

**TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**ABERDEENSHIRE COUNCIL
TREE PRESERVATION ORDER
NO. 131 (2021)**

**Subjects: The Old School House,
Auchenblae**

**Aberdeenshire Council
Woodhill House
Westburn Road
Aberdeen
AB16 5GB**

FAS 2269

**TREE PRESERVATION ORDER
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**ABERDEENSHIRE COUNCIL TREE PRESERVATION ORDER NO. 131 (2021)
The Old School House, Auchenblae**

The Aberdeenshire 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 of all other powers enabling them to do so.

CITATION, COMMENCEMENT AND INTERPRETATION

1. (1) This Order may be cited as the Aberdeenshire Council Order No. 131 (2021) and shall come into effect on the ninth day of September Two Thousand and Twenty-One.
1. (2) In this Order:-
 - I. “the Act” means the Town and Country Planning (Scotland) Act 1997
 - II. “the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992
 - III. “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. (2) The position of such trees, groups of trees or woodland is identified in the manner indicated in Schedule 1 and on the map annexed to this Order
2. (3) 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.

PROHIBITION AGAINST FELLING, ETC. WITHOUT CONSENT

3. Subject to the provisions of this Order and the exemptions specified in Article 4, no person shall, except with and in accordance with the consent of the Planning Authority-
 - (a) cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, uprooting, or wilful damage or wilful destruction of a Protected Tree.

EXEMPTIONS

4. 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 or uprooting in a woodland of a tree having a diameter not exceeding 100 millimetres, where this is done to improve the growth of other trees;
 - (c) 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;
 - (d) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit; *or*
 - (e) the cutting down, topping, lopping or uprooting of a tree where that work is 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.

DIRECTIONS AS TO REPLANTING

5. (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.
5. (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.
5. (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;
 - (e) protective measures against fire.

ADAPTION AND MODIFICATION OF THE ACT

6. Some of the provisions of the Act have been modified or adapted in relation to consents under this Order and applications for such consent. Those provisions as modified or adapted are set out in Schedule Two.

COMPENSATION FOR REFUSAL OF CONSENT TO WORKS OR GRANT OF CONSENT SUBJECT TO CONDITIONS

7. (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.
7. (2) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.
7. (3) The time within which any such notice shall be given is a period of six months –
- (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.
7. (4) No claim may be made under this article if the amount in respect of which the claim would otherwise have been made is less than £1,000.
7. (5) No compensation shall be payable to a person—
- (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.
7. (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.

APPLICATION OF TREE PRESERVATION ORDER TO FUTURE PLANTING

8. This Order applies to any tree specified in Schedule 1 to this order which is to be planted in pursuance of a condition imposed by virtue of Section 159(a) of the Act from the time that tree is planted.

OFFENCES AND PENALTIES ETC.

9. Under the provisions of Section 171 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 £20,000, or on conviction on indictment to an unlimited fine.

IN WITNESS WHEREOF: these presents typewritten on this and the preceding three pages together with the Schedules and Map annexed as relative hereto are subscribed for and on its behalf by its Authorised Signatory and Proper Officer as follows:-

Authorised Signatory and Proper Officer

Signature of Witness

Full Name

Full Name

Date of Signature

Date of Signature

Place of Signature

Place of Signature