

## APPENDIX 1

There are two main types of trees cover within the management plan boundary: those on the main body of the hill (which will largely be dealt with through a felling licence application) and those which fall within the western buffer strip, behind houses, such as on Aston Mead. It is this latter group that is referred to by WCRA.

The current position is that the above (latter) trees are inspected annually with a tree surgeon to check their safety and to determine necessary works. Obviously inspection is carried out from site footpaths and not from gardens of properties. In addition we are often called out by residents who have concerns or queries about individual trees behind properties (e.g. dead standing, fallen limbs, cone drop etc.). We apply the dead, dangerous or diseased approach and pay for works that fall under this. If residents want to cut back to boundary then it is at their expense under their common law right.

What is proposed under the plan for this buffer strip is that we (the steering group) will speak to small groups of residents about the trees within the strip and agree a long term plan regarding what would be the desired vegetation (trees or otherwise) for the future. We would factor in residents well-being, fire risk and nature conservation and amenity benefits, such as the importance of a wooded backdrop. We will then make decisions with that long-term plan in mind.

E.g. where adjacent residents on Aston Mead, who have very small gardens, would rather have broadleaves or no trees to the rear, we would have that as a long term goal. Where there is a desire to retain conifers or rhododendron hedge as a screen, then that would be respected also.

This does not mean that we will be carrying out extensive felling works to achieve this but we may plant or encourage broadleaves, or remove rhododendron. We would also prevent the regrowth of conifers, so that unwanted trees would not be replaced at the end of their lives. There may be opportunity to fell trees, but it is likely that this would need to be at the residents' expense.

In answer to Jim's question about whether the responsibility lies with the countryside service or the steering group regarding buffer trees, the answer is both. The countryside service will continue to make day to day decisions on minor maintenance works behind individual properties (it would be too time consuming and unnecessarily limited to involve the steering group in this). However, the steering group will carry out the role outlined above and help create and agree long-term solutions for the wider buffer strip.



## Appendix 2

### PART 6 COMPENSATION

#### Compensation

- 24 (1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of-
- a) the refusal of any consent required under these Regulations;
  - b) the grant of any such consent subject to conditions; or
  - c) the refusal of any consent, agreement or approval required under such a condition,
- that person 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 regulation-
- 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 these Regulations for the felling in the course of forestry operations of any part of a woodland area-
- a) they shall not be required to pay compensation to any person other than the owner of the land;
  - b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and
  - c) 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 case other than those mentioned in paragraphs (2) or (3), 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 application and the documents and particulars accompanying it, 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 that person's failure to take reasonable steps to avert the loss or 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 these Regulations or the grant of any such consent subject to conditions.



(5) Subsections (3) to (5) of section 11 of the Forestry Act 1967(22) (terms of compensation on refusal of licence) shall apply to the assessment of compensation under paragraph (3) as they apply to the assessment of compensation where a felling licence is refused under section 10 of that Act (23) (application for felling licence and decision of Commissioners thereon), as if-

- a) for any reference to a felling licence there were substituted a reference to a consent required under these Regulations; and
- b) for the reference to the Commissioners there were substituted a reference to the authority

(6) Claims for payment of compensation by virtue of paragraph (1) shall be made in writing to and paid by the authority.

(7)

a) This paragraph applies where-

- i. an authority have granted consent under regulation 17(1) and (3) for felling in the course of forestry operations all or any part of a woodland area to which an order applies;
- ii. such consent is granted subject to a condition under regulation 17(2)(a) requiring trees to be planted, and
- iii. the Forestry Commissioners decide not to make a grant or loan under section 1 of the Forestry Act 1979(24) (finance for forestry) in respect of the planting required by such a condition as is mentioned in paragraph (ii) for the reason that such a condition frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry

b) where this paragraph applies, the Forestry Commissioners shall, at the request of the person under a duty to comply with such a condition as is mentioned in sub-paragraph (a) (ii), give a certificate stating whether they have decided not to make such a grant or loan as is mentioned in sub-paragraph (a) (iii) and, if so, the grounds for their decision.

(8) Any question of disputed compensation under this regulation shall be referred to and determined by the Upper Tribunal (25).

(9) In relation to the determination of any such question, the provisions of section 4 of the Land Compensation Act 1961 (26) (costs for proceedings of Upper Tribunal) and sections 22 (Tribunal Procedure Rules) and 29 (costs or expenses) of the Tribunals, Courts and Enforcement Act 2007 shall apply subject to any necessary modifications and to the provisions of these Regulations.

(10) This regulation shall not apply to orders to which regulations 26(3) or 26(4) apply.

- (11) In this regulation-  
'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 by section 34 of the Forestry Act 1967(27) (meaning of 'owner').

## **Appendix 3**

### Human Rights

25. The Appellant asserts that the human rights of local residents, specifically the occupiers of No 27, are being severely affected by the tree particularly since the branches fell, which leaves them reluctant to use their garden. I accept that a fear that the tree or branches from the tree could fall without warning could affect the ability of residents to enjoy their homes and so I recognise that dismissal of this appeal would interfere with their private and family life. Such interference must be balanced against the public interest in pursuing the legitimate aims stated in Article 8 of the Human Rights Act 1998. These include the economic well-being of the country, which extends to preservation of the environment. This involves a balancing exercise which is in fact inherent to this appeal decision.

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### Appeal Decision APP/TPO/E1210/2408

26. In my view the interference is permissible in this case because: (i) the TPO has a statutory basis in law; (ii) the reason for refusal, which I have reviewed in this decision, is in pursuit of an aim set out in Article 8; and (iii) it pursues a legitimate objective and is proportionate to the objective being pursued. For these reasons the dismissal of this appeal would not have a disproportionate effect. For the same reasons I find that the interference with local residents' peaceful enjoyment of their properties is proportionate and strikes a fair balance in compliance with the requirements for Article 1 of the First Protocol.