

TOWN and COUNTRY PLANNING (SCOTLAND) ACTS 1972 to 1974

The East Lothian District Council Tree Preservation Order No. 40

The East Lothian District Council, in this Order referred to as "the planning authority", in exercise of the powers conferred on them by sections 58 and 59 of the Town and Country Planning (Scotland) Act 1972 (hereinafter referred to as "the Act") and of all other powers enabling them in that behalf and subject to the provisions of the Forestry Act 1967, hereby make the following Order:-

**Citation, Commencement and Interpretation**

1. (1) This Order may be cited as the EAST Lothian District Council Old Windymains, Humber Tree Preservation Order No. 40 (19 81 ) and shall come into effect on the date on which it is confirmed by specified in Article 15 to this Order.
- (2) The Interpretation Act 1889 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

**Prohibition against felling, etc. without consent**

2. Subject to the provisions of this Order and the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the planning authority, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting or wilful damage or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland specified therein, the position of which trees, groups of trees and/or woodlands to which this Order relates is defined in the manner indicated in the said First Schedule on the map annexed and signed as relative hereto, which map shall for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.

**Application for consent**

3. An application for consent made to the planning authority under Article 2 of this Order shall be in writing and shall specify :-
  - (i) the tree/trees to which the application relates;
  - (ii) the reasons for making the application;
  - (iii) the operation for the carrying out of which consent is required;

and shall where necessary for the identification of such tree/trees be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

4. If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made - not to the planning authority for consent under this Order but to the Conservator of Forests for a licence under Section 15(5) of that Act.
5. (1) Where an application for consent is made to the planning authority under this Order the planning authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof) as the planning authority may think fit, or may refuse consent:

Provided that where the application relates to any woodland specified in the First Schedule to this Order the planning authority shall grant consent so far as it accords with the principles of good forestry, except where, in the opinion of the planning authority, it is necessary in the interests of amenity to maintain the special character of the woodland or the woodland character of the area and shall not impose conditions on such consent requiring replacement or replanting.

- (2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of such applications, the decision of the planning authority

REGISTERS OF SCOTLAND.

GENERAL REGISTER OF SASINES.

13 COUNTY OF EAST Lothian.

Book 1204 Folio 43  
Presented and Recorded on 19 OCT 1987

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thereon, any compensation awarded in consequence of such decisions and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

6. Where the planning authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied :

- (a) that the refusal or condition is in the interests of good forestry; or
- (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

7. (1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless :-

- (a) such consent is granted for the purpose of enabling development to be carried out in accordance with permission to develop land under Part III of the Act, or
- (b) the planning authority, with the approval of the Secretary of State, dispense with replanting,

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where a direction is given and the part is felled the owner shall, subject to the provisions of this Order and Section 164 of the Act, replant the said land in accordance with the direction.

- (2) Any direction given under paragraph (1) of this Article may include requirements as to:-

- (a) species;
- (b) number of trees per acre;
- (c) the erection and maintenance of fencing necessary for the protection of the replanting;
- (d) the preparation of ground, draining, removal of brushwood, lop and top; and
- (e) protective measure against fire.

- (3) If any question arises between the planning authority and the said owner of the land as to whether any such direction 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.

#### Adaptation and modification of Act

8. The provision set out in the Third Schedule to this Order, being provisions of the Act adapted and modified for the purposes of this Order shall apply in relation hereto.

#### Compensation

9. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the planning authority within the time and in the manner prescribed by this Order, be entitled to recover from the planning authority compensation in respect of such loss or damage.

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any tree/trees the subject of a certificate in accordance with Article 6 of this Order.

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

- (a) any compensation or contribution which has been paid whether to the claimant or any other person in respect of the same trees or woodland areas under the terms of this or any other Tree Preservation Order under Section 58 of the Act or under the terms of any Interim Preservations 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 woodland 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.
11. (1) 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.
- (2) The time within which any such claim shall be made as aforesaid shall be a period of six months from the date of the decision of the 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 planning authority, from the date of the decision of the Secretary of State on the appeal.
12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 168 of the Act.

**Offences and penalties etc.**

13. Under the provisions of Section 98 of the Act any person who in contravention of this Order 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, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or twice the sum which appears to the court to be the value of the tree, whichever is the greater, or on conviction on indictment to a fine. Other contraventions of this Order carry with them on summary conviction a fine not exceeding £200. If in the case of a continuing offence the contravention is continued after conviction, the offender shall be guilty of a further offence and liable on summary conviction to an additional fine not exceeding £5 for each day on which the contravention is so continued.
14. (1) If a tree other than one which is part of a woodland is removed, uprooted or destroyed in contravention of this Order, or is removed, uprooted or destroyed or dies at a time when its felling is authorised only by virtue of the provisions of Section 58(6) of the Act relating to uprooting or felling where urgently necessary in the interests of safety, it shall be the duty of the owner of the land, unless on his application the planning authority dispense with this requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can.
- (2) In relation to any tree planted pursuant to paragraph (1) above this Order shall apply as it applied to the original tree.
- (3) If it appears to the planning authority that the provision in paragraph (1) above has not been complied with in the case of any tree or trees, they may, at any time within two years from the date on which failure to comply with this provision came to their knowledge, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified, and the provisions of section 99 of the Act shall apply in any such case.
15. The provisions of Section 59 (2) of the Act (which makes provision for a Tree Preservation Order to take effect immediately without previous confirmation by the Planning Authority or the Secretary of State) shall apply to this Order and the Order shall take effect on the Twenty Third day of January Nineteen Hundred and Eighty One.

Dated this Twenty First day of January Nineteen Hundred and ~~Seventy~~ Eighty One

Council Buildings  
HADDINGTON

  
Director of Administration

EL 1204

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FIRST SCHEDULE

TREES SPECIFIED INDIVIDUALLY

NONE

TREES SPECIFIED BY REFERENCE TO AN AREA  
(within a continuous black line on the map)

| <u>No. on Map</u> | <u>Description</u>  | <u>Situation</u>  |
|-------------------|---|---|
| A1                | The several Sycamores standing in the area numbered A1 on the map | Within O.S. plot no. 6000, lying to the south of the B6371 (Humbie- West Byres) Road and to the east of Old Windymains, near Humbie, on land belonging to John Norman Harrison and Others and forming part of the farm and lands of Windymains, Humbie, in the County of East Lothian, part of the lands and barony of Ormiston, described in Sasine of John Alexander, Earl of Hopetoun, recorded G.R.S. Haddington 9 November 1844. |

GROUPS OF TREES

NONE

WOODLANDS

NONE

DATED THIS TWENTY FIRST DAY OF JANUARY NINETEEN HUNDRED AND EIGHTY ONE

Director of Administration

Council Buildings  
Haddington

REGISTER on behalf of the within named EAST LOTHIAN DISTRICT COUNCIL in the REGISTER of the COUNTY of EAST LOTHIAN.

Solicitor, Haddington,  
Agent.

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the planning authority to –

- (1) the cutting down of any tree on land which is subject to a forestry dedication agreement where –
  - (a) any positive agreements on the part of the owner of the land contained in the same deed as the forestry dedication agreement and at the time of the cutting down binding on the then owner of the land are fulfilled;
  - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such a deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under section 4 of the Forestry Act 1967.
- (3) the uprooting, felling or lopping of any tree if such uprooting, 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 planning authority as soon as may be after the necessity for the operation arises, or if such uprooting, felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament.
- (4) the uprooting, felling or lopping of a tree –
  - (a) in pursuance of the powers conferred on the Post Office by virtue of Section 5 of the Telegraph (Construction) Act 1908 and Section 21 of the Post Office Act 1969 or by or at the request of the Post Office where the land on which the tree is situated is operational land as defined by the Post Office Operational Land Regulations 1973 and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;
  - (b) by or at the request of –
    - (i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;
    - (ii) an electricity board within the meaning of the Electricity Act 1947 where such a tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act 1882, or interferes or would interfere with the maintenance or working of any such line;
    - (iii) the Secretary of State for Defence, the Secretary of State for Trade or the Civil Aviation Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;
  - (c) where immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part III of the Act, or deemed to have been granted for any of the purposes of that part.

Dated this Twenty First day of January Nineteen Hundred and ~~Seventy~~ Eighty One

Council Buildings  
HADDINGTON

  
Director of Administration

EL 1204

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THIRD SCHEDULE

Provision of the Act as adapted and modified to apply to this Order -

30.- (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the planning authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time being interested therein. Provisions as to effect of consent

32.- (1) The Secretary of State may give directions to the planning authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the planning authority. Reference of applications to the Secretary of State

32.- (2) (b) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.

32.- (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

32.- (4) Where an application for consent under the Order is referred to the Secretary of State under this section, the provisions of Articles 5 and 6 of the Order shall apply as they apply to an application for such consent which falls to be determined by the planning authority.

32.- (5) Before determining an application referred to him under this section the Secretary of State shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

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

33.- (1) Where an application is made to the planning authority for consent under the Order and that consent is refused by the planning authority, or is granted by them subject to conditions or where any certificate or direction is given by the planning authority, the applicant if he is aggrieved by their decision, or by any such certificate or direction may by notice under this section appeal to the Secretary of State. Appeals against refusal of consent or conditional consent

33.- (2) Any notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as the Secretary of State may allow.

33.- (3) Where an appeal is brought under this section from a decision, certificate or direction of the planning authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the planning authority, whether the appeal relates to that part thereof or not or may cancel any certificate or cancel or vary any direction and may deal with the application as if it had been made to him in the first instance.

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

33.- (4) Before determining an appeal under this section the Secretary of State shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

33.- (6) The decision of the Secretary of State on any appeal under this section shall be final.

34.- Where an application for consent under the Order is made to the planning authority, then unless within two months from the date of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority, the planning authority either - Appeal in default of decision on application for consent

- (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 under section 32 above;

the provisions of the last foregoing section shall apply in relation to the application as if the consent to which it relates had been refused by the planning authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

Power to revoke or modify consent under the Order

42.- (1) If it appears to the planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any consent granted on an application made under Article 3 of the Order, they may (by order) subject to the following provisions of this section revoke or modify the consent to such extent as (having regard to those matters) they consider expedient.

42.- (2) Except as provided in Section 43 of the Act, an order under this section shall not take effect unless it is confirmed by the Secretary of State; and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modifications as he considers expedient.

42.- (3) Where the planning authority submit an order to the Secretary of State for his confirmation under this section they shall furnish the Secretary of State with a statement of their reason for making the order and shall serve notice, together with a copy of the aforesaid statement 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 specified in that notice (being not less than twenty-eight days from the service thereof) any person on whom the notice is served so requires the Secretary of State, before confirming the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by a person appointed by the Secretary of State for the purpose.

42.- (4) 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 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.

Unopposed revocation or modification of consent

43.- (1) The following provisions shall have effect when the planning authority have made an order under section 42 above revoking or modifying any consent granted on an application made under a Tree Preservation Order but have not submitted the order to the Secretary of State for confirmation by him, and -

- (a) the owner, lessee and occupier of the land and all persons who in the planning authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order; and
- (b) it appears to the planning authority that no claim for compensation is likely to arise under section 153 of the Act on account of the order.

43.- (2) The planning authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify -

- (a) the period (being not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose; and
- (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this sub-section) at the expiration of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section and without being confirmed by the Secretary of State.

43.- (3) The planning authority shall also serve notice to the same effect on the persons mentioned in sub-section (1) (a) above, and the notice shall include a statement to the effect that no compensation is payable under section 153 of the Act in respect of an order under section 42 of the Act which takes effect by virtue of this section and without being confirmed by the Secretary of State.

43.- (4) The planning authority shall send a copy of any advertisement published under sub-section (2) above to the Secretary of State not more than three days after the publication;

43.- (5) If within the period referred to in sub-section (2) (a) above no person claiming to be affected by the order has given notice to the Secretary of State has not directed that the order be submitted to him for confirmation, the order shall, at the expiration of the period referred to in sub-section (2) (b) above, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 42 (2) above.

43.- (6) This section does not apply to an order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Parts III, IV or V of the Act.

153.- (1) Where consent is revoked or modified by an order under Section 42 above then if, on a claim made to the 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 -

Compensation where consent revoked or modified

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.

153.- (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 matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

153.- (3) Subject to sub-section (2) of this section, 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 depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

Dated this Twenty First day of January Nineteen Hundred and ~~Seventy~~ Eighty One

Director of Administration

Council Buildings  
HADDINGTON.

EL 1204

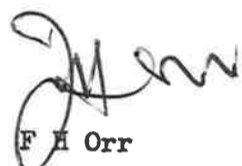
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The East Lothian District Council (Old Windymains,  
Humbie) Tree Preservation Order No 40

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 exclusion of  
the six north-eastmost trees from the area of the order.

Given under the Seal of the  
Secretary of State for Scotland  
this Sixth day of September  
nineteen hundred and eighty two.



F H Orr  
Assistant Secretary

Scottish Development Department  
New St Andrew's House  
Edinburgh

EL 1204

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Nat. Grid Ref. 

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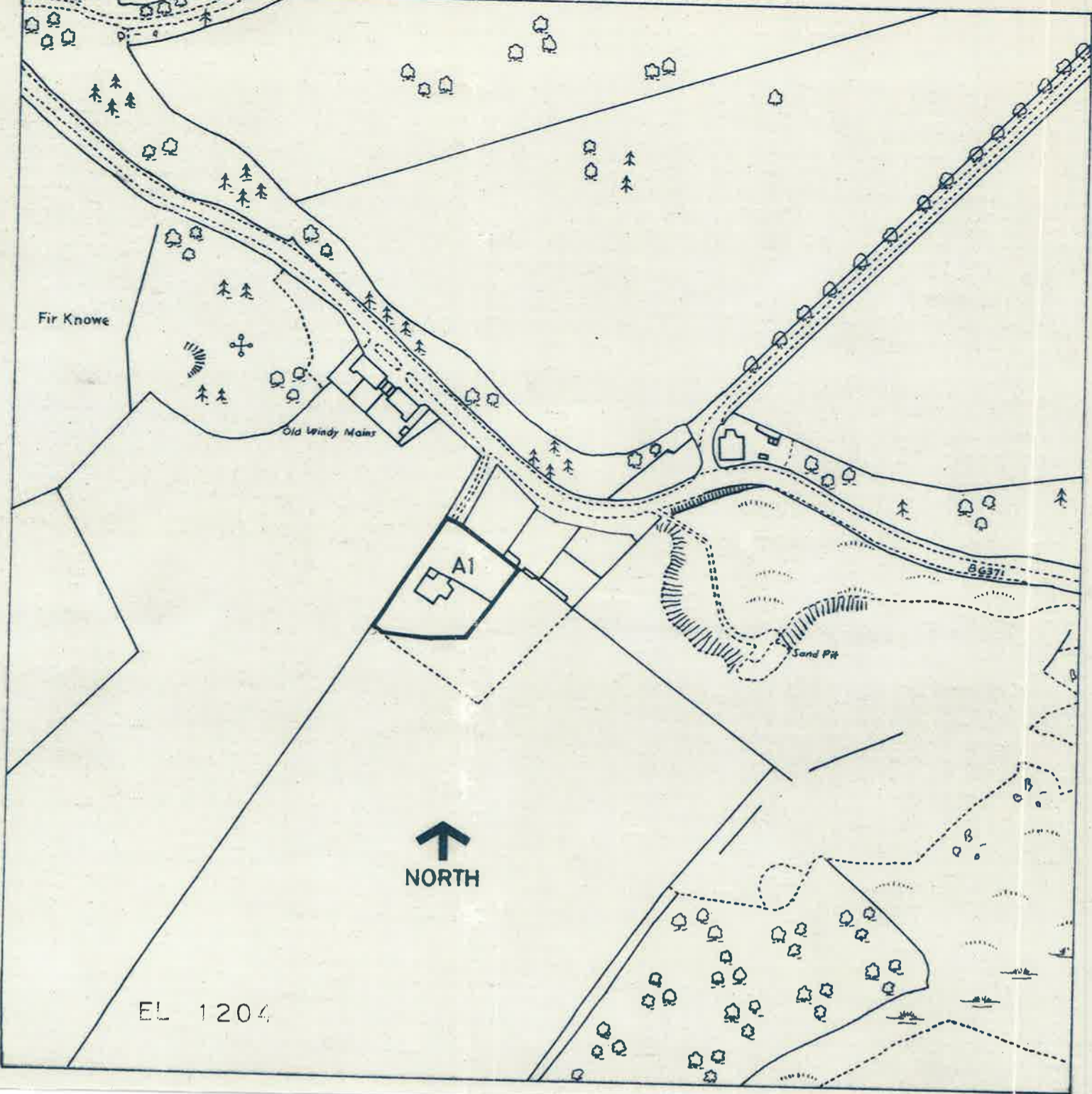
HUMBIE  
OLD WINDY MAINS

TREE PRESERVATION ORDER NO.40

This is the map referred to in the foregoing Tree Preservation Order.

Dated this Twenty First day of January Nineteen Hundred and Eighty One

Director of Administration



Drwg. No. 5304

EAST LOTHIAN DISTRICT COUNCIL  
Department of Physical Planning

Scale 1:2500



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Edinburgh  
NO. 7

EAST LOTHIAN DISTRICT COUNCIL

Town and Country Planning (Scotland) Act 1972

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Tree Preservation Order No. 40  
(Old Windymains, Humberie)           

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MALCOLM DUNCAN  
DIRECTOR OF ADMINISTRATION  
EAST LOTHIAN DISTRICT COUNCIL  
COUNCIL BUILDINGS  
HADDINGTON

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