

LAND OFF OAKHURST RISE

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)
Section 78 — APPEAL

PINS Ref: APP/B1605/W/20/3261154

EVIDENCE OF JULIAN FORBES-LAIRD

ON BEHALF OF THE APPELLANT,
IN RELATION TO ARBORICULTURAL MATTERS

Vol. 1—PROOF & SUMMARY



Prepared for: William Morrison (Cheltenham) Ltd

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SUMMARY

I am Julian Forbes-Laird, arboricultural expert witness for the Appellant,

And I will say:

- i) I am a highly-qualified arboriculturist of some thirty years' experience (JFL1). My evidence relates to arboricultural matters including the identification of ancient and other veteran trees.
- ii) I explain the planning policy position, at both national and local level, in relation to those aspects I cover. I discuss relevant aspects of national-level guidance, including Planning Practice Guidance on veteran trees (JFL6) and Standing Advice (JFL7) published by Natural England and Forestry Commission.
- iii) I describe the Appeal site and note that the majority of its boundaries benefit from a substantial presence of mature tree cover and that it slopes to the south within the eastern area, and to the west to the western area, with these two areas being separated by a grown-out hedgerow populated with mature, veteran and ancient trees (JFL4, JFL10).
- iv) I explain the methodology (JFL9) by which the latter have been identified and their buffer zones calculated, including the concept of the "relic tree", including details as to its scientific grounding.
- v) I provide a correlation between the FLAC tree survey and a Tree Preservation Order (JFL12) that is for the time being in force on ca. 45% of the trees on the Appeal Site.
- vi) My evidence discusses the previous, First Appeal Scheme and the findings of Inspector Sims, one of which was that ancient and other veteran trees on the site had been correctly identified by the applied methodology, and none had been missed.
- vii) I describe the current, Second Appeal Scheme and set out its arboricultural impact. This is identical to the First Appeal Scheme, save in two respects. Firstly, tree 3014 (TPO tree T11) is now proposed for retention. Secondly, a greater extent of tree group TG3005, the grown-out central hedge feature, is proposed for retention; 75% as opposed to 62.5% (JFL4). Both of these differences reduce the arboricultural impact of the proposals compared to those considered by Inspector Sims. Insofar as Inspector Sims considered the loss of 3014 objectionable, its retention now is a material improvement to the previous appeal position.
- viii) I explain that even greater protection has been afforded to ancient and other veteran trees under the current proposals (JFL5). Whilst the previous scheme was considered appropriate, it relied on a low number of minor incursions into veteran tree buffer zones. This was a second area where Inspector Sims had concerned, and it has been fully resolved (JFL5).

- ix) My evidence reviews the position of the Council (JFL13), which raised no tree-related objection, and of objecting parties, including the Woodland Trust (JFL14; my response at JFL15) and Ancient Tree Forum (JFL16; my response at JFL17). Both these organisations allege that additional veteran trees are present beyond those identified by me. However, I explain that in making this allegation they depart from the definition of veteran tree within the NPPF and that they run counter to their own published advice (JFL18). As such, I conclude that their objections should not attract material weight.
- x) The Rule 6 Party, “CK Friends” objects to the proposals and has sought professional advice (JFL19; my response at JFL20) from other arboriculturists, Barton Hyett Associates (“BHA”) who, like Inspector Sims, endorse the veteran tree identification methodology. I review criticisms of the Second Appeal Scheme in the BHA report and explain how they are unfounded. Specifically, I rebut their concern over the concept of the relic tree and their concerns over development impact on soil hydrology. In the final analysis, I show that BHA only raise one substantive issue: the reduced buffer zone for the relic veteran tree 3021, a matter covered by the scientific grounding for this concept.
- xi) I address the position of the Rule 6 Party on trees, as articulated both within its Statement of Case (its paragraph 3.8) and within our topic-specific Statement of Common Ground (JFL8, matters not agreed section). For each of the outstanding areas of disagreement, I provide an account of the Appellant’s position which fully addresses the position taken by CK Friends.
- xii) The final matter addressed is the disbenefit to the interests and well-being of the Irreplaceable Habitat trees by the current lack of informed management. I provide specific examples of this leading to habitat deterioration, contrary to the express will of government, and explain how a strongly beneficial effect of development would be the implementation of a Veteran Tree Management Plan (JFL21). I express my opinion that such a plan should be afforded very significant weight in the planning balance, as it relates directly to the preservation and enhancement of Irreplaceable Habitat.
- xiii) I conclude that the concerns raised by Inspector Sims are addressed in the Second Appeal Scheme, and that concerns raised by objectors are misplaced. Overall, I conclude that there are no tree-related reasons for withholding planning permission and accordingly I urge that the Appeal be allowed.

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- JFL4 Tree Retention/ Removal Plan, FLAC dwg no. 38-1036.02-B
- JFL5 Tree Protection Plan, FLAC dwg no. 38-1036.03-G
- JFL6 Planning Practice Guidance on Veteran Trees
- JFL7 Natural England & Forestry Commission Standing Advice
- JFL8 Topic-specific Statement of Common Ground, agreed with the Rule 6 Party
- JFL9 The author's veteran tree identification method, RAVEN
- JFL10 RAVEN recorder for ancient, veteran & notable trees on the Appeal site
- JFL11 Estimating the Age of Large and Veteran Trees in Britain, FC 1998
- JFL12 CBC Tree Preservation Order 1/ 1981
- JFL13 CBC Tree Officer's consultation response on planning application ref. 20/00683/OUT
- JFL14 Objection to the proposals submitted by the Woodland Trust
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- JFL21 Proposed Veteran Tree Management Plan
- JFL22 Extract from Trees: their Natural History, Thomas, P, Cambridge 2014

1 Introduction

1.1 Authorship

1.1.1 This Proof of Evidence addresses arboricultural issues in relation to proposed development. It does not consider issues of biodiversity, which are addressed in Mr Baxter's Ecology Proof. It has been prepared by me, Julian Forbes-Laird, Senior Director of Forbes-Laird Arboricultural Consultancy Ltd ("FLAC"; subsequent usage of the terms "our" and "we" should be construed accordingly).

1.1.2 I hold the following relevant memberships and qualifications:

- Member of the Institute of Chartered Foresters (that is, I am a Chartered Arboriculturist)
- Member of the Royal Institution of Chartered Surveyors
- Member of the Expert Witness Institute
- Professional Member of the Arboricultural Association
- Member of the Royal Forestry Society and holder of its 'Professional Diploma in Arboriculture'
- Technical editor for BS5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'
- Member of the British Standards Institution technical committee on trees, B/213

1.1.3 Full details of my qualifications and experience may be found at Appendix JFL1.

1.2 Instructions

I am instructed on this occasion by William Morrison (Cheltenham) Ltd ("the Appellant"). My instructions arise pursuant to refusal of planning consent on 17 September 2020 by the jurisdictional local planning authority, Cheltenham Borough Council, for its application ref: 20/00683/OUT. This refusal of planning permission is now appealed (PINS' ref 3261154). Hereafter I refer to the proposals as "Appeal Scheme 2", and to this appeal as the Second Appeal.

1.3 Direction of Evidence

1.3.1 The application at first instance was refused for a single Reason for Refusal. In toto this states:

The proposed development would have a significant impact on the setting of nearby listed buildings. The resultant 'less than substantial' harm to these designated heritage assets must be afforded significant weight, and this harm would fail to be outweighed by the public benefits arising from the proposal in the overall planning balance.

Policy HD 4 of the Adopted Cheltenham Plan suggests a minimum of 25 dwellings can be accommodated on this site subject to a list of criteria. The proposal for 43 dwellings against the policy requirement of 25 has led to a layout which does not respect the character, significance and setting of heritage assets. The proposal is therefore in conflict with Policy HD4 of the adopted Cheltenham Plan.

The development would also be in conflict with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, adopted policy SD8 of the Joint Core Strategy (2017), and paragraphs 193, 194 and 196 of the National Planning Policy Framework (2019).

1.3.2 On 6 January 2021 a Case Management Conference (“CMC”) was held by the appointed Inspector, Claire Searson, by video call. Appearing for the LPA, Mr Jeremy Patterson, clarified that the main issue for the Council which the Reason for Refusal sought to articulate was relationship of development to the setting of two nearby Listed Buildings. On this basis, it is apparent that the Council takes no issue in relation to arboricultural matters.

1.3.3 However, joining the Appeal is a Rule 6 Party, Charlton Kings Friends (“CKF”). In its Statement of Case, under the heading *Non-Compliance with HD4: Failure to meet the site-specific criteria*, CKF allege that such non-compliance extends to *protection of mature trees*. During the CMC, Mrs Sally Walker, appearing for CKF, made clear that she would seek to rely on an arboricultural report prepared by Barton Hyett Associates (“BHA”) for CKF during the life of the planning application, as well as the objection to the proposals submitted by the Woodland Trust (“TWT”). Insofar as the Ancient Tree Forum (“ATF”) submitted a similar objection, I assume that CKF will rely on this as well.

1.3.4 Accordingly, my evidence addresses those matters raised against the Appeal Scheme by the three organisations listed immediately above.

1.4 Proof Structure

1.4.1 Following this section 1, Introduction, my Proof is structured as follows:

2. Relevant Planning Policy context and National Guidance
3. Description of the Appeal Site and relevant trees and woodland
4. Summary of Appeal proposals and arboricultural impact
5. Comparison to the previous Appeal Scheme
6. The position of the Council and objectors
7. Conclusions

1.4.2 My Proof is supported by the following Appendices:

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- JFL2 FLAC Tree Survey: explanatory information
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2 Relevant Planning Policy context and National Guidance

2.1 National Planning Policy Framework 2019

2.1.1 At paragraph 11, Framework 2019 sets out the presumption in favour of sustainable development. However, this presumption (considered in detail in Mr Frampton’s evidence) is potentially countervailed where certain restrictive policies apply. Footnote 6 (Fn6) to paragraph 11 provides a closed list of such policies, stating:

*The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/ or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; **irreplaceable habitats**; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.*

My bolding. It is apparent from this list that the Framework sets a high bar to be cleared for the presumption to be outweighed by “Footnote Six Restrictions”, including “irreplaceable habitats”.

2.1.2 At paragraph 175c, the Framework articulates Government policy in relation to irreplaceable habitats in the following terms (relevant extracts only):

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 reasons⁵⁸ and a suitable compensation strategy exists.

2.1.3 The term *wholly exceptional reasons* is clarified/ expanded upon by Footnote 58 (“Fn58”), which states:

For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

In the present case, there is no suggestion that the site either comprises or lies adjacent to ancient woodland, and accordingly this type of irreplaceable habitat is not in issue. However, our tree survey and subsequent RAVEN assessment (section 3.4 refers) identified the presence of veteran trees and accordingly paragraph 175c of the Framework is relevant.

2.1.4 Framework paragraph 175c comprises two pairs of two tests each. The first pair of tests relates to the effect of the proposals on the irreplaceable habitat at issue. This pair interrogates whether the habitat would suffer either a) loss, or b) deterioration. The second pair of tests, which is only engaged where loss or deterioration would occur, relates to acceptability of the proposals. The two tests in the second pairing are whether the public interest clearly outweighs the harm, and whether a suitable compensation strategy is present.

2.2 Relevant Irreplaceable Habitat: the applicable definition and resulting considerations

2.2.1 That which constitutes the type of Irreplaceable Habitat present on this site, namely ancient and other veteran trees, is defined in NPPF Annex 2 in the following terms:

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.

2.2.2 It is apparent from the foregoing that the intention of the policy is the protection of “exceptional value” under one of three headings. In this case, there is no suggestion that any tree on the site is of exceptional cultural or heritage value. It follows that what concerns us here is exceptional biodiversity value.

2.2.3 In order for a tree to have this very special quality, it needs, as a starting point, to be *old relative to other trees of the same species*. If a tree does not meet this criterion, it cannot have acquired sufficient age or size to satisfy those two components of the definition and is therefore not a veteran tree, regardless of its condition. Thus, it is only once a tree has cleared the gateway hurdle of relative age, that its condition can be taken into consideration. The reason for this is simple: because what the policy seeks to protect is exceptional value, by definition this must occur only rarely: if it were not rare, it would not be exceptional and would not merit high-level policy protection.

2.3 Local Planning Policy

There are two elements of Local Planning Policy (Adopted Local Plan 2020) that are considered relevant to determination of this Appeal.

2.3.1 Policy GE 6, Trees and development

This policy is worded as follows:

Development which would cause permanent damage to trees of high value (note 1) will not be permitted.

The following may be required in conjunction with development:

- (a) the retention of existing trees; and*
- (b) the planting of new trees (note 2); and*
- (c) measures adequate to ensure the protection of trees during construction works.*

Note 1

'high value' means a sound and healthy tree with at least 10 years of life remaining which makes a significant contribution to the character or appearance of a site or locality.

Note 2

The preservation and planting of trees in conjunction with development should take account of the guidance in British Standard 5837:[2012].

2.3.2 Attention is drawn to the definition within this Policy of what constitutes a “high value tree”, which comprises four tests:

1. Tree should be (structurally) sound
2. Tree should be healthy
3. Tree should have a minimum residual longevity of ten years
4. Tree should make a significant contribution in landscape terms

Only trees which pass all four of these tests meet the Policy definition of high value.

2.3.3 Policy HD4, Land off Oakhurst Rise

This is the Appeal Site's allocation policy. Insofar as is presently material, it requires:

- Protection to key biodiversity assets (which would include veteran trees) and mature trees
- Long term protection of mature trees and hedges

Attention is drawn to the qualifying criterion for protection under this policy, namely that the trees thereby protected should be "mature".

2.4 Planning Practice Guidance on Veteran Trees

2.4.1 The PPG definition for veteran trees states:

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.

The relevant text from the PPG is included at JFL6.

2.4.2 As already explained, the Framework establishes the criteria for veteran status in terms of an additive approach: age **and** size **and** condition, with qualifying trees needing to be *old relative to other trees of the same species*. In contradiction of the Framework, the PPG mistakenly expresses the criteria as alternatives: age **or** size **or** condition, with qualifying trees being described as not necessarily *very old*. Most strikingly, the PPG omits the criterion that veteran trees should be *old relative to other trees of the same species*, and nowhere does the PPG make clear that veteran trees should have *exceptional value*.

2.4.3 It is not plausible that these several, significant differences between the Framework and the PPG are accidental in respect to the latter. As such, it appears that those responsible for drafting the PPG have knowingly departed from the clear intention of the Framework with respect to those trees that merit protection as Irreplaceable Habitat.

In doing so, they have failed to take account of the whole purpose of protecting such trees, namely for their rare and special quality. Insofar as the Framework articulates Government policy at national level, it takes clear primacy over the PPG, and accordingly the latter's flawed understanding of what makes a veteran tree should not be taken forward.

2.5 Other national-level guidance

2.5.1 Two further pieces of national-level guidance are relevant to these Appeals:

1. Standing Advice, titled *Ancient woodland, ancient trees and veteran trees: protecting them from development* ("the Standing Advice"). This is published on gov.uk jointly by Natural England and the Forestry Commission. The current version at time of writing is that dated 5 November 2018 (appended at JFL7);
2. British Standard BS5837:2012, titled *Trees in relation to design, demolition and construction – Recommendations* ("BS5837"). Whilst also referencing veteran trees, BS5837 serves to operate much more broadly, covering all trees regardless of whether or not they are veterans (included within the Core Documentation)

2.5.2 Whilst no ancient woodland is present on or immediately adjacent to the Appeals Site, as noted it does host veteran trees (paragraph 2.1.3 refers). In respect of such trees, the most pertinent guidance within the Standing Advice relates to their protection by and within a 'buffer zone', with a radius of 15 times the stem diameter of the tree or trees concerned. I shall return to this topic in due course.

2.5.3 BS5837 is considered seminal to appropriate management of the development interface with trees (both existing and proposed trees). It will be referenced throughout my evidence.

3 Description of the Appeal Site and relevant trees and woodland

3.1 The Appeal Site

3.1.1 The Appeal Site is an undeveloped parcel of land of just over 4ha, lying to the immediate north of St. Edward's Preparatory School, Cheltenham. The site is surrounded by existing residential properties to west, north and east. Those to the west are served by Oakhurst Rise, off which it is proposed to take the main access into the Appeal Site.

3.1.2 The majority of the Appeal Site's boundaries benefit from a substantial presence of mature tree cover. However, this becomes gappy at north-east and centre north. An outgrown hedgerow aligned north to south separates the westerly third of the site from the easterly two-thirds. A light scattering of individual trees are located inboard of the boundaries.

3.1.3 The lie of the land within the Appeal Site is varied: it slopes to the south within the eastern area, and to the west in the western area.

3.2 The Appeal Scheme

Insofar as is relevant to trees, the Appeal Scheme comprises the following:

- i) New access off Oakhurst Rise
- ii) Residential development comprising forty-three new dwellings in total
- iii) Formation of an attenuation pond near the south boundary, and
- iv) Trenchless service connection to the south and southwest.

3.3 Relevant trees

3.3.1 Trees relevant to this Appeal are captured by our tree survey, undertaken in compliance with BS5837:2012, *Trees in Relation to Design, Demolition and Construction – Recommendations*. Our findings are presented at Appendices JFL2, JFL3 (respectively explanatory key and tree survey data) and JFL4 (Tree Survey & Retention Plan). Pursuant to the Statement of Agreed & Not Agreed Matters, the tree survey is an agreed matter between the Appellant and the Rule 6 Party (JFL8 at paragraph 4).

3.3.2 A key element of the BS5837 tree survey process is the differentiation of the tree stock as to its quality, by means of the methodology set out at Table 1 of the Standard (reproduced in slightly enhanced form at JFL2). This method sees trees placed into one of four categories, A-B-C-U, according to differing residual longevity thresholds as follows:

<10 years	Tree in poor condition unsuitable for retention as a viable specimen: BS5837 quality grade U
10+ years	Tree in adequate condition to survive until new planting is established: BS5837 quality grade C at best
20+	Tree in satisfactory condition: BS5837 quality grades B or C, though not A
>40	Tree in good condition, capable of long-term strategic contribution:

3.3.3 With each residual longevity threshold cleared, the BS5837:2012 grading system then relates directly to tree quality. In relation to the Appeal Site, tree grade statistics derived from the foregoing are:

<i>Grade</i>	<i>Meaning</i>	<i>Count</i>	<i>%</i>
A	High quality	22	8
B	Moderate quality	194	66
C	Low quality	74	25
U	Unretainable in viable condition	2	1

In brief, our survey also found:

3.3.4 Eight ancient and other veteran trees comprising five veterans FLAC ident. 3007, 3026, 3028, 3030, 3031, and three ancient trees FLAC ident. 3018, 3021, 3037. All are pedunculate oaks with the exception of one ash (ident. 3021). Overall their condition is good but two would benefit from crown management in the interests of the preservation of the residual stem structure (see Tree Protection Plan at JFL5, Outline Arboricultural Management Plan under sub-heading *Heads of terms for management of veteran trees*). As the definition at Annex 2 of the NPPF makes clear (my para. 2.2.1 refers) ancient trees are a sub-set of veteran trees; both are hereafter referred to collectively as ‘veterans’.

3.3.5 Identification of veteran trees has been undertaken with close regard to the NPPF definition by application of the method known as RAVEN (for *Recognition of Ancient, Veteran & Notable Trees*; appended at JFL9). RAVEN is a systematized, transparent, repeatable, evidence-based methodology, that rests four-square on a) the governing criteria within the Annex 2 definition; and b) on the necessary presence (or absence) of specific habitat features on the trees concerned.

3.3.6 Our RAVEN recorder (JFL10) includes the results of a dendrochronological study, with age estimates provided for certain trees derived by application of a widely-accepted method¹ (see JFL11). Further information on RAVEN is set out within section 3.4, below.

3.3.7 Tree constraints have been mapped on our plans as follows:

- i) Tree crowns (measured on site) drawn to the four cardinal points
- ii) Root protection areas (RPAs) plotted based on the method set out in BS5837:2012 and
- iii) Veteran tree buffers (VTBs) plotted per Natural England recommendation of 15x stem diameter = buffer radius) per the key on both FLAC plans.

3.3.8 Concerning Natural England's veteran tree buffer recommendation, this is clearly a precautionary, rather than evidence-based, protective distance. Whilst as a generality this might be suitable for some trees (albeit not justifiably applied as an absolute), it is the case that many veteran trees simply do not require a protective offset of the magnitude computed by the Natural England method (15 times stem diameter).

3.3.9 This is because many veteran trees with a large-diameter stem have lost the greater majority of their original crowns. Because there is an unbreakable, biologically-imperative link between roots and shoots (known as the *root:shoot ratio*), such trees have a correspondingly compact root system too. This arises equally where the stem circumference includes tissue ("xylem") that is no longer vascularly active: such that only a portion of the outer stem is living. This has the practical effect of reducing the functional cross-section, and it is for this reason that a veteran tree buffer zone computed according to 15 times the active stem offers a better representation of the needs of the tree, than one measured by an inclusion of dead tissue.

¹ *Estimating the Age of Large and Veteran Trees in Britain*, Dr John White, Forestry Commission 1998

3.3.10 Logically, it follows that where a tree occupies a much smaller biological space as a result of significant crown loss or stem dysfunction, it can be safeguarded by a reduced protective buffer compared to where it does not. Thomas, 2018² (JFL22, second red box) confirms crown loss being reflected in the root system by the root:shoot ratio imperative.

3.3.11 In simple terms, for trees that have lost >75% of their original crown, which we refer to as *relic trees*, the size of the stem flatters to deceive, and does not identify a realistically necessary buffer zone. In order to factor relic trees into the layout design process in a responsible, transparent and readily understood way, we afford them a maximum 15 metre radial buffer, applied in this case, to relic trees with FLAC ident. 3007 and 3021.

3.3.12 As FLAC ident. 3028 has not exceeded the minimum threshold for the 15m maximum, it is afforded fully 15 times its stem diameter, a VTB with radius of 11 metres.

3.4 Recognition of Ancient, Veteran & Notable trees – RAVEN

3.4.1 The 2018 revision to the Framework made four important changes in respect of veteran trees, which significantly increased their materiality within the planning system. These changes, which remain unaltered in Framework 2019, are:

- i) Ancient trees are included within the Annex 2 definition for the first time, being identified there as the oldest subset of veteran trees;
- ii) The definition for what constitutes an ‘ordinary’ (i.e. non-ancient) veteran tree now requires these to pass four tests (set out below);
- iii) Veteran trees (including the ancient subset) are now included within the scope of *irreplaceable habitats*, as referenced at Framework Fn6 (closed list of restrictive policies which, where engaged, cause disapplication of the tilted balance) and at para. 175c
- iv) The latter sets a new test at §175c for acceptability of loss or deterioration of irreplaceable habitats, including therefore veteran trees, of *wholly exceptional reasons*, with these latter being elucidated at Fn58 as *public benefit clearly outweighing the loss or deterioration of habitat*;

² *Trees Their Natural History*, Thomas, 2nd ed. 2018

3.4.2 It will be apparent from the foregoing, and especially from the very high bar now set for retention and protection of veteran trees, that it is of paramount importance to have clarity on what constitutes a veteran tree. In this regard, within the planning context the **only** definition of relevance is the one found in the Framework at Annex 2. It is this definition that informs the policy – and level of protection – found at §175c.

3.4.3 Together, definition and policy establish four tests which articulate Government's intention as regards what constitutes a veteran tree:

- i) Specific characteristics of age, and size, and condition must all be present
- ii) The tree must be *old relative to other trees of the same species*
- iii) The tree must therefore have a relatively large stem size for its kind (age and stem size are indelibly linked at the biological level)
- iv) The tree must have *exceptional* value under at least one heading from biodiversity, cultural, or heritage values, i.e. the exceptional protection at §175 (c) should only apply as a safeguard to exceptional value.

Trees not meeting all four of these tests fall outside the intended reach of the Framework, and accordingly are not subject to protection under paragraph 175c.

3.4.4 Although there are many published definitions for what constitutes a veteran tree (as noted, the only one of present relevance being that found in Framework Annex 2), there is a very poor understanding within arboriculture of how to actually go about identifying them in the field. Because of the twin, potentially conflicting issues of greatly increased policy protection and lack of clarity as regards that which should be protected, based on his long-standing experience of creating internationally recognized tree assessment systems, in 2018 I designed RAVEN.

3.4.5 RAVEN is the only identification system for in-field identification of ancient, veteran and notable trees (the latter being the successor generation to today's veteran trees). It is geared directly towards identifying those trees which meet the criteria within the Framework definition (age *and* size *and* condition) and which, as a result, are of exceptional value (typically for biodiversity, though other values may be present too).

3.4.6 Since its release in 2018 as a free-to-use method, RAVEN has become adopted by a considerable (and growing) number of local authorities, as well as by many arboriculturists in private practice.

3.5 The Tree Preservation Order

3.5.1 A Tree Preservation Order (“TPO”) is in force, applying variously to differing elements of the trees described above, as well as to trees within the immediate locality to the south not affected by the Appeal Scheme. The TPO is appended at JFL12. The status (whether subject or not to TPO protection) of each arboricultural feature described in our tree survey is given in column two of the data table at JFL3.

3.5.2 Insofar as is relevant, in summary, the TPO protects:

- i) A number of individual trees within the main body of the Appeal Site and around the site boundaries;
- ii) By virtue of 2no. Group designations, trees located on top of the ice house and adjacent to the pond on the north boundary;
- iii) Trees within Area A3 which were present within the dotted line at the time the Order was made.

3.5.3 In total, just over 45% of trees on the site are covered by the Tree Preservation Order.

4 The previous Appeal Scheme

4.1 General

The Inspector is aware that this present Appeal is in fact the second to be considered in relation to this Site. The First Appeal (PINS ref. 3227293) considered refusal of planning permission for a scheme of 69 units. This Appeal was dismissed by Inspector Sims in September 2019.

4.2 Inspector Sims' findings on arboricultural matters

I provide here a brief summary of Inspector Sims findings, insofar as I consider them to be material to the Second Appeal:

1. Policy GE6, at that time a saved policy of the Cheltenham Borough Local Plan Second Review 2006 was relevant to a determination of the First Appeal
2. The tree removal proposed to facilitate the first Appeal Scheme was not objectionable save in respect to tree 3014 (TPO tree T11) (IR48-54)
3. Tree 3014 was agreed to be of moderate quality and to have limited public amenity value, however Inspector Sims considered that its loss would comprise an adverse impact, which weighed on the negative side of the planning balance (IR54)
4. The RAVEN methodology was considered at length during the Inquiry into the First Appeal, with Inspector Sims concluding that it was fit for its purpose as identifying trees that fell within the NPPF definition of ancient and veteran (IR56-58)
5. The root protection areas and veteran tree buffers identified within the arboricultural evidence were correctly defined respectively in line with BS5837:2012 and Natural England Standing Advice (IR59)
6. Inspector Sims considered detailed tree protection proposals as part of the arboricultural information before him. Whilst he concluded that the layout and related tree protection measures would have a reasonable prospect of successfully retaining the mature and veteran trees identified for retention, he also concluded that he could not be certain on this point (IR60-65)

5 Summary of Appeal proposals and arboricultural impact

5.1 Summary of the Appeal proposals

5.1.1 The application (as now appealed) is to be determined in Outline, with access, scale and layout not being reserved for subsequent approval. These details are shown on the Masterplan before the Inquiry.

5.1.2 The Appeal proposals are explained fully by Mr Frampton, but are referable as:

OUTLINE APPLICATION FOR 43 DWELLINGS INCLUDING ACCESS, LAYOUT AND SCALE,
WITH ALL OTHER MATTERS RESERVED FOR FUTURE CONSIDERATION

5.1.3 Inherent within the Appeal Scheme is delivery of a landscape and biodiversity management plan. Whilst this is explained fully by Mr Baxter, I wish here to draw attention to the substantial provision of new tree planting that would be delivered as part of the proposals.

5.2 Arboricultural impact – general

5.2.1 Save in two respects, tree removal to facilitate development is identical under the Second Appeal Scheme to that proposed under the First Appeal Scheme. The two exceptions are:

1. Tree 3014 (TPO tree T11) is now proposed for retention. This addresses Inspector Sims' concern (4.2.1.3 refers)
2. A greater extent of tree group TG3005, the grown-out central hedge feature, is proposed for retention; 75% as opposed to 62.5%

5.2.2 All other trees proposed for retention or removal under the First Appeal Scheme have the same outcome under Second Appeal Scheme.

5.3 Arboricultural impact – ancient and other veteran trees

5.3.1 The First Appeal Scheme proposed (like the Second) the retention and protection of all ancient and other veteran trees. However, in some cases, protection was to have been achieved by the insertion of certain features of development into their buffer zones, for example parts of gardens of new dwellings, and a low-impact walkway. As Inspector Sims noted:

[Cheltenham Borough Council] maintains that these incursions are contrary to the relevant protective planning policies because of their departure from the strict terms of BS5837 and Natural England Standing Advice. However, these advice documents expressly make provision for professional judgement in their application. (IR62)

5.3.2 However, given Inspector Sims concluded that he could not be “certain” that tree protection would be successfully delivered, the Appellant has ensured that no such incursions are relied on for delivery of the Second Appeal Scheme. It is Natural England’s implicit position that if a veteran tree is provided with a recommended buffer zone, it is protected from adverse impacts from new development: in this regard, as already noted, Inspector Sims considered that the buffer zones had been correctly defined. The present Inspector is invited to conclude that her predecessor’s concern over reliability of outcome has been addressed (4.2.1.6 refers).

5.4 Conclusion on arboricultural impact

It is apparent from the foregoing that Inspector Sims raised only two concerns against the First Appeal scheme: loss of TPO tree T11 (FLAC ident. 3014) and safeguarding for retained trees. The 43-Unit scheme, as now appealed, has been designed with these specific matters in mind, and ensures that both concerns are addressed. The present Inspector is, therefore, invited to conclude that the Second Appeal Scheme is acceptable in arboricultural terms.

6 The position of the Council and objecting parties

6.1 The Tree Officer

6.1.1 The Council has offered no tree-related Reason for Refusal, and accordingly the headline of its position is that it is satisfied that arboricultural aspects of the 43-Unit Scheme are policy-compliant. To look at its position in more detail, we can turn to the consultation response provided by the Tree Officer (appended at JFL13).

6.1.2 Notably, the Tree Officer raised no objection to the 43-Unit Scheme. Specific comments included provision of *a particularly robust tree protection plan, a generous planting mitigation strategy, and acceptable landscape management proposals*. The Tree Protection Plan is found at JFL5.

6.1.3 In addition to these positive remarks, the Tree Officer also highlighted some points that would need to be addressed as part of Reserved Matters consent. I confirm that none of these matters are in any way objectionable to the Appellant, which would intend to deliver the scheme in full accord with the Tree Officer's recommendations.

6.2 The Woodland Trust

6.2.1 The Inspector will be aware that the Woodland Trust (TWT) made submissions to the previous Inquiry in relation to the identification of ancient and other veteran trees. Specifically, it objected to the use of the RAVEN methodology. Inspector Sims did not accept its position and as already noted, he concluded that RAVEN was fit for purpose. It is within this context, that the present Inspector is invited to approach the objection submitted by TWT in respect of the 43-Unit Scheme. The TWT objection is appended at JFL14, and the author's response can be found at JFL15.

6.2.2 In brief, TWT sought again to suggest that additional veteran trees were present beyond those identified by FLAC. However, whilst all the trees concerned would be retained and protected in accordance with agreed standards, none of them meet the criteria for applicability of the veteran descriptor set out in the NPPF (sections 2.3 and 3.4 refer).

6.2.3 In support of its position, TWT cited the Planning Practice Guidance definition of veteran trees (PPG, JFL6), which as I explain in section 2 is a material departure from the Framework. Insofar as the PPG is subservient to the Framework, TWT's reliance on the former as the foundation for its objection inevitably sees this countervailed by the Appellant's position.

6.2.4 With this key point in TWT's objection being addressed, all other matters raised by it, which are of a secondary order, are shown to fall away. Accordingly, I do not intend to rehearse them here, and would invite the Inspector to refer to my detailed response to TWT at JFL15.

6.3 The Ancient Tree Forum

6.3.1 The ATF also objected (JFL16) to the 43-Unit Scheme application at first instance, doing so in very similar terms to TWT. Indeed, it also relies on the PPG rather than the Framework. However, the ATF raised no additional issues of any materiality and accordingly I would invite the Inspector to refer to JFL17 for my response to this objection. This response includes reference to a book published by the ATF, the relevant extract from which is found at JFL18.

6.3.2 However, there is one aspect of the ATF's submission to which I would like to draw the Inspector's attention. 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: the NPPF definition states in terms that veteran trees are those which are *old relative to other trees of the same species*. Clearly, this is "guidance on the parameters of age", in direct contradiction of the ATF statement. Insofar as it is difficult to imagine that the ATF is unaware of the full text of the Framework definition of what constitutes a veteran tree, I consider this aspect of its submission to be very unfortunate (putting it mildly).

6.4 Barton Hyett Associates on behalf of the Rule 6 Party

6.4.1 In line with the requirements of this process, the Rule 6 Party (R6P) has prepared a Statement of Case, in which inter alia it sets out its position on trees. At 1.8 of the R6P SofC, it explains that professional arboricultural advice has been obtained from Barton Hyett Associates (BHA). This advice comprises a review of and comments on the planning application and the FLAC submission to it; for convenience the BHA submission is appended at JFL19.

6.4.2 Of note, BHA does not seek to argue that additional veteran trees are present beyond those seven identified by me using the RAVEN method. Indeed, at BHA 3.6 it states:

The FLAC report uses a consistent and transparent methodology in identifying the site's veteran and ancient trees, and so I do not find a sufficient reason to disagree with its findings in this regard.

This means that all three professional arboriculturists considering this matter (me, the CBC Tree Officer, and the author of the BHA review document) are in agreement as to which trees on the Appeal Site meet the criteria for veteran status, within the meaning of this term and definition in the NPPF. This consensus position is no different to that considered and agreed by Inspector Sims.

6.4.3 In reply to BHA, I prepared a shote note that I append hereafter at JFL20 which I shall not rehearse in detail here. However, to summarize, the BHA review identified two areas where it took issue on behalf of its client:

1. The concept of "relic" trees; and
2. Safeguarding measures for veteran trees.

6.4.4 In my response, I explain the underlying biological science behind the concept of relic trees (per paragraphs 3.3.9 to 3.3.12) , and why it is both rational and reasonable to take account of this when designing site layouts and tree protection systems. I note that there has been no response from BHA to my note and on this basis, it seems fair to consider the matter closed.

6.4.5 In relation to safeguarding measures for veteran trees, FLAC has prepared and submitted a detailed Tree Protection Plan (JFL5), which I would expect to be made the subject of a planning condition in the usual way. At Table 1 I set out a schedule of BHA's concerns and my responses to them.

Table 1 – Matters raised in issue by BHA, with the author’s response

Tree	Species	BHA concern	JFL response
3014 & 3015	Oak	<p>Surrounded by development, root-spread likely to exceed RPA.</p> <p>Possible need for working space incursions into protected area, though can be resolved via further details.</p> <p>Potential for hydrological change due to retention & detention of soil water.</p>	<p>The purpose of the RPA is not to contain all roots but to contain <u>sufficient</u> roots. Most arboriculturists consider that the RPA computation in BS5837 results in greater protection than trees require.</p> <p>FLAC has discussed engineering working space requirements extensively with relevant professionals and is satisfied that the scheme can be built without incursion into protected areas.</p> <p>Uphill water retention outside the protected area is not considered a problem: the trees have sufficient greenspace around them to provide for their needs. Downhill retention inside the protected area is addressed by the provision of an exceedance flow path for storm water drainage (per the TPP)</p>
3021	Ash	Objects to concept of the relic tree and the capped protective area, stating that this is contrary to the Standing Advice.	Inspector Sims accepted the concept of the relic tree, which is based on robust biological science. At DL62 he explicitly notes that the Standing Advice makes provision for professional judgment.
3028	Oak	<p>Concerns raised regarding construction working space and barrier specification but accept that these could be addressed by conditions.</p> <p>Issue raised of light-spill and fly-tipping of garden waste from adjacent dwellings. However, accepts that further information could be provided.</p>	<p>The Appellant is well aware that as the scheme moves from Outline to Reserved Matters, the Council will seek additional information on various matters of detail. This will be provided as necessary.</p> <p>We have considered these specific points during the design process and are satisfied that any residual, potential adverse impacts of this nature can be designed out.</p>

6.4.6 It is apparent from the foregoing that the only substantive matter raised by BHA relates to tree 3021, where BHA takes issue with the concept of the relic tree. It is clear from his comments that the BHA author does not understand either the computation or the biology (or both) behind the veteran tree buffer (VTB) recommended in the Standing Advice. The VTB is found by multiplying the stem of the tree concerned by a factor of 15 to derive a radial measure used in turn to define the buffer zone for layout and tree protection purposes. Stem diameter is used as the core measurement because this is notionally relatable to the functions of the tree and the area within which it may be active.

6.4.7 However, the stem diameter metric assumes: a) that the size of the stem is relatable to the tree's root and crown volumes; and that b) the totality of the stem circumference hosts vascularly active parenchyma (i.e. living, functional tissue). If either of these assumptions is not reflected by the condition of the tree, then the relationship between stem diameter and area required for protection breaks down (my paragraphs 3.3.9 to 3.3.12 refer).

6.4.8 It is, therefore, a matter of fact that a tree of greatly diminished crown volume (or one with significant dysfunction of its vascular cross-section) must have greatly diminished root volume and in consequence it occupies a greatly diminished biologically active space. Whilst sometimes this can be inferred directly, for example with tree 3028 where it is possible to measure the currently living portion of the stem, in other cases it cannot. This is so with 3021: whilst it is apparent from the photograph of this tree on the front cover of the BHA review that this tree is operating with greatly reduced vascular potential, the actual extent of this is necessarily subject to estimation (due to the condition of the tree). It is for these reasons that we specify a more precise protective area for tree 3028, and a generous over-estimate for the protective area for tree 3021.

6.4.9 Drawing together these threads, I do not accept the BHA conclusion (at its paragraph 5.5) that:

Despite protective measures, disturbance to the veteran tree habitats (including soil, ground flora and fungi) during construction and in the site's end-use is likely to occur.

Furthermore, I submit that these allegations have been woefully unsubstantiated and accordingly should only attract the limited weight afforded to mere assertions.

6.5 The Rule 6 Party

6.5.1 At the request of the Inspector, Mrs Walker of the Rule 6 Party and I have prepared a Joint Statement on arboricultural matters (JSAM), setting out those agreed and not agreed. As noted already, for convenience, I append this statement at JFL8.

6.5.2 I wish to draw attention to the JSAM at its paragraph 19, in which it is confirmed that the R6P is taking no position on the question of veteran tree identification raised by TWT and ATF. In other words, the R6P is not seeking to expand on its Statement of Case beyond the summary of its position on trees provided at SofC 3.8, namely:

Non-Compliance with [Policy] HD4: Failure to meet the site-specific criteria [including] protection of mature trees

6.5.3 Focussing on those matters where the Appellant and the R6P do not agree (as set out in the *Matters Not Agreed* section of the Joint Statement at JFL8), these are summarized as follows:

1. That the requirement in Policy HD4 for protection of mature trees from loss or damage is not met;
2. The concept of Relic trees;
3. The question of harm from alterations to soil hydrology;
4. That comments made by the CBC Tree Officer weigh in favour of the Appeal being dismissed;
5. That the most relevant matter when considering soil hydrology is the presence of springs in the Battledown area;
6. That current arrangements for site management are detrimental to veteran trees.

6.5.4 In my discussion of the BHA review at my section 6.4, I have already addressed the questions of tree protection during construction; the debate over Relic trees; and the question of layout-specific issues of soil hydrology. As such, there is no need for me to revisit these issues again. This leaves matters 1 (in respect of loss), 4, 5 and 6, which I now consider in turn below.

Protection of mature trees from loss

6.5.5 The Second Appeal Scheme, like the First, identifies for removal two mature trees, FLAC numbers 3016 and 3017, respectively an ash and a sycamore. Both are of moderate quality (BS5837 category B), and neither are subject to inclusion within the Tree Preservation Order. Whilst I accept that absolutist readings of Policies GE6 and HD4 would lean towards retention of *all* mature trees on *all* development sites within this Borough, this cannot seriously be argued to be a hard and universal requirement.

6.5.6 In the case of trees 3016 and 3017, their removal is not cited as objectionable by BHA and it was not considered harmful by Inspector Sims: indeed, his Decision Letter makes no mention of them. Furthermore, the Council does not consider their loss to be harmful, either to an extent sufficient to sponsor a Reason for Refusal, or to the extent of being raised as an issue by the Tree Officer. Sitting above all of these considerations, if at any point the Council had considered them worthy of TPO protection, it could either have included 3016 and 3017 within the current TPO, or it could have made a new Order more recently to capture them; it has done neither.

6.5.7 The overwhelming consensus is that the loss of these two trees should not be considered an objectionable matter. For this reason, the fact that the R6P has taken this position, contrary even to that taken by its own arboricultural advisors, should not attract significant weight.

Comments made by the CBC Tree Officer

6.5.8 I intend to deal with this matter shortly: given that the Tree Officer states in terms that he has no objection to the grant of planning permission (JFL13), it cannot logically be sustained that the Tree Officer's consultation response contains objections to the Second Appeal Scheme of sufficient materiality to lead to its dismissal. His comments, though seized upon by the R6P, are discursive in nature and clearly do not seek to condemn the proposals.

That the presence of springs in the Battledown area is relevant to tree retention

6.5.9 For two reasons, the alleged presence of springs in the locality has no bearing whatsoever on soil hydrology such that this might prejudice successful tree retention:

1. Regardless of what may pertain elsewhere in Battledown, there is no reason to believe either that springs occur on the Appeal Site, or that if they do so occur, they are co-located with trees identified for retention.
2. The presence of springs can create areas that lie permanently or semi-permanently wet, which come to harbour trees of species that favour boggy conditions. In such cases, dewatering for development can be harmful to the trees concerned. However, as no such trees are present here, the issue simply does not arise.

That current arrangements for site management are not harmful to veteran trees

6.5.10 With all due respect to the non-specialist nature of the R6P position, I must point out that it is generally agreed within the arboricultural profession that veteran tree populations are most suitably preserved and enhanced by means of a Veteran Tree Management Plan, as is here proposed (please see JFL21). There are several reasons for this, one of which is habitat management in the crown of the trees themselves. In this regard, there are three issues in play:

1. Lack of appropriate husbandry can lead to massive structural failure which prejudices the retention of the tree;
2. Removal of dead wood directly leads to habitat loss for saproxylic invertebrates and their predator species; and
3. Removal of 'habitat stubs' (broken spars left in the crown of trees following branch failures) directly leads to loss of aerial habitat spaces, including nesting/ roosting opportunities for birds and bats³, where the spars include hollows and crevices.

6.5.11 In this regard, prior to preparation of evidence, Mr Baxter and I undertook a site visit to ensure currency of baseline data. During this visit I was dismayed, frankly, to find that one of the finest of the veteran trees on site, number 3026, has been subject to what are termed 'hygiene works': dead wood has been removed (Figure 1) and habitat stubs have been cut back to the parent member (Figures 1 and 2).

³ BS8596:2015 *Surveying for bats in trees and woodland – Guide* at clause 5.2, Potential Roost Features

Figure 1 – Photograph of recently formed pruning cut in crown of 3026 showing removal of dead wood (circled) and location for former habitat stub (arrowed)



Figure 2 – Photograph of pruned-out habitat stub, on the ground beneath the crown of 3026



6.5.12 Inappropriate tree work of this nature is precisely what should be avoided in the management of veteran tree populations. The fact that this is ongoing is exactly the sort of treatment that the proposed Veteran Tree Management Plan would prevent.

6.5.13 In this regard, veteran trees enjoy the high level of protection that they do as Irreplaceable Habitat at NPPF 175c, specifically because of the very features that have been removed from tree 3026. Accordingly, it must follow that very significant weight should attach to the implementation of a management regime geared towards their preservation. In my opinion, this one single ground should be held sufficient to outweigh any residual concerns arising from the submission of the Rule 6 Party.

7 Conclusions

7.1 The First Appeal was dismissed partly in relation to Inspector Sims' concerns regarding two aspects of the proposals as then before him. Firstly, he was concerned at the loss of tree 3014. This tree is now identified for retention. Secondly, he considered that tree protection proposals did not offer certainty of outcome. Whilst I would question whether "certainty" is the proper test (even capital punishment only required a confidence level of *beyond reasonable doubt*), the proposals before this Inspector are cured of those features about which Inspector Sims raised specific concerns.

7.2 It is right to note that Appeal Scheme 2 enjoys officer support at technical level and that the Council, at all levels, does not consider tree-related aspects of the proposals to be non-compliant with local or national policy. This leaves objectors comprising a Rule 6 Party, supported by professional advice, and two tree advocacy pressure groups.

7.3 The overlaps between the Rule 6 Party and its advisors relate to the concept of the relic tree and questions over soil hydrology. Whilst the former has a firm scientific basis, against which no counter argument is raised, the latter was simply not made out by the R6P or its advisors: in this regard, it is axiomatic that unsubstantiated assertions should attract only limited weight.

7.4 It is also right to note that neither the R6P nor its advisors consider that additional veteran trees are present, beyond those which we identify. This was also the conclusion reached by Inspector Sims.

7.5 Turning to the pressure groups, their principal complaint is the use of the RAVEN methodology to identify ancient and other veteran trees. They propose no alternative approach. Instead, they rely on an expanded definition of veteran tree that omits one of the key criteria in the NPPF, namely that such trees should be old relative to others of the same species, and they make no reference to exceptionality of value. The latter is the driver for the protection given to this type of Irreplaceable Habitat at paragraph 175c of the Framework, and its omission by these parties is both very striking and difficult to understand.

7.6 It can be seen from the TWT and ATF approach that their thinking is not aligned to the concept of veteran trees within the Framework, not least because they do not appear to understand the importance of relative age. Moreover, they have effectively abandoned the idea that veteran trees offer exceptional value, and that this is why they should receive exceptional protection. It is regrettable that these organisations have lost their way, but in my view that ought not to lead this Inquiry equally astray.

7.7 Overall, I consider that matters raised by objecting parties are fully resolved by my evidence, though I welcome the opportunity for further dialogue on the current papers, during the Inquiry proceedings to come.

7.8 Finally, there is the question of beneficial effects of development, specifically implementation of a long-term Veteran Tree Management Plan. I have shown how the current management regime is deleterious to habitat value. In this context, preservation and enhancement of Irreplaceable Habitat of *exceptional value for biodiversity* should attract very significant weight.

7.9 It is for these reasons that I urge that this appeal be allowed.

Statement of truthfulness and professional endorsement

Pursuant to Planning Inspectorate guidance 'Planning Appeals and Called-in Applications', specifically section 1.13 Expert Evidence (PINS 01/2009 published in April 2010), I confirm that the evidence which I have prepared and provide in this Proof of Evidence is true, and has been prepared, and is given in accordance with the guidance of my professional institutions (Institute of Chartered Foresters, Royal Institution of Chartered Surveyors and the Expert Witness Institute). I further confirm that the opinions expressed herein are my true and professional opinions.

Julian Forbes-Laird