Cheltenham Borough Council Planning Application ref. 20/00683/OUT:
Ancient Tree Forum (ATF) comments of 15.06.20

<u>Project Arboriculturist's Response</u>

Note

The ATF comments are difficult to reference in their original form due to lack of page and paragraph numbering: this response should be read in conjunction with a marked-up version of the ATF document, to which paragraph numbers have been added.

Responses below are enumerated in like numbering to the paragraphs to which they refer.

For reference, we insert here the NPPF definition for ancient and other veteran trees:

A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

1. In this paragraph the ATF introduces itself as, in effect, a single-issue pressure group. Whilst we support the principle of protection for important trees, one must not lose sight of the need for the application of objectivity when identifying which these are. In our view, the generally laudable concern shown for such trees by the ATF is potentially a difficulty where it impairs objective judgment. The extent to which this has occurred in this case will be explored below.

2. We disagree that any tree has been wrongly excluded from the list of those identified as veterans. The ATF is here rehearsing the central allegation of the Woodland Trust put before Inspector Sims last year (PINS ref. APP/B1605/W/19/3227293), namely that our ancient, veteran and notable tree recognition system (RAVEN) is not fit for purpose. This matter was ventilated at length at the 2019 Inquiry, further to which Inspector Sims concluded in his Decision Letter (paragraph 58) that RAVEN *was* suitable, and accordingly all ancient and other veteran trees had indeed been correctly identified.

3. 1) The ATF is here seeking to interpret the NPPF in a way that the text of this document does not support, including by cherry-picking and/ or selective quotation. For example, the ATF correctly notes that the NPPF definition for veteran trees states that they do not need to be old enough to be ancient (i.e. ancient trees are the oldest subset of veteran trees), whilst omitting to point out that the NPPF requires veteran trees to be those that are *old relative to others of trees of the same species*. Thus, there is no such thing as a young veteran tree, where young here refers to comparison to others of its kind.

2) The species of the trees with which the ATF takes issue are pedunculate oak (*Quercus robur* L.), a species which in England is known to live to 800 - 1000 years. Given that the vast majority of such trees in England are younger than 200 years old, it is clearly irrational to suggest that one can qualify as a veteran within the NPPF criterion of *old relative to others trees of the same species* at much less than this age.

3) The ATF comments state in terms that they are an *interpretation* of the NPPF, however where the interpretation seeks to ignore a key element of the applicable definition, it should more accurately be described as a *distortion*. For example, the suggestion that trees can qualify based on condition-related features alone (the ATF cites branch death and hollowing), ignores the other two elements of the NPPF definition: age and size. Any assessment of a tree for veteran potential that fails to take these other factors into proper account, is not one undertaken in harmony with the NPPF definition and will, therefore, lead to false positive identifications. It is clear that this is precisely what the ATF has done in this case.

4. In this paragraph the ATF seeks further to expand the definition of veteran tree to any tree which has decay features and is mature or ancient. Clearly, if a tree has veteran features and is ancient, it is by definition a veteran. However, the suggestion that "mature" trees with "decay features" are veterans once again ignores the age and size criteria required by the NPPF definition.

5. 1) The ATF objects to the inclusion within the RAVEN method of very large stem girth (for species) as a gateway feature for consideration of veteran status. However, in doing so it ignores: the size element of the NPPF definition; a significant body of published advice, including its own recommendations[1]; the unbreakable biological link between increasing age and increasing stem girth; and thus also the age-related criterion in the NPPF definition.

   2) Notwithstanding this, the ATF omits to mention that RAVEN allows for cases where trees of smaller girth (due to stunted growth) can qualify as veteran trees, where they still meet the age and condition criteria (albeit no such under-sized trees qualify here).

6. No response required.

7. 1) In relation to 3010, the ATF states that it exhibits features which meet the criteria for veteran identification. Once again, the ATF ignores that fact that the NPPF sets out three criteria for veteran status: age and size and condition, all of which must be present simultaneously.

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[1] *Ancient and other veteran trees*, Lonsdale D, Ancient Tree Forum 2013, pub. The Tree Council

2) The ATF states that: *although it is the view expressed in the tree survey that this tree may not survive long term, there is no indication why it is judged not to be able to survive long-term nor what time period that might be.* This statement is straightforwardly false: in the tree survey entry for 3010, we recorded that:

> *Physiological condition and vitality coupled with structural condition considered likely to limit long-term retention prospects*.

The survey entry also records its estimated remaining longevity at 20 years.

3) In any event, tree 3010 is neither old relative to others of its kind, nor large and so it fails both the other two NPPF criteria, irrespective of condition and remaining longevity. In relation to its age, using the accepted White Method, we put this at 138 years (likely range 130-150). Even the upper end of this likely range is less than 20% of the lower end of the range for the species maximum (150/800*100 = 18.75%). Accordingly, it cannot rationally be advanced that 3010 is *old relative to other trees of the same species*. In relation to size, its unimpressive stem diameter of 930mm is well under the threshold size of likely onset of veteran status published by the ATF itself[2].

4) 3010 is not a veteran tree and accordingly does not require a 15x stem diameter buffer zone.

8. Tree 3014 can be addressed in like manner to 3010. Whilst it does have features that can be associated with veteran trees, in order for it to meet the definition required by the NPPF for the associated protective policy to apply, it would have to be both larger and older. Here, again, the ATF is seeking to cherry-pick only one of the three stipulated criteria. To reiterate, its suggestion that a tree is a veteran if merely mature and possessed of veteran features is a distortion of the NPPF. This is not to say that the features are not of some value, but unless they are of *exceptional* value (which they are not), then the protective policy does not apply.

9. In this paragraph the ATF suggests that other veteran trees may also be present, a notion that they derive from what they describes as the *citizen science project* known as the Ancient Tree Hunt. Whilst we note in passing the hyperbolic description of tree measuring and recording by hobbyists as "science", our NPPF-based approach, which was subjected to the scrutiny of the Inquiry process and validated by the appeal decision, has <u>not</u> overlooked any veteran trees on this site.

10. It follows from the above that there is no need to undertake any further veteran tree survey on the application site.

11. This paragraph, which comprises relevant extracts from the NPPF relating to veteran trees, requires no response.

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[2] Op.cit.

12. This paragraph sees the first narrative acknowledgement that the NPPF definition relates to <u>three</u> criteria, not just one (condition). Unfortunately, the ATF advises that *there is no guidance* [in the NPPF definition] *on the parameters of age (except that veterans can be younger than ancient trees).* This statement is straightforwardly false: as we point out above, the definition states <u>in terms</u> that veteran trees are those which are *old relative to other trees of the same species*. The fact that the ATF seeks to obscure this part of the NPPF definition is sadly consistent with the potential for impaired judgment to which we have already referred.

13. No response required.

14. 1) In this paragraph, the ATF considers guidance in addition to that found in the NPPF. In relation to the PPG, the ATF says that this guidance is as follows:

> *Veteran trees may not be very old but exhibit decay features such as branch death or hollowing. <u>Trees become ancient or veteran because of their age, size or condition.</u> <u>Not all of these three characteristics are needed to make a tree ancient or veteran as the characteristics will vary from species to species</u>.* Our underlining.

2) It will be apparent that the underlined text is not consistent with the definition in the NPPF, with three divergences being present:
   i)   The PPG omits the requirement for veteran trees to be *old relative to other trees of the same species*;
   ii)   The PPG rewords the NPPF so as to change the additive construct of the latter (age *and* size *and* condition), to an alternative construct (age *or* size *or* condition);
   iii) Finally, the PPG then states explicitly that not all three criteria have to be present for the veteran descriptor to apply.

3) From the foregoing it is apparent that there is a tension between what is said in the guidance and the policy. The policy, read objectively, is to be given precedence. Insofar as this was the settled conclusion of the recent appeal on this site, we have, unfortunately, been here before.

4) Finally, the ATF draws attention to and quotes from the FC/ NE Standing Advice. We wish to draw attention to and comment on one particular aspect of this guidance. The Standing Advice includes the following: *A veteran tree may not be very old, but it has decay features, such as branch death and hollowing. These features <u>contribute</u> to its biodiversity*. Our underlining.

5) What must not be forgotten when considering whether a tree qualifies as a veteran is the purpose of identifying it as such: this purpose is the protection of exceptional biodiversity (and/ or other) value. It is <u>only</u> where a tree has exceptional value that it merits the exceptional protection at NPPF 175c.

6) In relation to irreplaceable habitat trees, therefore, the NPPF's clear purpose may be summarized simply as 'exceptional protection for exceptional value'. Thus, for the Standing Advice to cite merely *contributory* biodiversity value is a significant departure from the NPPF. As with the PPG, the Standing Advice is subordinate to the NPPF, and the Standing Advice should be read with this in mind.

15. No response required.

16. No response required.

17. In this paragraph, the ATF again seeks to mislead by cherry-picking. The response states: *according to the* [NPPF] *glossary, a veteran tree does not need to be old enough to be ancient*. Once again the ATF omits the fact that the glossary also requires such trees to be old relative to their kind.

18. No response required.

19. Here, at last, the ATF agenda becomes apparent: it seeks nothing less than the reclassification of all mature trees with decay features as veterans. There are several aspects to this which are badly wrong:
    i) Mature trees with branch death and hollowing are relatively commonplace compared to actual veteran trees;
    ii) Contrary to the ATF's explicit assertion, mature trees are <u>not</u> "irreplaceable habitat";
    iii) The effect of the attempted reclassification of mature trees as veterans would be to vastly expand the number of trees attaining veteran status;
    iv) This is very clearly not the intention of the NPPF, which as we note seeks to afford exceptional protection to exceptional value.

This completes our review of and response to the ATF's comments on the present planning application. We conclude by urging that no material weight should be attached to this organisation's comments. With respect to the ATF, these arguments were rehearsed in front of the Planning Inquiry Inspector: his conclusion was that our interpretation and approach to veteran tree identification are appropriate.

Forbes-Laird Arboricultural Consultancy

24 June 2020

Ancient Trees Forum (Neutral)
Comment submitted date: Mon 15 Jun 2020

1 The Ancient Tree Forum (ATF) is a charity which has pioneered the conservation of ancient and veteran trees and their associated habitats such as ancient wood pasture and parkland. The ATF seeks to secure the long-term future of ancient and veteran trees and associated habitats through advocacy of no further avoidable loss, good management, the development of a succession of future ancient and veteran trees, and seeking to raise awareness and understanding of their value and importance.

2 The ATF objects to this application because the way veteran trees have been identified means that trees, which should be protected by planning policy and meet the criteria set out by the guidance (National Planning Policy Framework glossary (2018), Standing Advice (2019) and Planning Policy Guidance (2019)), have been wrongly excluded. They are a significant factor in considering this application.

3 We set out our rationale for identification of ancient and veteran trees in relation to NPPF in Annex 1. In line with the government guidance, it is our view that for a tree to be categorised as a veteran, it should primarily have key decay features (including branch death or hollowing) and such features should be substantial by volume (in proportion to the size of the tree), long-lasting and/or significant (in terms of quality). NPPF glossary states that a veteran tree does not need to be old enough to be ancient but does not define any specific size or age criteria to be met. However, it is our interpretation of the guidance, that for the condition of the tree (decay features of branch death or hollowing) to be judged as irreplaceable habitat, a veteran tree will usually be in either a mature or ancient life-stage owing to the time taken and complexity of the habitat to develop.

4 The ATF therefore interprets the guidance to mean that trees which have the appropriate key decay features and are also mature or ancient should be considered as irreplaceable habitat and are the trees to which the policy in para 175c of the NPPF applies.

5 We strongly disagree with the categorisation methodology used in the tree survey. The first step of the applicant's tree consultant's methodology is to eliminate trees which do not have a "very large girth" before consideration of veteran characteristics. In our view this step is not justified by NPPF or other government guidance.

6 It is our view that at least two trees should be re-categorised as irreplaceable veterans and protected from harm by appropriate buffer zones. They are the mature trees numbered T3010 and T3014

7.1 The Tree Survey states that T3010 is mature tree and has "Fistulina hepatica fruiting body on root buttress at ground level east. Laetiporus sulphureus on old branch loss wound at 2 metres south. Numerous habitat holes within branch structure indicating heartwood fungal decay is well progressed." Decay or hollowing evidenced by heart-rot decay fungi is a clear criterion for veteran categorisation and the applicant's tree consultant accepts this too. Although it is the view expressed in the tree survey that this tree may not survive long term, there is no indication why it is judged not to be able to survive long-term nor what time period that might be. There is no reference to life expectancy/longevity of the tree in the NPPF and therefore this should be disregarded in categorising a tree as a veteran. The extra protection that a buffer zone would provide, and should be allocated to this tree, would mitigate the possibility of deterioration

7.2 resulting from development pressures - the very purpose for which it is intended. According to Standing Advice the Buffer Zone should be "at least 15 times larger than the diameter of the tree. The buffer zone should be 5m from the edge of the tree's canopy if that area is larger than 15 times the tree's diameter." Due to the proximity of this tree to proposed buildings the Buffer Zone may need to be greater than the minimum to avoid future intervention on the grounds of risk.

8 Tree number 3014 is recorded as OM/over-mature in the survey. It is recorded as having a stem diameter of 930mms and in the Raven assessment as 148 years old and not of an 'age or size to merity veteran descrptor'. We assume the OM label is a erro.r However, it is recorded as mature and having "bark wounding after historic lightning strike seen as broad tongue of bark loss from ground level south extending into upper crown structure, exposed and desiccated non-functional heartwood within the affected stem section comprises large volume dead wood Scattered dead wood and smaller distal decline." It is quite clear from this description and images on the Ancient Tree Inventory that the trunk of this tree is hollowing and has a large volume of deadwood in the trunk. This tree definitely has substantial and long-lasting veteran characteristics which accord with Standing Advice, it is mature and therefore is a veteran tree and should be given proper protection by an appropriate Buffer Zone.

9 Other mature trees on site may also be veteran trees but we do not have enough information on which to confirm their status but the LPA must be assured one way or another. The Ancient Tree Inventory is a citizen science project and has not required surveyors to assess trees according to NPPF as it started in 2005 which is well before the planning policy changes in 2018. The tree records on it however are good indicators of whether trees are ancient or veteran. For example, T3015 is listed as a veteran on the Ancient Tree Inventory and the record states that it has hollowing branches - substantial enough features on such a large tree to be good veteran characteristics. In addition, the Tree Survey, provided with the application, confirms that there are "large dead limbs scattered through the crown". Dead branches are given as a key veteran tree criterion in Standing Advice. It is very likely that this mature oak is a veteran for the purposes of NPPF and therefore should be given the protection of an appropriate buffer zone.

10 We would strongly recommend that the trees on site are resurveyed to identify whether other veteran trees have been overlooked.

Annex 1: The Ancient Tree Forum's interpretation of the application of National Planning Policy Framework's protection measures for ancient and veteran trees.

11 The National Planning Policy Framework (NPPF) in England refers to ancient and veteran trees in three places:

1) in Conserving and enhancing the natural environment document, para 175c:

development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;

2) and in Annex 2: Glossary:

Ancient or veteran tree. A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

Irreplaceable habitat: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees,?

12 In terms of applying the NPPF to a development proposal and to relevant trees, the first step must be to identify if a tree is ancient or veteran. The glossary, to be used in this context, describes three characteristics i.e. age, size and condition, which contribute to the stated values of biodiversity, cultural and heritage value of both ancient and veteran trees. There is no guidance on the parameters of age (except that veterans can be younger than ancient trees), or size or the meaning of condition.

13 In relation to ancient trees, the ATF considers ancient is a life-stage indicated by the chronological age of the trunk, using trunk girth only as a guide. Trees in this ancient life-stage usually also have well-developed key veteran decay features as a consequence of ageing. It is ATF's view that all ancient trees are exceptional and irreplaceable for their cultural and heritage values, but specifically, for the application of NPPF policy 175c, they all have irreplaceable habitat.

14 In relation to veteran trees, the NPPF glossary only distinguishes by age those trees that 'are not old enough to be ancient, but are old relative to trees of the same species.' Planning Policy Guidance (2019 and FC & NE Standing Advice (2018) give some further guidance in relation to age (see bold below) and also condition (see underlined below):

PPG: Ancient trees are trees in the ancient stage of their life. Veteran trees may not be very old but exhibit decay features such as branch death or hollowing. Trees become ancient or veteran because of their age, size or condition. Not all of these three characteristics are needed to make a tree ancient or veteran as the characteristics will vary from species to species.

Standing Advice: A veteran tree may not be very old, but it has decay features, such as branch death and hollowing. These features contribute to its biodiversity

15 Both of the above documents provide examples of relevant features relating to condition i.e branch death and hollowing. But, neither these nor the NPPF glossary, give guidance or information on the amount, volume or quality of these features. In line with the available guidance, the ATF consider, that a tree to be categorised as a veteran for the application of NPPF policy 175(c) should have key decay features (including branch death or hollowing) which should be substantial by volume (in proportion to the size of the tree), long-lasting and/or significant (in terms of quality).

16 For a tree to have developed decay features of branch death or hollowing which could be judged to be irreplaceable habitat, it will usually be in either a mature or ancient life-stage owing to the time taken and complexity of the habitat to develop. Threshold dimensions for veteran characteristics are recommended in the Veteran Trees Initiative:

Specialist Survey Method but these may not be appropriate for all species of tree, especially those of a smaller stature (Fay, N. and de Berker, N. (1997): Veteran Trees Initiative: Specialist Survey Method. English Nature, Peterborough, UK). For example, in terms of dead wood in the crown of the tree the unit of value is "each 1m length over 15cm in diameter".

17   According to the glossary, a veteran tree does not need to be old enough to be ancient. However, it is likely that for the condition of the tree (decay features of branch death or hollowing) to be judged as irreplaceable habitat, a veteran tree will usually be in a mature life-stage.

In conclusion

18   All ancient trees of whatever species or size should receive the level of protection stated in para 175c.

19   Mature trees, where they have the appropriate key decay features, should be considered as irreplaceable habitat and therefore veterans to which the policy in para 175c of the NPPF applies.