

COUNTY COUNCIL OF THE COUNTY OF EAST LOTHIAN

THE COUNTY OF EAST LOTHIAN TREE PRESERVATION ORDER NO. 22 : GILMERTON ESTATE

The County Council of the County of East Lothian (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") as read with Part II of the Civic Amenities Act 1967 and of all other powers enabling them in that behalf hereby to 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, groups of trees or woodlands specified in the First Schedule hereto, the positions of which are indicated, numbered and coloured on the map or 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 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 if such felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament;

The provisions of this Order shall be without prejudice to the provisions of Section 15 of the Forestry Act 1967 (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), and Sections 13 and 14 of the Civic Amenities Act 1967 (which provide respectively for the replacement of trees and for default, powers and appeals);

2. 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, groups of trees, or woodlands 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, groups of trees, or woodland areas be accompanied by a map or plan of a size or on a scale sufficient for the purpose;

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;

3. Subject to the provisions of this Order, any person who has suffered damage or has incurred expenditure in consequence of any refusal of 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;
4. 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 Act, 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
 - (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;
5. 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 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;

REGISTERS OF SCOTLAND.

GENERAL REGISTER OF SASINES.

COUNTY OF EAST LOTHIAN.

Book 700 Folio 34
Presented and Recorded on 13th April 1973

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PLANNING ACT

- 6. 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;
- 7. Where any part of a woodland area to which this Order relates is felled in the course of forestry operations permitted by or under this Order, the owner or owners of the land shall carry out such replanting as the local planning authority may require under this Order and if any question arises between the authority and the said owner or owners as to whether any such requirement is reasonable having regard to the particular circumstances of the case or to any other material considerations the question shall, on the application of either party, be determined by the Secretary of State whose decision shall be final;
- 8. This Order shall take effect provisionally on the First day of April 1972 and the provisions of Section 16 of the Civic Amenities Act 1967 (which provides for a Tree Preservation Order proposed to be made by the local planning authority taking effect immediately without previous confirmation by the Secretary of State) shall apply to this Order as from the said date until the expiration of six months beginning on the said date, or until the date on which the Secretary of State confirms the Order or notifies the local planning authority that he does not propose to confirm it, whichever first occurs;
- 9. Under the provisions of Section 26 of the Act as read with Section 15 (1) of the Civic Amenities Act 1967, any person who cuts down or wilfully destroys a tree or lops a tree in such a manner as to be likely to destroy it, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £250 or twice the sum which appears to the Court to be the value of the tree, whichever is the greater. Other Contraventions of this Order carry with them on summary conviction a maximum fine of £50. In the case of a continuing offence, there is an additional fine following on summary conviction, not exceeding £2 for every day on which the contravention is continued.

Made at Haddington this Fourteenth day of February 1972.

A. HARKESS
County Clerk

COUNTY CLERK

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FIRST SCHEDULE

Trees, Groups of Trees and Woodlands in the County of East Lothian to which the Order applies

<u>Notation on Map</u>	<u>Description</u>	<u>Situation</u>
W.1 Black Horizontal Hatching	An area of amenity woodland, which also performs shelter belt functions for Gilmerton House, containing mature Sycamore, Ash, Oak, Elm, Beech, Poplar, Chestnut, Larch and Scots Pine with saplings and scrub	Land immediately to the east of the B.1347 road (NT 54687802)
W.2 Black Horizontal Hatching	An area of amenity woodland, which also performs shelter belt functions for Gilmerton House, containing mature Lime, Oak, Beech, Birch, Poplar, Spruce, Ash, Scots Pine, Horse Chestnut, Sycamore, Chamaecyparis, Ornamental Shrubbery and saplings and scrub	Land immediately to the north-east of Gilmerton House (NT 54997782)
W.3 Black Horizontal Hatching	An area of amenity woodland which also performs shelter belt functions for Gilmerton House, containing mature Lime, Oak, Beech, Birch, Spruce, Scots Pine, Sycamore, with saplings and scrub. The woodland also contains 1 Giant Redwood as well as 6 Larch and 1 Yew of great historical interest	Land immediately to the south and east of Gilmerton House (NT 54947766)
W.4 Black Horizontal Hatching	An area of amenity woodland which screens Home Farm from Gilmerton House containing mature Oak, Beech, Spruce, Scots Pine, Sycamore, Chamaecyparis with saplings and scrub and in particular groups of immature Yews	Land immediately to the east of Home Farm (NT 54767766)
W.5 Black Horizontal Hatching	An area of amenity woodland providing shelter to Home Farm containing mature Beech, Birch, Spruce, Scots Pine, Sycamore, Oak, Ash, with saplings and scrub	Land immediately south of Home Farm (NT 54657764)
W.6 Black Horizontal Hatching	A shelter belt comprising immature Beech, Oak, Sycamore, Ash, Scots Pine, with saplings and scrub	Land immediately east of the B.1347 road (NT 54197767)

The following Trees and Groups of Trees all enhance the parkland setting of Gilmerton House

G.1 Black Cross Hatching	A group of four over mature Oaks	Within Ordnance Parcel No. 4888 (NT 54467796)
G.2 Black Cross Hatching	A group of two over mature Oaks	Within Ordnance Parcel No. 4888 (NT 54397781)
G.3 Black Cross Hatching	A group of six over mature Limes and one over mature Sycamore	Immediately to the north of Home Farm in Ordnance Parcel No. 6781 (NT 54667775)
G.4 Black Cross Hatching	A group of six over mature trees comprising two Chestnuts, one Lime and three Oaks	Within Ordnance Parcel No. 7781 (NT 54727777)
G.5 Black Cross Hatching	A group of 11 over mature Scots Pine	Immediately to the east of Gilmerton House (NT 54987776)
G.6 Black Cross Hatching	11 Roadside hedgerow trees comprising seven Elm and four Lime	Immediately to the west of Home Farm in Ordnance Parcel No. 4068 (NT 54407761)

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<u>Notation on Map</u>	<u>Description</u>	<u>Situation</u>
G.7 Black Cross Hatching	21 Roadside hedgerow trees comprising 16 Ash and 5 Elm	Within Ordnance Parcel No. 4340 (NT 54407759)
T.1 Black Tree	One over mature Ash	Within Ordnance Parcel No. 7781 (NT 54677788)
T.2 Black Tree	One over mature Oak	(NT 54697789)
T.3 Black Tree	One over mature Beech	(NT 54727789)
T.4 Black Tree	One over mature Beech	(NT 54727788)
T.5 Black Tree	One over mature Oak	(NT 54737788)
T.6 Black Tree	One over mature Oak	(NT 54747789)
T.7 Black Tree	One over mature Oak	(NT 54767788)
T.8 Black Tree	One over mature Beech	(NT 54757787)
T.9 Black Tree	One over mature Oak	(NT 54817788)
T.10 Black Tree	One over mature Oak	(NT 54827787)
T.11 Black Tree	One over mature Elm	(NT 54767780)
T.12 Black Tree	One over mature Beech	(NT 54807779)
T.13 Black Tree	One over mature Beech	Immediately to the north of Gilmerton House (NT 54937782)

which trees, groups of trees and woodlands are within the lands of Gilmerton described in Extract Decree of Special Service by Sheriff of Chancery of Sir David Alexander Kinloch, Bart., of Gilmerton dated 18th May and recorded in Chancery 22nd May and recorded in the Division of the General Register of Sasines for the County of East Lothian 18th June, all in the year 1912.

M. Ross

EL 700

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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).

Section 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.
- (5) The local planning authority shall keep a Register containing information with respect to all applications made to the local planning 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 a decision: and every such Register shall be available for inspection by the public at all reasonable hours

Section 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 28 days from the receipt of notification of their decision 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 sub-section (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 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.



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The Secretary of State for Scotland in exercise of the powers conferred on him by Section 58(4) of the Town and Country Planning (Scotland) Act 1972 hereby confirms the foregoing order subject to the following modifications:-

1. In paragraph 1 of the Order (a) for "indicated, numbered and coloured" in the third line substitute "indicated and numbered"; (b) after "Parliament;" in the ninth line add "or is immediately required for the purpose of carrying out development authorised by 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.(a) In the Second Schedule after Section 12 add:-

Reference of applications to the Secretary of State

"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."

(b) After Section 14 add:-

Revocation and modification of 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.

Supplementary provisions as to revocation and modification of consent

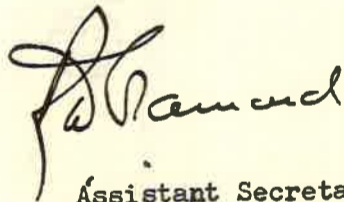
20. (1) Where consent is revoked or modified by an order made under the last foregoing section, then if, on a claim made to the local planning authority in writing within the period of six months from the date of the confirmation of the order by the Secretary of State, it is shown that any person interested 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.

Temporary provisions pending approval of plans

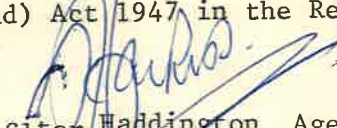
33. Where, under the foregoing provisions of this Part of this Act, the local planning authority are required to have regard to the provisions of the development plan in relation to the exercise of any of their functions, then, in relation to the exercise of these functions during any period before such 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."

Given under the Seal of the Secretary of State for Scotland this thirteenth day of October, nineteen hundred and seventy-two.



Assistant Secretary

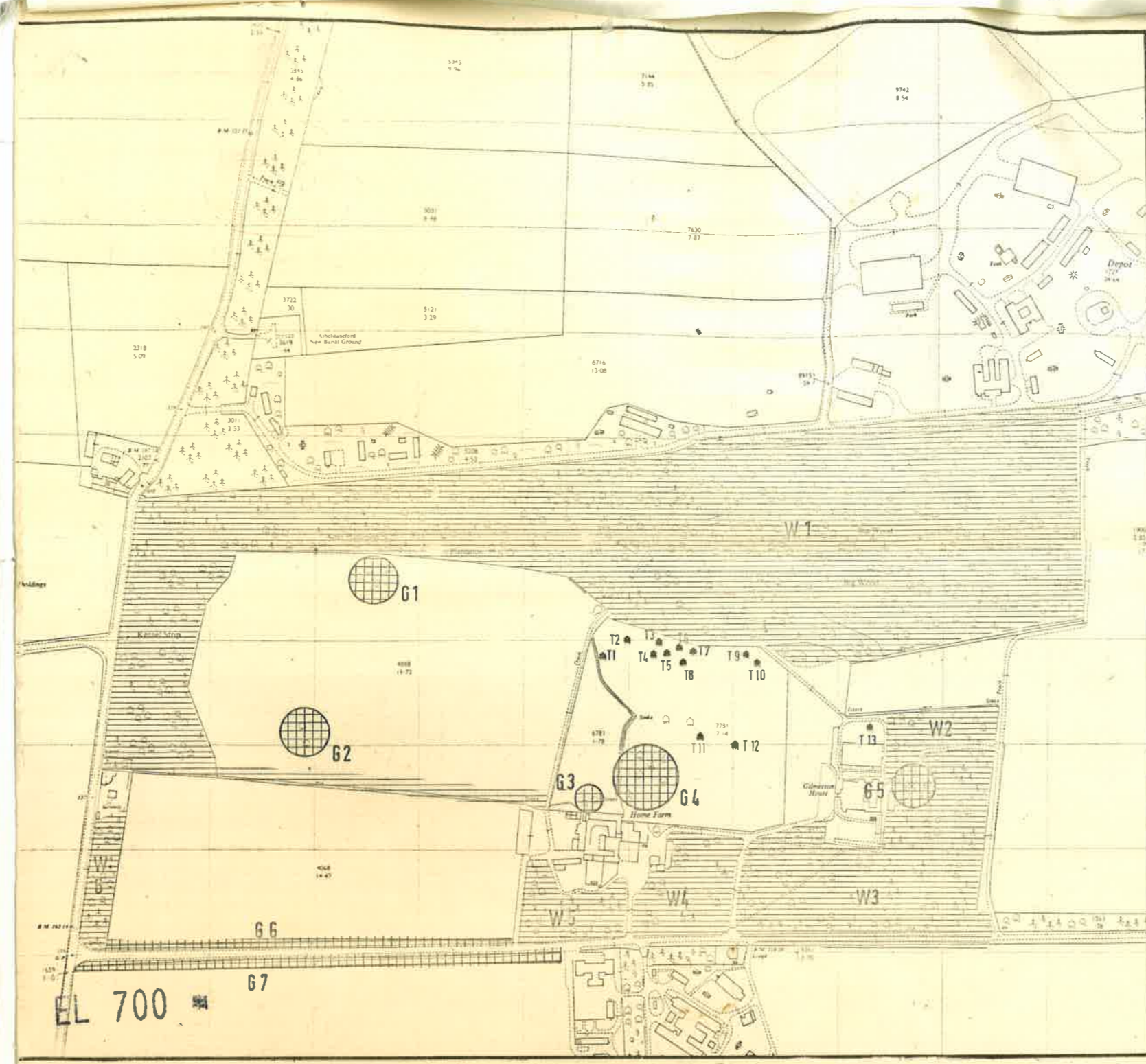
REGISTER on behalf of the County Council of the County of East Lothian incorporated under the Local Government (Scotland) Act 1947 in the Register of the COUNTY OF EAST LOTHIAN.



Solicitor, Haddington, Agent.

EL 700

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Nat Grid Ref

N 541
T 775

COUNTY OF EAST LOTHIAN
TREE PRESERVATION ORDER No 22
GILMERTON ESTATE

- T1 Trees
- G1 Groups of trees
- W1 Woodlands

This is the PLAN referred to in the foregoing County of East Lothian Tree Preservation Order No. 22: Gilmerton Estate dated 14th February 1972 and confirmed by the Secretary of State for Scotland 13th October 1972.

REGISTERS of SCOTLAND
GENERAL REGISTER OF SALES

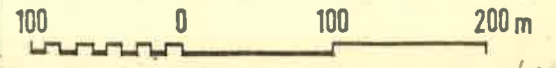
Duplicate of this Plan
received 13th April 1973

Banker *Gov.* **KEEPER.**

[Signature]
EAST LOTHIAN COUNTY COUNCIL
COUNTY PLANNING DEPARTMENT.

Drg No. 2586a

Scale in Metres.



41 (a)

*to Loch
gc*

D. P.

THE COUNTY OF EAST LOTHIAN TREE PRESERVATION
ORDER NO. 22 - GILMERTON ESTATE.

*TPO
22*

BY POST
15 APR 1973
10-10-30
No. 005514
FEE C £1.00

COUNTY CLERK
COUNTY BUILDINGS
HADDINGTON
EAST LOTHIAN

1973.

A. Harkess, Solicitor,
County Buildings, Haddington.