

The Town and Country Planning (Scotland) Act 1997

Tree Preservation Order (No. 1) 2023 (Barns Court, East Whitburn)

West Lothian Council (In this Order referred to as the "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.

1 Citation, commencement and interpretation

1.1 This Order may be cited as the Tree Preservation Order (No. 1) 2023 and takes effect on 11 October 2023

1.2 In this Order-

1.2.1 "the 1992 Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992;

1.2.2 "the Act" means the Town and Country Planning (Scotland) Act 1997; and

1.2.3 "protected tree" has the meaning given in article 2.

2 Protected Tree

2.1 A protected tree is a tree specified in Part 1 of the Schedule to this Order ("Part 1") or comprised in a group of trees or in a woodland specified in Part 1.

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

2.3 Where any ambiguity as to the identification of a protected tree arises between the Map and the specification in Part 1, 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-

3.1 to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or

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

4 Exemptions

Nothing in article 3 is to prevent-

4.1 the cutting down of a tree in accordance with a felling licence granted by The Scottish Ministers under the Forestry and Land Management (Scotland) Act 2018;

4.2 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;

4.3 the cutting down, uprooting, topping or lopping of a tree having a diameter not exceeding 75 millimetres;

4.4 the cutting down or uprooting in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees;

5.3.4 the preparations of ground, draining, removal of brushwood, lop and top;
and

5.3.5 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 2 of the Schedule to this Order ("Part 2") 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 2.

6.2 The provisions referred to in paragraph 6.1, as so adapted and modified, are set out in Part 3 of the Schedule to this Order ("Part 3").

7 Compensation

7.1 Subject to paragraphs 7.2 to 7.5, any person who has suffered loss or damage caused or incurred in consequence of-

7.1.1 any refusal of consent required under this Order; or

7.1.2 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.

7.2 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.

7.3 The time within which any such notice shall be given is a period of six months:

7.3.1 from the date of the decision of the planning authority; or

7.3.2 where an appeal has been made to The Scottish Ministers against the decision of the planning authority, from the date of the decision of The Scottish Ministers on the appeal.

7.4 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.

7.5 No compensation shall be payable to a person-

7.5.1 for loss of development value or other diminution in the value of the land;

7.5.2 for loss or damage which was not reasonably foreseeable when consent was refused or was granted subject to conditions;

7.5.3 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

7.5.4 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.

7.6 In this article-

7.6.1 "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.

IN WITNESS WHEREOF these presents consisting of this and the preceding three pages together with the Schedule of three parts and the Map are subscribed as follows:-

Given under the seal of the West Lothian Council at Livingston on



Signature of Proper Officer

LESLEY MONTAGUE

Full Name of Proper Officer

SCHEDULE

PART 1

Trees Specified Individually (coloured green on the map)

None

Trees Specified by Reference to an Area (within a continuous black line on the map)

None

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

None

Woodlands (within a continuous red line on the map)

No.
on
Map

Description

Situation

1

Mixed deciduous and
conifer woodland
including Silver Birch
and Common Beech.

The area of land shown outlined in red on the Map and forming part and portion of ALL and WHOLE that area or piece of ground at East Whitburn House, East Whitburn, West Lothian in the Parish of Whitburn and County of West Lothian being the subjects described in and disposed by the Disposition by Robert Breckenridge Smellie in favour of James Howieson Hamilton and Ann Mackay McLean Drummond or Hamilton dated 28 September 1992 and recorded in the General Register of Sasines for the County of West Lothian on 5 October 1992.

PART 2

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)

(a) in subsection (1)-

(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".

(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 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,"

(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 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 3

PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1967, AS ADAPTED AND MODIFIED BY PART I

The following provisions of the Town and Country Planning Act 1967, as adapted and modified by Part 2 of the Schedule to this Order, 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,

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) 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

- 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 (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 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.

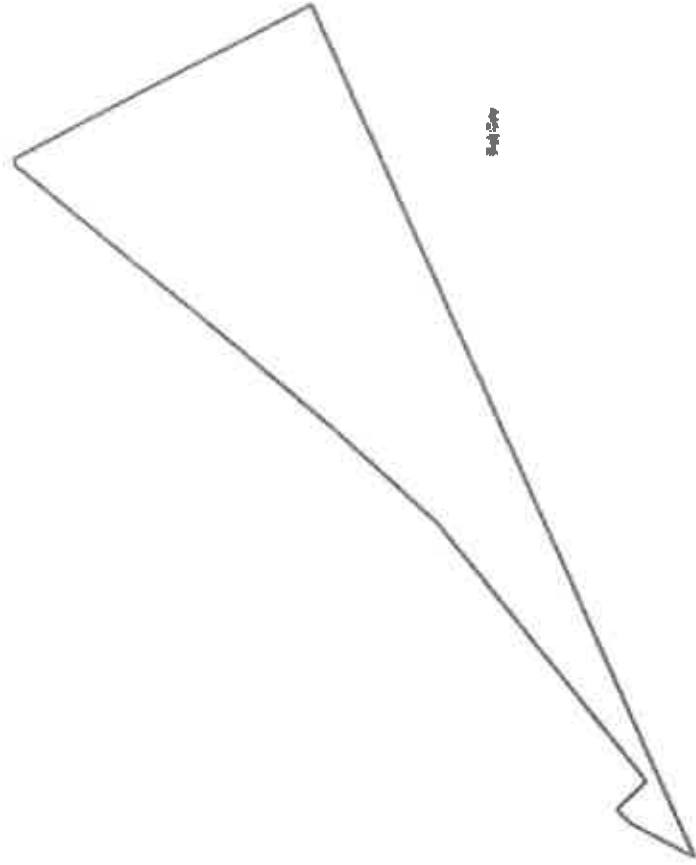
(3) If the Scottish Ministers propose to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations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

This is the map referred to in the foregoing Tree Preservation Order (No. 1) 2023 (Barns Court, East Whitburn)



Scale: 1:1,000



Tree Preservation Order (No. 1) 2023 (Barns Court, East Whitburn)

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