

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE EAST LoTHIAN COUNCIL (205 CHURCH STREET, TRANENT EH33 1BP, EAST LoTHIAN)

TREE PRESERVATION ORDER No. 139 (2018)

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 (205 Church Street, Tranent, EH33 1BP East Lothian) Tree Preservation Order No. 139 (2018) and takes effect from the 8 March 2018 .
- (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;
"Protected Tree" has the meaning given in Article 2.
"the Schedule" means the 2 schedules (being the Schedule 1 and Schedule 2 (and the Schedule 2 being in 2 parts Part I and II and together with the Map annexed to Schedule 1) of this Order and executed as relative hereto.

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 Schedule 1 and identified on the Map annexed to that Schedule.

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;
 - (e) protective measures against fire.

5. Adaption and Modification of the Act

- (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 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; and
 - (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.

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
 - (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 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 the 8 March 2018

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 9TH MAY 2018



Proper Officer
John Muir House
Haddington

This is the Schedule I of the East Lothian Council (205 Church Street, Tranent, East Lothian) Tree Preservation Order No. 139 (2018)

Trees Specified Individually (coloured green on the map)		
No. on Map	Description	Situation
T1	Ash (Fraxinus sp)	ALL and WHOLE the subjects known as and forming 205 Church Street, Tranent, East Lothian which subjects are registered in the Land Register under Title Number ELN 1220
T2	Sycamore (Acer sp)	
Trees Specified by Reference to an Area (within a continuous black line on the map)		
No. on Map	Description	Situation
NONE		
Groups of Trees (within a broken black line on the map)		
No. on Map	Description	Situation
NONE		
Woodlands (within a continuous red line on the map)		
No. on Map	Description	Situation
NONE		

Reason for promotion of order:

This Tree Preservation Order is being promoted to secure the retention of large mature trees that form a significant gateway feature at the northern entrance to the historic heart of Tranent and its Conservation Area. They make an important contribution to the visual amenity of this gateway and link with trees in the wider Tranent Conservation Area forming part of the overall character of this part of Tranent. The historic trees add to the history of the area relating to the age of the listed building of the grounds in which they are located.

C. Molloy

This is the Schedule 2 Part I of the East Lothian Council (205 Church Street, Tranent, East Lothian)
Tree Preservation Order No 139. (2018)

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)	(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

C. Mully

	<p>(b) After subsection (1) insert –</p> <p>“(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 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>(c) Omit subsections (2) and (3); and</p> <p>(d) In subsection (4) for paragraphs (a) to (c) substitute –</p> <p>“(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,”</p>
<p>Section 44 (effect of planning permission)</p>	<p>(a) references to ‘planning permission’ are to be treated as references to ‘consent required by a tree preservation order’,</p> <p>(b) for ‘the permission’ substitute ‘the consent’,</p> <p>(c) for ‘to develop land’ substitute ‘to carry out works’, and</p> <p>(d) after ‘land’ insert ‘on which the tree or trees to which the consent relates are situated’.</p> <p>(e) Omit subsections 92) and (3).</p>

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 give 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].

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

C. Kelly

	<p>date of expiry of the period mentioned in that paragraph,"</p> <p>(d) For subsection (5) substitute –</p> <p>“(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.”</p>
Section 47A	
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” “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>

C. Polley

This is Part 2 of the Schedule Part II of the East Lothian Council (205 Church Street, Tranent, East Lothian) Tree Preservation Order No. 139 (2018)

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
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).

Cholley

- (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 or 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,”

C. Rully

- (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),

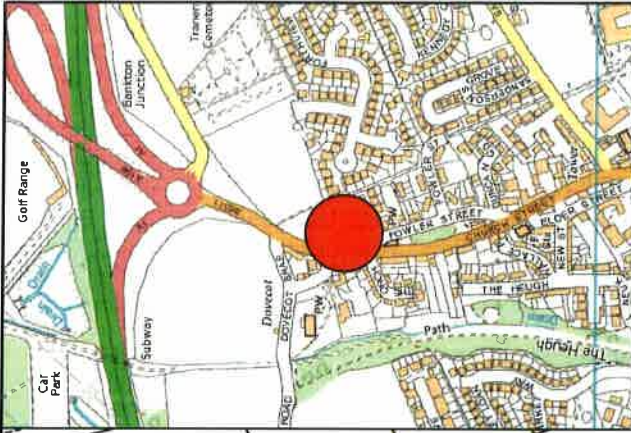
and may deal with the application as if it had been made to them in the first instance.

- (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.

C. Kelly

THIS IS THE MAP REFERRED TO IN THE REASONING TREE ALLOCATION CASE NO. 139 (2018).

Handwritten signature

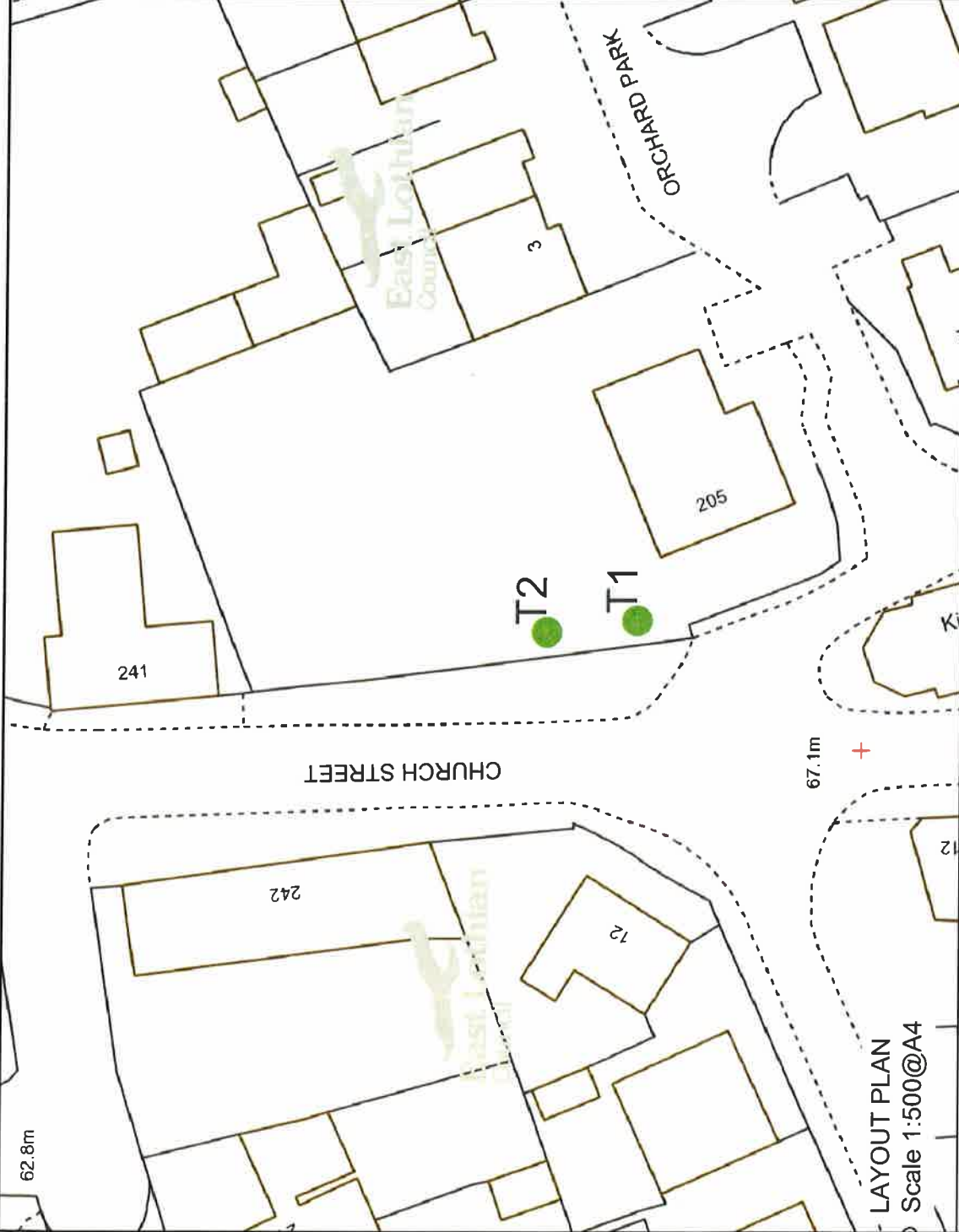


LOCATION PLAN
NTS



East Lothian Council

205 Church Street
Tranent, East Lothian
TPO 139 (2018)



LAYOUT PLAN
Scale 1:500@A4



Grid Reference:
NT 40388, 73309

This base plan is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office Crown Copyright 2018. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. East Lothian Council LA 100023381 2018

13331

TOWN AND COUNTRY PLANNING (SCOTLAND)
ACT 1997

THE EAST LoTHIAN COUNCIL
(205 Church Street, Tranent, East Lothian)
TREE PRESERVATION ORDER NO. 139 (2018)

LEGAL AND PROCUREMENT SERVICES
EAST LoTHIAN COUNCIL
JOHN MuIR HOUSE, HADDINGTON