

R. Evans.

2.3 p.m. - 2.4 p.m.  
20th June, 1961.

C. L. 1

Midlothian 360 D.P.

MIDLOTHIAN COUNTY COUNCIL

Town and Country Planning (Scotland) Act, 1947

The County of Midlothian Tree Preservation  
Order No. 1

No 1

5 10339  
14 JUNE 1961  
16

74  
64

1961

James McBoyle,  
Solicitor.



James McBoyle, Solicitor,  
County Buildings, Edinburgh

Inveresk Village

11.274. Folio 27  
re. nted and Recorded on 20.12.1961  
MIDLOTHIAN COUNTY COUNCIL  
Town and Country Planning (Scotland) Act, 1947

The County of Midlothian Tree Preservation Order No. 1

The County Council of the County of Midlothian (in this Order referred to as "the local planning authority") in exercise of the powers conferred on them by Section 26 of the Town and Country Planning (Scotland) Act, 1947, (hereinafter referred to as "the Act") and of all other powers enabling them in that behalf hereby make the following Order:-

1. No person shall, except with the consent of the local planning authority, cut down, top, lop, or wilfully destroy or cause or permit the cutting down, topping, lopping, or wilful destruction of any of the trees specified in the First Schedule hereto, the positions of which trees are indicated by the letters "A", "B" and "C" and coloured green on the Plan annexed and signed as relative hereto.

Provided that nothing in this Order shall prohibit the felling or lopping of any tree if such felling or lopping -

- (a) is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the local planning authority as soon as may be after the necessity for the operations arises, or
- (b) is carried out in compliance with any obligation imposed by or under any Act of Parliament, or
- (c) is immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part II of the Town and Country Planning (Scotland) Act, 1947, or deemed to have been so granted for any of the purposes of that Part.

2. The provisions of this Order shall be without prejudice to the provisions of Section 13 of the Forestry Act, 1951, (which provides for a licence or direction under that Act being sufficient authority for felling trees and prohibits the entertainment of certain applications by the local planning authority).

3./

*James M. Beyle*



3. Any application for the consent of the local planning authority under paragraph 1 of this Order shall be in writing and shall specify the trees to which the application relates and the operations for the carrying out of which that consent is desired and shall where necessary for the identification of such trees be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

4. The provisions set out in the Second Schedule to this Order, being provisions of Part II of the Act relating to planning permission and to applications for such permission adapted and modified as shown in the said Schedule, shall apply in relation to any consent under this Order and to applications therefor.

5. Subject to the provisions of this Order, any person who has suffered damage or has incurred expenditure in consequence of any refusal or consent under this Order or of any grant of such consent subject to conditions, shall, if he makes a claim within the time limited for the purpose by this Order, be entitled to recover from the authority compensation in respect of such damage or expenditure.

6. In assessing compensation payable under the last preceding paragraph, account shall be taken of -

(a) Any compensation or contribution which has been paid in respect of the same trees or woodland areas under the terms of this or any other Tree Preservation Order under Section 26 of the Town and Country Planning (Scotland) Act, 1947, or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) (Scotland) 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 (Scotland) Act, 1932 and

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

7. A claim under this Order for compensation shall be made by serving on the local planning authority a notice in writing stating the grounds of the claim and/

*James W. Bayle*

and the amount claimed, within six months of the date of the decision of the local planning authority, or of the Secretary of State as the case may be, or where an appeal has been made to the Secretary of State against the decision of the local planning authority, of the date of the decision of the Secretary of State on the appeal.

8. Any question of disputed compensation payable in accordance with the terms of this Order shall be determined in accordance with the provisions of Section 105 of the Act.

9. Any person contravening the provisions of this Order shall be guilty of an offence under subsection (6) of Section 26 of the Act and liable on summary conviction to a fine not exceeding fifty pounds; and if, in the case of a continuing offence, the contravention is continued after conviction, he shall be 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.

Dated this        Seventh        day of        October        1960

Signature of Clerk  
to the Local Planning Authority.

*James McBayle*  
County Clerk.

#### FIRST SCHEDULE

##### Trees to which the Order applies

<u>Letter and colour on map</u>	<u>Description</u>	<u>Situation</u>
(1) Tree "A" - coloured green	Species Sycamore, Age approximately 120 years. This tree has a good sound bole 11 to 12 ft. in height with a healthy spreading well balanced crown. There is no evidence of fungal disease and it is considered that this tree will stand safely for many years.	The southmost of the two trees situated within and flanking the entrance to the front garden of Shepherd House, Inveresk Village being part of the subjects described in the Disposition granted by the Trustees of John Dixon Brunton with consent therein mentioned in favour of Douglas Cumming dated third November, 1952 and subsequent dates and recorded in the Division of the General Register of Sasines applicable to the County of Midlothian on the fourteenth day of March, 1953.

(2)/

*James McBayle*

<u>Letter and colour on map</u>	<u>Description</u>	<u>Situation</u>
(2) Tree "B" - coloured green	Species Sycamore, Age approximately 120 years. Clean boled to 11 to 12 ft. The crown, which is spreading and well balanced, still appears to be healthy although there is very extensive decay where the crown breaks from the bole. The Forestry Commission (Scotland) consider that with the removal of a large branch overhanging the Inveresk Village Road (which has now been done) the tree, being still quite root firm and at present sound at the base, could be preserved subject to periodic inspection.	The northmost of the said two trees at the entrance to the front garden of said Shepherd House.
(3) Tree "C" - coloured green	Species Sycamore, probable age about 150 years, excellent specimen tree, very well sited and forming prominent feature on the landscape. It has a sound healthy bole with a length of 11 feet and a quarter girth of 30 inches. The crown is beautifully balanced, wide spreading and healthy. The whole tree is sound and wind firm and likely to stand safely for many years.	On a strip of ground adjoining the north side of Pinkiehill Road, Inveresk Village being part of subjects described in Extract Decree of Special Service in favour of Sir Archibald Philip Hope of Craighall, Baronet, dated eleventh and recorded in Chancery seventeenth July and in the General Register of Sasines applicable to the County of Edinburgh (now Midlothian) twenty-second day of September all in the year 1925.

#### SECOND SCHEDULE

Provisions of Part II of the Act relating to planning permission and to applications for such permission applicable with adaptations and modifications to any consent under the Order and to applications therefor.

(The provisions adapted or modified are underlined).

12. (1) Subject to the provisions of this and the next following section, where application is made to the local planning authority for any consent under the order, that authority may grant consent either unconditionally or subject to such conditions as they think fit, or may refuse consent, and in dealing with any such application the local planning authority shall have regard to the provisions of the development plan, so far as material thereto, and to any other material considerations.

12. (5) The local planning authority shall keep ..... a register containing information ..... with respect to all applications made to the local planning authority/

*James M. Bayle*



authority for consent under orders made under section 26 of the Act, including information as to the nature of the application, the decision 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.

.....

13. (1) The Secretary of State may give directions to the local planning authority ..... requiring that any application for consent under the order, or all such applications of any class specified in the directions, shall be referred to the Secretary of State instead of being dealt with by the local planning authority, and any such application shall be so referred accordingly.

(2) Where an application for consent under the order is referred to the Secretary of State under this section, the provision of subsection (1) ..... of the last foregoing section shall apply, subject to any necessary modifications, in relation to the determination of the application by the Secretary of State as they apply in relation to the determination of such an application by the local planning authority.

Provided that before determining any such application the Secretary of State shall, if either the applicant or the local planning authority so desire, afford to them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(3) The decision of the Secretary of State on any application referred to him under this section shall be final.

14. (1) Where application is made to the local planning authority for consent under the order ..... and that consent is refused by that authority, or is granted by them subject to conditions, then, if the applicant is aggrieved by their decision, he may, by notice in writing served within twenty-eight days from the receipt of notification of their decision or such longer period as the Secretary of State may allow ..... appeal to the Secretary of State .....

(2) Where an appeal is brought under this section from a decision of the local planning authority the Secretary of State may allow or dismiss the appeal or may reverse or vary any part of the decision of the local planning authority, whether or not the appeal relates to that part, and deal with the application as if it had been made to him in the first instance and the provisions of the last foregoing section shall apply, subject to any necessary modifications, in relation to the determination of an application by the Secretary of State on appeal under this section as they apply in relation to the determination by the Secretary of State of an application referred to him under that section:

Provided that where the Secretary of State proposes to reverse or vary any part of the decision of the local planning authority to which the appeal does not relate, he shall give notice of his intention to the local planning authority and to the applicant and shall afford to them an opportunity to make representations in regard thereto:

(3) Unless within two months from the date of the receipt of an application for consent under the order, or within such extended period as may at any time be agreed upon in writing between the applicant and the local planning authority, the local planning authority either -

- (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 Secretary of State in accordance with directions given by him under the last foregoing section,

the provisions of subsection (1) of this section shall apply in relation to the application as if the consent to which it relates had been refused by the local planning/

*James M. By...*



planning authority, and as if notification of their decision had been received by the applicant at the expiration of the said period of two months or the extended period agreed upon as aforesaid, as the case may be.

revocation  
modification  
consent  
under the  
order

19. (1) Subject to the provision of this section, if it appears to the local planning authority that it is expedient, having regard to the development plan and to any other material considerations, that any consent granted on an application made in that behalf should be revoked or modified, they may by order revoke or modify the consent to such extent as appears to them to be expedient as aforesaid.

Provided that no such order shall take effect unless it is confirmed by the Secretary of State, and the Secretary of State may confirm any order submitted to him for the purpose either without modification or subject to such modifications as he considers expedient.

(2) Where the local planning authority submit an order to the Secretary of State for his confirmation under this section, that authority shall serve notice on the owners, lessees and occupiers of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be prescribed in that behalf in the notice (not being less than fourteen days from the service thereof) any person on whom the notice is served so requires, the Secretary of State shall, before confirming the order, afford to him, and to the local planning authority, an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(3) The power conferred by this section to revoke or modify 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 these operations as has been carried out before the date on which the order was confirmed as aforesaid.

elementary  
provisions  
of  
revocation  
modification  
consent

20. (1) Where consent is revoked or modified by an order made under the last foregoing section, then if, on a claim made to the local planning authority in writing within the period of six months from the date of the confirmation of the order by the Secretary of State, it is shown that any person interested in the land concerned has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, that authority shall pay to that person compensation in respect of that expenditure, loss or damage:

(2) For the purposes of this section any expenditure incurred in the preparation of plans for the purposes of any work or upon other similar matter preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid no compensation shall be paid under this section in respect of any work carried out before the grant of the consent which is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of the depreciation in value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

provisionary  
provisions  
relating  
to the  
approval of  
plans

33. Where, under the foregoing provisions of this Part of this Act, the local planning authority are required to have regard to the provisions of the development plan in relation to the exercise of any of their functions, then, in relation to the exercise of these functions during any period before such a plan has become operative with respect to the district of that authority, the authority shall have regard to any directions which may be given to them by the Secretary of State as to the provisions to be included in such a plan, and subject to any such directions shall have regard to the provisions which in their opinion will be required to be so included for securing the proper planning of the said district.

*James M. Bay*

The Secretary of State in exercise of the power conferred on him by subsection (4) of section 26 of the Town and Country Planning (Scotland) Act, 1947, hereby confirms the foregoing Order.

Given under the Seal of the Secretary of State for Scotland this eleventh day of January, 1961.

*R.P. Fraser*

Assistant Secretary.

Register on behalf of the within named County Council of the County of Midlothian in the Register of the County of Midlothian.

*L.P. Ritchie*

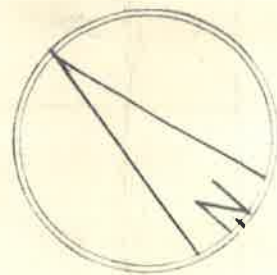
Solicitor, Edinburgh  
Agent.

SCALE -

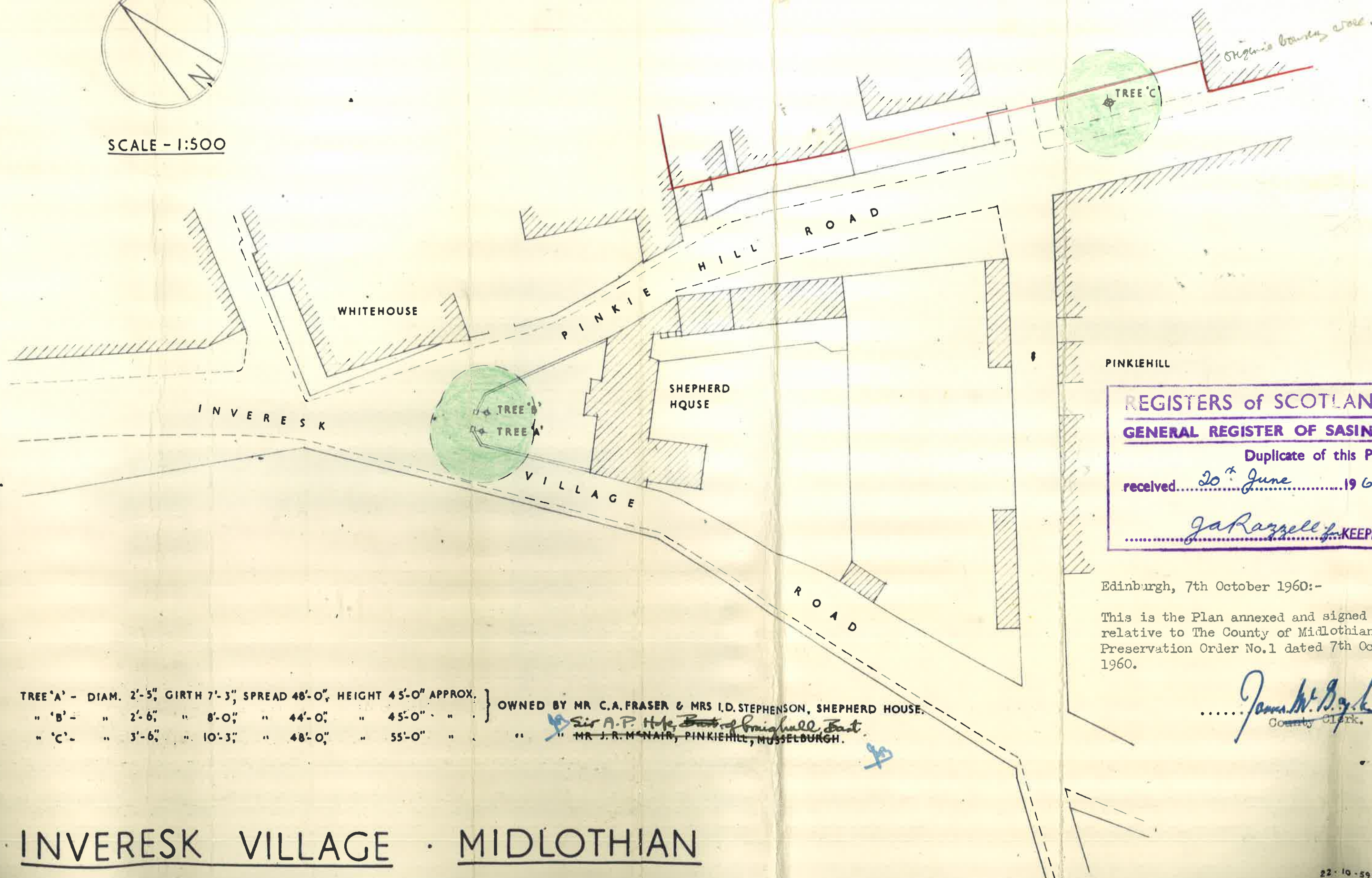
TREE 'A' - DIAM. 2'-5" G  
" 'B' - " 2'-6"  
" 'C' - " 3'-6"

INVERES





SCALE - 1:500



TREE 'A' - DIAM. 2'-3", GIRTH 7'-3", SPREAD 48'-0", HEIGHT 45'-0" APPROX.  
" 'B' - " 2'-6" " 8'-0" " 44'-0" " 45'-0" "  
" 'C' - " 3'-6" " 10'-3" " 48'-0" " 55'-0" "

OWNED BY MR C.A. FRASER & MRS I.D. STEPHENSON, SHEPHERD HOUSE.  
" Sir A.P. Hope, Bart. of Brighthelm, Bart.  
" MR J.R. McNair, Pinkiehill, Musselburgh.

PINKIEHILL

REGISTERS of SCOTLAND  
GENERAL REGISTER OF SASINES

Duplicate of this Plan

received 20<sup>th</sup> June 1961.

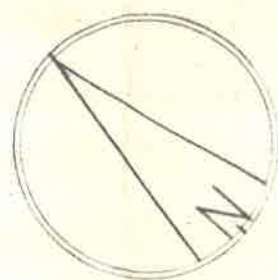
John R. McNair, KEEPER.

Edinburgh, 7th October 1960:-

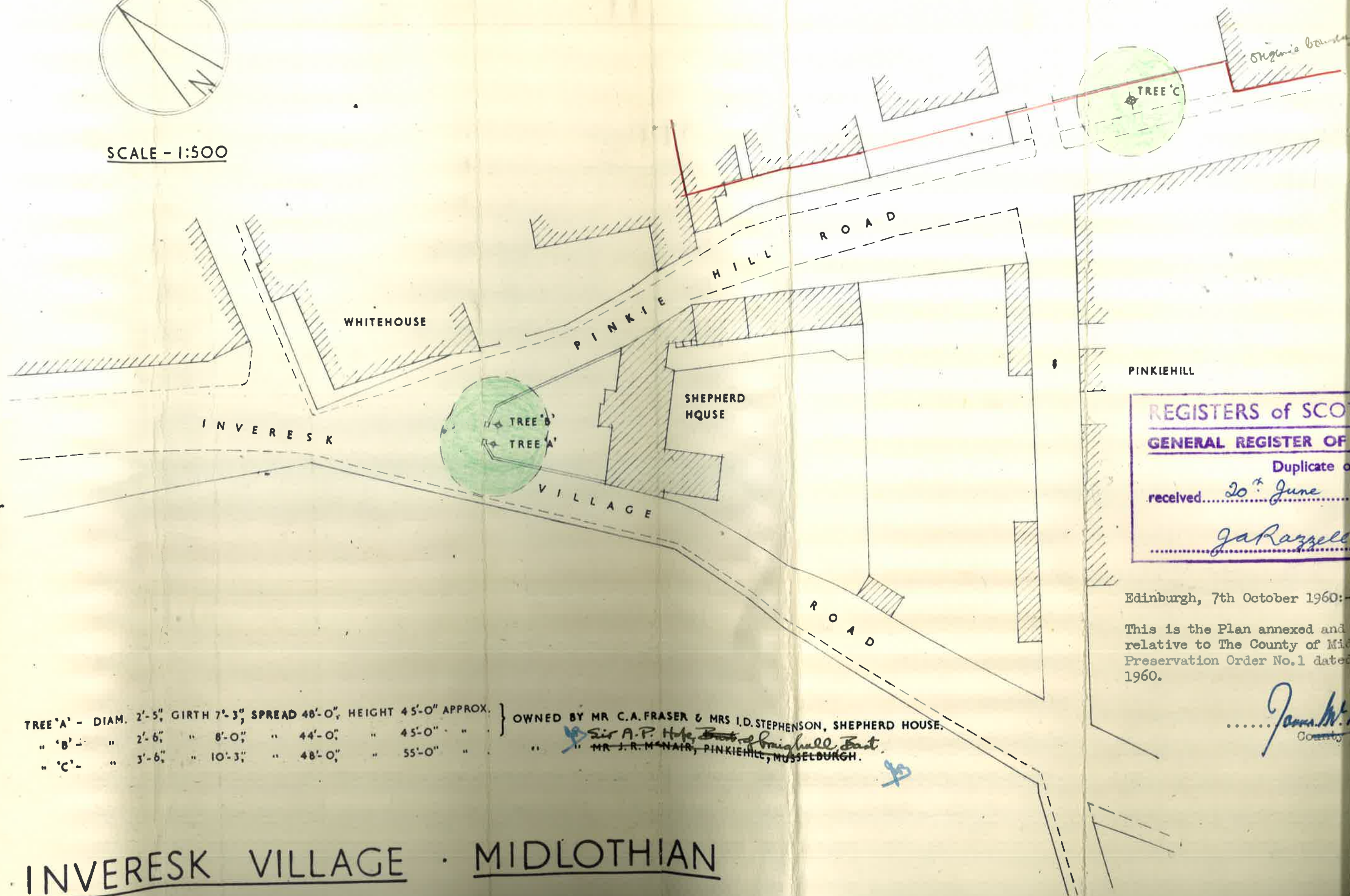
This is the Plan annexed and signed as  
relative to The County of Midlothian Tree  
Preservation Order No.1 dated 7th October  
1960.

James W. B. L.  
County Clerk.





SCALE - 1:500



TREE 'A' - DIAM. 2'-5", GIRTH 7'-3", SPREAD 48'-0", HEIGHT 45'-0" APPROX.  
" 'B' - " 2'-6" " 8'-0" " 44'-0" " 45'-0" "  
" 'C' - " 3'-6" " 10'-3" " 48'-0" " 55'-0" "

OWNED BY MR C.A. FRASER & MRS I.D. STEPHENSON, SHEPHERD HOUSE.  
" Sir A.P. H. *Bartholomew*  
" MR J.R. McNair, PINKIEHILL, MUSSELBURGH.

PINKIEHILL

REGISTERS of SCOTLAND  
GENERAL REGISTER OF

Duplicate of  
received... 20<sup>th</sup> June

*Ja Razzell*

Edinburgh, 7th October 1960:-

This is the Plan annexed and  
relative to The County of Midlothian  
Preservation Order No.1 dated  
1960.

..... *James W. Mc*  
County

INVERESK VILLAGE · MIDLOTHIAN