

Appeals under section 208 of the Town and Country Planning Act 1990

A Guide for Appellants (Tree Replacement Notices)

This guidance sets out the procedures for appeals made to the Secretary of State under section 208 of the Town and Country Planning Act 1990 against Tree Replacement Notices issued by councils under section 207 of the Act.

This guidance relates only to appeals in England.

Only the courts can give an authoritative interpretation on any point of law, so this guidance has no legal force.

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1. Introduction

Under section 206(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) a landowner has a duty to replace a tree which is removed in contravention of a tree protection order (TPO). Where the duty is not complied with, local authorities (this may be a district council or a unitary authority but we will call them "councils") have powers, under section 207 of the Act, to issue tree replacement notices (TRNs). These powers are also exercised where a tree is removed in a conservation area in contravention of section 211 of the 1990 Act (i.e. without giving the council six weeks' notice) and in circumstances when a condition to plant a replacement tree, on a consent to fell a tree under a TPO, is not complied with.

Section 208 of the 1990 Act gives people served with a TRN a right of appeal to the Secretary of State. Statutory provisions in respect of the appeal process are also contained in section 23 of the Planning and Compensation Act 1991 (the 1991 Act), The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Persons) (Prescribed Classes) (Amendment) (England) Regulations 2008, and the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008. The Acts and Regulations are available at larger public libraries. You can also find them on the Internet at:

<http://www.legislation.hmsso.gov.uk/acts/acts2003/20030038.htm>

The Secretary of State has delegated her appeal functions to the Planning Inspectorate (*see section: The Planning Inspectorate - who we are and what we do*).

This guidance is issued by the Planning Inspectorate and explains how and when an appeal must be made, and how we will deal with it.

The Department for Communities and Local Government (CLG) has also issued a series of leaflets about TPOs including best practice and guidance which includes TRNs. The most comprehensive guidance, 'Tree Preservation Orders: A Guide to the Law and Good Practice' at a cost of £8, has been supplemented by the Addendum dated September 2008 and is available at larger libraries and from CLG direct (telephone 08701 226236 or email communities@capita.co.uk

You may also access the guidance and leaflets via the internet on the CLG web site at: <http://www.communities.gov.uk/planningandbuilding/planning/treeshighedges/trees/>

2. Do I have the right to make an appeal?

You, or an agent acting on your behalf, can appeal if you were the person served with the TRN.

Grounds of appeal

An appeal against a TRN must be made on specific grounds as set out in section 208 of the 1990 Act as amended by the Planning and Compensation Act 1991. The statutory grounds of appeal are:

- that the duty to replace the tree is not applicable or has been complied with;
- that in all the circumstances of the case the duty to replace the tree should be dispensed with;
- that the requirements of the TRN are unreasonable in respect of (i) the size of the tree, or (ii) the species of the tree, or (iii) the period given;
- that planting the tree in line with the TRN (i) is not required in the interests of amenity, or (ii) would be contrary to the practice of good forestry;
- that the place on which the tree is or trees are to be planted is unsuitable for that purpose.

3. How and when do I appeal?

Your appeal should be made on a TRN appeal form obtained from the Planning Inspectorate.

You may obtain the form from our web site at:

<http://www.planning-inspectorate.gov.uk/pins/environment/> You may also obtain a form by telephoning or writing to us (*see section 19 of this guidance*). If you visit the Planning Inspectorate's web site, you will be able to complete the appeal form and return it to us electronically by e-mail to: environment.appeals@pins.gsi.gov.uk (you will need Adobe Professional software) or you can complete it, print it out and post it back to us.

Where possible we would prefer appeals to be made electronically, but do not worry if you cannot do that. Whether an appeal is sent electronically or on paper will not influence its chances of success.

When submitting an appeal electronically you do not need to complete it with an electronic signature. If you submit the form electronically but post supporting documents, please include your name and address on the papers so that we can link the posted documents with your appeal form. If you submit an appeal electronically please do not send an additional paper copy.

When submitting your appeal to us you please attach a copy of the TRN and any explanatory document sent by the council when they issued it. You **must** send a copy of your appeal to the council at the same time that you submit it to us. You should also keep an additional copy of your appeal form and supporting documents for your own reference.

When completing the appeal form you **must** set out the grounds of appeal and state the facts on which the appeal is based. A simple statement that you are appealing against the TRN would not comply with the requirements, and appeals that fail to comply with the requirements will be turned away.

If we consider that any of your representations contain racist or abusive comments, we will send them back to you and our Inspector will not see them. This is because representations can only be taken into consideration if they are made known to both parties; the Inspectorate cannot copy any material that might be construed as libelous. If you take out the racist or abusive comments, you can send your comments back to us. **But we must receive them before the time limit ends.** If a revised appeal does not reach us within the appeal period it will be deemed out of time and will be turned away.

You do not need to submit the documents already held by the Council because they will be forwarded to us at a later stage (*see section 7 of this guidance*). However, if you want to make a point that would be best illustrated by a plan or photograph, you should send a copy with the appeal form.

You must indicate your choice of procedure (see section 6).

The completed appeal form and any supporting documents **must** be received by the Planning Inspectorate at least one working day before the TRN takes effect. An appeal delivered on the day that the notice takes effect is out of time and will be turned away. This means that if the notice takes effect on a Sunday or Monday it must be received by us on the previous Friday, unless you can prove that any delay has been caused by postal disruptions. Apart from this one exception, **we have no discretion to accept late appeals**. Nor can we extend the period for making appeals.

The TRN is suspended pending the Secretary of State's determination or the withdrawal of the appeal.

4. Who is involved?

The parties to an appeal relating to a TRN are:

- the appellant;
- the Council;

5. How much will it cost?

There is no charge for making an appeal but you will have to pay your own costs. This means that if you employ a professional adviser (e.g. a solicitor or an arboriculturist) to help you make your appeal, you will have to pay for their services. If you opt to be heard at a hearing you will incur any preparation costs and any loss of income brought about by your attendance at the event. Although there is no charge for submitting appeals, they are expensive to administer and time-consuming for everyone and so should not be made lightly. (see section 16)

6. How will my appeal be decided?

When deciding which procedure to choose you should bear in mind that the written representations process is considerably quicker and cheaper than the hearing or inquiry procedures. Although you and the council have a right to be heard (i.e. appear before an Inspector at either a hearing or inquiry) we will decide which procedure (hearing or inquiry) is more appropriate, however, when reaching our decision we will take your views, and those of the Council, into account. Hearings and inquiries are not governed by statutory rules of procedure but our policy is to follow the spirit of the Town and Country Planning (Hearings Procedure) (England) Rules 2000, and the Town and Country Planning (Inquiries Procedure) (England) Rules, 2000.

Whichever procedure is used will have no bearing on the quality of the decision which will be based entirely on the merits of the evidence. A site visit will be undertaken regardless of the procedure unless, due to exceptional circumstances, we decide that a site visit is not required.

7. What happens when you receive my appeal?

When we receive your appeal, we will check that you have completed the form correctly, and that you have included valid grounds of appeal (see section 2). We will also check to establish that the appeal has been made before the notice is due to come into effect. Where applicable, validation of the appeal also includes checking that the Council has served the TRN within four years from the landowner's alleged failure to comply with the duty to plant the replacement

tree. If the TRN has been served after the four year period it is not valid and we will have no jurisdiction to process the appeal.

You must send a copy of your appeal to the Council. On receipt of their copy the Council will send us the preliminary information listed below:

- a copy of the replacement notice;
- where the notice has been issued following a failure to plant replacement trees, the original application for consent, and the Council's notice of consent;
- where the notice has been issued as a result of the unlawful removal of a tree, the date of the unlawful removal, if not included in the notice;
- where the notice has been issued as a result of a failure to replace a removed, exempted (dying, dead or dangerous) tree, the date of the alleged failure, if not included in the notice.

This information will enable us to complete the validation process.

8. What happens if something is missing?

If at any stage of the appeal process, we, or the Inspector, decide further information is required we will write to you and/or the Council to request it. The information requested must be submitted within the period we specify. Unless you/the Council can provide exceptional reasons for not being able to meet a deadline, we will reject submissions that are received after the specified period.

9. Written Representations (Fast track) Procedure:

The written representations (Fast Track) procedure is one whereby and Inspector will make a decision based upon the documents submitted within the appeal period together with the documents held on the Council's file. This procedure aims to reduce the length of time for a decision to be made and is one we would recommend for most cases.

As soon as we can after receiving the preliminary information from the Council we will send a questionnaire to the Council. The Council will return the completed questionnaire to us, together with copies of the documents listed on it, and will send a copy of the completed form to you. The Council has not less than 21 days to complete and return the questionnaire. The date on which it is returned to us will be recorded on the form.

After we have received the documents from the Council we will check the documents on our file and if the papers are complete we will then make arrangements for the site inspection to take place. However in some instances we **may** decide that it is necessary to obtain further information relevant to the appeal. Where this is the case we will write to you and the Council asking for further submissions and we will set a deadline for its receipt. Any requested information that you submit will be copied to the Council and vice versa, and if new issues are raised we will invite comments from the other party. We will ensure that all representations are cross-copied and placed on file before it is set before the Inspector.

10. The site visit

When we are satisfied that we have all the relevant documentation, we will pass the appeal file to the Inspector who will conduct a site inspection, unless we decide that a site visit is unnecessary, but this will happen very rarely.

The site visit will usually involve all parties and we will liaise with you before confirming the arrangements. If the Inspector needs to gain access to a neighbouring property we will also consult with the owner of that property in order to arrange access to the land in question. However, if you or the Council notify us that you are unable to attend, or if you do not wish to attend we will arrange for the Inspector to conduct an unaccompanied site visit. The Inspector must be accompanied by all main parties or by none at all. If a party fails to turn up on the appointed day the Inspector will make it clear to any parties present that he/she will conduct the visit alone. Any third parties who made comments on the matter or who sent comments in

response to the appeal will not be invited and are not permitted to attend (unless the Inspector needs to gain access to their property).

Whether you attend or not will have no bearing on the decision since discussion is not permitted during the inspection and the Inspector will not accept any supplementary oral or written evidence on site.

If the site in question is not situated in a garden but in a wood or park or on farmland we will ensure that all parties who are permitted to attend receive a clear plan linking the meeting point to a road, established right of way and/or an established landmark.

If necessary, the Inspector may request further information after the site inspection has taken place. However, unsolicited representations received after the site inspection will be returned to the sender unless the person submitting them can demonstrate that there were exceptional reasons which prevented their submission in accordance with the deadlines set out in the regulations or as otherwise specified by the Secretary of State.

11. Hearing Procedure:

A hearing is a round table discussion which is led by the Inspector. It is more informal and usually quicker than an inquiry and the Inspector will encourage the parties to focus upon the main issues of disagreement. A hearing will usually be a more appropriate forum to consider tree appeals, unless the case involves cross-examination of a number of witnesses or generates such interest that large numbers of people wish to attend.

After we have received the preliminary information from the Council (see paragraphs 7 & 8) we will send a questionnaire to the Council (see paragraph 9) and in the same letter will set a start date for the appeal. At the same time we will write to you, informing you of the start date. The start letter will confirm the contact details of the case officer who will process your appeal, and the procedure to be adopted. The start date is the date on which the clock starts ticking for the submission of further representations, and our letter will set out the statutory timetable which applies to you and to the Council. **It is your responsibility to keep to this timetable - we will not send you reminders.**

The 2-week deadline

Within 2 weeks of the start date the Council must have provided us with a copy of the completed questionnaire together with all of the documents listed on it which they indicate are being submitted to the Inspector for consideration.

The 6-week deadline

We must receive your **statement of case**, which sets out your side of the argument, within 6 weeks of the start date **unless** you intend to rely only upon the grounds that you entered onto your appeal form. The statement does not have to be in any particular format and it can be submitted on paper or electronically. If you decide not to send a statement of case within 6 weeks you will still be given the opportunity to comment on the statements and representations submitted by the Council and third parties (*see The 8-week deadline below*). The Council may also notify any third parties who commented on this matter that you have lodged an appeal and that they may also submit representations to us. All representations that have been received within the specified time will be copied to you and the Council once the 6-week deadline has passed. Your statement of case and the Council's will be despatched by us to the other party at the same time. Your statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make your case in a logical form.

Each party will only get the full benefits of the hearing if you, the council and the Inspector have an opportunity to consider the issues beforehand. The hearing can then be an open discussion of the main issues without witnesses having to be examined. If appropriate, expert opinions should also be obtained and backed up with evidence.

If you intend to call somebody to speak on your behalf their statement should be included in your statement of case. The statement of case may be used, in whole or in part, for reference at the hearing and by the Inspector in writing his/her decision. When preparing your statement you should bear in mind that evidence will not necessarily be accepted just because it has not

been challenged by another party. Our Inspectors bring their own experience, knowledge and judgment to all evidence presented to them.

If more than one document is referred to in your statement of case and will be submitted as evidence, an index should be provided and each page of the statement numbered. Photographs should be representative of actual views, rather than distorted by special lenses or digitally manipulated. The Inspector will inspect the site, and may wish to see it from the viewpoints shown in photographic evidence.

The 8-week deadline

Within 8 weeks of the start date you and the Council may comment on each other's statements made before the 6-week deadline and on any comments submitted by third parties. We expect both you and the Council to have given us all evidence in the grounds of appeal and statements of case, so the opportunity to comment at 8 weeks must not be used as a means of introducing new material or putting forward arguments that should have been included in your 6-week statement. **We will reject and return representations received at this stage if they raise new issues.**

Unless a shorter period of notice is agreed with you and the Council we will give at least 4 weeks notice of the arrangements for a hearing. We *may* require the council to place a notice of a hearing or inquiry in a local newspaper not less than 2 weeks before the hearing or inquiry is due to open.

We have a duty to decide all appeals as efficiently and cost-effectively as possible whilst giving equal opportunities to all parties to produce valid evidence. For this reason you and the Council will only be able to refuse one date offered for the hearing. If you refuse the first date, we will choose an alternative. We will do our best to avoid any dates that you tell us are not convenient, but we cannot guarantee that we will be able to find a more convenient day.

If you are unable to attend on the date fixed for your hearing, you should consider sending somebody to present your case for you.

The Council may also notify any interested third parties so that they may attend if they wish to. At a hearing third parties have no *right* to speak, but may be heard at the discretion of the Inspector.

The Inspector may adjourn the hearing to the site and allow further discussion to take place there before closing it. However, where the Inspector considers there would be no benefit from continuing discussion on site, the visit will take place after the hearing has been closed. The Inspector will conduct the inspection in the company of the main parties unless one party drops out or is unhappy about giving another party access to their land, in which case an unaccompanied site visit will take place (*see section 10*).

12. Inquiry Procedure:

The written exchanges are the same as set out above for the hearing procedure (*see section 11*) but additionally there will be an opportunity to submit a **proof of evidence**. Exceptionally there may also be a need for a pre-inquiry meeting in order to agree the topics that will be discussed at the inquiry and those which will not be raised. You will normally be required to agree a statement of common ground. The procedure will be determined by the Inspector who conducts the inquiry, however, as a general guide, it will normally take the following form:

- The Inspector will introduce him/herself. He/she will then explain how the inquiry will continue.
- The Inspector will then identify the likely main issues – again referring to the pre-inquiry meeting if there was one, and the position on the receipt of proofs of evidence.
- You (or your representative) and the Council may be invited to make a brief opening statement of not more than 15 minutes.
- The Council will give evidence first and you will then have the right to make your case in full. Third parties will be heard in the order determined by the Inspector. Regardless of who is speaking, the Inspector may refuse to hear evidence that is irrelevant or repetitious or offensive.
- The Council calls their witnesses in turn to give evidence. Witnesses may then be cross-examined by you. You must use this opportunity to ask questions only. If the Inspector considers that you are making a statement rather than asking questions, or if your questions are repetitive, he/she will stop you. The witnesses are then re-examined by the Council, but this must be strictly confined to

matters raised in cross-examination.

- The Inspector may ask you, the Council and witnesses questions to obtain relevant information. If the questions asked by the Inspector raise matters which could harm that party's case additional re-examination will be allowed.
- This process is then repeated for you and your witnesses.
- Only you and the Council have the right to cross-examine, although the Inspector may permit other persons to do so if they have stated they wish to speak.
- You will have the right of final reply.

The Inspector may then make arrangements for a site visit before formally closing the inquiry.

13. What happens if I decide to withdraw my appeal?

You can withdraw your appeal at any time. If you decide to withdraw your appeal you must confirm it in writing to us as soon as possible so that we may write to the other parties and let them know that we will take no further action on the appeal. In these circumstances the original decision issued by the Council will again become live and any conditions to which it is subject will take effect from the date the appeal is withdrawn. However, you should be mindful of costs implications if you have asked to be heard and only withdraw your appeal at a late stage (*see section 16*).

14. The decision

The Inspector may proceed to a decision in the absence of any representations if it appears to him/her that there is sufficient information to enable a determination to be made. In determining the appeal the Inspector may **allow** it, in which case the notice may be quashed, or **dismiss** it. The Inspector may correct any defect, error or misdescription in the TRN and he/she may also vary any of its requirements. However he/she must be satisfied that any correction or variation would not cause injustice or prejudice to the appellant or to the Council. The Inspector's decision is final. However, after the decision has been issued, our involvement in the process comes to an end and it is for the Council to ensure that any of the upheld, varied or corrected requirements of the notice are complied with.

15. Who will be notified of the decision?

We will notify the Council, the appellant and, where appropriate, any third party who attended the hearing/inquiry of the Inspector's decision as soon as possible. A copy will also be sent, on request, to any third party who submitted representations. In the future we may also post the decision on our web site.

16. Costs

Unlike the TPO appeals procedure, costs applications may be made in respect of TRN appeals which are dealt with under the written/fast track procedure. You and/or the Council may apply for costs on the ground that the other party's unreasonable behaviour has caused you unnecessary expense. The application must be made in writing to us.

If the appeal is heard an application may be made in writing before the hearing is opened or at the hearing/inquiry itself. Applications for costs that are made after the hearing or inquiry has closed are only accepted in very exceptional circumstances. However, a written application may be made if the party who asked for the hearing causes its cancellation at the last minute by requesting a change of procedure or by withdrawing the appeal, thus causing the other party unnecessary expense in preparing for it. In such cases a written application should be submitted within 4 weeks from the date on which notice of the cancellation is given.

The Inspector will consider the application, and any response from the party from whom costs are being sought, and will write a separate decision. The decision will not go into the actual amount of costs involved – only the principle and what the award is broadly for. Comprehensive guidance is contained in DOE Circular 8/93.

See also *Costs Awards in Planning Appeals – A Guide for Appellants* at:

http://www.planning-inspectorate.gov.uk/pins/appeals/costs/making_costs.htm

17. How do I complain if I am not happy about the way the Planning Inspectorate has handled my appeal?

If you have any complaints about the decision or the way we have handled your appeal please write to:

The Planning Inspectorate
Quality Assurance Unit
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay,
Bristol
BS1 6PN

phone: 0117-372 8252
fax: 0117-372 8139

e-mail: complaints@pins.gsi.gov.uk

The Quality Assurance Unit will reply to you, or they will ask someone else within the Planning Inspectorate to reply if they have specialist knowledge of the issues raised. They will investigate your complaint and you can expect a full reply within 3 weeks. However, the Planning Inspectorate cannot reconsider your appeal if the decision has already been issued unless the decision is overturned in the High Court (*see section 18 below*).

18. How can I challenge the decision?

There is no separate right of appeal against a decision issued by an Inspector appointed by the Secretary of State. The only way to have an appeal decision reconsidered is by making an application to the High Court under section 289 of the Act. Such a challenge is designed to ensure that the powers laid down in the Act and the Regulations have been exercised properly. It can only be used to challenge the way in which the Inspector has interpreted the law in making the decision or if the relevant statutory requirements have not been complied with such that they were seriously defective. To be successful you would have to show that a serious mistake e.g. failure to take an important factor into account, had been made or that procedural aspects of the appeal were seriously defective. It follows that what is at issue is not the strength of your arguments and/or the merits of the appeal decision.

Permission is needed to bring an application under section 289 and any such application must be made within **28 days** from the date of the decision, although the Court has discretion to extend the time limit in exceptional circumstances. Permission will only be granted where the applicant is able to satisfy the court that he/she has both sufficient interest in the matter and a reasonable case to put forward. Anyone who is considering an application to the court is strongly advised to seek legal advice. Community Legal Service (CLS) can help you to find the right legal advice. You can search their website at www.clsdirect.org.uk or telephone them on 0845 345 4 345. You can also find advice on the process on the HM Courts Service website at: <http://www.hmcourts-service.gov.uk/cms/1208.htm>

19. The Planning Inspectorate - who we are and what we do

The Planning Inspectorate is an executive agency of the Secretary of State for Communities and Local Government. Its TPO/TRN Appeal Team is based at:

Environment Appeals Team
Room 4/04 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Telephone: 0117 372 8192

e-mail: environment.appeals@pins.gsi.gov.uk

The team is responsible for the administration of TPO/TRN cases and for ensuring that appeals are processed in a timely manner. Officers will also answer general queries on appeal procedures and on the progress of specific cases.

You will find more detailed information about the Planning Inspectorate on the Inspectorate's web site at <http://www.planning-inspectorate.gov.uk> and in the Inspectorate's Annual Report and Accounts which can be found on the website or bought from Government bookshops.

20. Data Protection and Privacy in the Planning Inspectorate

Under the Data Protection Act 1998 The Planning Inspectorate has a legal duty to inform you about and protect any information it collects from you. When considering an appeal, we receive a variety of personal information. This information comes from a number of sources including the appeal form and any documentation of support or objection.

In accordance with current statutory obligations most of the documentation received by us will be made accessible to the public. Nevertheless, the Planning Inspectorate recognises the importance of the privacy of individuals. This section sets out what information it collects and how it will be used.

Data Protection

The Planning Inspectorate has put procedures in place to ensure that it complies with the Data Protection Act 1998 when handling your personal information.

In particular the Planning Inspectorate will:

- only use your personal information for the purpose of dealing with and considering the relevant appeal;
- only hold your personal information for as long as is reasonably necessary. For decided appeals this is usually 12 months unless a decision is judicially reviewed in which case it is 3 years.

The Planning Inspectorate will retain a copy of the Inspector's decision indefinitely. It may be that personal information could form part of the Inspector's decision.

What information does the Planning Inspectorate hold?

When dealing with a tree replacement notice appeal the Planning Inspectorate could receive personal information about you from a number of parties, including yourself, the Council or other parties interested in the appeal. The information the Planning Inspectorate receives is varied but may include your name, address and occupation, and information relating to your opinions or intentions in respect of an appeal.

What steps should you take?

- Only provide personal information if you are happy for it to be placed in the public domain.
- Do not include personal information about another third party (including family members) unless you have told the individual concerned and they are happy for you to send it.
- Tell the Planning Inspectorate as soon as possible if any of the personal information you have provided has changed.

The Data Controller

The data controller (the organisation responsible for dealing with personal information) is the Office of the Deputy Prime Minister.

Your rights to see personal information

If you ask for it, we have to provide you with a readable copy of the personal data that the Planning Inspectorate keeps about you within 40 days. There is a statutory charge of £10. Evidence of proof of your identity will be required before information is released. It is both in our interest and yours to hold accurate data. If the data we hold is inaccurate in any way, then without charge and where appropriate, you may have the data:

- erased
- rectified or amended
- completed.

For any enquiry or concern about the Planning Inspectorate's privacy policy, or to request access to your personal data contact our Data Manager:

Data Manager	Telephone: 0117 372 8922
The Planning Inspectorate	E-mail: enquiries@pins.gsi.gov.uk
Room 5/04 Kite Wing	
Temple Quay House	
2, The Square	
Bristol BS1 6PN	

Related information about our privacy policy is available on the Planning Inspectorate web site at http://www.planning-inspectorate.gov.uk/pins/terms_conditions/privacy/index.htm

Complaints about access to personal information

The Planning Inspectorate aims to ensure that it resolves any matters satisfactorily, however if you are not satisfied with its response you may contact:

The Information Commissioner	Switchboard: 01625 545 700
Wycliffe House	Fax: 01625 524 510
Water Lane	DX: 20819 Wilmslow
Wilmslow	Web site: http://www.dataprotection.gov.uk/
Cheshire	E-mail: mail@dataprotection.gov.uk
SK9 5AF	