Northern Ireland) Order 1972(a), hereby makes the following regulations:—

Citation and commencement

1. These regulations may be cited as the Planning (Tree Preservation Order) Regulations (Northern Ireland) 1973 and shall come into operation on 1st October 1973.

Interpretation

2. In these regulations "order" means a tree preservation order.

Form and content of order

3.—(1) An order shall be in the form set out in the Schedule.

(2) The order shall define the position of the trees, groups of trees or woodlands to which it relates, and for that purpose shall include a map.

Making and service of tree preservation orders

4.—(1) An order shall take effect immediately it is made by the Ministry and the Ministry shall serve notice of its making on the owners and occupiers of the land and on any other person who in its opinion would be affected by the order.

(2) Any person on whom notice has been served under paragraph (1) may, within 28 days from the date of service of the notice, make objections or representations in writing to the Ministry with respect to the order, stating the grounds thereof and specifying the particular trees, groups of trees or woodlands in respect of which they are made; and if within that period any such person so desires the Ministry shall afford to him an opportunity of appearing before and being heard by the Planning Appeals Commission.

Objections and representations

5.—(1) If objections and representations are made in accordance with regulation 4(2), then after considering those objections and representations and where a hearing is held, the report of the Planning Appeals Commission, the Ministry may confirm the order, withdraw it or confirm it subject to modification.

(a) S.I. 1972, No. 1634 (N.I. 17).

(2) The Ministry shall inform any person on whom notice has been served under regulation 4(1) of its decision and where the order has been confirmed subject to modification, the Ministry shall serve on every such person a copy of the order and map as confirmed by the Ministry.

Sealed with the Official Seal of the Ministry of Development for Northern Ireland this 15th day of August 1973.

(L.S.)

L. V. D. Calvert,
Deputy Secretary.

SCHEDULE

Form of Tree Preservation Order

PLANNING (NORTHERN IRELAND) ORDER 1972

[Title of order]

The Ministry of Development (in this order called "the Ministry") in pursuance of the powers conferred upon it by Article 39 of the Planning (Northern Ireland) Order 1972 HEREBY ORDERS that no person shall, except with the consent of the Ministry 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 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 First Schedule on the annexed map which map shall for the purpose of such definition prevail where any ambiguity arises between it and the specification in the First Schedule.

The Order is subject to the provisions of the Second Schedule and to the exemptions specified in the Third Schedule

FIRST SCHEDULE

[Particulars of trees protected by the order]

SECOND SCHEDULE

Application for consent to cut down, top or lop trees

1. An application for consent made to the Ministry shall be in writing stating the reasons for making the application, and specifying, by reference if necessary to a map, the trees to which the application relates, and the operations for which consent is required.

2. The Ministry may grant consent to an application 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 Ministry may think fit, or may refuse consent.

Appeal against refusal of consent

3.—(1) Where an application to the Ministry for consent is refused or is granted subject to conditions, the applicant, if he is aggrieved by the Ministry's decision, may by notice under this paragraph appeal to the Planning Appeals Commission.

(2) Any such notice shall be served in writing within six months from the receipt of notification of the decision, or such longer period as the Planning Appeals Commission may allow.

(3) The Planning Appeals Commission, subject to the following provisions of this paragraph, may allow or dismiss the appeal, or may reverse or vary any part of the decision, whether the appeal relates to that part thereof or not.

(4) Before determining an appeal the Planning Appeals Commission shall, if either the appellant or the Ministry so desires, afford to each of them an opportunity of appearing before and being heard by the Commission.

Appeal in default of decision

4. Where an application for consent is made to the Ministry, then unless within two months from the date of its receipt, or within such extended period as may be agreed upon in writing between the applicant and the Ministry, the Ministry gives notice to the applicant of its decision on the application, the provisions of paragraph 3 shall apply in relation to the application as if consent had been refused by the Ministry, and as if notification of the Ministry's 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.

Revocation or modification of consent

5.—(1) If it appears to the Ministry that it is expedient to revoke or modify any consent granted on an application made under paragraph 1, the Ministry may, subject to sub-paragraphs (2) and (3), by order revoke or modify the consent to such extent as it considers expedient.

(2) Before making such an order the Ministry shall serve notice on the owner and on the occupier of the land affected and on any other person who in its opinion will be affected by the order, and if within the period of twenty-eight days from the service thereof any person on whom the notice is served so desires, the Ministry shall afford to that person an opportunity of appearing before and being heard by the Planning Appeals Commission.

(3) The power to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed, but any such revocation or modification shall not affect so much of those operations as has been carried out.

Compensation

6. 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 or of any grant of any such consent subject to conditions, shall, if he makes a claim on the Ministry within the time and in the manner prescribed by paragraph 8, be entitled to recover from the Ministry compensation in respect of such loss or damage.

7. In assessing compensation account shall be taken of:—

(*a*) any compensation which has been paid whether to the claimant or any other person, in respect of the same tree under the terms of this or any other Tree Preservation Order under Article 39 of the Planning (Northern Ireland) Order 1972; and

(*b*) any injurious affection to any land of the claimant which would result from the felling of the trees the subject of the claim.

8.—(1) A claim for compensation shall be in writing and shall be made by serving it on the Ministry.

(2) The time within which any such claim shall be made as aforesaid shall be a period of six months from the date of the decision of the Ministry, or where an appeal has been made to the Planning Appeals Commission against the decision of the Ministry, from the date of the decision of the Commission on the appeal.

9. Any question of disputed compensation shall be determined by the Lands Tribunal.

This provision may be included in relation to trees to be planted pursuant to a condition imposed under Article 38 of the Planning (Northern Ireland) Order 1972.

[10. This order shall apply to any tree specified in the First Schedule hereto, which is to be planted as mentioned therein, as from the time when that tree is planted.]

NOTE: *Any person contravening the provisions of this order is guilty of an offence under Article* 40(1) *of the Planning (Northern Ireland) Order* 1972 *and liable on summary conviction to a fine not exceeding £400; 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 £5 for every day on which the contravention is so continued.*

THIRD SCHEDULE

This order shall not apply so as to require the consent of the Ministry to:—

(1) the cutting down, topping or lopping of a tree exempted from the provisions of this order by Article 39(3) of the Planning (Northern Ireland) Order 1972, 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 any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance;

(2) the cutting down, topping or lopping of a tree—

(*a*) in pursuance of the power conferred on the Post Office by virtue of section 5 of the Telegraph (Construction) Act 1908; or

(*b*) where required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part IV of the Planning (Northern Ireland) Order 1972; or

(*c*) which is a fruit tree cultivated for fruit production, growing or standing on land comprised in an orchard or garden.

EXPLANATORY NOTE

(*This note is not part of the Regulations, but is intended to indicate their general purport.*)

These regulations prescribe the form of tree preservation orders and set out the procedure for making such orders.