THE BRAINTREE DISTRICT COUNCIL TREE PRESERVATION ORDER NO.11/2001

Areas around Woodhouse Farm, Kelvedon

Town and Country Planning Act, 1990

The Braintree District Council, in exercise of the powers conferred on them by sections 198, 201 and 203 of the Town and Country Planning Act 1990 hereby make the following Order:-

1. This Order may be cited as Tree Preservation Order No. 11/2001.

2. In this Order "the authority" means the Braintree District Council and unless the context otherwise requires, any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990.

3. The authority hereby direct that section 201 (provisional tree preservation orders) shall apply to this Order and, accordingly this Order shall take effect provisionally on 9th February 2001.

4. Without prejudice to subsections (6) and (7) of section 198 (power to make tree preservation orders), and subject to article 5, no person shall:-

   (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or

   (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of:-

   any tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland so specified, except with the consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.

5 (1) Nothing in article 4 shall prevent:-

   (a) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where land on which the tree is situated is operational land of the statutory undertaker and the work is necessary:-

      (i) in the interests of the safe operation of the undertaking;
      (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
      (iii) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;

   (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;

   (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;

(d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (a)(iii), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995 granted on an application under Part III of the Act, or deemed to have been granted (whether for the purposes of that Part or otherwise);

(e) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995;

(f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose "drainage body" and "drainage" have the same meanings as in Land Drainage Act 1991; or

(g) without prejudice to section 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder under paragraph 9 of Schedule 4 to the Electricity Act 1989.

(2) In paragraph (1), 'statutory undertaker' means any of the following:-

a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power,

a relevant airport operator (within the meaning of Part V of the Airports Act 1986,

the holder of a licence under section 7 of the Telecommunications Act 1984 to whom the telecommunications code (within the meaning of the Act) is applied,

a water or sewerage undertaker,

the Civil Aviation Authority or a body acting on behalf of that Authority,

the Post Office.

6. An application for consent to the cutting down, topping, lopping, or uprooting of any tree in respect of which this Order is for the time being in force shall be made in writing to the authority and shall:-

(a) identify the tree or trees to which it relates (if necessary, by reference to a plan);

(b) specify the work for which work is sought; and

(c) contain a statement of the applicant's reasons for making the application.

7(1) The provisions of the Town and Country Planning Act 1990 relating to registers, applications, permissions and appeals mentioned in column (1) of Part 1 of Schedule 2 to this Order shall have effect, in relation to consents under this Order and applications for such consents, subject to the adaptations and modifications mentioned in column (2).

(2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part II of that Schedule.

8 (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the authority may give the owner of the land on which that part is situated ("the relevant land") a direction in writing specifying the manner in which and the time within which he shall replant the relevant land.

(2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land shall replant it in accordance with the direction.

(3) A direction under paragraph (1) may include requirements as to:-

(a) species;

(b) number of trees per hectare;

(c) the preparation of the relevant land prior to the replanting; and

(d) the erection of fencing necessary for the protection of the newly planted trees.

9 (1) If, on a claim under this article, a person establishes that loss or damage has been caused or incurred in consequence of:-

(a) the refusal of any consent required under this Order; or

(b) the grant of any such consent subject to conditions,

he shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.

(2) No claim, other than a claim made under paragraph (3), may be made under this article:-

(a) if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or

(b) if the amount in respect of which the claim would otherwise have been made is less than £500.

(3) Where the authority refuse consent under this Order for the felling in the course of forestry operations of any part of a woodland area, they shall not be required to pay compensation to any person other than the owner of the land; and such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

(4) In any other case, no compensation shall be payable to a person:-

(a) for loss of development value or other diminution in the value of the land;

(b) for loss or damage which, having regard to the statement of reasons submitted in accordance with article 6 (c) and any documents or other evidence submitted in support of any such statement, was not reasonably foreseeable when consent was refused or was granted subject to conditions;

(c) for loss or damage reasonably foreseeable by that person and attributable to his failure to take reasonable steps to avert the loss of damage or to mitigate its extent ; or

(d) for costs incurred in appealing to the Secretary of State against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(5) Subsections (3) and (5) of section 11 (terms of compensation on refusal of licence) of the Forestry Act 1967 shall apply to the assessment of compensation under paragraph (3) as it applies to the assessment of compensation where a felling licence is refused under section 10 (application for felling licence and decision of Commissioners thereon) of that Act as if for any reference to a felling licence there was substituted a reference to a consent required under this Order and for the reference to the Commissioners there were substituted a reference to the authority.

(6) In this article:-

"development value" means an increase in value attributable to the prospect of development; and in relation to any land, the development of it shall include the clearing of it; and "owner" has the meaning given to it by section 34 of the Forestry Act 1967.

10 In relation to the trees identified in the first column of Schedule 1 by the letter 'C' being a tree to be planted pursuant to a condition (being a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees)), this Order takes effect as from when the time when that tree is planted.

11 This Order takes effect in accordance with subsection (3) of section 300 (tree preservation orders in anticipation of disposal of Crown land.

FIRST SCHEDULE

Trees Specified Individually
(encircled in black on the map)

No. on Map	Description	Situation
T1	Oak	In the southern part of O.S 4171
T2	Crab Apple	In the southern part of O.S 4171
T3	Oak	In the southern part of O.S 4171
T4	Oak	In the western part of O.S 4850
T5	Oak	In the western part of O.S 4850
T6	Oak	In the central part of O.S 4850
T7	Oak	In the central part of O.S 4850
T8	Oak	In the southern part of O.S 4850 South of the aircraft hangar.
T9	Ash	In the northern part of O.S 7620 West of the track to Woodhouse Farm.
T10	Pear	In the western part of O.S 7058
T11	Pear	In the western part of O.S 7058
T12	Pear	In the western part of O.S 7058
T13	Ash	Within the northern part of O.S 4850 North of Woodhouse Farm Cottage
T14	Crab Apple	Within the northern part of O.S 4850 North of Woodhouse Farm Cottage

Trees Specified by Reference to an Area
(within a dotted black line on the map)

No. on Map	Description	Situation
	None	

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

No. on Map	Description	Situation
G1	13 Oak 2 Hawthorn 1 Crab Apple	In the southern part of O.S 4171
G2	14 Oak 3 Hawthorn	In the southern part of O.S 4171
G3	12 Oak 2 Pine 3 Maple 1 Hawthorn 1 Willow	In the central part of O.S 4850
G4	2 Oak 5 Willow	In the central part of O.S 4850
G5	5 Ash	On the north western boundary of O.S 7500
G6	5 Oak	On the north western boundary of O.S 7500
G7	4 Oak	On the north western boundary of O.S 7500
G8	12 Oak 2 Ash 3 Willow	On the north western boundary of O.S 7500
G9	6 Oak 2 Maple 2 Hawthorn 1 Crab Apple 1 Lime	On the south eastern part of O.S 5228 north west of the 'Wayfarers' site.
G10	4 Oak	On the south western boundary of O.S 5228
G11	3 Oak 1 Ash 1 Maple	On the south western boundary of O.S 5228
G12	2 Ash 2 Crab Apple	In the eastern corner of O.S 5228
G13	5 Oak 1 Ash 1 Maple	On the south western boundary of O.S 6839

G14	1 Oak 1 Pine 1 Crab Apple 1 Maple	In the western corner of O.S 6839
G15	20 Lombardy Poplar	On the western boundary of O.S 6060 north west of Woodhouse Farm.
G16	9 Poplar 1 Oak	On the northern boundary of O.S 7058.
G17	3 Oak 30 Willow 2 Maple 1 Crab Apple	On the northern boundary of O.S 7058 immediately north of Woodhouse Farm

Woodlands
(within a continuous black line on the map)

No. on Map	Description	Situation
W1	A woodland of mainly Oak Pine, Cherry Plum and Hawthorn	Within the north eastern part of O.S 4850 to the south and south west of Woodhouse Farm.
W2	A woodland of mainly Oak Poplar, Hawthorn and Crab Apple.	Within the south western part of O.S 4850
W3	A woodland of mainly Oak Hawthorn and Blackthorn.	Within the southern part Of O.S 4850
W4	A woodland of mainly Oak and Hawthorn	Enclosing the south and western part of O.S 5717 To the south west of the 'Wayfarers site'

SECOND SCHEDULE
PART 1

Provisions of the Town and Country Planning Act 1990 applied with adaptations or modifications.

Provision of the Town and Country Planning Act 1990	Adaptation or Modification
Section 69 (registers)	(a) In subsection (1) :- (i) omit:- "in such a manner as may be prescribed by a development order", "such" in the second place where it appears, and "as may be so prescribed"; and (ii) Substitute "matters relevant to tree preservation orders made by the authority" for "applications for planning permission". (b) In subsection (2) :- (i) after "contain" insert ",as regards each such order" and, (ii) for paragraphs (a) and (b) substitute "(a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and (b) a statement as to the subject-matter of every appeal under the order and the date and nature of the Secretary of State's determination of it." (c) Omit subsections (3) and (4) (as required by section 198 (4).
Section 70 (determination of applications: general considerations)	(a) In subsection (1)- (i) substitute:- "Subject to subsections (1A) and (1B), where" for "Where"; "the authority" for "a local planning authority"; "consent under the order" for

	"planning permission" in both of the other places where those words appear; (ii) after "think fit", insert:- "(including conditions limiting the duration of the consent or requiring the replacement of the trees)"; and (iii) omit "subject to sections 91 and 92". (b) After subsection (1) insert:- (i) "(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the area. (1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting)". (c) Omit subsections (2) and (3).
Section 75 (effect of planning permission)	(a) In subsection (1) substitute:- (i) "Any" for the words from "Without" to "any"; (ii) "consent under a tree preservation order" for "planning permission to develop land"; (iii) "the consent" for "the permission"; and

	(iv) "the land to which the order relates" for " the land". (b) Omit subsections (2) and (3).
Section 78 (right to appeal against planning decisions and failure to take such decisions).	(a) In subsection (1) substitute:- (i) "the authority" for " a local planning authority"; (ii) "consent under a tree preservation order" for "planning permission" in the first place where those words appear; (iii) "consent under such an order" for "planning permission" in the second place where those words appear; (iv) for paragraph (c) substitute:- "(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or (d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority," (b) Omit subsection (2). (c) In subsection (3) for "served within such time and in such manner as may be prescribed by a development order," substitute:- " in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:- (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of

	28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow; (b) in respect of such failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant". (d) For subsection (4), substitute:- "(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3)." (e) For subsection (5), substitute:- "(5) For the purposes of the application of section 79(1), in relation to an appeal made under subsection (1) (d), it shall be assumed that the authority decided to refuse the application in question."
Section 79 (determination of appeals) (a)	(a) In subsections (1) and (2), substitute "the authority" for "the local planning authority". (b) Omit subsection (3). (c) In subsection (4), substitute:- (i) "section 70(1), (1A) and (1B)" for " sections 70, 72 (1) and (5), 73 and 73A and Part 1 of Schedule 5"; (ii) "consent under a tree preservation order" for "planning permission"; and (iii) "the authority" for "the local planning authority and a

	development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of section 65 or 71." (d) Omit subsections (6) and (6A). (e) In subsection (7), omit the words after "section 78".

SECOND SCHEDULE
PART 2

PROVISIONS OF THE TOWN AND COUNTRY PLANNING ACT 1999, AS ADAPTED AND MODIFIED BY PART 1

The following provisions of the Town and Country Planning Act 1990, as adapted and modified by Part 1 of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 69

(1) Every local planning authority shall keep a register containing information with respect to matters relevant to tree preservation orders made by the authority.

(2) The register shall contain, as regards each such order:-

(a) details of every application under the order and of the authority's decision (if any) in relation to each such application, and

(b) a statement as to the subject-matter of every appeal under the order and of the date and nature of the Secretary of State's determination of it.

(5) Every register kept under this section shall be available for inspection by all public at all reasonable hours.

Section 70

(1) Subject to subsections (1A) and (1B), where an application is made to the authority consent under a tree preservation order:-

(a) they may grant consent under the order, either conditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or

(b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant

consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

Section 75

Any grant of consent under a tree preservation order shall (except in so far as the consent otherwise provides) inure for the benefit of the land to which the order relates and of all persons for the time being interested in it.

Section 78

(1) Where the authority:-

(a) refuse an application for consent under a tree preservation order or grant it subject to conditions;

(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grant it subject to conditions;

(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or

(d) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 8 weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State.

(3) Any appeal under this section shall be made by notice in writing addressed to the Secretary of State, specifying the grounds on which the appeal is made; and such notice shall be served:-

(a) in respect of a matter mentioned in any paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State may allow;

(b) in respect of such failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.

(4) The appellant shall serve on the authority a copy of the notice mentioned in subsection (3).

(5) For the purpose of the application of section 79(1), in relation to an appeal made under subsection (1) (d), it shall be assumed that the authority decided to refuse the application in question.

Section 79

(1) On an appeal under section 78 the Secretary of State may:-

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(2) Before determining an appeal under section 78 the Secretary of State shall, if either the appellant or the authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) Subject to subsection (2), the provisions of section 70(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Secretary of State under section 78 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(5) The decision of the Secretary of State on such an appeal shall be final.

(7) Schedule 6 applies to appeal under section 78.

Given under the Common Seal of the Braintree District Council

the 9th day of February 2001

THE COMMON SEAL of the
BRAINTREE DISTRICT COUNCIL
was hereunto fixed in the
presence of:-

Authorised Signatory

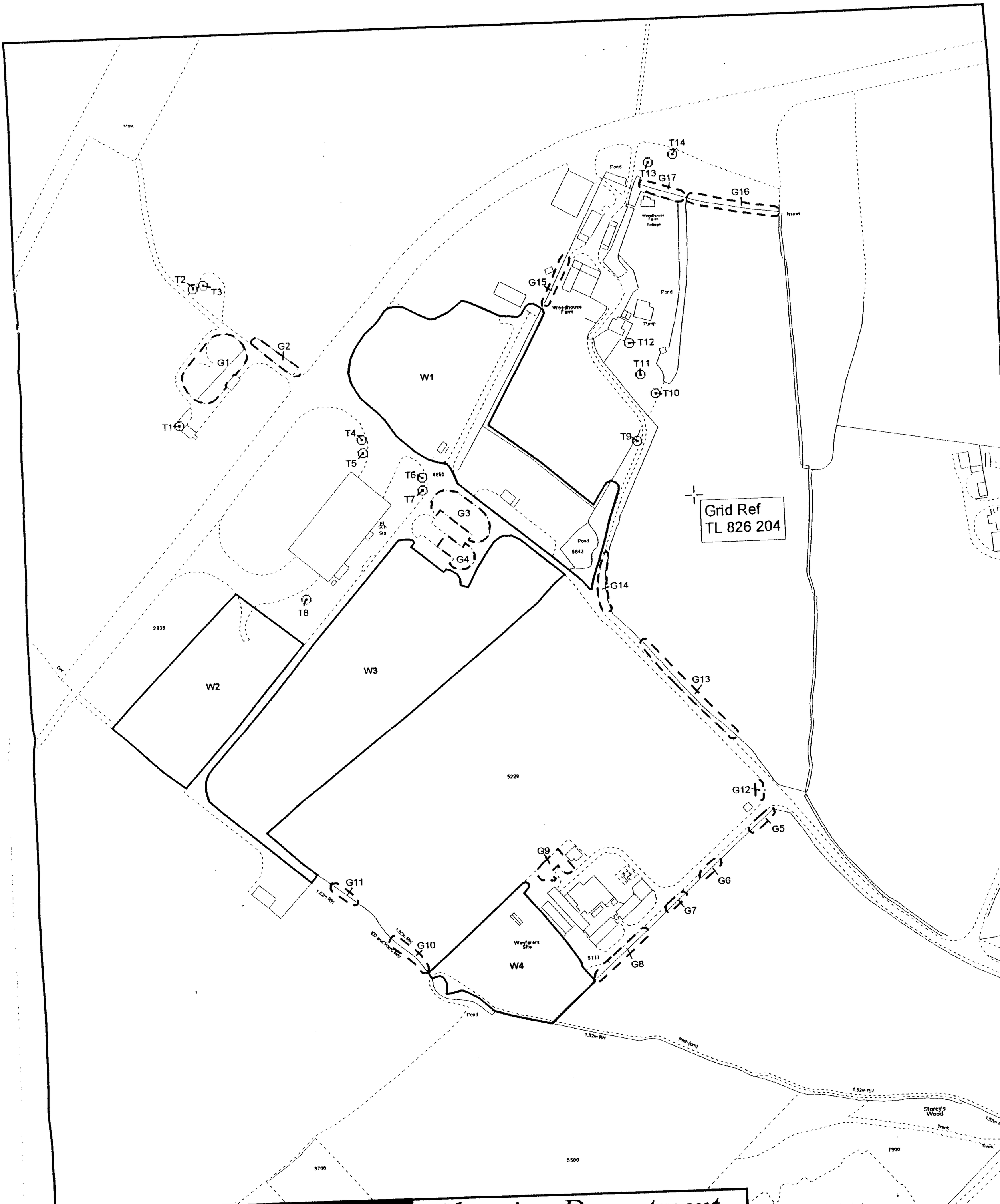
16825

The Braintree District Council hereby confirms the foregoing Tree Preservation Order No.11/2001, Areas around Woodhouse Farm, Kelvedon.

Give under the Common Seal of the Braintree District Council this
22nd day of June 2001.

The COMMON SEAL of the
BRAINTREE DISTRICT COUNCIL
was hereunto affixed
in the presence of

Authorised Signatory



Planning Department

Date: JANUARY 2001
Ref: 116 - 4 - 494
Drawn: D.R.F
Scale 1:2500
TL 8220

TREE PRESERVATION ORDER 11/2001

WOODHOUSE FARM AND SURROUNDING AREA
KELVEDON

This is the map referred to in the Braintree District Council Tree Preservation Order No. 11/01

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Authorised Signatory