

# **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

## **THE EAST LoTHIAN COUNCIL (FENTON NEW MAINS, DREM, EAST LoTHIAN) TREE PRESERVATION ORDER No. 121, (2023)**

East Lothian Council, in this Order referred to as "the planning authority", in exercise of the powers conferred on them by section 160 of the Town and Country Planning (Scotland) Act 1997 (the relevant provisions of which are annexed to the Schedule Part 2) and of all other powers enabling them in that behalf hereby make the following Order:-

### **1. Citation, commencement and interpretation.**

- (1) This Order may be cited as The East Lothian Council (Fenton New Mains, Drem, East Lothian) Tree Preservation Order No.121 (2023) and takes effect from 2 June 2023.
- (2) In this Order –  
"the 1992 Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992;  
"The Act" means the Town and country Planning (Scotland) Act 1997;  
"Map" means the map annexed to this Order; and  
"Protected Tree" has the meaning given in Article 2.

### **2. Protected Trees**

A Protected Tree is a tree specified in Schedule 1 annexed as relative to this Order or comprised in a group of trees or in a woodland specified in the said Schedule 1.

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

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.

### **3. Prohibited acts**

Subject to the provisions of the Act and the exemptions specified in Article 4, no person is, except with, and in accordance with, the consent of the planning authority -

- (i) to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
- (ii) to cause or permit the cutting down, topping, lopping, uprooting, or wilful destruction of, a Protected Tree.

### **4. Directions as to replanting**

- (1) Where consent is granted under this Order for the felling of any tree, 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.
- (3) Any direction given under paragraph (1) may include requirements as to –
  - (a) species;
  - (b) quantities;
  - (c) the erection and maintenance of fencing necessary for the protection of the replanting;
  - (d) the preparations of ground, draining, removal of brushwood, weed control, and beating up; and/or
  - (e) protective measures against fire.

## **5. Adaption and Modification of the Act**

- (1) The provisions of the Act 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.

## **6. Compensation**

- (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 made payable to a person–
  - (a) for loss or 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.

## **7. Applications for consent**

- (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; and
  - (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.

## **8. Application of Tree Preservation order to future planting**

This Order applies to any tree specified in Schedule 1 of 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.

## **9. Offences and Penalties.**

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
  - wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,The said person 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 the 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.

## 10. Effect

This Order shall take effect from 2 June 2023.

This Order is sealed with the Common Seal of East Lothian and signed for on its behalf by Carlo Domenico Grilli, Service Manager- Governance, an Authorised Signatory and as such a "Proper Officer" for the purposes of Section 194 of the Local Government (Scotland) Act 1973 as amended, at Haddington on 2 June 2023



Proper Officer  
John Muir House  
Haddington

EAST LOTHIAN COUNCIL IN EXERCISE OF THE POWERS CONFERRED ON THEM BY SECTION 160 OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 CONFIRMED THE FOREGOING ORDER AND MAP ON

INITIALS X *DMV* *Council* INITIALS X *JM* *and* INITIALS X *DMV* *by*

*DMV* Confirmation of this Order is sealed with the Common Seal of East Lothian and signed for on its behalf ~~Carlo Domenico Grilli, Service Manager- Governance~~ *by Douglas Proudfoot, Executive Director - Place* for the purposes of Section 194 of the Local Government (Scotland) Act 1973 as amended, at Haddington on *Twentieth July Two thousand and Twenty three*

*Douglas Proudfoot*

*20/07/23*

Proper Officer  
John Muir House  
Haddington

This is the Schedule 1 of the East Lothian Council (Fenton New Mains, Drem, East Lothian) Tree Preservation Order No. 121 (2023)

<b>Groups of Trees</b> <i>(Within a broken black line on the plan)</i>		
<b>No. on Plan</b>	<b>Description</b>	<b>Situation</b>
G1	Acer sp. A group of 4 mature Sycamore ( <i>Acer</i> sp.)	A group of trees running north-south located on the east side of the road between the road and the properties of 11 Fenton Steading and West Cottage, being the subjects registered in the Land Register of Scotland under Title Number ELN25546.

Reason for promotion of order:

This Tree Preservation Order is being promoted to secure the retention of large semi-mature trees that form the landscape setting with the subjects known as Fenton New Mains, Drem, East Lothian.

The trees are publicly visible and are positioned far enough away from the surrounding houses not to affect daylight whilst providing privacy and screening from neighbouring industrial units

These trees make an important contribution to the visual amenity within a well-established landscape setting and make a significant contribution to the landscape character linking with trees in the wider area.



This is the Schedule 2, Part I of the East Lothian Council (Fenton New Mains, Drem, East Lothian)  
Tree Preservation Order No. 121 (2023)

## SCHEDULE 2

### PART I

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

Provision of the Town and Country Planning (Scotland) Act 1997	Adaptation or Modification
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.”
Section 37 (determination of applications: general considerations)	1. In subsection (1) – (a) for “planning permission” where those words first appear, substitute “consent under a tree preservation order”, (b) for “sections 27B(2) and 59(1)(b)” substitute “subsections (1A) and (1B)”, (c) for “planning permission” in both of the other places (section 37(1)(a) and (b)) where those words appear substitute “consent under the order”, (d) after “think fit”, insert, “(including conditions limiting the duration of the consent or requiring the replacement of trees)”,

	<p>2. After subsection (1) insert –</p> <p>(a) “(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practise 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.</p> <p>(1B) Where the planning 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).”</p> <p>3. Omit subsections (2) and (3); and</p> <p>4. In subsection (4) for paragraphs (a) to (c) substitute –</p> <p>“(a) consent under a tree preservation order; or</p> <p>(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,”</p>
Section 44 (effect of planning permission)	<p>1. for “planning permission” where those words first appear, substitute “consent under a tree preservation order”;</p> <p>2. for “the permission” substitute “the consent”;</p> <p>3. for “to develop land” substitute “to carry out works”;</p> <p>4. after “land” insert “on which the tree or trees to which the consent relates are situated”; and</p> <p>5. Omit subsections (2) and (3).</p>
Section 47 (right to appeal against planning decisions and failure to take such decisions)	<p>1. For subsection (1) substitute –</p> <p>“(1) Where a planning authority –</p>

	<p>(a) refuse an application for consent under a tree preservation order or grant it subject to conditions;</p> <p>(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;</p> <p>(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</p> <p>(d) have not given notice or their decision on such an application within the period 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].</p> <p>The applicant may by notice appeal to the Scottish Ministers”.</p> <p>2. Omit subsections (1A), (2) and (4).</p> <p>3. For subsection (3) substitute –</p> <p>“(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 –</p> <p>(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</p> <p>(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,”</p> <p>(d) For subsection (5) substitute –</p>
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	“(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	To apply to this Order.
Section 48 (determination of appeals)	<p>(a) In subsection (5)(a) –</p> <p>(i) for “sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3” substitute “section 37(1), (1A) and (1B)”; and</p> <p>(ii) for “planning permission” substitute “consent under a tree preservation order”.</p> <p>(b) Omit subsections (5)(b) and (6) to (8).</p>

This is Schedule 2, Part II of the East Lothian Council (Fenton New Mains, Drem, East Lothian) Tree Preservation Order No. 121 (2023)

## PART II

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

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 compensations awarded in consequence of the decisions of the planning authority or Scottish Ministers: and
  - (c) 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 practise 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, 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) Effect of planning permission**

**44 – (1)** Without prejudice to the provision of this Part as to the duration, revocation or modification of consent required by a tree preservation order, 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 Right to appeal against planning decisions and failure to take such decisions**

**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 or by 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”.

“(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 –
- (a) that the matter could not have been raised before that time, or
  - (b) that it's 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 Determination of appeals**

- 48 –** (1) On an appeal under section 47 of 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 proposals.
- (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.

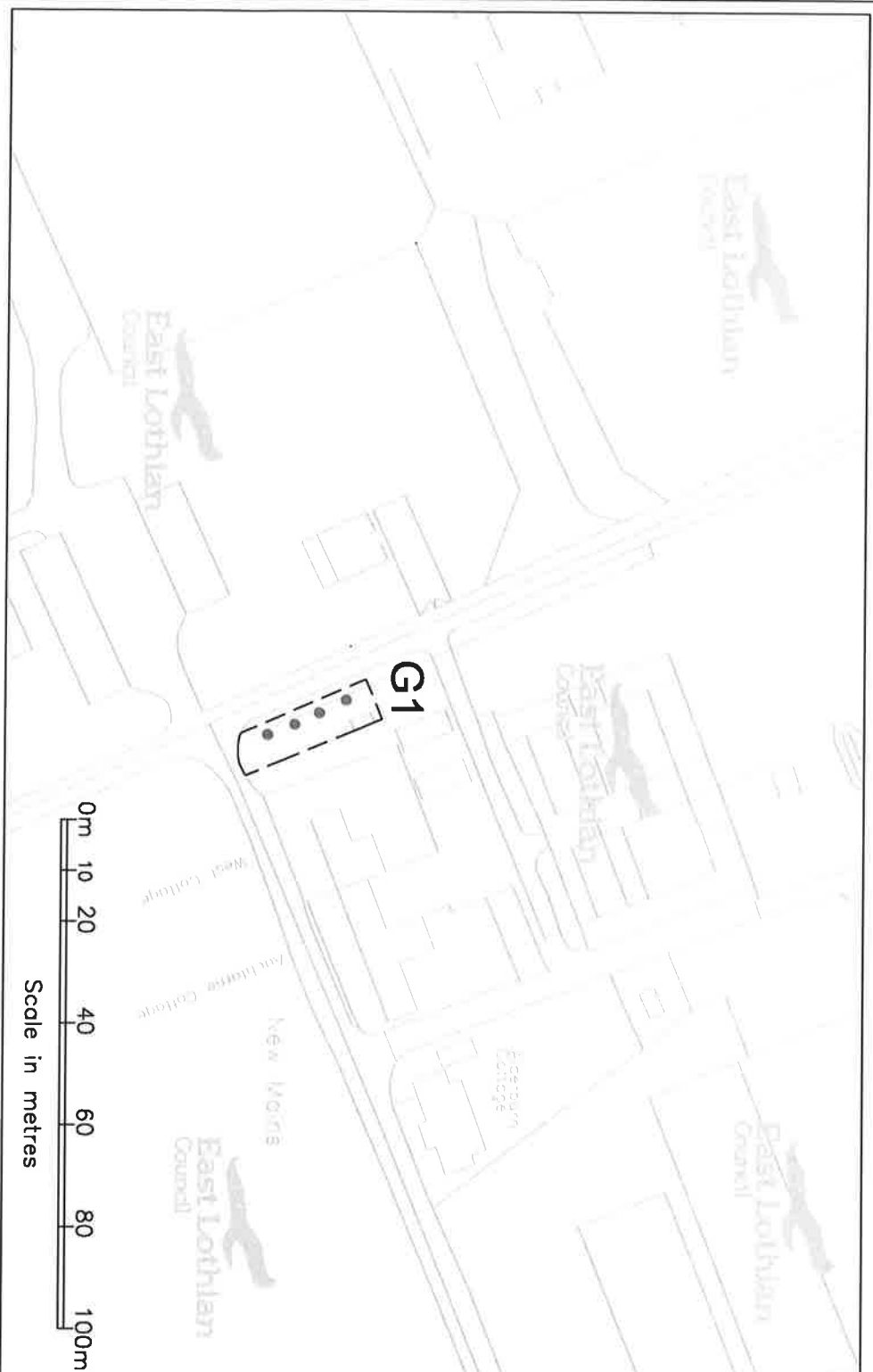
- (9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

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TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE EAST LoTHIAN COUNCIL  
(FENTON NEW MAINS, DREM, EAST LoTHIAN)  
TREE PRESERVATION ORDER No. 121, (2023)

LEGAL SERVICES  
EAST LoTHIAN COUNCIL  
JOHN MuIR HOUSE, HADDINGTON



BLOCK PLAN



LOCATION PLAN  
(Not to scale)



Ordnance Survey  
Grid Reference:  
E350707, N681358



**East Lothian  
Council**

Fenton New Mains  
Drem, East Lothian

TP0 121 (2008)

*Andrew*

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