



Draft Tree and Woodland Strategy

APPENDIX G: The Regulatory Framework

The Regulatory Framework

G1. Nothing in this strategy should be taken as legal advice, for which a qualified legal opinion should be sought.

Preparation of the Forestry and Woodland Strategy

G2. The Planning (Scotland) Act 2019 introduced a requirement (Section A159 of the Town and Country Planning Act (Scotland) 1997) for the planning authority to prepare a forestry and woodland strategy. This is to:

- (a) identify woodlands of high nature conservation value in the planning authority's area, and
- (b) set out the planning authority's policies and proposals in their area, as to—
 - (i) the development of forestry and woodlands,
 - (ii) the protection and enhancement of woodlands, in particular those mentioned in paragraph (a),
 - (iii) the resilience to climate change of woodlands, in particular those mentioned in paragraph (a),
 - (iv) the expansion of woodlands of a range of types to provide multiple benefits to the physical, cultural, economic, social and environmental characteristics of the area,
- (c) any other matter which the planning authority consider appropriate

The Planning System

G3. The purpose of planning is 'to manage the development and use of land in the long term public interest' (Planning (Scotland) Act 2019)

G4. Grant of planning permission should include appropriate provision for preservation and planting of trees (Section 159 of the Town and Country Planning (Scotland) Act 1997)

"It shall be the duty

(a) of the Scottish Ministers and the planning authority] to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees, and

(b) of the planning authority to make such orders under section 160 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise, and

(c) of the planning authority from time to time to review any order made in exercise of their powers under that section and to consider whether it is requisite to vary or revoke the order in question."

G5. The Scottish planning system is plan led. Section 25 of the Town and Country Planning (Scotland) Act as amended provides: "Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise, to be made in accordance with that plan".

G6. The development plan for the area is currently National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan 2018. NPF4 being the more recent of the two, if there is a conflict between the policies of the two plans, NPF4 takes precedence. National Planning Framework 4 reaffirms the Scottish Government's commitment to the Control of Woodland Removal Policy, and strengthens protection for ancient woodland. It brings new protection for

ancient and veteran trees, and native woodlands and hedgerows. NPF4 Policy 6 gives specific policy for trees and woodland.

NPF4: Policy 6

a) Development proposals that enhance, expand and improve woodland and tree cover will be supported.

b) Development proposals will not be supported where they will result in:

i. Any loss of ancient woodlands, ancient and veteran trees, or adverse impact on their ecological condition;

ii. Adverse impacts on native woodlands, hedgerows and individual trees of high biodiversity value, or identified for protection in the Forestry and Woodland Strategy;

iii. Fragmenting or severing woodland habitats, unless appropriate mitigation measures are identified and implemented in line with the mitigation hierarchy; iv. Conflict with Restocking Direction, Remedial Notice or Registered Notice to Comply issued by Scottish Forestry.

c) Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal. Where woodland is removed, compensatory planting will most likely be expected to be delivered.

d) Development proposals on sites which include an area of existing woodland or land identified in the Forestry and Woodland Strategy as being suitable for woodland creation will only be supported where the enhancement and improvement of woodlands and the planting of new trees on the site (in accordance with the Forestry and Woodland Strategy) are integrated into the design.

G7. The East Lothian Local Development Plan also contains policy on trees:

Policy NH8: Trees and Development

There is a strong presumption in favour of protecting East Lothian's woodland resource.

Development affecting trees, groups of trees or areas of woodland will only be permitted where:

a. any tree, group of trees or woodland that makes a significant positive contribution to the setting, amenity of the area has been incorporated into the development through design and layout, and wherever possible such trees and hedges should be incorporated into public open space and not into private gardens or areas; or

b. (i) in the case of woodland, its loss is essential to facilitate development that would achieve significant and clearly defined additional public benefits in line with the Scottish Governments Policy on Control of Woodland Removal; in particular the loss of Ancient Woodland will not be supported; or (ii) in the case of individual trees or groups of trees, their loss is essential to facilitate development that would contribute more to the good planning of the area than would retaining the trees or groups of trees.

Development (including extensions to buildings) must conform to British Standard 5837:2012 Guide for Trees in Relation to Design, Demolition and Construction, or any subsequent revision.

Tree Preservation Orders

- G8. Section 160 of the Town and Country Planning Act (Scotland) 1997, as amended, gives the planning authority the power to make Tree Preservation Orders for trees or groups of trees
- G9. A Tree Preservation Order (TPO) is a legal procedure used by the local authority to protect individual trees, groups of trees or woodlands that make a significant contribution to the visual amenity of an area or are of cultural or historical importance.
- G10. Landowners remain responsible for the care, maintenance and safety of all trees covered by TPOs, which are growing on their land. Before any work can be carried out on a tree that is protected by a tree preservation order, the landowner must obtain written permission from the local planning authority (East Lothian Council) in advance of such work. In most cases replacement tree planting will be required for any trees agreed to be felled
- G11. Please refer to [East Lothian Council's](#) website for further information

Conservation Areas

- G12. Trees within conservation areas are also protected by legislation, and the Council must be notified in writing 6 weeks in advance of any planned work on such trees. To check whether a tree is in a conservation area, please refer to the maps of East Lothian's [conservation area](#)

Planning Conditions

- G13. If planning permission has been granted for a particular site then the trees within the site may be protected by a condition of the consent. In such cases you must obtain written approval from East Lothian Council in advance of any tree work. Before undertaking any tree work you are advised to check with East Lothian Council at environment@eastlothian.gov.uk whether any planning conditions protect trees within the property

Forestry Consents

- G14. Permission is required for tree felling. There are some exemptions these can be found at <https://forestry.gov.scot/support-regulations/felling-permissions>
- G15. Permission may also be required for woodland creation where there are likely to be significant effects. More information can be found from Scottish Forestry here [Scottish Forestry - Woodland creation](#)

Statutory Undertakers

- G16. Statutory undertakers are bound by the duty of care of land owners and managers regarding trees and woodland on their land where they pose a risk to the public. They generally also have a duty and right to safely maintain their asset and its safe operation. They also have some extra powers with regard to trees on adjacent land with regard to this

Landowners

- G17. Landowners, or sometimes tenants, have a duty of care to the public¹. They are responsible for the trees which grow on their land and making sure they are generally safe. Landowners, occupiers and managers, as well as tree workers also have responsibility for obtaining any consents required

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for tree work. This may include permission from the Council for work on trees in Conservation Areas, or felling licences from Scottish Forestry (these are not needed for trees within garden ground).

- www.eastlothian.gov.uk/ldp
- East Lothian Council Environment 01620 827216
- ldp@eastlothian.gov.uk
- Contact East Lothian Council Planning Service
 John Muir House
 Brewery Park
 HADDINGTON
 East Lothian
 EH41 3HA
- To make a comment, suggestion or complaint about a council service, download a feedback form online at www.eastlothian.gov.uk or pick one up at your local office



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