

## LOCATION PLAN



Map not to scale – for identification purposes only

**Electoral Wards Affected:** Dewsbury West

### **RECOMMENDATION:**

DELEGATE approval to confirm Tree Preservation Order 02/17, Ravens Lodge Terrace, Huddersfield Road, Dewsbury WF13 3EF as served.

## **1.0 INTRODUCTION:**

- 1.1 The purpose of this report is for Members to consider an objection against the making of Tree Preservation Order (TPO) 02/2017, Ravens Lodge Terrace, Huddersfield Road, Dewsbury WF13 3EF and delegate authority to Officers to confirm the Order as opposed.
- 1.2 The TPO legislation requires that all TPO's have a 28 day period within which objections can be made. Any objections received must be considered before the TPO can be confirmed and therefore made permanent.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The properties affected by the TPO are Nos. 2-8 Ravens Lodge Terrace which is adjacent to Huddersfield Road in Scout Hill. The four trees included within this Order add high amenity value to the area which has a limited number of mature trees. The few trees that are present along this section of Huddersfield Road are in Council ownership and not under threat.

## **3.0 BACKGROUND:**

- 3.1 A planning application (ref.2016/93684) has been submitted for development at No.8 Ravens Lodge Terrace, Huddersfield Road, which had implications for the tree outside No.8. This planning application has since been granted.
- 3.2 These large individual trees are a prominent landscape feature positioned as they are adjacent to Huddersfield Road. For this reason they provide significant public amenity. A large mature tree had recently been felled in the rear garden of No.8. To protect the integrity of these trees and the public amenity they afford a new Tree Preservation Order (TPO) was made on 5th January 2017. TPO 02/17 was served by recorded delivery on 5<sup>th</sup> January 2017 to all interested parties, i.e. homeowners and neighbours where trees overhang a boundary line. (A copy of the Order is included in the Supporting Papers)

## **4.0 REPRESENTATIONS:**

- 4.1 In response to this Order one objection has been received from the owner of No.8 Ravens Lodge Terrace regarding the tree at the front of their property. The objection was on the following grounds:
  - i. A planning application for a driveway in front of the property and had intended to get remove the tree.
  - ii. The tree was blocking light from the property
  - iii. Damp conditions within the house
  - iv. Falling branches during bad weather
  - v. Overgrown tree and complaints from neighbours
  - vi. Son suffers from hayfever, asthma, allergies and plants.(A copy of the objection email is included in the Supporting Papers)

## **5.0 RELEVANT PLANNING HISTORY:**

- 5.1 2016/93684 – Erection of two storey extension to side and alteration to pavement – Approved

## **6.0 HISTORY OF NEGOTIATIONS:**

- 6.1 In light of the objection a letter was sent to the owner setting out the reasons for the Order and re-butting the reasons raised. In brief they are; the tree to the front of No.8 was shown as retained in the planning application 2016/93684; it was explained that light loss would not be a justification for the removal of these trees and the public amenity value they provide; hayfever can be caused by tree pollen however this typically lasts only 2-3 weeks of the year due to their flowering period; there were other trees in the immediate vicinity which would also contribute to the above and therefore the removal of this one tree would not solve the problems. It was hoped that this explanation would appease the objection raised. (A copy of the response to the objection is included in the Supporting Papers)
- 6.2 Having explained the reasons for the Order in greater detail to the Objector no formal response was received either accepting the TPO or relating to the status of their objection. A phone conversation occurred where further explanation was offered to explain that the tree will not prevent the proposed changes to the property and that mature trees have been shown to reduce the levels of pollutants in their immediate vicinity.

## **7.0 PLANNING POLICY:**

- 7.1 N/A

## **8.0 PUBLIC/LOCAL RESPONSE:**

- 8.1 N/A

## **9.0 CONSULTATION RESPONSES:**

- 9.1 N/A

## **10.0 MAIN ISSUES**

- Reason for making the TPO
- Objection received

## **11.0 APPRAISAL**

### Reason for Making the TPO

- 11.1 To protect and preserve the amenity value of trees and woodlands within the district that are under threat of removal or destruction to satisfy responsibilities under the Town and Country Planning Act.

## Objection Received

- 11.2 The Objector states a number of reasons that they feel the TPO should not be confirmed. The main one being that it will impede their plans, which were subject to a planning application at the time. The application has since been approved and works to the front and side of the property have commenced which the tree in front of No.8 has not prevented.
- 11.3 Concerns were also raised regarding the health of their son and asthma, hayfever and allergies. Tree pollen related hayfever will only affect people for the two to three weeks of the year that trees flower and studies have now shown that trees help reduce pollution particulate levels (a major cause of asthma).
- 11.4 Another reason given in the email objecting to the TPO was that branches fall from the tree during bad weather causing damage to their parked vehicles. Mature trees require maintenance much the same as any part of a property. Regular maintenance will minimise this and would be expected of any tree owner.

## **12.0 CONCLUSION**

- 12.1 The Order is warranted and justified due to the amenity value the trees provide. The points raised by the Objector do not override the benefit of confirming the Tree Preservation Order and it is believed that the Order should be confirmed.

### **Background Papers:**

Copy of The Tree Preservation Order, as served

Copy of the objection email

Copy of the response to the objection

Photos

5<sup>th</sup> January 2017

Our Reference: DEV/SJH/SG/D26-1293

## MEMORANDUM

To: Trees Section  
Investment & Regeneration  
Civic Centre III  
Huddersfield

**Tree Preservation Order No 2 2017**  
**Ravens Lodge Terrace, Huddersfield Road, Dewsbury WF13 3EF**  
**Grid Reference: SE 234 208**

I enclose a copy of the above Order together with a copy of the Notice served on those affected by it.

**Sandra Haigh**  
**Legal Officer**  
**for Assistant Director – Legal, Governance and Monitoring**

# TOWN AND COUNTRY PLANNING ACT 1990

## THE KIRKLEES COUNCIL TREE PRESERVATION ORDER NO 2 2017

The Kirklees Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order –

### Citation

1. This Order may be cited as “The Kirklees Council Tree Preservation Order No 2 2017

### Interpretation

2. (1) In this Order “the authority” means the Kirklees Council
- (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012

### Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made
- (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall –
  - (a) cut down, top, lop, uproot, willfully damage, or wilful destroy; or
  - (b) cause or permit the cutting down, topping, lopping, willfully damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted

Dated this 5 January 2017

THE CORPORATE COMMON SEAL of )  
THE COUNCIL OF THE BOROUGH )  
OF KIRKLEES was hereunto affixed )  
in the presence of: )



\_\_\_\_\_  
Assistant Director – Legal, Governance & Monitoring/Authorised Signatory

## CONFIRMATION OF ORDER

This Order was confirmed by Kirklees Council without modification on the \_\_\_\_\_ day  
of \_\_\_\_\_ Two thousand and \_\_\_\_\_

OR

This Order was confirmed by Kirklees Council, subject to the modifications included  
in red ink on the \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and \_\_\_\_\_

Signed on behalf of Kirklees Council

\_\_\_\_\_  
Authorised by the Council to sign in that behalf

## DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Kirklees Council on the \_\_\_\_\_ day  
of \_\_\_\_\_ Two thousand and \_\_\_\_\_

Signed on behalf of Kirklees Council

\_\_\_\_\_  
Authorised by the Council to sign in that behalf

## VARIATION OF ORDER

This Order was varied by Kirklees Council on the \_\_\_\_\_ day of \_\_\_\_\_ Two  
thousand and \_\_\_\_\_ by a variation order under reference number a copy of which  
is attached

Signed on behalf of Kirklees Council

\_\_\_\_\_  
Authorised by the Council to sign in that behalf

## REVOCATION OF ORDER

This Order was revoked by Kirklees Council on the \_\_\_\_\_ day of \_\_\_\_\_  
Two thousand and \_\_\_\_\_

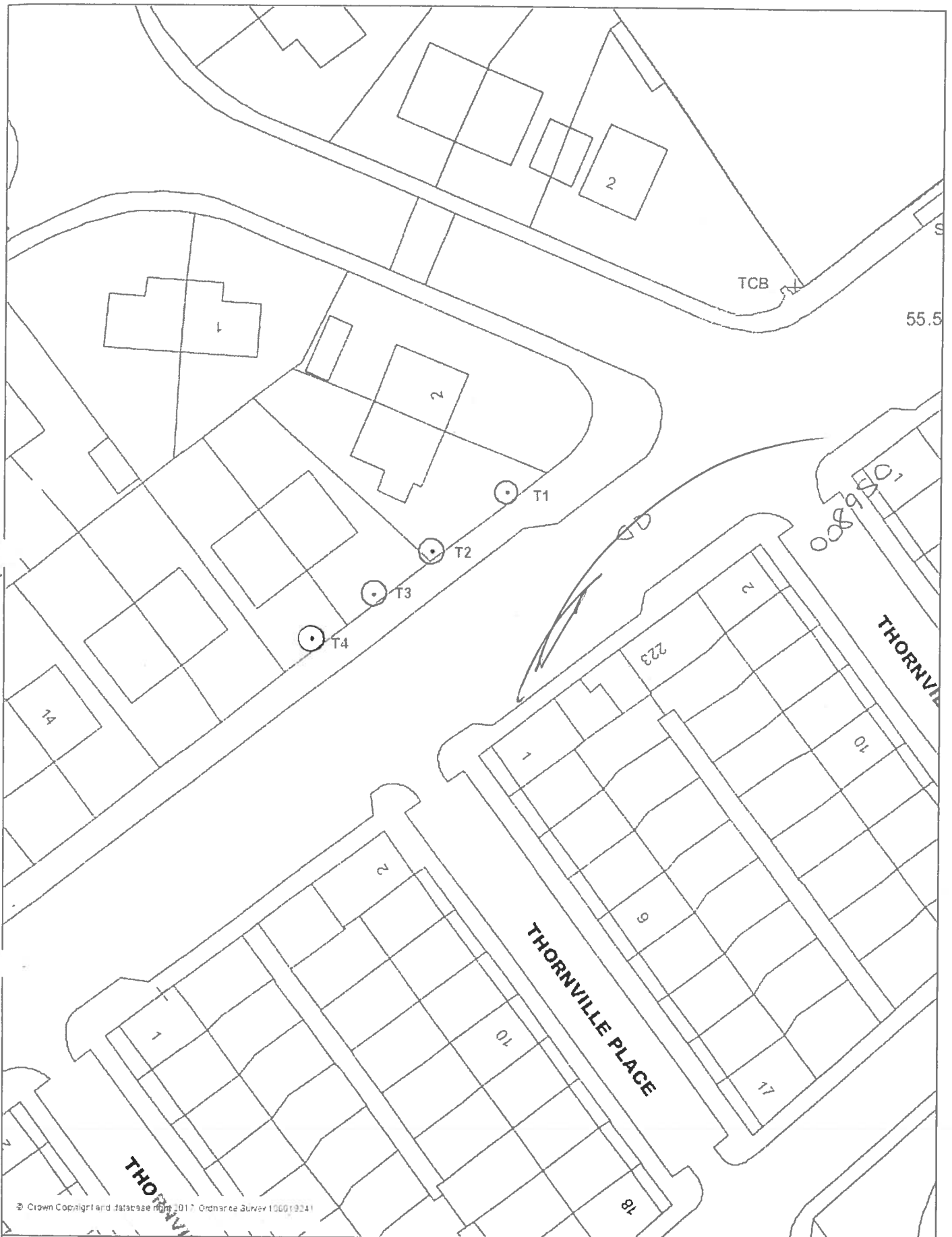
Signed on behalf of Kirklees Council

\_\_\_\_\_  
Authorised by the Council to sign in that behalf

## SCHEDULE 1

### SPECIFICATION OF TREES

<b>Trees specified individually</b> (encircled in black on the map)		
Reference on map	Description	Situation
T1	Sycamore	To front of No.4
T2	Sycamore	To front of No.4
T3	Sycamore	To front of No.6
T4	Sycamore	To front of No.8
<b>Groups of trees</b> (within a broken line on the map)		
Reference on map	Description (including number of trees in the group)	Situation
None	None	None
<b>Woodlands</b> (within a continuous black line on the map)		
Reference on map	Description	Situation
None	None	None



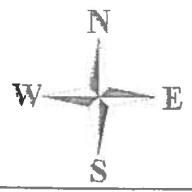
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**Kirklees**  
COUNCIL  
**Kompass**  
Kirklees Mapping Service  
Tel: 01484 221757  
(Internal 890 1757)  
E-Mail: maps@kirklees.gov.uk

Tree Preservation Order No. 2 2017 - Ravens Lodge  
Terrace, Huddersfield Road – GR SE 234 208

0 m    10 m    20 m

Scale 1 : 500



## EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which apply in relation to England only, substantially revoke and replace the Town and Country Planning (Trees) Regulations 1999, to the extent to which they apply to England. This also revokes the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No 2) (England) Regulations 2008.

Part 2 prescribes the form of tree preservation orders and the procedure for their making, provisional effect, confirmation, variation and revocation. The prescribed form is set out in the Schedule to the Regulations.

Part 3 of the Regulations sets out prohibited activities in relation to a tree protected by an order and exceptions. Under regulation 13 a tree protected by a tree preservation order may not be cut down, topped, lopped, uprooted or willfully damaged or destroyed without the consent of the local planning authority, unless an exception applies. These exceptions are set out in sections 198(7) and 200(1) of the Town and Country Planning Act 1990, and in regulation 14 of the Regulations.

Section 198(7) provides exceptions relevant to section 39(2) of the Housing and Planning Act 1986 (c.53) (saving for effect of section 2(4) of the Opencast Coal Act 1958 (c.69) on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c.10) (licences under that Act to fell trees comprised in a tree preservation order).

Section 200(1) provides that a tree preservation order does not have effect in respect of anything done by or on behalf of Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision or anything done by or on behalf of any other person under a plan of works approved by the Forestry Commissioners under a forestry dedication covenant (as defined in section 5 of the Forestry Act 1967) or under conditions of a grant or loan made under section 1 of the Forestry Act 1979 (c.21).

Regulation 14 contains exceptions to the requirement for consent and regulation 15 contains exceptions for trees in conservation areas.

Part 4 of the Regulations prescribes the procedure for applications for consent under tree preservation orders.

Part 5 prescribes the procedure for appeals and for their determination. Regulation 19 grants a right of appeal in respect of a refusal to grant consent, a grant of consent subject to conditions or a failure to determine an application for consent within the prescribed time period.

In Part 6, regulation 24 provides for compensation claims, subject to exceptions, to be made where loss or damage has been incurred as a consequence of a refusal to grant consent, a grant of consent subject to conditions or a refusal of approval under a condition.

Part 7 contains miscellaneous provisions. Regulation 25 provides that the prescribed time for the purposes of sections 206(1)(b) (replacement trees) and 213(1)(b) (enforcement of controls as respects trees in conservation areas) is

whenever the cutting down or uprooting of a tree is authorised only by virtue of regulations 14(1)(a)(i) or 14(1)(c) (dead or dangerous trees).

Regulation 26 revokes the Town and Country Planning (Trees) Regulations 1999, the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No 2) (England) Regulations 2008, subject to transitional transitory and saving provisions in respect of certain classes or order. This regulation also saves regulation 17 of the Town and Country Planning (Trees) Regulations 1999 (amendment to the Town and Country Planning General Regulations 1992).

Under section 193 of the Planning Act 2008 (c.29), all tree preservation orders made prior to the date on which these Regulations come into force take effect with the omission of all of their provisions other than any that identify the order or identify the trees, groups of trees or woodlands to which the order applies.

A full impact assessment of the effect that this instrument will have on the costs of business, charities and the voluntary sector has been prepared in relation to these Regulations. The assessment has been placed in the Library of each House of Parliament and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). The assessment may also be accessed at [www.communities.gsi.gov.uk](http://www.communities.gsi.gov.uk).

## Nick Goddard

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**From:** Sandra Haigh  
**Sent:** 23 January 2017 13:15  
**To:** Nick Goddard  
**Subject:** FW: Ref:DEV/SJH/SG/D26-1293

Nick

I am forwarding this emailed objection and would be grateful if you could respond to Mr Asif.

Regards

Sandra Haigh  
01484 221000

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**Sent:** 23 January 2017 12:48

**Subject:** Ref:DEV/SJH/SG/D26-1293

Dear madam

I would like to make objection against the tree preservation order No 2 2017, as it is on a private property which I have recently purchased, I have submitted a planning application for an extension and driveway to this property which has been successful. I intend to have a driveway in front of property and this tree is in the way so intend to get rid of it. I did enquire with council for the other trees in garden which I have got rid of and was told there was no restrictions on them and was planning to get rid of this too but was waiting for a reply for my planning application. The tree is also a major obstruction to my property as it is blocking any light coming to the property as it covers the whole front of the house. The property is already in a bad state of repair and damp conditions within the house. It is a very overgrown tree which neighbours also have complained to me with branches falling into their gardens in bad weather conditions causing damage to their vehicles parked. My son also suffers from hayfever asthma and allergies, he has allergy to plants the tree has insects falling off it during summer which cause irritation to skin. So please consider my concerns and not allow this order to take effect.

Thanks  
Mohammed Asif  
Owner 8 Ravens lodge Terrace

Sent from my Samsung device

**Planning**

Investment and Regeneration  
PO Box B93, Civic Centre 3,  
Off Market Street, Huddersfield, HD1 2JR

Tel: 01484 414909

Email: [trees.planning@kirklees.gov.uk](mailto:trees.planning@kirklees.gov.uk)

Enquires to: Nick Goddard

Date: 23<sup>rd</sup> January 2017

Our Ref: TPO 02/17

Mohammed Asif  
8 Ravens Lodge Terrace  
Scout Hill  
Dewsbury  
WF13 3EF

Dear Mr Asif

Thank you for your correspondence regarding the Tree Preservation Order 02/17. Your comments will be taken into account and recorded as a formal objection regarding the inclusion of T4 in the order.

The reason given for making the order was that a planning application has been received for this property and the application may have an adverse effect on tree T4. Considering the removal of the tree to the rear of your property we have deemed it necessary to protect the four trees along Huddersfield Road due to the amenity value they provide to users of this busy road.

The tree, T4, to the front of your property was shown as retained on your plans submitted with your planning application (2016/62/93684/E) and it was therefore considered that the trees should be protected to ensure that first of all the tree was considered during the construction of a new drive and rear extension but also for the long term amenity value it provides.

Landowners have a duty of care in both civil and criminal law to take reasonable management measures to avoid foreseeable injury or harm caused by their trees. It is worth noting though that there is well-established case law upholding the principle that the standard of the duty of care varies according to the resources available to the landowner; meaning that a small landowner would not be expected to maintain as high a standard of management as a country estate or hospital trust for example.

With regards to your comments regarding light loss please consider that in law light loss would not be justification for the removal of these trees and the public amenity they provide. Please also note that while pollen from trees can cause hay fever this is a seasonal issue; tree pollen is only produced for a very limited period in spring. Additionally there are multiple trees in the area which will contribute to the pollen in your area so the loss of this tree will not significantly reduce the issues described.

Given your tree's position on Huddersfield Road and being one of four trees with high visual amenity in a row I would be pleased if you now felt able to formally withdraw your objection. If you do, please let me know in writing within the next 30 days.

If you do not wish to withdraw your objection then you need take no further action and I will write up your objection in my report before a decision on the confirmation of the TPO is made.

Yours Sincerely

Nick Goddard  
(Tree Officer)