



PART B: RECOMMENDATIONS TO PLANNING COMMITTEE

REPORT TO: TREE PRESERVATION ORDER WORKING PARTY

DATE: 6TH MAY 2022

**REPORT OF THE: PLANNING AND DEVELOPMENT MANAGER
JILL THOMPSON**

TITLE OF REPORT: TREE PRESERVATION ORDER No: 354/2021

WARDS AFFECTED: DERWENT

AUTHOR: MATTHEW STUBBINGS, TREE & LANDSCAPE OFFICER

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 For members of the working party to consider Tree Preservation Order (TPO) 354/2021 at **MULLINS COTTAGE, MAIN STREET, SCRAYINGHAM, MALTON, NORTH YORKSHIRE, YO41 1JD**. Then to make a recommendation to the Planning Committee on whether the Order should be confirmed.

2.0 RECOMMENDATION

2.1 That the Planning Committee is recommended to:

- (i) Confirm Tree Preservation Order No: 354/2021

3.0 REASON FOR RECOMMENDATION

3.1 To protect the amenity value that the trees provide to the locality.

4.0 SIGNIFICANT RISKS

4.1 There are no significant risks associated with recommendation.

5.0 POLICY CONTEXT

5.1 Members are aware that Local Planning Authorities can make a Tree Preservation Order (TPO) if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. In this respect, 'expediency' means that there is a risk of trees being felled, or the trees will be significantly damaged by trenching within the root zone. An Order prohibits the cutting

down, topping, lopping, uprooting or wilful destruction of trees without the Local Planning Authority's written consent.

- 5.2 Amenity, whilst not defined in law, is a matter of judgement for the Local Planning Authority. In terms of the purpose of TPOs, they should be used to protect selected trees and woodlands if their destruction or removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future. Matters to consider are:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and
- contribution to the character or appearance of a conservation area.

Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

- 5.3 An Order comes into effect on the day that it is made, and once made, interested parties have a minimum of 28 days to make representations either supporting or objecting to the Order. A Local Planning Authority has six months in which to confirm the Order or to decide not to confirm it. An Order cannot be confirmed unless the LPA has considered duly made representations made in response to the Order.
- 5.4 In Ryedale, the confirmation of TPO's is a matter for the Planning Committee, following advice of the Tree Preservation Order Working Party. The Working Party is established to allow the matter to be considered in detail.

6.0 REPORT

DESCRIPTION OF SITE AND TREES

- 6.1 The proposed TPO covers two large individual mature Ash trees and three groups of trees located within the domestic curtilage of the property known as Mullins Cottage. The trees are located near to the northern boundary of the property and are viewable from the adjacent highway and footpath on Main Street.

- 6.2 The trees located on the attached plan (Annexe 1) should be viewed in conjunction with the accompanying 'TEMPO' TPO assessments (Annexes 2-6).

T1 – Ash

T2 – Ash

G1 – Group of 18 trees

G2 – Group of 19 trees, young to early mature in age

G3 – Group of 9 trees

- 6.3 The Council understood that that there were plans to trench in close proximity to the northern boundary of the owner of Mullins Cottage, prompting a TPO evaluation on 16.11.2021 at the request of the owners, Mr and Mrs Stone.

- 6.4 The owners of Mullins Cottage have many trees on the northern boundary, some of which are mature and are therefore concerned that the proposed trenching will severely damage the trees.

7.0 TREE ASSESSMENT

- 7.1 As part of the TPO making procedure, the trees were assessed using the nationally recognised 'TEMPO' system. This has been developed to provide a transparent and objective means of evaluating and considering the merits of trees and whether their amenity value is such that it warrants protection. It is split into different aspects of the amenity value, and identifies a scoring system. A minimum of 12 points is required.

- 7.2 The scores are based on condition, retention span and public visibility and were as follows:

T1 – overall score of 13 → TPO Defensible

T2 – overall score of 19 → Definitely merits TPO

G1 – overall score of 16 → Definitely merits TPO

G2 – overall score of 16 → Definitely merits TPO

G3 – overall score of 19 → Definitely merits TPO

- 7.3 All trees were above the threshold that determines the viability of TPO orders. This TEMPO assessment was undertaken by myself, a qualified arboriculturalist with over twenty years' experience in arboriculture.

Tree assessment- Amenity

- 7.4 Photographs of the trees can be found in Annexe 7.

- 7.5 T1 Twin Stemmed Mature Ash tree - the tree's condition is reasonable (3) with an anticipated retention span of between 40-100 years and is therefore considered to be suitable. The tree is large and situated approximately 30m east of the River Derwent, designated SSSI and Special Area of Conservation. This tree is also situated within the Ryedale 100 year flood risk area. The gradient of the land drops down towards the western end of the land, hence the tree is only visible with difficulty (2).

- 7.6 T2 – Large mature Ash tree – the condition is fair (3). This is an attractive specimen and good healthy example of a tree of this species and is therefore considered to have an anticipated retention span of between 40-100 years (4). It is therefore considered

to be very suitable for TPO. This is the largest and most prominent tree at Mullins Cottage. The health of this tree would be most significantly harmed should trenching occur within its root zone. It would also increase the likelihood of this tree being blown over.

- 7.7 G1 - Group of 18 trees. The trees are native mixed broadleaves and coniferous trees. There are established Hawthorn and Beech hedges parallel to trees and fence line which are not included. The condition of the trees is good (5) and are therefore considered to be highly suitable for TPO, with potential for the trees to provide amenity for many years to come (5). They are young to early mature in age so are relatively small at present (2). The trees have significant habitat importance (3) by providing a wildlife corridor connecting the site to woodland by the river to the west. Trenching is not likely to harm this group of trees, but retention is desirable for long-term protection of the trees, hence a score of 1 for expediency. Inclusion within the TPO is for precautionary purposes.
- 7.8 G2 - Group of 19 trees. The trees are native mixed broadleaves and coniferous trees. The condition of the trees is good (5) and are therefore considered to be highly suitable for TPO, with potential for the trees to provide amenity for many years to come (5). They are young to early mature in age so are relatively small at present (2). The trees have attractive autumn colour. The trees have significant habitat importance (3) by providing a wildlife corridor connecting the site to woodland by the river to the west. Trenching is not likely to harm this group of trees, but retention is desirable for long-term protection of the trees, hence a score of 1 for expediency. Inclusion within the TPO is for precautionary purposes.
- 7.9 G3 - Group of 9 mature specimens. The trees are mixture of native and non-native specimen trees that provide year-round interest with attractive autumn colour as well as providing a verdant frontage to Mullin's Cottage. The trees are mature. The condition of the trees is fair (3) and are therefore considered to be highly suitable for TPO, with potential for the trees to provide amenity for many years to come (4).

Tree assessment- Expediency

- 7.10 A multi-agency group meeting was held earlier this year to provide solutions to a flooding issue that regularly occurs within Scrayingham. It is understood that there were representatives from Yorkshire Water, NYCC Highways, NYCC Flood Management, Scrayingham Parish Council, village residents and a Trustee of Aldby Park Estate (landowner of the land to the north of Mullins Cottage).
- 7.11 The property is in a foul sewerage problem area. Yorkshire Water have advised that the "agreed" solution includes the installation of a new surface water drain (helped by some goodwill funding that would be provided by Yorkshire Water to Trustees of Aldby Park Estate) would help to capture the run off from the fields that occurs and gathers in the highway.
- 7.12 Following this meeting it was proposed that a solution to the flooding issues could be dealt with by digging of new open 2m wide deep open ditch/sewer that would run parallel to Mullins Cottage. The approximate location of the proposed ditch can be seen on image 1, page 1 of Annexe 7. The method proposed to do this would have disastrous consequences to the health of the mature trees in close proximity to the boundary of Mullins Cottage; the owners of the trees at Mullins Cottage not therefore in agreement with this proposal.

- 7.13 The mature trees on the northern boundary of Mullins Cottage are considered to be under threat, particularly T1, T2 and trees in G3. The proposed ditching would see the roots of mature trees severed. The work would no doubt severely harm the trees and could even increase their likelihood of collapse in future. If the order is not confirmed the owners of the adjacent land (Trustees of Aldby Park Estate) will have a common law right to carry out trenching which would not require permission to do so from the owners of Mullins Cottage.
- 7.14 The owners of Mullins Cottage have raised concerns that they are not happy with this proposal because of potential harm to the trees and have suggested that alternate solutions should be considered. Nevertheless it is understood that alternatives are not currently under consideration and that the proposed trenching will occur in the near future if the order is not confirmed.
- 7.15 The inclusion of T1, T2, G1, G2 & G3 in the order is recommended to ensure the long-term retention of an attractive treeline and the avoidance of detrimental trenching by the neighbouring landowner. This will ensure that two large mature Ash trees (T1 and T2) as well as several other trees of varying age are not needlessly harmed and all future tree work is in accordance with best practice and standards (BS3998).
- 7.16 There is an immediate threat to T1, T2 and G3 (a score of 5 in the expediency assessment) because the proposed works will sever tree roots of mature trees.
- 7.17 The making of a TPO will prevent harm to high quality tree cover in an area of outstanding natural beauty and when the time comes to fell the tree in future will ensure continuity of tree cover in perpetuity, thereby maintaining the special character of the area.

8.0 Representations

8.1 Support (4no.)

In addition to the owner (proposer's) support for the TPO to be confirmed a total of 4 neighbours have also provided support for the making of the TPO (emails can be found in full at Annexe 8):

Mr & Mrs P Woodliffe (next door neighbour), Japonica Cottage, Scrayingham

"We wish to confirm our support for the TPO No. 354/2021 and any work undertaken to be the sufficient clearance away from any existing trees (inc. roots, etc)."

Nick du Plessis (neighbour opposite), Yggdrasil, Scrayingham

"In the event that an independent survey determines that the proposed excavation to dig an open trench on the northern boundary of Mullins Cottage determines that damage will be done to the existing trees and their root system, I confirm my support for the tree preservation order and ask that the proposed trench be relocated so as not to impact any established trees."

Eileen Barker and Martin Cruttwell, Hamilton House, Scrayingham

"Trees are very special and important to our environment, in particular they also add to the visual appearance in our small rural village...the land on the north side of the TPO is a "Visually Important Undeveloped area" on Ryedale Local Plan...We think it is incumbent on Ryedale Council to ensure that if any excavations are to be carried out that they are subject to the correct distance away from the trees, thereby ensuring that no harm whatsoever is done to the existing and established tree root systems"

Chris Sheridan, 2 Derwent View, Scrayingham

I wish to confirm my support for the TPO number 354/2021 and that any excavation's be the correct distance away, so that no harm is done to the existing and established tree root systems.

8.2 Neutral comments (1no.)

John Cave, River Derwent Partnership Officer has confirmed that Yorkshire Derwent River Catchment Partnership are:

"in favour of the proposed ditch restoration work due to the benefits of reducing sediment input into the River Derwent and the benefits of an open ditch to biodiversity. Through YDCP we have allocated funding to progress the ditch restoration work as part of a wider package of measures which aim to reduce sediment across the middle Derwent catchment and protect the River Derwent SSSI".

Mr Cave's comments are considered to neither support or object to the making of the TPO. A copy of his email can be found at Annexe 9

8.3 Objections (1no.) and appraisal

An objection was received from George Winn-Darley, Trustee of Aldby Park Estate (the original documents can be found at Annexe 10 and 11).

The objection is in full below (in **blue type**) and the Officer response where it is deemed appropriate can be found in **black type**.

**["Tree Preservation Order number 354/2021
Mullins Cottage, Scrayingham, York, YO41 1JD](#)**

Thank you for the opportunity to make representations regarding the above.

Were this TPO to be confirmed it would be very contrary to the public interest.

Expediency

Running underneath all the proposed TPO trees is a 6 inch pipe belonging to Yorkshire Water which was originally the main foul sewage pipe for the village and now serves as the storm

overflow from the South Farm sewage pumping station. This station under permit 27/28/0145, is listed as having one of the worst records in North Yorkshire for discharging foul sewage into a watercourse at over 100 events. In 2021 this sewer storm overflow spilled 108 times for a total of 660 hours, discharging into the Goit via a culverted system.

Approximately 6m to the south of the large ash tree shown as T2 there is a manhole chamber which now diverts water to a 9 inch pipe which heads south west and discharges into the Goit slightly to the south of Lacy's riding school buildings. It seems clear, with the exception of one large ash tree T1 that all the other trees present have been deliberately planted on top of this pipe over the years (as well as buildings being erected over it at various points). This would appear to be motivated by the desire to limit the ability for this pipe to be maintained, in the hope that it will be diverted out of the Mullins Cottage property. The owners of Mullins Cottage property have been pursuing this agenda for many decades and were instrumental in triggering the diversion mentioned above. They took ownership of this land about 45 years ago.

8.4 Mr and Mrs Stone bought the property from the Aldby Estate in 1984. At that time there were mature trees along the northern boundary from the highway towards the river. Several trees had Dutch Elm Disease and had to be removed at a later date. Photographs taken around the time the house was purchased show that the pre-war ditch from the road down the fence line was already piped and backfilled before the Stones purchased Mullins Cottage in 1984. Having removed the dead and dying trees Mr and Mrs Stone replaced them where possible as well as planting many additional trees. It is therefore reasonable that they should wish to prevent harm being done to their trees.

Attached at Appendix 1 is a copy of the Ordnance Survey plan surveyed in 1891. Mullins Cottage property is shown as OS parcel 145. The northern boundary is highlighted and clearly shows a ditch was present running down this boundary taking water from the village highway to the Goit. This ditch can still be seen at the western end on the boundary of the Mullins Cottage property but it has been successfully filled in over the years and continues to be to this day, currently with burnt horse manure and soil arisings from the most recent building construction.

It is clear from what the owners of Mullins Cottage have said that their motivation in asking for these trees to be covered by a TPO is to prevent the restoration of a ditch in this location. The current proposal is to put the ditch on the other side of the boundary on neighbouring property, not on theirs as it originally was but they are still objecting to that. They have suggested that it is installed as a pipe rather than an open ditch but the effect of this TPO will frustrate even that, because the size of the pipe required in order to address the flooding issues within the village will need to be able to take 3x9 inch drains running at full bore. This is too big to be thrust bore under any root plates.

8.5 I met with Mr Winn-Darley at his request on 22nd March 2022 to discuss the implications of the proposed TPO in relation to works on or near the trees, including tree roots. It is my assertion that it may be possible to install pipes by utilising thrust bore technology rather than open trenching which would harm trees on the Mullins Cottage boundary. I have not received any professional reports to confirm that it is not possible.

To avoid any backing up and flooding and future proof for climate change the pipe should be much larger than 300mm. The ditch is the ideal solution.

Flooding in Scrayingham Village

A large number of parties, led by Emily Mellalieu of Ryedale District Council and including North Yorkshire County Highways, Yorkshire Water, the Parish Council, Buttercrambe Estate and others have been working to find a solution

8.6 It is unfortunate that that the root system of the trees has been overlooked and that at no time have I, or any other arboricultural professional from North Yorkshire County Council or Ryedale District Council been included.

to the flooding in the middle of the Village which has in the past flooded one dwelling and threatened others and regularly cuts off the north end of the village as the flood water is too deep to drive through, and at the same time the ford to the east of the Church is also too deep for cars to safely traverse. There have also been concerns that this flooding, which is caused by the combined sewer being overwhelmed, lead to the flood water being contaminated with foul sewage.

The Yorkshire Wildlife Trust have offered substantial grant aid towards the restoration of a ditch as a means of assisting the natural flood management (NFM) and improving biodiversity.

The solution that is being worked on is the installation of a completely new and separate carrier drainage system to connect the road gulleys and land drains which have no foul drainage into a separate system and let that flow by gravity along the historic route and lowest point in the village and into the Goit water course. This involves coming along the boundary of Mullins Cottage which is the lowest point.

If the TPO is in place there is no practical prospect of putting a ditch close to that boundary hedge as has been confirmed by Matthew Stubbings.

8.7 This is not entirely true. My view is that trenching should only occur outside of the root protection area (RPA) of the trees (as per BS5837 Trees in Relation to Construction). Thus, it may be possible to have a mixture of open ditching outside of the RPAs and use of trenchless boring method within RPAs

It may be possible to put pipes further into the field avoiding the root zones and/or using part of the ditch at the west end but the additional cost to install and maintain this would be a significant burden on the public purse.

The owners of Mullins Cottage have suggested that the carrier pipeline runs instead along a parallel line at the other end of the adjacent field to the rear of Village Farm buildings. The land here forms effectively a hill and it would involve a major, dangerous engineering operation to lay a pipe through this height of ground.

The traditional route for water to flow away from the street in this part of the village is at its lowest point which is along the northern boundary of Mullins Cottage, as indeed there was a ditch there certainly in 1891 and up until at least the Second World War.

8.8 It is my understanding that the when the current owners bought Mullins Cottage

there was no open ditch.

Amenity

None of the trees in the proposed TPO can be seen from the public Highway adjacent to Mullins Cottage or to the south as the view of them is blocked by various residencies and ancillary buildings. A brief view of those in G3 can be seen from the gateway to Mullins Cottage.

8.9 Image 4, 5, 10 and 11 (Annexe 7) can be seen from the public highway.

The roadside hedge running north thereof is sufficiently high to obscure all views of anything except occasionally the tip of some of these trees from the Highway.

The only other view point is briefly through the gate to Village Farm. This view will soon be blocked by a hedge line which has recently been planted on the garden boundary.

It is quite possible that the entrance to Mullins Cottage and Village Farm could have solid, high level, residential gates installed on them replacing the existing field gates. In these circumstances no view will be likely be obtainable of any of the trees from the roadside.

8.10 The proposed TPO is based on what was present during my assessment carried out on 16.11.2021. Changes can and will occur. Whilst it is acknowledged that the recently planted hedge may obscure views of some of the trees within the TPO in the future as indeed the installation of a high field gate may do the same. Nevertheless, the order also seeks to protect several younger specimens that have not reached their full potential and may well exceed the size of the largest trees that are currently visible.

The surrounding countryside is full of trees. There is no shortage of views with trees to improve people's amenity.

8.11 The making of TPOs is one such way of protecting public amenity when trees are considered to be under threat.

Historic

With the exception of the ash tree's T2 and T1 none of the trees have been in existence historically and are relatively young trees all less than 40 years old – most less than 10. If the TPO is not confirmed, and the ditch or pipe is installed on the obvious line along the northern boundary then the impact on the root zone for such young trees is likely to be very minimal.

Sadly, the ash tree T2 is almost certainly likely to succumb to ash die back in the coming years as has happened to similar ash trees within a few 100m of it to the north and south.

8.12 It is estimated that Ash die-back will result in the death of between 75-90% of Ash trees. T1 and T2 do not have the disease and may well survive due to resistance. The damage to mature Ash trees on the grounds that they will probably die anyway is contrary to best practice and advice issued by the Forestry Commission and the Woodland Trust.

Technical

It is clear from the plan of the TPO that there is no tree in position T1 and this should be relocated further to the south west where there is a tree if that is indeed the tree that is intended. Matthew Stubbings has confirmed that the ash tree with the barn owl box in it, which is showing signs of ash die back and just to the north of T1 position is not covered by the proposed TPO.

The extent of buildings between G2 and G3 is more extensive than is shown on the plan, as a result of recent extensions and the area G2 is therefore inaccurate accordingly.

8.13 Minor errors such as these can be rectified by modifying the plan prior to confirmation.

Summary

There is no public interest served by confirming this TPO and indeed doing so will add very considerably to the public burden, not only in maintaining the foul sewer storm over flow pipe which runs underneath them but by preventing a new clean water carrier drain or ditch being most economically installed.

8.14 As already discussed, other solutions are possible. It is of note that there is support for the TPO from four neighbouring properties who do not share the view that damaging the roots of mature trees is the way forward to achieve the solution to flood issues in the village. There is also an environmental and visual cost to the loss of tree cover.

9.0 Other factors

Whilst the ability of trees to carbon capture and provide wildlife habitats are not a material consideration in the confirmation of TPOs, it is of note that trees provide essential habitat for birds and other wildlife throughout their life. Each tree will typically absorb over a tonne of CO² during its lifetime.

10.0 Conclusion

10.1 The Local Planning Authority has considered all duly made representations and provides detailed responses in section 8.

10.2 In making the Order in the first instance, the Local Planning Authority sought to evaluate the trees at Mullins Cottage, Main Street, Scrayingham, Malton, North Yorkshire, YO41 1JD. 48 trees were considered to be worthy of a TPO.

10.3 In confirming the TPO the Council seeks to protect trees that are at risk as a result of root damage which would irreversibly harm several of the trees and would be a loss to the amenity and a detriment to the area.

10.4 The significant amenity value that the trees provide and will continue to provide to the locality in future, in addition to the benefits the younger trees give as they develop and become more visible is considered to justify the making, and confirming of a TPO, when weighed against the objection put forward. This is borne out by the high score the trees achieve in the TEMPO assessments from 16.11.2021 (Annexes 2-6).

10.5 Support from four neighbouring properties adds weight to the view that the trees are worthy of TPO.

10.6 No objections to the Order were received from parish and district councillors, neighbours, Yorkshire Water, NYCC Highways or NYCC Flood Management.

11.0 IMPLICATIONS

11.1 The following implications have been identified:

- a) Financial
No financial implications identified
- b) Legal
A decision to confirm the Order must be made within six months of the Order being made.
- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

11.2 If the TPO is confirmed, open trenching as currently proposed adjacent to the northern boundary of Mullins Cottage will not be supported by the Tree and Landscape Officer. Although alternative piped solutions (i.e. taking water through a pipe underground) may be possible it is understood that these are not likely to be deliverable through the multi-agency partnership due to additional costs and issues concerning liabilities and responsibilities for ongoing maintenance. NYCC Flood Management (as representative of the County Council as Lead Local Flood Authority) have confirmed that the area that floods in this part of Scrayingham is not a 'programmed commitment' and therefore NYCC will not maintain a piped solution.

No other implications have been identified.

12.0 NEXT STEPS

12.1 The 08.06.22 Planning Committee will consider the recommendations of the Working Party at its meeting. If the Committee resolves to confirm the Order all of the interested parties will be notified and the notice will provide details of the grounds on which an application can be made to the High Court. (The legislation provides no right of appeal to the Secretary of State against an authority either making or confirming an Order.)

12.2 The Council must make a formal note of its decision in relation to the Order. If the Order is confirmed it will be recorded in the Land Charges Register. If the Order is not confirmed, its operation will cease with immediate effect.

Jill Thompson
Planning and Development Manager

Author: Matthew Stubbings, Tree & Landscape Officer

Qualified: Professional Tree Inspector (LANTRA)
Tech Cert (ArborA)
NCH Arb

Telephone No: 01653 600666 ext: 43357
E-Mail Address: matthew.stubbings@ryedale.gov.uk

Annexes:

Annexe 1- TPO tree location plan for TPO No. 353/2021
Annexe 2 – TEMPO Evaluation –T1
Annexe 3 - TEMPO Evaluation –T2
Annexe 4 - TEMPO Evaluation – G1
Annexe 5 - TEMPO Evaluation – G2
Annexe 6 - TEMPO Evaluation – G3
Annexe 7 – Images of the trees at Mullins Cottage
Annexe 8 – Emailed support
Annexe 9 – Emailed comment (neutral)
Annexe 10 – Emailed objection
Annexe 11 – Appendix to objection
Annexe 12 –map showing locations for comments received in Scrayingham
Annexe 13 – Copy of signed and sealed order for TPO No. 353/2021