

**East Lothian Council Tree Preservation Order
- Preston, East Linton No. 142 (2020)**

The Town and Country Planning (Scotland) Act 1997 Tree Preservation Order – Preston, East Linton No. 142 (2020)

East Lothian Council constituted under the Local Government etc. (Scotland) Act 1994 and having its principal office at John Muir House, Haddington as planning authority make the following Tree Preservation Order in exercise of the powers conferred by section 160 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so.

Citation, commencement and interpretation

1. -(1) This Order may be cited as the “East Lothian Council Tree Preservation Order – Preston, East Linton No.142 (2020)” and takes effect on 22/12/2020.

(2) In this Order-

"the 1992 Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended or remade¹;

"the Act" means the Town and Country Planning (Scotland) Act 1997 as amended or re-enacted;

"protected tree" has the meaning given in Article 2 of this Order.

“the Plan” means the plan annexed and signed as relative hereto.

Protected Trees

2. -(1) A protected tree is a tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland specified in that Schedule.

(2) The position of such trees, groups of trees or woodlands is identified in the manner indicated in Schedule 1 and on the map annexed to this Order.

(3) Where any ambiguity as to the identification of a protected tree arises between the map and the specification in Schedule 1 to this Order, the map is to prevail.

Prohibited acts

3. Subject to the provisions of the Act and the exemptions specified in Article 4 of this Order, no person is except with, and in accordance with, the consent of the planning authority(a) to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or

(b) to cause or permit the cutting down, topping, lopping, uprooting, or wilful damage or wilful destruction of, a protected tree.

Exemptions

4. - Nothing in Article 3 is to prevent-

¹) [S.I. 1992/223].

- (a) the cutting down of a tree in accordance with a felling licence granted by The Forestry Commissioners under the Forestry Act 1967²;
- (b) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, The Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;
- (c) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the 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 for which planning permission is granted by the 1992 Order, provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A of the Act, or deemed to have been granted (whether for the purposes of Part 3 of the Act or otherwise); or
- (e) the cutting down, topping, lopping or uprooting of a tree by, or at the request of, SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order.
 provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary
- (f) the cutting down, uprooting, topping or lopping of a tree on land in the occupation of a planning authority when this is done by or with the consent of that authority;

Directions as to replanting

5. - (1) Where consent is granted under this Order for the felling, in the event that the provisions of Section 167(i)(a) and (b) of the Act apply the planning authority may give to the owner of the land on which the tree(s) are situated a direction in writing specifying the manner in which and the time within which the owner must replant trees on that 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 must replant trees on the land in accordance with the direction.

² 1967 c.10.

(3) Any direction given under paragraph (1) may include requirements as to-

- (a) species;
- (b) number of trees per hectare;
- (c) the erection and maintenance of fencing necessary for the protection of the replanting;
- (d) the preparations of ground, draining, removal of brushwood, lop and top; and(e) protective measures against fire.

Adaption and Modification of the Act

6. -(1) The provisions of the Town and Country Planning (Scotland) Act 1997 mentioned in column 1 of Part 1 of Schedule 2 to this Order are to have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications specified in column 2 of Part 1 of that Schedule.

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

Compensation

7. - (1) Subject to paragraphs (2) to (5), any person who has suffered loss or damage caused or incurred in consequence of-

- (a) any refusal of consent required under this Order; or
- (b) any grant of any such consent subject to conditions,

is entitled to recover from the planning authority compensation in respect of such loss or damage.

(2) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.

(3) The time within which any such notice shall be given is a period of six months -

- (a) from the date of the decision of the planning authority; or
- (b) where an appeal has been made to Scottish Ministers against the decision of the planning authority, from the date of the decision of Scottish Ministers on the appeal.

(4) No claim may be made under this article if the amount in respect of which the claim would otherwise have been made is less than £1,000.

(5) 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 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 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 Scottish Ministers against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(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.

Applications for Consent

8. - (1) Any application for consent of the Planning Authority for all non-exempt tree management works must be submitted in advance in writing ("Application"). The Application must provide the following:

(a) specify the tree management work for which consent is sought

(b) give reasons for carrying out such operations

(c) identify the Protected Tree or trees which would be affected by such operations

(d) The Protected Tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose

The Application may be sent by electronic communications

All Applications must include the applicants contact details, including but not limited to a current email and telephone number.

Application of tree preservation order to future planting

9. – This Order applies to any tree specified in Schedule 1 to this Order which is to be planted in pursuance of a condition imposed by virtue of section 159(a) of the Act as from the time when those trees are planted.
3

Offences and Penalties

10. – Section 171 of the Act shall apply

(1) If any person, in contravention of a tree preservation order –

(a) Cuts down, uproots or wilfully destroys a tree; or

(b) Wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it

He shall be guilty of an offence

(2) A Person guilty of an offence under subsection (1) shall be liable – (a) on summary conviction to a fine not exceeding £20,000, and

(b) on conviction on indictment, to a fine.

(3) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(4) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Offences and Penalties

11. This Order shall take effect from the 22 December 2020

³ This provision may be included in relation to trees planted pursuant to a condition imposed under section 159(a) of the Act in order to ensure that in granting planning permission for development adequate provision is made for the preservation or planting of trees.

IN WITNESS WHEREOF these present consisting of this and the five proceeding pages, with the FIRST and SECOND schedule hereto and the Plan are executed as follows; **SUBSCRIBED**

for or and behalf of the said **EAST LOTHIAN COUNCIL**

at

on the day of

2020

by

.....

Douglas Proudfoot

Authorised Officer

Head of Service (Development)

East Lothian

This is Schedule 1 referred to in the forgoing East Lothian Council Tree Preservation Order - Preston, East Linton No. 142 (2020) by East Lothian Council

SCHEDULE 1 Article 1

Trees Specified Individually (coloured green on the map)

| Trees Specified Individually (Coloured Green on the Map) | | |
|---|-------------|---|
| No. on Map | Description | Situation |
| T1 | Lime | Rear garden of the property known as 3 The Glebe, East Linton, EH40 3EF and forming part of the subjects described in the Disposition by David and Margaret Ruddick in favour of Gavin and Helen Henderson recorded in the division of the General Register of Sasines for the county East Lothian 19 July 1996 |
| T2 | Lime | Rear garden of the property known as 3 The Glebe, East Linton, EH40 3EF and forming part of the subjects described in the by David and Margaret Ruddick in favour of Gavin and Helen Henderson recorded in the division of the General Register of Sasines for the county East Lothian 19 July 1996 |
| T3 | Lime | Rear garden of the property known as 2 The Glebe, East Linton, EH40 3EF and forming part of subjects registered in the Land Register under Title ELN8522 |

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| | | |
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| T4 | Whitebeam | Front garden of the property known as 3 The Glebe, East Linton, EH40 3EF and forming part of the subjects described in the Disposition by David and Margaret Ruddick in favour of Gavin and Helen Henderson recorded in the division of the General Register of Sasines for the county East Lothian 19 July 1996 |
| T5 | Whitebeam | Front garden of the property known as 2 The Glebe, East Linton, EH40 3EF and forming part of subjects registered in the Land Register under Title ELN8522 |
| T6 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T7 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T8 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T9 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |

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| T10 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T11 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T12 | Yew | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T13 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title ELN25527 |
| T14 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |
| T15 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title number ELN25527 |

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|-----|---------------------|--|
| T16 | Sycamore | The property known as Prestonkirk Manse, Preston Road, East Linton, EH40 3DS and forming part of the subjects undergoing registration in the Land Register under Title ELN25527 |
| T17 | Pink Horse Chestnut | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
| T18 | Walnut | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |

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| T19 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
| T20 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |

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|-----|----------|--|
| T21 | Lime | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
| T22 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |

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| | | |
|-----|----------|--|
| T23 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
| T24 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |

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| | | |
|-----|----------|--|
| T25 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
| T26 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
| T27 | Sycamore | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |

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

| No. on Map | Description | Situation |
|------------|--------------------------|---|
| G1 | 10no. Sycamore, 2no. Ash | South side of the property known as Preston Road, under possible ownership of Gray of Smeaton Farm, EH40, 3DT and forming part of the subjects undergoing registration in the Land Register under Title Number ELN25729 |

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| T28 | Yew | The property known as Prestonkirk Church Hall, Preston Road, East Linton, EH40 3DS and forming part of the subjects described in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the division of the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932 |
|-----|-----|--|

**Trees Specified by Reference to an Area
(Coloured Green on the Map)**

| No. on Map | Description | Situation |
|------------|--|--|
| NONE | | |
| W1 | Holly, Beech, Larch, Pine spp, Sycamore, Elm, Yew, Norway Maple, Cypress, Wild Plum, Privet, Elder, Laurel | Westerly within the subjects known as Prestonkirk Manse, Preston road, East Linton, EH40 3DS and forming part of the subjects recorded in the Title per Certificate of Sheriff of Lothians & Peebles recorded in the General Register of Sasines for the county East Lothian 23 February 1929 and Order & Scheme in favour of the said Trustees recorded in the division of the General Register of Sasines 9 June 1932. |

Woodlands (within a continuous red line on the map)

| No. on Map | Description | Situation |
|------------|-------------|-----------|
|------------|-------------|-----------|

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Douglas Proudfoot

Authorised Officer

Head of Service (Development)

East Lothian Council

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SCHEDULE 2

PART I

PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Adaptation or Modification Country Planning (Scotland) Act 1997

Section 36 (Registers of applications etc.)

For subsections (1) to (3) substitute -

"(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing -

(a) information as to the nature of such applications, the decisions of the planning authority thereon,

(b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and

(c) any directions as to the replanting of woodlands."

This is Schedule 2 referred to in the forgoing East Lothian Council Tree Preservation Order - Preston, East Linton No. 142 (2020) by East Lothian Council

Section 37 (determination of (a) In subsection (1) - applications:
general

considerations)

(d) for "planning permission" where those words first appear;" substitute "consent under a tree preservation order";

(e) for "sections 27B(2) and 59(1)(b) substitute "subsections (1A) and (1B)";

(f) for "planning permission" in both of the other places where those words appear substitute "consent under the order";

(g) after "think fit", insert, "(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and

(b) After subsection (1) insert -

"(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)."

(c) Omit subsections (2) and (3); and

(d) In subsection (4) for paragraphs (a) to (c) substitute-

"(a) consent under a tree preservation order; or

(b) any consent, agreement or approval required by a condition imposed

on the grant of such consent,"

Section 44 (effect of planning permission)

(a) references to 'planning permission' are to be treated as references to 'consent required by a tree preservation order';

(b) for 'the permission' substitute 'the consent';

(c) for 'to develop land' substitute 'to carry out works'; and

(d) after 'land' insert 'on which the tree or trees to which the consent relates are situated'.

(e) Omit subsections (2) and (3).

Section 47 (right to appeal against planning decisions and failure to take such decisions)

(a) For subsection (1) substitute -

"(1) Where a planning 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;

(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) have not given notice of their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority],

the applicant may by notice appeal to the Scottish Ministers".

This is Schedule 2 referred to in the forgoing East Lothian Council Tree Preservation Order - Preston, East Linton No. 142 (2020) by East Lothian Council

(b) Omit subsections (1A), (2) and (4).

(c) For subsection (3) substitute -

"(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made underæ

(a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;

(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,".

(d) For subsection (5) substitute-

"(5) For the purposes of the application of section 48(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 47A

Section 48 (determination of appeals) (a) In subsection (5)(a) -

(i) for "sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3" "section 37(1), (1A) and (1B)"; and

(ii) for "planning permission" substitute "consent under a tree preservation order".

(b) Omit subsections (5)(b) and (6) to (8).

PART II

PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS ADAPTED AND MODIFIED BY PART I

This is Schedule 2 referred to in the forgoing East Lothian Council Tree Preservation Order - Preston, East Linton No. 142 (2020) by East Lothian Council

The following provisions of the Town and Country Planning Act 1997, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 36

36.-(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing –

- (a) information as to the nature of such applications, the decisions of the planning authority thereon,
- (b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and

any directions as to the replanting of woodlands."

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

Section 37

37.-(1) Where an application is made to a planning authority for consent under a tree preservation order-

- (a) subject to subsections (1A) and (1B) they may grant consent under the order, either unconditionally 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).

(4) The date of the grant or refusal of-

- (a) consent under a tree preservation order; or
- (b) any consent, agreement or approval required by a condition imposed on the grant of such consent,

This is Schedule 2 referred to in the forgoing East Lothian Council Tree Preservation Order - Preston, East Linton No. 142 (2020) by East Lothian Council

shall be the date on which the notice of the planning authority's decision bears to have been signed on behalf of the authority.

Section 44(1)

44.-(1) Any grant of consent required by a tree preservation order shall (except in so far as the consent otherwise provides) ensure for the benefit of the land on which the tree or trees to which the consent relates are situated and all persons for the time being interested in it.

Section 47

47.-(1) Where a planning 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;
- (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) have not given notice of their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority

the applicant may by notice appeal to the Scottish Ministers "

"(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under -

- (a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;
- (b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,".

(5) For the purposes of the application of section 48(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 47A

47A.-(1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate-

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(a) that the matter could not have been raised before that time, or

(b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard

to(a) the provisions of the development plan, or (b) any other material

consideration.

Section 48

48.-(1) On an appeal under section 47 the Scottish Ministers 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 them in the first instance.

(3) If the Scottish Ministers propose to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about their proposal.

(5) In relation to an appeal to the Scottish Ministers under section 47-

(a) sections 37(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Scottish Ministers under section 47 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

.....Douglas Proudfoot

Authorised Officer

Head of Service (Development)

East Lothian Council