THE CITY OF EDINBURGH COUNCIL TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE CITY OF EDINBURGH TREE PRESERVATION ORDER NO. 217 (South Gyle)

Notice is hereby given that the City of Edinburgh Council (referred to below as the "Council") as planning authority in exercise of their powers conferred upon them by Section 160 of the above Act have made the City of Edinburgh Tree Preservation Order No. 217 (South Gyle) (referred to below as the "Order") in respect of a collection of trees around South Gyle. The Order takes effect on 16 August 2024.

The Order has been made to protect a number of trees in the interests of public amenity, and to ensure appropriate replacement planting for any removed trees.

The Order can be viewed on the Council's website (search for 'new tree preservation orders'). A certified copy of the Order will be deposited at Corstorphine Library, 12 Kirk Loan, Edinburgh, EH12 7HD for inspection by any person without payment on Mondays and Wednesdays 1pm-8pm and Tuesdays, Thursdays, Fridays and Saturdays 10am-5pm. An electronic copy of the Order can be provided by email free of charge by sending a request to planningtrees@edinburgh.gov.uk

Objections and representations in respect of the Order may be made to the planning authority in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010. Any objection or representation must be in writing and shall be duly made if it states its grounds, specifies the particular trees in respect of which it is made and is received by the planning authority no later than 15 September 2024.

Objections and representations should be sent to the Chief Planning Officer, Level G3, Waverley Court, 4 East Market Street, Edinburgh EH8 8BG or by email to

Proper Officer, Legal and Assurance, The City of Edinburgh Council, Waverley Court Edinburgh

Dated: 14 August 2024

Kevin Joseph McKee

Proper officer
For and on behalf of

The City of Edinburgh Council

Address: 1.9 Waverley Court East Market Street Edinburgh EH8 8BG

The Town and Country Planning (Scotland) Act 1997

Tree Preservation Order No. 217 (South Gyle)

The City of Edinburgh Council 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.

Citation, commencement and interpretation

- 1.—(1) This Order may be cited as the Tree Preservation Order No.217(South Gyle) and takes effect on 16 August 2024.
 - (2) In this Order-

"the 1992 Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(1);

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

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

Protected Trees

- 2.—(1) A protected tree is a tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland specified in that Schedule.
- (2) The position of such trees, groups of trees or woodlands is identified in the manner indicated in Schedule 1 and on the maps annexed to this Order.
- (3) Where any ambiguity as to the identification of a protected tree arises between the maps and the specification in Schedule 1 to this Order, the maps is to prevail.

Prohibited acts

- 3. Subject to the provisions of the Act and the exemptions specified in article 5, no person is except with, and in accordance with, the consent of the planning authority—
 - (a) to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
 - (b) to cause or permit the cutting down, topping, lopping, uprooting, or wilful damage or wilful destruction of,
 - a protected tree.

Application for consent

- **4.**—(1) An application for consent to the carrying out of any act prohibited by a tree preservation order must be made to the planning authority and must—
 - (a) specify the operation 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.
- (2) The protected tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose.

Exemptions

- 5.— Nothing in article 3 is to prevent—
 - (a) the cutting down of a tree in accordance with a felling permission granted by Scottish Forestry under the Forestry and Land Management (Scotland) Act 2018
 - (b) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land(1) of the statutory undertaker and the work is necessary—
 - (i) in the interests of the safe operation of the undertaking;
 - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
 - (iii) to enable the statutory undertaker to carry out development for which planning permission is granted by the 1992 Order.
 - provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary
- (b) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- (c) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- (d) the cutting down, topping, lopping or uprooting of a tree where that work is immediately required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A of the Act(2); or
- (e) the cutting down, topping, lopping or uprooting of a tree by, or at the request of, SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order.

Directions as to replanting

- **6.**—(1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the planning authority may 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 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) number of trees per hectare:
 - (c) the erection and maintenance of fencing necessary for the protection of the replanting;
 - (d) the preparations of ground, draining, removal of brushwood, lop and top; and

⁽¹⁾ See sections 214 and 215 of the Act respectively for the meaning of statutory undertaker and operational land.

⁽²⁾ Section 242A was inserted by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning etc. (Scotland) Act 2006 (asp 17).

(e) protective measures against fire.

Adaption and Modification of the Act

- 7.—(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 of Schedule 2 to this Order.

Compensation

- 8.—(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 payable to a person-
 - (a) for loss of 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.

IN WITNESS WHEREOF these presents together with the schedule and plan are subscribed as follows:

For City of Edinburgh Council	
signature of witness	signature of proper officer
MARRY LOYSTON CRUBB full name of above (print)	LEYIN JOSEPH MCICEE full name of above (print)
1/0 WAVERLEY COURT	14/08/24
4 EAST MARKET STREET	date of signing
address of witness	ED, NBURGH

No. on Maps	Description	Situation
Т3	Swedish whitebeam	On land at South Gyle Road, Corstorphine Edinburgh being the subjects more particularly
T4	Rowan	described in the disposition by The City of Edinburgh District Council in favour of MacTaggard and Mickel Limited recorded in the Division of the
T5	Lime	General Register of Sasines applicable to the County of Midlothian 28 January 1977.
T6	Lime	* * * * * * * * * * * * * * * * * * * *
Т7	Rowan	
Т8	Cherry	
Т9	Rowan	
T10	Rowan	
T11	Rowan	
T15	Cherry	20
T22	Apple	
T26	Elm	
T34	Birch	
T35	Cherry	
Т36	Cherry	
Т37	Rowan	
Т49	Bird Cherry	
Г50	Cherry	2
Γ1	Sycamore	On land at South Gyle Road, Corstorphine, Edinburgh being the subjects more particularly

T2	Sycamore	described in the disposition by The Corporation of the City of Edinburgh in favour of MacTaggart & Mickel Limited recorded in the Division of the
T12	Lime	General Register of Sasines applicable to the County of Midlothian 17 July 1975.
T13	Rowan	
T14	Sycamore	
T16	Cherry	
T17	Cherry	
T18	Whitebeam	
T19	Rowan	
T20	Whitebeam	
T21	Rowan	E .
T24	Apple	
T25	Apple	
T27	Whitebeam	
T28	Rowan	
T29	Rowan	
T30	Rowan	
T31 =	Cherry	
T32	Rowan	
T33	Rowan	
T38	Rowan	
T39	Rowan	

T40 Cherry T41 Rowan T42 Cherry T43 Sycamore T44 Apple T45 Birch T46 Apple T47 Apple		
T42 Cherry T43 Sycamore T44 Apple T45 Birch T46 Apple		
T43 Sycamore T44 Apple T45 Birch T46 Apple		
T44 Apple T45 Birch T46 Apple		
T45 Birch T46 Apple		
T46 Apple		
T47 Apple		
T48 Bird Cherry		
T51 Ash		
T52 Ash		
T53 Italian Alder		
T54 Poplar		
T55 Italian Alder		
T56 Sycamore		
T57 Poplar	Е	
T58 Apple	×	
being the subjects more particularly describe the Edinburgh South Gyle Compulsory Purc Order 1972 recorded in the Division of the Ge	On land at South Gyle, Corstorphine, Edinburgh being the subjects more particularly described in the Edinburgh South Gyle Compulsory Purchase Order 1972 recorded in the Division of the General Register of Sasines applicable to the County of Midlothian 29 January 1974.	
Trees Specified by Reference to an Area (within a solid black line on the maps	;)	
None.		

Groups of Trees (within a broken black line on the maps) No. on Description Situation Maps. G5 ' Three Norway maple On land at South Gyle Road, Corstorphine, and three rowan Edinburgh being the subjects more particularly described in the disposition by The City of G6 Three cherry and three Edinburgh District Council in favour of MacTaggart rowan and Mickel Limited recorded in the Division of the G7 Four rowan, one apple General Register of Sasines applicable to the and one cherry County of Midlothian 28 January 1977. G8 Two cherry, one rowan and one whitebeam G9 Four beech, four hawthorn, four sycamore and two lime G10 One whitebeam, two rowan and one apple G11 One whitebeam and two rowan G18 Two rowan G19 Two rowan and one apple G20 Two cherry G35 One cherry and one whitebeam G44 Two apple G45 Four rowan G46 One rowan, four Norway maple and two lime G47 Three lime and one cherry G48 Three Norway maple G54 One apple, one rowan, one whitebeam and one cherry G55 Two cherry, two whitebeam and one apple G67 Three rowan and one cherry G71 Three rowan G79 Two hawthorn, one whitebeam, one rowan

and two cherry

G89	Two apple and one plum	
G90	One Norway maple, one hornbeam, two cherry, two ash and one hawthorn sp.	
G1	Eight field maple and two sycamore	On land at South Gyle Road, Corstorphine, Edinburgh being the subjects more particularly
G2	One lime and two rowan	described in the disposition by The Corporation of the City of Edinburgh in favour of MacTaggart &
G3	Four lime, two Norway maple and two red- leaved Norway maple	Mickel Limited recorded in the Division of the General Register of Sasines applicable to the County of Midlothian 17 July 1975.
G13	Two cherry	
G15	One cherry and one rowan	
G17	Three plum	
G21	Two apple, three rowan, one lime, one cherry, one birch and one hawthorn	
G22	Two rowan	
G23	Two sycamore	
G24	Two sycamore	
G25	One lime, three sycamore, one ash and two hawthorn	
G26	Five sycamore	
G27	One Norway maple, one goat willow and one whitebeam	
G28	One Norway maple and one apple	- a
G29	Two cherry	e
G30	Two rowans	r ee
G31	Three cherry and three apple	
G32	Two cherry and one rowan	
G33	Two cherry and one rowan	w
G34	Two rowan	4
G36	Two whitebeam, three rowan and one Norway maple	a.

G37	Two Norway maple and one whitebeam	
G39	One whitebeam and two rowan	
G40	One rowan and one whitebeam	
G41	One cherry and two rowan	
G42	Seven cherry	
G43	Four cherry, one lime and two whitebeam	
G49	Two apple	
G50	Two rowan, one cherry, four lime and seven Norway maple	
G51	One birch and one lime	
G52	Two rowan, one lime and two Norway maple	
G53	Two Norway maple, one lime and one apple	-
G56	One rowan, one apple, one hawthorn sp. and one cherry	
G57	Two whitebeam and two apple	
G58	Two cherry_	
G59	Two rowan	· ·
G60	One cherry and one apple	(8) 5 (6)
G61	Two cherry and one rowan	
G62	Three rowan, one plum and one cherry	
G63	Three cherry and one hawthorn sp.	*
G64	Two rowan	
G65	Two rowan	
G66	Two cherry and one apple	
G68	One rowan and three apple	
G69	Four rowan and three apple	× = ==================================
G72	One cherry and two rowan	

G73	One cherry and two rowan	
G74	Three cherry and two rowan	
G75	One birch, one rowan and two apple	
G76	Two cherry	*
G77	One cherry, one rowan and one apple	
G78	Nineteen hawthorn and one beech	
G80	One cherry and two apple	
G81	One cherry and one rowan	
G82	Three sycamore, one holly and two lime	
G83	Three rowan	
G84	Two apple	
G85	Three apple	=
G86	Two Norway maple and one birch	
G87	One lime and one sweet chestnut	
G88	Two lime	
G91	Two cherry and one whitebeam	
G4	One whitebeam, four rowan, one sycamore and one birch	On land at: South Gyle Road, Corstorphine, Edinburgh being the subjects more particularly described
G12	One sycamore, five hawthorn, one rowan and one elder	in the disposition by The City of Edinburgh District Council in favour of MacTaggart and Mickel Limited recorded in the Division of the General Register of Sasines applicable to the
G14	Three cherry	County of Midlothian 28 January 1977; and
G16	Three rowan and two plum	South Gyle Road, Corstorphine, Edinburgh being the subjects more particularly described the disposition by The Corporation of the
G38	Three whitebeam and one cherry	in the disposition by The Corporation of the City of Edinburgh in favour of MacTaggart & Mickel Limited recorded in the Division of the
G70	Four rowan and one apple	General Register of Sasines applicable to the County of Midlothian 17 July 1975.
	ds (within a red line on th	ne maps)
None.	я я	a a



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	(a) In subsection (1)—
considerations)	(d) for "planning permission" where those words first appear;" substitute "consent under a tree preservation order";
n e	(e) for "sections 27B(2) and 59(1)(b) substitute "subsections (1A) and (1B)";
5	 (f) for "planning permission" in both of the other places where those words appear substitute "consent under the order";
29	(g) after "think fit", insert, "(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and
# 5 #	(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 incomed, agreement of authorization.
25 E	condition imposed on the grant of such consent,"
Section 44 (effect of planning permission)	(c) references to 'planning permission' are to be treated as references to 'consent required by a tree preservation order';
	(d) for 'the permission' substitute 'the consent';
	(e) for 'to develop land' substitute 'to carry out works'; and
я _	(f) after 'land' insert 'on which the tree or trees to which the consent relates are situated'.
⊕	(g) Omit subsections (2) and (3).
Section 47 (right to appeal against planning decisions	(a) For subsection (1) substitute—
and failure to take such decisions)	"(1) Where a planning authority—
	 (a) refuse an application for consent under a tree preservation order or grant it subject to conditions;
e a	 (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) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 2 months beginning with the date on which the application was received by the authority,
	the applicant may by notice appeal to the Scottish Ministers against the decision".
	(b) Omit subsections (1A), (2) and (4).

E	(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—
	 (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Scottish Ministers may allow; (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to
	conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.".
9	(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 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 (Scotland) 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 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) endure 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) fail to determine any such application as is referred to in paragraphs (a) to (c) within the period of 2 months beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Scottish Ministers against the decision".

- (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—
 - (a) in respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1), within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Scottish Ministers may allow;
 - (b) in respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant.
- (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.





