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<b>PART B:</b>	<b>RECOMMENDATIONS TO PLANNING COMMITTEE</b>
<b>REPORT TO:</b>	<b>TREE PRESERVATION ORDER WORKING PARTY</b>
<b>DATE:</b>	<b>2<sup>nd</sup> NOVEMBER 2021</b>
<b>REPORT OF THE:</b>	<b>HEAD OF PLANNING AND REGULATION SERVICES GARY HOUSDEN</b>
<b>TITLE OF REPORT:</b>	<b>TREE PRESERVATION ORDER No: 353/2021</b>
<b>WARDS AFFECTED:</b>	<b>DERWENT</b>
<b>AUTHOR:</b>	<b>MATTHEW STUBBINGS, TREE &amp; LANDSCAPE OFFICER (TLO)</b>

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 For members of the working party to consider the objection to the Tree Preservation Order (TPO) 353/2021 at The Redings, The Green, Low Hutton, Malton, YO60 7HF. 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: 353/2021

### **3.0 REASON FOR RECOMMENDATION**

- 3.1 To protect the amenity value that the tree provides 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 a tree being felled. 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 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**

### **Background**

- 6.1 The tree which is the subject of this provisional TPO 353/2021 (Annexe 1) is known as T1, a Lime, is within the domestic curtilage of the property known as The Redings (tree location plan, Annexe 2). The tree is located near to the southern boundary of the

property. The tree is viewable when approaching the property by road, from the adjacent pavement on The Green, from the property known as The Hollies which is opposite The Redings as well as from the rear of some of the neighbouring properties.

6.2 It should be noted that at the time the Provisional TPO was made the property had three other trees situated within the front of the property, also on the southern boundary. These trees were not included in the Provisional TPO and have since been removed.

6.3 The trees located on the attached plan should be viewed in conjunction with the accompanying 'TEMPO' TPO assessments.

T1 – Large Leafed Lime  
T2 – Blue Lawson Cypress  
G1 – 2no. Golden Leyland Cypresses

#### 6.4 **Planning history and other background information**

##### 6.5 **10.07.2020**

The property neighbouring The Redings submitted an application for the *Erection of single storey rear extension to form additional living accommodation, 4 bay garage and 1no. stables following removal of existing outbuildings with associated landscaping* (20/00628/HOUSE)

##### **05.08.2020**

Planning Objection submitted to the Council by a planning consultant on behalf of Mr and Mrs Ingram, the then owners of The Redings. The objection raised by Mr and Mrs Ingram concerned the potential harmful effect the extension would have on the Lime tree.

##### **27.08.2020**

TLO comments submitted in relation to 20/00628/HOUSE - No objections subject to conditions (see Annexe 3).

**02.09.2020** Arboricultural Consultant carried out site visit to provide a report on the trees at The Redings on the instruction of Mr and Mrs Ingram.

**08.09.2020** Arboricultural Report submitted to the Council as part of the objection for 20/00628/HOUSE.

- This report suggested that it would be "*inappropriate to approve the application*" and recommended that the Council serve a TPO on T1 Lime tree.

**08.09.2021** Planning agent working on behalf of Mr and Mrs Ingram asked the Case Officer that the TLO consider whether T1 Lime is worthy of a TPO due to concerns that the tree might be harmed

##### **11.09.2020**

Case Officer advises the planning agent "*if your clients wish to pursue TPO'ing the tree, it would be best to contact him directly and submitting an application*"

##### **17.09.2020**

Having been reconsulted and considered the Arboricultural Report, TLO felt that the conditions proposed in comments made on 27.08.2020 would be sufficient to protect the tree from demolition phase through to the end of the development.

## **02.10.2020**

Consent given for The Rise for application 20/00628/HOUSE.

## **13.11.2020**

The planning agent working on behalf of Mr and Mrs Ingram emailed the Case Officer

*“Now that this matter has been resolved is it possible that my client’s objection and tree report be removed from the Council’s website?”*

Mr and Mrs Ingram’s objection and the two reports were duly made confidential (i.e. no longer publically visible)

## **27.05.2021**

The Council received information that The Redings had a new owner that intended to remove T1 in early June 2021, prompting an urgent TPO evaluation on 27.05.2021.

**28.05.2021** Provisional TPO served on owner of The Redings.

## **7.0 Tree assessment**

7.1 Images of the trees at The Redings can be found at Annexe 4

7.2 As part of the TPO making procedure, four trees were assessed on 27.05.2021 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. T1, the tree subject to this proposed TPO was found to have an overall score of 20 based on condition, retention span and public visibility, 8 marks more than the threshold that determines the viability of TPO orders, and rating as **‘definitely merits TPO’**. This TEMPO assessment was undertaken by myself, a qualified arboriculturalist with over twenty years’ experience in arboriculture. Guidance notes can be seen in Annexe 5 and are used in conjunction with the scoring sheet as a reference.

## **7.3 Tree assessment- Amenity**

7.4 The trees were individually assessed. It should be noted that a total of 4 trees were assessed, however only T1 Lime was considered to be of sufficient quality to merit being subject to a TPO.

7.5 T1 – Large Leafed Lime - the tree’s condition is good (5) with an anticipated retention span of between 40-100 years and was therefore highly suitable. The tree is large, prominent tree situated within an area designated AONB. The tree is clearly visible to the public (4).

T2 – Blue Lawson Cypress – the tree’s condition is fair (3). It has been “topped” in the past and is therefore likely to reduce the lifespan of the tree, hence it scored (2). The tree is a medium sized tree and due to size and location is a relatively unremarkable specimen.

G1 – 2no. Golden Leyland Cypresses – this group of closely growing conifers appear to have been topped in the past. Condition is fair (3). For the same reasons as T2, the trees score (2) for prospective lifespan. The trees are medium sized and visible to the

public (4), they have an attractive colour however have indifferent form and no other redeeming features, hence a score of (1).

#### **7.6 Character of the locality**

The Green is in Low Hutton, a small village located on the southern boundary of the Howardian Hills Area of Outstanding Natural Beauty. It is a narrow road set on a north/south axis servicing an established residential locality within a lightly wooded area. The properties are characterized by good sized houses in medium sized plots with spacious front gardens, contained by trees, hedging and low stone walls.

Facing from the road, the front garden is bounded by a low stone wall with a metal gated entrance to a driveway and brick built triple garage situated close to the left hand (southern) boundary. To the left of the driveway is an area of low maintenance perennial shrubs and grasses set within a decorative gravel.

The subject tree is situated on the left hand boundary in the rear garden of The Redings, a large detached property set back from the road. There is large open space opposite the property (referred to as 'The Green') which gives the area an attractive spacious feel as you travel through the village.

#### **7.7 Local tree cover and the amenity value of T1 Lime**

The tree is a large prominent mature Lime with an attractively balanced domed crown. The tree has reasonable health and form and there are no significant defects visible. The tree is estimated to be around 50 years in age. Large leafed Lime trees can live up to 400 years, therefore this tree has the potential to provide amenity for many years to come. Many of the surrounding properties have mature trees in their gardens, which gives the area a verdant and established character.

The well-balanced domed shaped crown is most noticeable when in leaf. The tree has a dense canopy of healthy looking leaves and the branch framework is also noticeable when not in leaf providing an elegant and attractive backdrop to the property. The tree is one of a scattering of similarly sized trees that grow locally and one of many trees that grow within gardens along both sides of the road, to both the front and rear of properties. It is this feature that lends the area a very pleasant, lightly wooded character. The tree can be seen from the property opposite and when approaching along the road where it is an important landscape feature.

#### **7.8 Tree assessment- Expediency**

7.9 The previous owner was very concerned that T1 should be retained and had the trees at The Redings inspected by a qualified Arboricultural Consultant. That report (Annexe 6) suggested that in accordance with the BS5837 development report criteria that T1 Lime was an 'A1' category tree of high quality with an estimated remaining life expectancy of at least 40 years. This view concurs with my assessment of the tree.

7.10 The inclusion of T1 in the order was recommended to ensure retention and the avoidance of detrimental pruning by the neighbouring property where there is permission for the erection of single storey rear extension close to the tree. This will ensure the large domed crown is not harmed needlessly and all future tree work is in accordance with best practice and standards (BS3998).

7.11 Having considered the tree evaluation as set out above, under the delegated powers of Gary Housden, Head of Planning, it was agreed that the Provision TPO 353/2021 should be made. The order was served on the owner on 28<sup>th</sup> May 2021.

## **8.0 Representations and appraisal**

- 8.1 Support for the making of the TPO has been received from the Howardian Hills AONB Manager, Ellie Hook (Annexe 7)
- 8.2 No comments were received from the occupiers of properties either side of The Redings.
- 8.3 Huttons Ambo Parish Council have been consulted, they will be provided after the next meeting on 17.11.2021.
- 8.4 Objections have been received from the owners of The Redings (Mrs Jane Johnson QPM and Mrs Clare Messer). A copy of the objection, together with associated reports can be found in Annexe 8
- 8.5 The objection can be found in full below (in **blue type**) and the Officer response where it is deemed appropriate can be found in **black type**.

## **8.6 “Householder objections to the TPO**

- 8.7 Dear Working Party Chair/Member,
- 8.8 We are the new owners of The Redings in Low Hutton, Huttons Ambo and I am writing to set out our objections to the tree preservation order (TPO) made on the 27th May 2021.
- 8.9 We believe that the TPO has been misapplied and our objections are summarised below. The TPO is a significant issue for us because it means the enjoyment and maintenance of our garden and home is effectively controlled by authorities, we're unable to make decisions without seeking permission and the extent of any work will be limited by the LPA. Had we been aware that a TPO was being considered we would not have purchased the property.
- 8.10 Our contention is that if the LPA had dealt effectively with the TPO when the application was made and the value of the lime tree and its contribution to the appearance of Low Hutton became known in August and September 2020 and acted positively and promptly to protect the tree we, as prospective buyers would have had a choice as to whether we purchased the property with the TPO already in existence.
- 8.11 The grounds for objection to the TPO are:
- 8.12 (1) Abuse of process - the scoring of the TEMPO decision guide without a site visit and the excessive time taken to consider and make the TPO (August 2020 to May 2021).
- 8.13 (2) The impact of the presence, proximity and overbearing prominence of the tree on our property and the effect of shade and loss of daylight into the property outweighs its limited public amenity.

## **8.14 Summary**

- 8.15 After over thirty years of policing in London we retired in January 2021 and moved to North Yorkshire a place we love and feel very fortunate to live. We hoped to embrace village life, integrate and involve ourselves in our community, contribute and live in harmony with our neighbours. A life without stress and pressure is very important to us as I am currently recovering from a second diagnosis of breast cancer and dealing with its associated treatment.
- 8.16 We have lived at The Redings since 11th March 2021, I hope you can empathise with the disappointment we feel, when just 78 days after moving in we were unexpectedly served with a TPO particularly when the LPA has been dealing with this issue since at least September 2020. The circumstances of the order being made against us are unique because we are involved in a complicated situation which, despite due diligence and our best efforts, we were completely unaware of.
- 8.17 In early December 2020 we viewed The Redings with an estate agent. The previous owners, Mr and Mrs Ingram, had moved out and the estate agent informed us during the viewing that planning permission had been granted for an extension at The Rise next door. In the rear garden there is a tree very near to the rear wall of the house, this was an immediate concern to us due to its prominence and position but the estate agent confirmed there was no TPO in existence. The tree clearly needed maintenance and the area around it needed repair and rebuilding but we believed these issues could be easily resolved with a tree surgeon.
- 8.18 Following our viewing we checked the planning portal and reviewed plans and documents for The Rise application. It was recorded clearly that Mr and Mrs Ingram objected to the plans and we suspected they were selling The Redings because the planning application had been approved. After reviewing plans and documents we agreed we were happy with proposals and future impact on us accepting that the building work on our boundary would be very disruptive. In the seller's questionnaire and the local searches carried out by our solicitor it was confirmed there was no TPO on any tree in the garden and we were content that issues with the lime tree would be resolved with the help of a professional.
- 8.19 After moving in we called a reputable tree surgeon, he visited and after discussing options with him and our neighbours at The Rise we planned to fell the tree. This was scheduled for early June and required no reporting or permission. Our neighbour discussed this with the LPA querying whether the felling of the tree changed the foundation requirements for his building work prompting the preservation order served on us on 28th May 2021. This was not an egregious breach of an order where a sanction was necessary, we were merely exercising our rights as the homeowner to maintain our garden and this action by the LPA, in the circumstances, feels entirely disproportionate. After nine months the LPA effectively dealt with this in a matter of a few days.
- 8.20 (1) Abuse of Process
- 8.21 Through neighbours I have now had access to documents that were not attached to the planning application on the portal (I can evidence the fact these were not uploaded.) These documents are the objections submitted by Mr and Mrs Ingram and provide a deeper understanding of events and the extent of their feelings. There is information confirming these were received by the LPA and formally discussed with responses provided. The presence of these documents on the planning portal would have enabled us to ask further questions of the seller and the local authority about outstanding issues in respect of the lime tree ie the TPO."

- 8.22 It is accepted that the presence of these documents would have enabled any prospective buyers of The Redings to have questioned the seller/local authority about outstanding issues in respect of the Lime tree.
- 8.23 It is understood that these documents were available to the public, consultees and the Planning Committee during the public consultation period for application 20/00628/HOUSE. However a planning agent acting on behalf of Mr and Mrs Ingrams, the then owners of The Redings, emailed the Case Officer for 20/00628/HOUSE on 13.11.2020 and requested that the two reports were removed from the website (a redacted copy of the email exchange can be found at Annexe 9), the agent asked:
- 8.24 *“Now that this matter has been resolved is it possible that my client’s objection and tree report be removed from the Council’s website?”*
- 8.25 The Case Officer’s reply on 16.09.2021 was:
- 8.26 *“Thanks for your email. Yes that’s fine, I’ll ask our support team to make these documents confidential today.”* Hence the documents were not visible at the time the current owners of The Redings viewed documents on the Council’s website.
- 8.27 Contributors have a right to remove their objections from public view if they request the Council to do so, therefore the tree owner’s objection on the grounds of abuse of process with regard to absence of documents from the website is not accepted.
- 8.28 *“Mr and Mrs Ingram invested substantial resources, effort and funds by commissioning a planning consultancy and arboriculturist to inspect the lime tree. They overlaid planning legislation on the situation and evidenced objections to the application. In summary they raised three issues; residential amenity, design and layout and the impact on the mature lime tree. Despite their considerable efforts planning consent was granted for The Rise causing Mr and Mrs Ingram to move out of The Redings in November 2020.*
- 8.29 In the document titled Planning Objection prepared by Gallagher Planning Consultancy (Annexe A) grounds for objection were set out and these included damage to the lime tree on the southern boundary between The Redings and The Rise. On page 2 Para 1.3 and page 7 Para 3.11 and 3.12, the consultant asserts *‘the ground works to construct the proposed development will inevitably harm this tree.’*”
- 8.30 **In principle I broadly agree with this point of view, traditional foundations would have harmed the tree.**
- 8.31 *“In response to this report the Tree Officer, Mr Matthew Stubbings, advises that ‘there will be an issue with overhanging branches, leaf fall and this will be a persistent nuisance along with a subsidence risk. There will be debris from the tree, seeds and sap.’*”
- 8.32 **I still stand by this comment with regards to leaf debris and overhanging branches, however the risk of subsidence will have been addressed by the condition to ensure non-standard foundations such as pile and beam.**
- 8.33 *“In response to the objections and identification of potential threat to the tree through extensive foundation work rather than making a TPO he recommended routine*



conditions attached to the planning permission protecting the tree during the construction phase.”

- 8.34 **According to the Planning Advisory Service (2011), Local Authorities are encouraged to “*work with applicants to find mutually acceptable solutions*”. My proposed solution was to propose planning conditions which sought to protect the interests of both The Rise (reducing the risk of subsidence/harm to T1 tree roots) and The Redings (insurance claims for subsidence/harm to tree roots) by ensuring that the impact on the roots would be minimised through use of non-standard foundations. Furthermore, by requiring the owner of The Rise submit details of how the trees would be protected from demolition through to completion of the development we sought to ensure that no harm should come to the tree as a result of the development. Annexe 10 shows the conditions for the protection of T1 from decision notice for application 20/00628/HOUSE.**
- 8.35 “On 4th September 2020 a further report was prepared by Barnes Associates on behalf of Mr and Mrs Ingram (Annexe B), this report was completed by an arboriculturist following inspection. His opinion was that due to its proximity to the new building and foundations the lime tree was at risk and planning permission should be refused, he also recommended a TPO was made making the following specific comments:
- 8.36 *Page 7 ‘In particular the Lime indicated T1 by the orange arrow has an attractive and rounded form typical of the species, suggesting it is worthy of a tree preservation order to help ensure its continued contribution to the Area of Outstanding Natural Beauty.’*
- 8.37 *Page 8 ‘I would recommend that RDC serve a Tree Preservation Order on the large leaved lime T1 under the Town and Country Planning Regulations 2012.’*
- 8.38 This document indicates that the TPO may have been an unresolved issue and would have caused us to ask further questions of the seller and the LPA had it been available to us on the planning portal. This could reasonably be interpreted as a written application for a TPO and in an email on 24<sup>th</sup> June 2021 Mr Stubbings confirms that he did consider this to be an application for a TPO on the lime tree.”
- 8.39 **Any immediate threat to a tree could instigate a TPO Evaluation by the local authority. The Lime was not considered to be at risk at that time however because:**
- **the committee decision for application 20/00628/HOUSE was to be made on 29.09.2021; therefore the application could potentially be refused thereby removing the perceived risk.**
  - **If the application was approved at committee, conditions had been proposed that were considered to be the best way of ensuring that the tree roots would be protected and required the applicant to provide detail of the measures to be taken for protection of trees prior to commencement of demolition.**
- 8.40 **Our usual procedure for TPO evaluation requests is for the proposer to complete a ‘TPO request form’ (see annexe 11) for example. It is unusual for planning agents to request TPOs on behalf of their clients, therefore the Case Officer advised the agent the following:**

- 8.41 **“if your clients wish to pursue TPO’ing the tree, it would be best to contact him [the Tree and Landscape Officer] directly and submitting an application”**
- 8.42 **The Case Officer made me aware of this correspondence at the time but heard nothing further from Mr and Mrs Ingram.**
- 8.43 “It isn’t clear whether a TEMPO data sheet and decision guide was completed at that time but the guidance allowed for use of a TPO in these circumstances because there was a threat to the tree from the development. Mr Stubbings responds by email, *‘having considered the arboricultural report I have not altered my previous opinion subject to conditions and I do not object.’* This suggests he did not consider the tree worthy of a TPO despite both amenity and expedience arguably being present at that time if it was present in May 2021.
- 8.44 **It is not that the tree was not worthy, it was not considered expedient to TPO the tree at the time, the tree was not perceived to be under threat.**
- 8.45 The TEMPO document is a guide and a subjective assessment to support decision making, we understand that this builds in some personal interpretation of the guidance. There were at least two occasions in September 2020 when the tree report was received by the LPA, October 2020 when the planning permission was approved and possibly a third in December 2020 when the building work was due to start when the guide might have been used to safeguard the tree because there was a foreseeable threat due to the extent of the foundation work required for the building work at The Rise. The pile and beam foundations required involve columns driven into the ground around the tree roots. This could therefore have attracted a subjective expediency score of 2 or 3 leading to a TPO.
- 8.46 In ‘Tree Preservation Orders: A Guide to the Law and Good Practice DETR 2000 Para 5.19 sets out - ‘The LPA should decide in each case whether trees should be safeguarded by using a planning condition or TPO or both. In the Secretary of State’s view, however, it is not reasonable to use conditions as a means of securing the long-term protection of trees when TPOs are available for this purpose.’ In this case Mr Stubbings used general planning conditions where a TPO was available inferring that he did not consider the tree worthy of protection.”
- 8.47 **The conditions would only serve their purpose for the duration of the development. However, I was expecting the then owners of T1 to submit an evaluation form which would then kick-start the evaluation process.**
- 8.48 **The Council did not receive an official request to TPO the tree from Mr and Mrs Ingram as requested.**
- 8.49 “It was apparently our decision to fell the tree which increased the score in the expediency assessment to 5 based on immediate threat, only at this stage was the TPO made while expediency was clearly present earlier in the process ie Foreseeable Threat to the Tree scores 3 and Perceived Threat to the Tree scores 2. This feels to us like a cynical and spiteful use of the TEMPO process to protect the interests of the LPA against potential criticism after there had been a delay in actioning the TPO application. There had been ample opportunity to protect the tree in the preceding nine months, if that was the LPA’s intention. It is entirely unreasonable that it should take the LPA almost 9 months to deal with the TPO application when, if relevant, both amenity and expediency were present within the subjective interpretation of the

guidance. My understanding is that the TPO was made in a matter of days once it was reported the tree would be taken down.

8.50 2) Presence, Proximity and Prominence of the Lime Tree and impact of shade and daylight on our Property.

8.51 The tree is approximately 14m tall and the crown is 12.5m in diameter. The tree wasn't there when the house was built indicated in the photographs at Annexe C, we are advised it was most likely seeded rather than planted because it is so close to the boundary and in an unusual position. It has outgrown its space, it is perched precariously in a raised area approx. 1.7m above the ground level at the rear of the property and is 6.7m from the south west corner of the house, its canopy is full, it is prominent and overbearing proportional to the house, (Annexe C) there are cracks and bowing in the retaining wall at its base, the dense canopy casts a huge shadow over the house and garden and limits daylight into the orangery and lounge at the side and rear of the property from mid-morning onwards.

**8.52 No evidence has been presented to support the view that the tree is unsafe or "precarious" in any way. The tree was found to be in good health and safe. Even if, in due course, such work is required, this can be applied for in the usual way.**

**8.53 I have seen no supporting evidence that supports the view that the cracks and bowing are caused by the tree. The cause may have been poor quality workmanship or design. The wall could be rectified in future without having to remove the tree.**

8.53 In the document Tree Preservation Orders: A Guide to the Law and Good Practice para 3.7 sets out that *'before making a TPO the LPA should visit the site of the tree or trees in question and consider whether or not a TPO is justified.'*

**8.54 The Council's first assessment in this case was from a public viewpoint. If the Council made our intentions known to tree owners there is a risk that they would fell trees prior to us being able to serve TPOs. This is fairly standard practice across local authorities.**

8.55 "The LPA had nine months to conduct a site visit and didn't therefore consider fully the extent of the visibility and public amenity assessment does not fully consider the position of the tree in a rear garden and the extent it contributes to its local surroundings and the extent of public amenity.

8.56 Mr Stubbings has confirmed that prior to making the order he had not visited the site nor looked at the tree from the back garden despite the fact that Mr Ingram was fully engaged in this process seeking to protect the tree. In making the assessment of the TEMPO score he was unaware of the tree's position and proximity to the house. He visited the property only at my invitation on 25<sup>th</sup> June 2021 a month after the order was made. His assessment at the time of making the order was therefore incomplete because it did not consider our challenges managing the tree in its position, the area around it and the future risk of damage it might cause to our property in high winds for example. The TEMPO document does allow for a lower score where a tree has outgrown its context and this wasn't considered. Mr Stubbings awarded an Amenity Retention Score of 4 while the decision guide allows for a score of 0 where a tree is clearly outgrowing its context. The TEMPO decision sheet sets out where there is any score of 0 a TPO should not be applied."

- 8.57 Following the visit on 25.06.2021 I re-evaluated my original scores (see Annexe 12).
- 8.58 As outlined in 7.1 above, the assessment is split into different aspects of the amenity value, and identifies a scoring system. A minimum of 12 points is required. Following this process, and having adjusted the scores for Part 1 (a) and (c) T1, the tree subject to this proposed TPO was found to have an overall score of 17 based on condition, retention span and public visibility, 5 marks more than the threshold that determines the viability of TPO orders, and still rating as 'definitely merits TPO'.
- 8.59 **Part 1 (a) Condition and Suitability for TPO**  
The tree was originally scored (5) 'Good', however having visited the tree and taking into consideration the fact that the tree has some minor crown defects (included unions) and the fact that historic ground works may have affected the roots on the northeastern quadrant of the root area of the tree I took the view that it would be reasonable to reduce the score to 3 in this category.
- 8.60 Taking into account the objector's previous comments regarding the expediency, had the TPO been made when the tree was not under threat of being felled (i.e. foreseeable threat – 3 points) following a visit from with the garden itself the outcome would still have been a score of 15, which according to TEMPO would define the TPO as 'defensible', i.e. the TPO would still have been proposed.
- 8.61 "On 27th May 2021 the Tree Preservation Order set out in respect of amenity that the tree *'makes a significant contribution to the character and appearance of the area when viewed from the main road when passing through the village. It is attractive in form and removal of the tree would be detrimental to the amenity of the area.'* The tree is in our rear garden at The Redings and the view of it from The Green is very narrow and limited to a restricted area between The Hollies and The Green directly opposite The Redings, (this can be seen on the map included with the TPO) outside of this area the tree cannot be seen due to the presence of; many other village features, village and garden trees, other foliage, buildings and the elevation of the land from North to South. The TEMPO assessment records the fact that the tree is large and clearly visible to the public attracting a score of 4 where a score of 3 or possibly 2 may have been more appropriate in that this includes 'medium or large trees with a limited view only' because only the top part of the crown can be seen from the road as the stem/trunk is fully obscured by garages at The Redings (photo attached). The rear garden abuts farmland used to graze animals therefore there is very limited amenity from the rear of the property. All of these factors were present for consideration by the LPA in August and September 2020 if a TPO was to be made."
- 8.62 **Part 1 (c) Relatively public visibility & suitability for TPO**  
The tree was originally scored (4) 'Large trees, or medium trees clearly visible to the public'. A 14m high tree is in my view a large tree, however in retrospect given that the tree is partially obscured by the garage and house I would accept a reduced score of 3 and would be a fairer description, i.e. 'Medium trees, or large trees with limited view only'.
- 8.63 "Unfortunately, because the TPO was sent to neighbours we and our tree have become infamous and the talk of the village with neighbours actually knocking on our door to speak with us. They are completely perplexed and dumbfounded by the 'overbearing' actions of the LPA. They are unconcerned about the tree in our garden and its future."

**8.64 Under Section 198 of the Town and Country Planning Act 1990 Local Authorities may make TPOs if it appears “expedient in the interests of amenity to make provision for the preservation of trees”. I therefore don’t agree that the Council has been “overbearing” in our actions.**

8.65 “As we are relatively new to the village I am reluctant to intrude, canvas opinion and ask neighbours to write letters in support of us, for that reason it’s unlikely that neighbours will have made their feelings known to the LPA.

**8.66 Conclusion**

8.67 Documents pertinent to the planning application were not publicly available on the Planning Portal.

8.68 The LPA received a TPO application on 4<sup>th</sup> September 2020 and took almost 9 months to deal with application despite amenity and expedience being present throughout that time as on 27<sup>th</sup> May 2021. There were a number of occasions in that time when a TPO could have been made.

8.69 The LPA did not visit the site prior to making the TPO therefore the TEMPO assessment was incomplete and did not include factors and information relevant to decision making.

8.70 The tree in the rear garden of The Redings is a significant size, it has been allowed to grow out of control without routine maintenance, its impact on the property in respect of shade and light should be weighted and considered in decision making in particular the issue of whether it has outgrown its context.”

**8.71 I agree that the tree has not received routine maintenance and would support applications to carry out remedial pruning such as crown lifting, crown thinning and drawing back branches away from the orangery. This may also allow better light penetration to the garden in the latter part of the day. I advised the owner this on the day of my visit to the property on 25<sup>th</sup> June 2021.**

8.72 “Mr Stubbings acknowledges and in fact sets out in writing (Annexe D) that the tree is difficult to manage, he says *‘leaf fall, sap, seeds and overhanging branches a persistent nuisance that will not be resolved through remedial pruning as well as presenting a subsidence risk.’* “

8.73 My comments were in relation to the effect of the proposed extension at The Rise. The overhang and issues at The Redings is not so acute and could also be rectified through sympathetic pruning.

8.74 “It those issues are relevant to the building next door they are also relevant and worrying for us due to the proximity of the tree to our home ie just 6.7m.

8.75 We appeal to your sense of fairness and justice and request you do not confirm the interim TPO. We appreciate this would be a highly unusual step but the circumstances of the TPO being made are very unique. In summary the previous occupant actively sought to protect the tree during a planning disagreement and then moved out of the property. The person originally seeking to protect the tree has long since left the village and only the LPA now sees its value and amenity in a village with extensive trees and



greenery, however we as the new owners will have to manage this situation for the time we live here.

8.76 Finally, it seems perverse and contradictory that referring back to the written comments made by Mr Stubbings regarding; nuisance, subsidence, overhanging branches and associated debris and detritus the TPO disempowers us from managing the tree and making decisions about its maintenance and future.

8.77 In reaching your decision if it would assist to see the tree in the garden I would be very happy for you to visit our property.”

## **9.0 Other factors**

Whilst the ability of trees to carbon capture and provide wildlife habitats are not a material considerations in the confirmation of TPOs it is of note that mature trees such as Lime provide essential habitat for birds and other wildlife and throughout its life typically absorbs over a tonne of CO<sup>2</sup>.

## **10.0 Conclusion**

10.1 The Local Planning Authority has considered these duly made representations and provides detailed responses in section 9.

10.2 In making the Order in the first instance, the Local Planning Authority sought to evaluate the trees at The Redings. T1 was considered to be worthy of a TPO.

10.3 Since the time that the order was made, although not considered to be of sufficient quality to receive protection, T2 Blue Lawson Cypress and G1 2no. Golden Leyland Cypresses have been removed.

10.4 In confirming the TPO the Council seeks to retain a tree that it at risk of being removed, which would be a loss to the amenity and a detriment to the area.

10.5 It has been shown that there has been no abuse of process.

10.6 Issues of shade are a result of a lack of historic tree maintenance which at least in part could be improved through remedial pruning.

10.7 The significant amenity value that T1 provides and will continue to provide in future to the locality is considered to justify the making, and confirming of a TPO, when weighed against the objections put forward. This is borne out by the high score the trees achieve in the Tree Evaluation Assessment from 27.05.21 (Annexe 13) and follow-up assessment (Annexe 12).

10.8 Support from the Howardian Hills AONB Manager adds weight to the view that the tree is worthy of TPO.

10.9 No objections to the Order were received from NEIGHBOURS, DISTRICT COUNCILLORS.

10.10 Huttons Ambo Parish Council have been consulted and will provide a response after the meeting on Wednesday 17th November 2021.

10.11 **It is recommended that the Order is confirmed without modification.**

## **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)  
No other implications identified

## **12.0 NEXT STEPS**

- 12.1 The 23.11.2021 Planning Committee will consider the recommendations of the Working Party at its next 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.

**Gary Housden**  
**Head of Planning**

**Author: Matthew Stubbings, Tree & Landscape Officer**

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

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### **Annexes:**

Annexe 1- (Provisional) TPO No. 353/2021

Annexe 2 – TPO 353 - tree location plan

Annexe 3 - TLO comments re 20-00628-HOUSE 27.08.2020

Annexe 4 - Images of the trees at The Redings

Annexe 5 - TEMPO-GuidanceNotes

Annexe 6 - Barnes Associates Tree Report

Annexe 7 – Emailed support for TPO from AONB Manager

Annexe 8 – Documents submitted from tree owner, including:

- Householder Objection
- Annexe A - Planning Objection to 20-00628-HOUSE
- Annexe B - DUPLICATE -of Annex 5 - Tree Report YO60 7HF
- Annexe C Pt1
- Annexe C Pt2
- Annexe C Pt3
- Annexe C Pt4
- Annexe C Pt5
- Annex D Mr Stubbings comments re 20-00628-HOUSE 27082020

Annexe 9 – Redacted email exchange between Case Officer for 20-00628-HOUSE and planning agent

Annexe 10 - Conditions for the protection of T1 from decision notice for application 20/00628/HOUSE

Annexe 11 – TPO Evaluation Request Form

Annexe 12 – 2<sup>nd</sup> TEMPO Tree Evaluation

Annexe 13 – 1<sup>st</sup> TEMPO Tree Evaluation