

Town & Country Planning Act 1990 (as amended), Section 78 - Appeal

PINS ref. **APP/B1605/W/20/3261154:**

Land off Oakhurst Rise, King's Charlton

Statement of Agreed & Not Agreed Matters

Between:

Julian Forbes-Laird BA(Hons), Dip.GR.Stud, MICFor, MRICS, MEWI, Dip.Arb(RFS), FLAC *For the Appellant*

And:

Sally Walker, MA (Hons) Cantab, Local Resident

For the Rule 6 Party

Pursuant to the Refusal of Outline Planning Permission on 17 September 2020 by Cheltenham Borough Council in respect of its application ref. 20/00683/OUT, and further pursuant to the "Charlton Kings Friends" being granted Rule 6 status at the forthcoming Public Local Inquiry, the following matters are agreed or not agreed, as the case may be.

It is hereby AGREED that:

1. The previous application (First Appeal Scheme) was found to be in some conflict with Policies GE6, GE5 and INF3. The inspector also found that there was some degree of risk to the longevity of the trees concerned. These potential harms counted "in some measure against the approval of the scheme".
2. The Tree Officer appointed to review the development proposals under 20/00683/OUT at first instance did not recommend that Planning Permission should be refused, although he did qualify his decision (file note response to 10/9/20 BH report, repeated in part below).
3. Wendy J Burden BA DipTP, MRTPI appointed as Local Plan Inspector for Cheltenham, in her final report to Cheltenham Borough Council following inspection of the Local Plan (para 59) on 17 March 2020, stated: "I have made a minor change to the wording of modified Policy HD4 to require the protection of mature trees".¹ The modified policy includes "requirements for development proposals for Oakhurst Rise to demonstrate the protection of key biodiversity assets and mature trees and the long term protection of mature trees and hedges".
4. The trees on site have been surveyed in accordance with the benchmark standard BS5837: 2012 *Trees in Relation to Design, Demolition and Construction Recommendations*.

¹ https://www.cheltenham.gov.uk/downloads/file/8071/ed043_final_report_on_the_cheltenham_plan

5. The total number of trees identified for removal to facilitate the scheme as now Appealed is set out in Table 1, below.

Table 1 - Schedule of tree removal

FLAC no.	TPO ref.	Species	Count	Age class	BS5837 grade	Quality
3012	<i>None</i>	Ash	1	EM	C	Low
3013	<i>None</i>	Ash	1	EM	C	Low
3016	<i>None</i>	Ash	1	M	B	Moderate
3017	<i>None</i>	Sycamore	1	M	B	Moderate
TG3004	<i>None</i>	Mixed deciduous	25	EM	C	Low
TG3008	Possibly A3	Damson, hawthorn	20	M	C	Low

6. There is a Tree Preservation Order in force on the site, which covers:
 - 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) Those trees within Area A3 on the TPO map which were present within the dotted line thereon at the time that the Order was made.

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

7. A number of trees possibly subject to the TPO (within its Area A3) are proposed for removal, as set out in Table 1. These are confined to FLAC group ident TG3008, which comprises damson and hawthorn. The extent of the coverage provided by TPO A3 with respect to TG3008 is uncertain, not least as some components of this group are not trees proper, and so would not fall under the TPO in any event. The extent and nature of this uncertainty is not considered material.
8. All other trees included within the TPO are identified for retention, including TPO T11 (FLAC ident 3014), which was proposed for removal under the First Appeal Scheme.
9. The loss of tree 3004 (TPO tree T6) is not objectionable on arboricultural grounds.
10. The loss of several trees from within TG3008, some of which may be included within the TPO under Area A3, is not objectionable due to their low quality.

(Note: A quantity of the trees and hedgerow protected under A3 in TG3008 was removed in 2017, in order to install a new gateway at the top of Oakhurst Rise.)

11. By reference to the FLAC tree survey numbering system, the trees listed below on the Appeal Site are agreed to be ancient or other veteran trees within the meaning and definition provided within the Glossary to the Framework, at its Annex 2:

<i>Ancient trees</i>	3018, 3021, 3037
<i>Other veteran trees</i>	3007, 3026, 3028, 3030, 3031

12. The ancient and other veteran trees listed in paragraph 11 would all be protected by provision within the layout of buffer zones, some of which are in accordance with the Natural England and Forestry Commission standing advice recommendations, and three of which have been reduced according to the RAVEN assessment of the trees as 'relics' (3007, 3021, and 3028).
13. The development proposals do not require, for their implementation, the felling of any tree meeting the criteria for the descriptor an '*ancient or veteran tree*' within the meaning and definition provided within the Framework.
14. Tree 3016 has been identified by FLAC as a mature ash tree. It will be removed as part of this application/ appeal.
15. Tree 3017 has been identified by FLAC as a mature sycamore tree. It will be removed as part of this application/ appeal.
16. Both trees 3016 and 3017 were also identified for removal under the previous application.

It is hereby NOT AGREED that:

17. The requirement in Policy HD4 for 'protection' of mature trees applies to all mature trees, including on this site 3016 and 3017. CKF contend that it should, and therefore the removal of these two trees is in contravention of that policy.
18. The concerns raised and professional judgements (over which there is dispute, particularly over the use of the Relic definition to reduce protected habitat around veteran trees compared with standard guidance) mitigate, or not, risk to veteran tree habitats and high value trees, in compliance with policy.
19. Mature trees would be inadequately protected (CKF Statement of Case at its 3.8) from both loss and from damage. Mature trees on the Appeal Site include those that the Woodland Trust and Ancient Tree Forum consider to be veteran trees (disputed by the appellant and not raised further by CKF), and trees that have previously been identified as being of significant local amenity and visual impact in planning appeals.
20. In particular:
 - i) There is a risk of harm to mature trees and veteran and ancient tree habitat due to alterations of soil hydrology arising from the Appeal Scheme; and that

- ii) The concept of the “relic tree” is invalid, such that trees 3007, 3021 and 3028 should be afforded larger buffer zones than presently shown, in accordance with Natural England’s standing advice.

21. Comments by the CBC tree officer weigh in favour of the Appeal being dismissed, specifically:

- There was a divergence of opinion as to identification of veteran trees.
- Veteran trees had not been afforded the full Natural England buffer zone due to their being classed by FLAC as “relic trees”, and that there is no concept of a “relic” veteran in the NPPF.
- The current proposed design does respect, “in the main, tree protection guidance”.
- Assuming successful establishment of new trees, there should (in the long term) be a net gain in canopy cover.
- There is incursion into the RPA of T3014 but that he considered it to be marginal (T3014 is not identified as a veteran tree, though has some characteristics thereof).
- The “relic reasoning makes logical sense but is not strictly in line with the official formal guidance”.
- And that in his opinion, development of the land would cause changes to veteran trees from construction pollution, end-use light pollution, changes in soil ecosystems and changes in soil hydrology. But that “in his experience”, such changes should be minimal and not significant.

22. The presence of springs across Battledown is the most relevant criterion when assessing soil hydrology and trees, not precipitation (though CKF accept that there is no evidential support for their position on this point, beyond the detailed experiences of residents (including infrastructure specialists)).

23. As claimed by the Appellant, the traditional arrangements for site management are to the detriment of trees, or that there is any credible risk to future management of the trees, absent any development.

Signed for the Appellant

Julian Forbes-Laird, 2 February 2021

Signed for the Rule 6 party



24 Feb 2021