

TOWN AND COUNTRY PLANNING ACT 1962

COUNTY OF LINCOLN - PARTS OF KESTEVEN

HORBLING TREE PRESERVATION ORDER 1968

THE County Council of Lincoln, Parts of Kesteven (in this Order called "the Authority") in pursuance of the powers conferred in that behalf by Section 29 of the Town and Country Planning Act, 1962, and subject to the provisions of Section 15 of the Forestry Act, 1967, hereby make the following Order:-

1. In this Order:-

"the Act" means the Town and Country Planning Act 1962;  
"owner" means the owner in fee simple, either in possession or who has granted a lease or tenancy of which the unexpired portion is less than three years, lessee (including a sub-lessee) or tenant in possession, the unexpired portion of whose lease or tenancy is three years or more, and a mortgagee in possession; and  
"the Minister" means the Minister of Housing and Local Government.

2. Subject to the provisions of this Order, and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the Authority 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 either tree specified in the First Schedule hereto, the position of which trees is defined in the manner indicated in the said First Schedule on the map marked "Map referred to in the Horbling Tree Preservation Order 1968", signed by the Clerk of the Authority and deposited for inspection at the offices of the South Kesteven Rural District Council, 41 North Street, Bourne, which map shall, for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

3. An application for consent made to the Authority under Article 2 of this Order shall be in writing stating the reasons for making the application, and shall, by reference if necessary to a plan, specify the trees to which the application relates, and the operations for the carrying out of which consent is required.

4. (1) Where an application for consent is made to the Authority under this Order, the Authority may grant such consent 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 Authority may think fit, or may refuse consent.

(2) The Authority shall keep a register of all applications for consent under this Order containing information as to the nature of the application, the decision of the Authority thereon and any compensation awarded in consequence of such decision, and every such register shall be available for inspection by the public at all reasonable hours.

5. Where the Authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied that the refusal or condition is in the interests of good forestry or that the trees have an outstanding or special amenity value.

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NOTE: If it is desired to fell any of the trees included in this Order and the trees are trees for the felling of which a licence is required under the Forestry Act, 1967, application must be made not to the Authority for consent under this Order, but to the Forestry Commissioners for a licence under that Act. (See Forestry Act, 1967, Section 15(5)).

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6. On imposing any condition requiring the replacement of any tree under Article 4 of the Order the Authority shall if such condition relates to land in respect of which byelaws made by a River Authority or Drainage Board restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any such condition has effect subject to the requirements of the River Authority or Drainage Board under those byelaws and the condition shall have effect accordingly.

7. The provisions set out in the Third Schedule to this Order, being provisions of Part III of the Act adapted and modified for the purposes of this Order, shall apply in relation thereto. The provisions of Part II of the Civic Amenities Act 1967, set out in the Fourth Schedule to this Order have effect in relation thereto.

8. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the Authority within the time and in the manner prescribed by this Order, be entitled to recover from the Authority compensation in respect of such loss or damage.

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any tree the subject of a certificate in accordance with Article 5 of this Order.

9. In assessing compensation payable under the last preceding Article account shall be taken of:-

(a) any compensation or contribution which has been paid whether to the claimant or any other person, in respect of the same trees under the terms of this or any other Tree Preservation Order under Section 29 of the Act or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) 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 Act 1932, and

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

10. (1) A claim for compensation under this Order shall be in writing and shall be made by serving it on the Authority such service to be effected by delivering the claim at the offices of the Authority addressed to the Clerk thereof or by sending it by prepaid post so addressed.

(2) The time within which any such claim shall be made as aforesaid shall be a period of twelve months from the date of the decision of the Authority, or of the Minister, as the case may be, or where an appeal has been made to the Minister against the decision of the Authority, from the date of the decision of the Minister on the appeal.

11. Any question of disputed compensation shall be determined in accordance with the provisions of Section 128 of the Act.

12. Any person contravening the provisions of this Order is guilty of an offence under subsection (1) of Section 62 of the Act and liable on summary conviction to a fine not exceeding fifty pounds (but see also Section 15 of the Civic Amenities Act 1967, set out in the Fourth Schedule to this Order) 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 forty shillings for every day on which the contravention is so continued.

13. This order may be cited as the Horbling Tree Preservation Order, 1968



FIRST SCHEDULE

TREES SPECIFIED INDIVIDUALLY  
(encircled in black on the map)

<u>Number on Map</u>	<u>Description</u>	<u>Situation</u>
T.1	Wellingtonia )	In O.S. 22, to the west of the house known as "Milestones", Spring Lane, in the Parish of Horbling."
T.2	London plane )	

TREES SPECIFIED BY REFERENCE TO AN AREA

None

GROUPS OF TREES

None

WOODLANDS

None

The O.S. parcel number referred to in this schedule appears on the 1/2500 scale Ordnance Survey Map Lincs. (Parts of Kesteven) sheet CXXIV, 4, second edition of 1904.

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SECOND SCHEDULE

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

- (1) the cutting down of any tree 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.
- (3) the cutting down, topping or lopping of any tree exempted from the provisions of this Order by Section 29(7) of the Act 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 an Act of Parliament or is so far as may be necessary for the purpose of preventing or abating a nuisance.
- (4) the cutting down, topping or lopping of any 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; or
    - (iii) a river authority established under the Water Resources Act 1963 or a drainage board constituted or treated as having been constituted under the Land Drainage Act 1930 where the tree interferes or would interfere with the exercise of any of the functions of such river authority or drainage board in relation to the maintenance improvement or construction of water courses or of drainage works;
  - (c) where 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;
  - (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden.





### THIRD SCHEDULE

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

22-(1) The Minister may give directions to the authority requiring applications for consent under the Order, to be referred to him instead of being dealt with by the Authority. Reference of applications to the Minister.

22-(2) A direction under this Section may relate either to a particular application or to applications of a class specified in the direction.

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

22-(4) Where an application for consent under the Order is referred to the Minister under this section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to an application which falls to be determined by the Authority.

22-(5) Before determining an application referred to him under this section the Minister shall, if either the applicant or the Authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

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

23-(1) Where an application is made to the Authority for consent under the Order and that consent is refused by that Authority or is granted by them subject to conditions, or where any certificate is given by the Authority, the applicant, if he is aggrieved by their decision on the application, or by any such certificate, may by notice under this section appeal to the Minister. Appeals against decisions

23-(2) A notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision or certificate, as the case may be, or such longer period as the Minister may allow.

23-(4) Where an appeal is brought under this section from a decision or certificate of the Authority, the Minister, 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 Authority, whether the appeal relates to that part thereof or not, or may cancel any certificate, and may deal with the application as if it had been made to him in the first instance.

23-(5) Before determining an appeal under this section, the Minister shall, if either the appellant or the Authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

23-(7) The decision of the Minister on any appeal under this section shall be final.

24. Where an application for consent under the Order is made to the Authority, then unless within two months from the date of receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either - Appeal in default of decision.

- (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 Minister in accordance with directions given under section 22 of the Act;

the provisions of the last preceding section shall apply in relation to the application as if the consent to which it relates had been refused by the 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.

27. (1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the authority may by Order revoke or modify the consent to such extent as they consider expedient. Power to revoke or modify the consent under the order.

27. (2) An Order under this Section shall not take effect unless it is confirmed by the Minister ; and the Minister may confirm any such Order submitted to him either without modification or subject to such modification as he considers expedient.

27. (3) Where an authority submit an Order to the Minister for his confirmation under this section, the authority shall furnish the Minister with a statement of their reason for making the Order and shall serve notice on the owner of the land affected, and on any other person who in their 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 requires, the Minister, before confirming the Order, shall afford to that person, and to the authority, an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

27. (4) The power conferred by this section to revoke or modify a 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 those operations as has been previously carried out.

27. (5) Where a notice has been served in accordance with the provisions of subsection (3) of this section, no operations or further operations as the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Minister under sub-section (2) of this section.

FOURTH SCHEDULE

Provisions of Part II of the Civic Amenities Act 1967 which came into force on 27th August, 1967 and have effect in relation to tree preservation orders:-

Section 13 (1) If any tree in respect of which a tree preservation order is for the time being in force, other than a tree to which the order applies as part of a woodland, is removed or destroyed in contravention of the order or is removed or destroyed or dies at a time when its cutting down is authorised only by the provisions of section 29(7) of the Planning Act relating to trees which are dying or dead or have become dangerous, it shall be the duty of the owner of the land, unless on his application the local planning authority dispense with this requirement, to plant another tree of an appropriate size and species at the same place as soon as he reasonably can. Replacement of trees.

(2) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.

(3) The duty imposed by subsection (1) of this section on the owner of any land shall attach to the person who is from time to time the owner of the land and may be enforced as provided by section 14 of this Act and not otherwise.

Section 14 (1) If it appears to the local planning authority that the provisions of section 13 of this Act, or any conditions of a consent given under a tree preservation order which require the replacement of trees, are not complied with in the case of any tree or trees, that authority may, at any time within four years from the date of the alleged failure to comply with the said provisions or conditions, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified. Default powers and appeals.

(2) Subject to the following provisions of this section, a notice under this section shall take effect at the end of such period (not being less than twenty-eight days after the service thereof) as may be specified in the notice.

(3) A person on whom a notice under this section is served may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal to the Minister against the notice on the ground -

- (a) that the provisions of the said section 13 or the conditions aforesaid are not applicable or have been complied with;
- (b) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified therein,
- (c) that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry;
- (d) that the place on which the tree or trees are required to be planted is unsuitable for that purpose;

and subsections (2) to (5) of section 46 and section 180 of the Planning Act (procedure and powers of Minister on appeal, and appeals to the High Court from decision of Minister) shall apply in relation to any such appeal as they apply in relation to an appeal against an enforcement notice.

(4) In section 48 of the Planning Act (execution by local planning authority of works required by an enforcement notice) and in section 49 of that Act (supplementary provisions as to enforcement notices) and any regulations in force under that section, references to an enforcement notice and an enforcement notice served in respect of development shall include references to a notice under this section, and in relation to such a notice the reference in subsection (1) of the said section 49 to the person by whom the development was carried out shall be construed as a reference to any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees.

Section 15 (1) In relation to an offence of cutting down or wilfully destroying a tree, or of topping or lopping a tree in such a manner as to be likely to destroy it, being an offence committed after the commencement of this Act, section 62(1) of the Planning Act ... (enforcement of tree preservation orders) shall have effect as if for the words "fifty pounds" there were substituted the words "two hundred and fifty pounds or twice the sum which appears to the court to be the value of the tree, whichever is the greater."

Penalties.

NOTE: In the above three Sections of the Civic Amenities Act, 1967 "the Planning Act" means the Town and Country Planning Act 1962.

GIVEN under the Seal of the County Council of Lincoln, Parts  
of Kesteven the <sup>21<sup>st</sup></sup> day of December, 1968.

THE COMMON SEAL of the County )  
Council of Lincoln, Parts of Kesteven )  
was hereunto affixed in pursuance of )  
a Resolution passed on the 24th day )  
of May, 1966. )

Seal

(sgd)

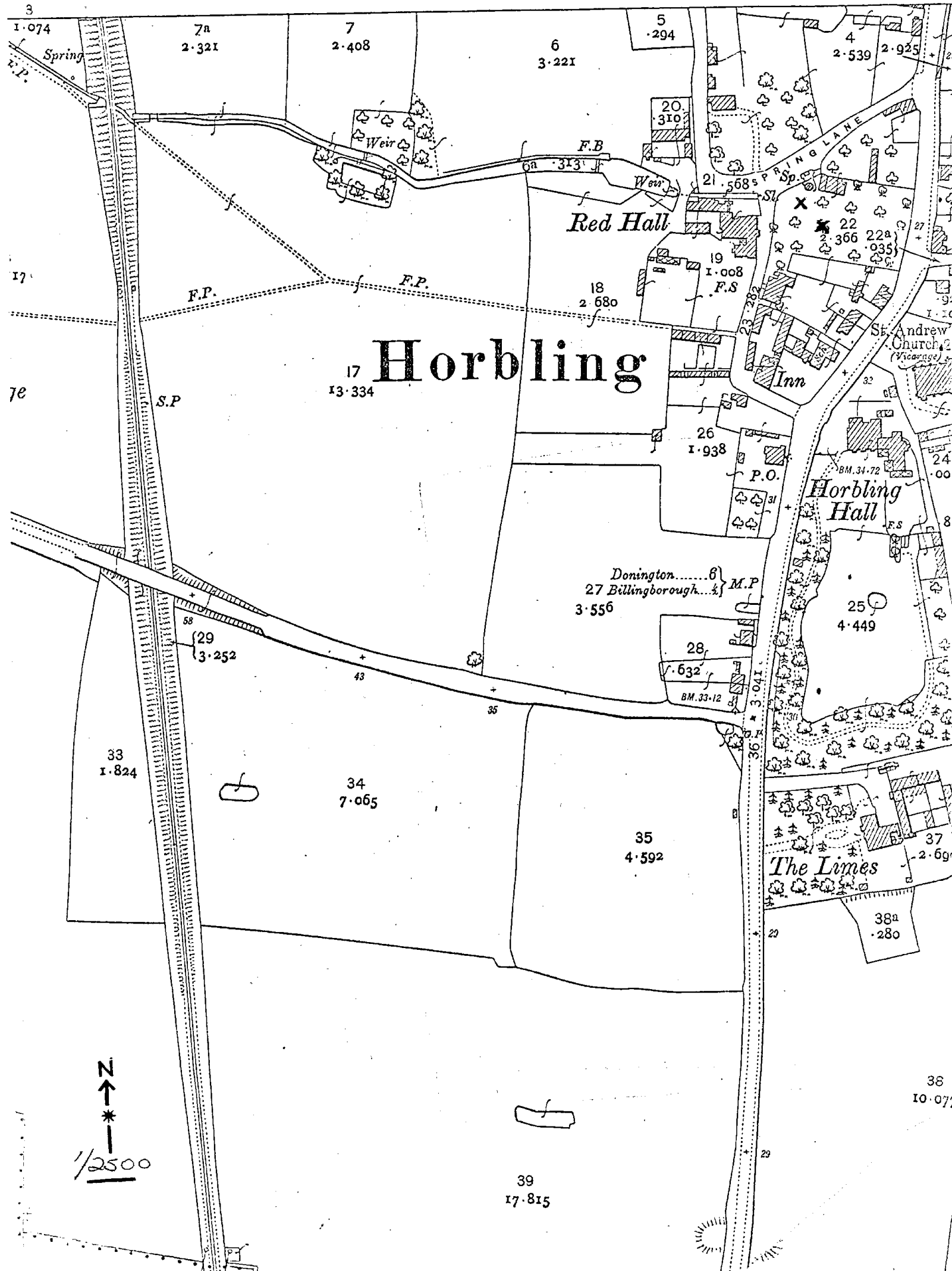


Chairman

(sgd)



Deputy Clerk of the County Council

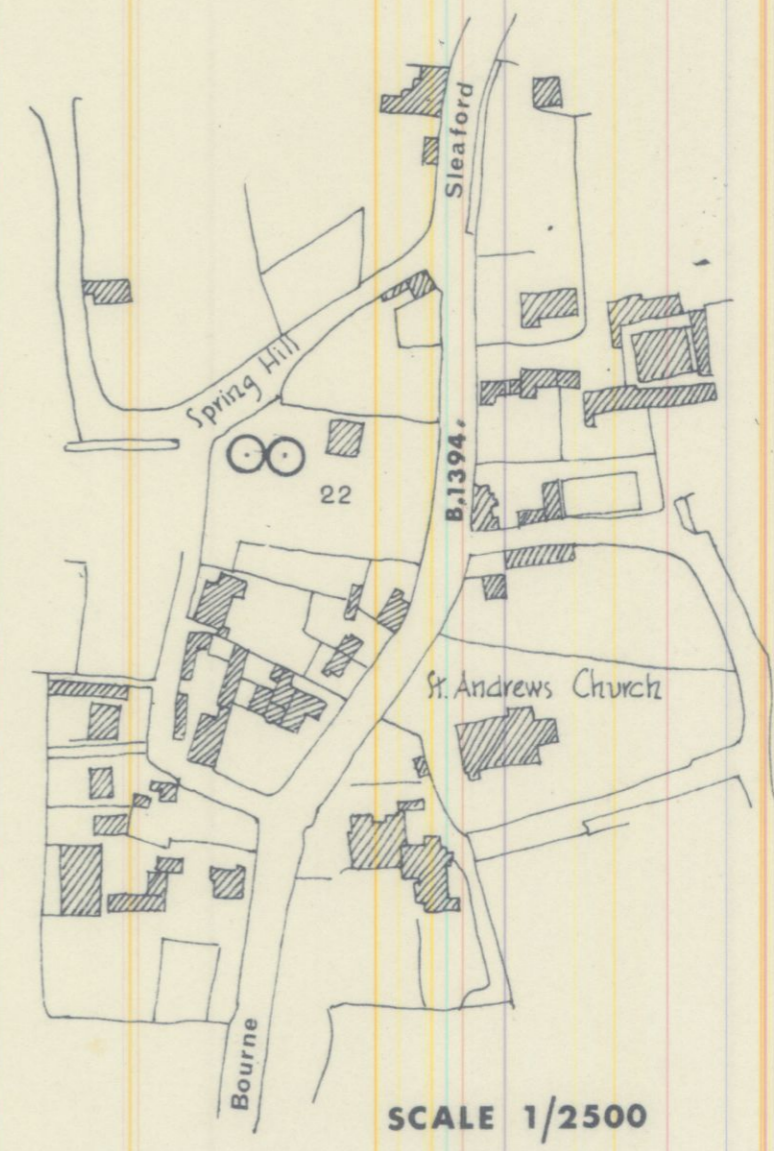
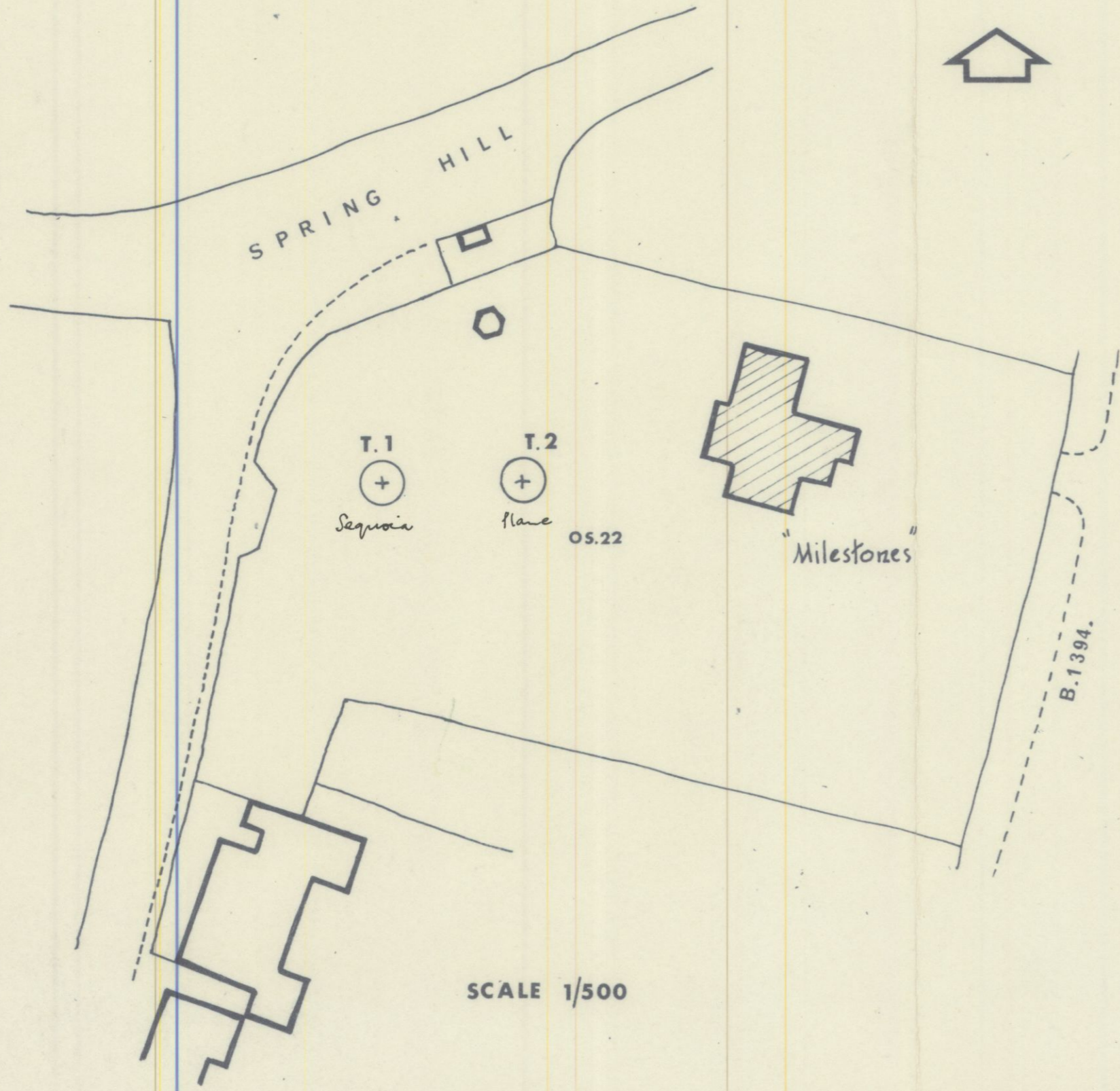


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SOUTH KESTEVEN RURAL DISTRICT COUNCIL,  
 "BASED ON (OR REPRODUCED FROM) THE  
 ORDNANCE SURVEY MAP WITH THE SANCTION OF  
 THE CONTROLLER OF H. M. STATIONERY OFFICE"  
 "CROWN COPYRIGHT RESERVED"

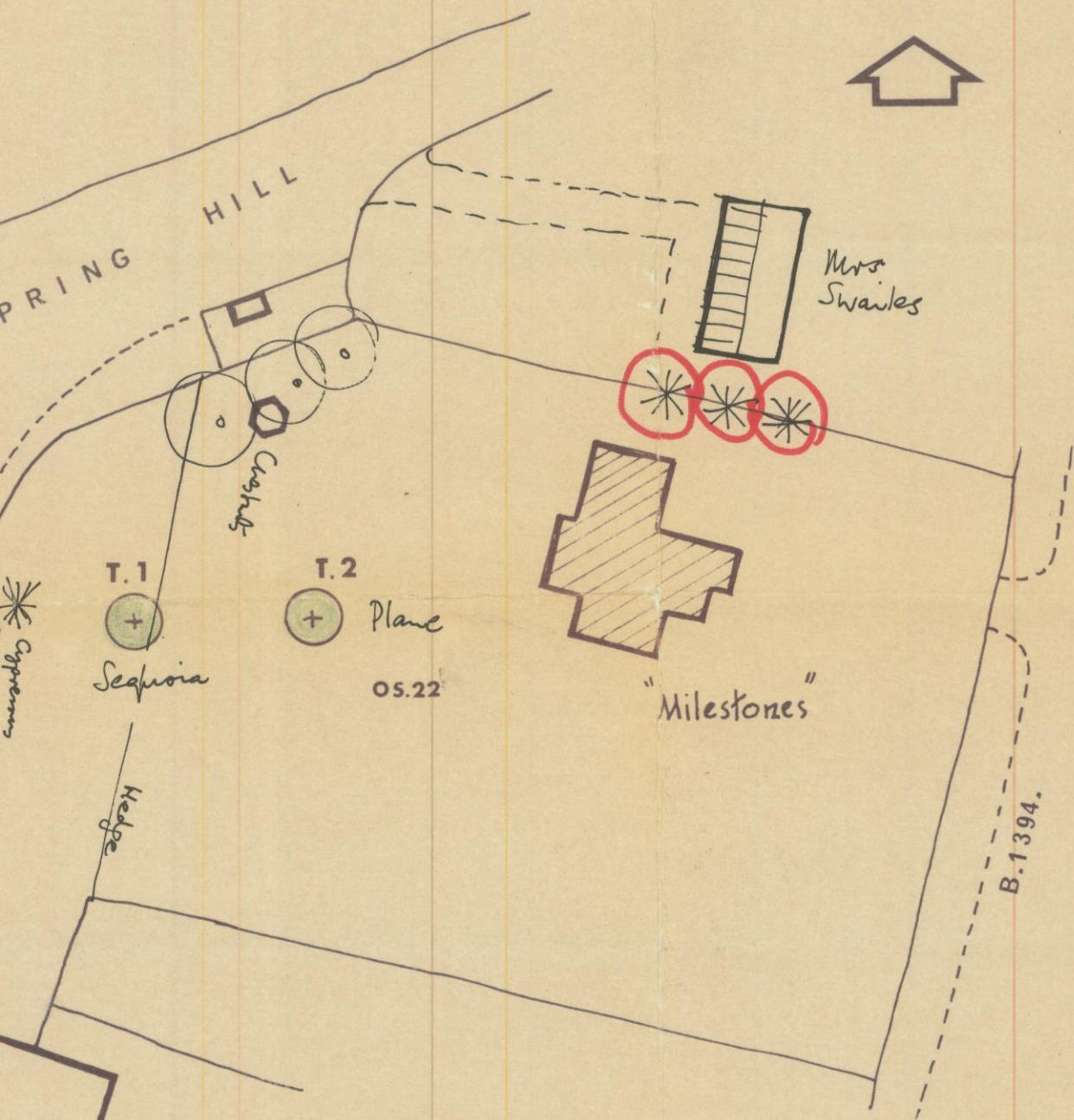
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Map referred to in the  
**HORBLING**  
**TREE PRESERVATION ORDER 1968**

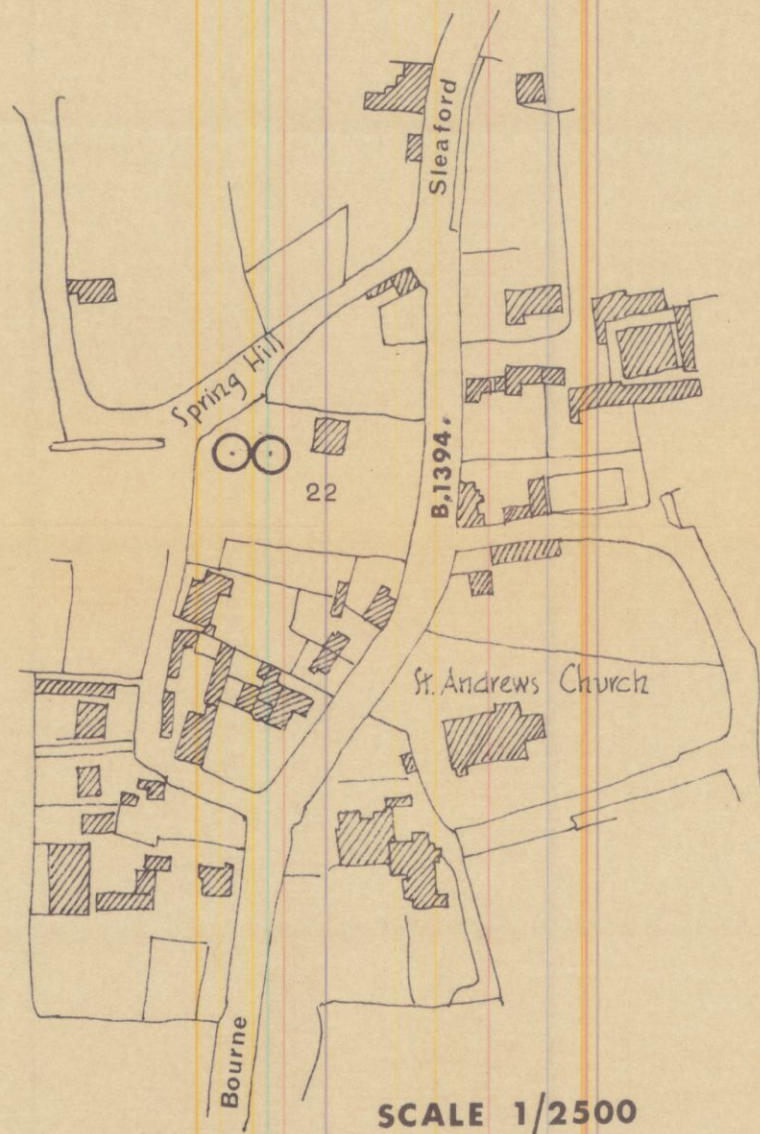


O.S. 25" Sheet Lincs(Kesteven) 124/4 Second Edition  
1904 refers.

# HORBLING



SCALE 1/500



SCALE 1/2500

O.S. 25" Sheet Lincs(Kesteven) 124/4 Second Edition  
1904 refers.