

# Tree Preservation Order - 353/2021

## Householder objections to the TPO

Dear Working Party Chair/Member,

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.

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.

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.

The grounds for objection to the TPO are:

- (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).
- (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.

### Summary

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.

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.

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.

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.

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.

#### (1) Abuse of Process

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.

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.

In the document titled Planning Objection prepared by Gallagher Planning Consultancy (Annex 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.*'

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.*' 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.

On 4th September 2020 a further report was prepared by Barnes Associates on behalf of Mr and Mrs Ingram (Annex 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:

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.'*

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.'*

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. 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 expediency arguably being present at that time if it was present in May 2021.

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.

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.

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.

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

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 Annex 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, (Annex 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.

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.* 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.

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.

On 27<sup>th</sup> 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.

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. 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.

## Conclusion

- Documents pertinent to the planning application were not publicly available on the Planning Portal.
- 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.
- 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.
- 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.
- Mr Stubbings acknowledges and in fact sets out in writing (Annex 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.*' 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.

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.

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.

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.

Yours faithfully,

**Mrs Jane Johnson QPM**  
**Mrs Clare Messer**