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DEVELOPMENT MANAGEMENT AGENDA

**THURSDAY 22 JUNE 2023 AT 7.00 PM
COUNCIL CHAMBER, THE FORUM**

The Councillors listed below are requested to attend the above meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Membership

Councillor Guest	Councillor Cox
Councillor C Wyatt-Lowe	Councillor Link
Councillor Durrant	Councillor Mottershead
Councillor Hobson (Vice-Chairman)	Councillor Patterson
Councillor Maddern	Councillor Riddick
Councillor Stevens (Chairman)	Councillor Silwal
Councillor Bristow	Councillor Mitchell

For further information, please contact Corporate and Democratic Support or 01442 228209

AGENDA

(f) Addendum (Pages 2 - 31)



DEVELOPMENT MANAGEMENT COMMITTEE

ADDENDUM SHEET

Item 5a

22/02531/FUL Proposed new Residential Dwelling

Land Between 33 And 39 Pickford Road Markyate St Albans Hertfordshire AL3 8RS

Representation received from 33 Pickford Road:

I am affected by the planned development and would like to be heard. I am also attaching two photos that I would like to be shown at the meeting.





Recommendation

As per the published report.

Item 5b

22/02538/FUL Replacement Dwelling

**Frithsden Vineyard Frithsden Lane Frithsden Hemel Hempstead Hertfordshire
HP1 3DD**

Consultation Response from Trees & Woodlands:

“The applicant has submitted a Tree Report describing trees within the development site. However, it fails to offer appropriate protection measures to avoid the detrimental impacts of development to the adjacent trees identified. Therefore, I require the applicant to provide further information in the form of a Tree Protection Plan as described in BS5837:2012 Trees in relation to design, demolition and construction.”

The Case Officer highlighted to the Trees & Woodlands Officer that Tree Protection Measures would be secured by Condition 2. The Trees & Woodlands Officer has confirmed that the recommended condition is acceptable.

Representation received from The Old Farmhouse:

Dear Cllrs

Item 5b - development Committee meeting 22nd June 2023
Frithsden Vineyard Frithsden Lane Frithsden Hemel Hempstead Hertfordshire HP1 3DD,
22/02538/FUL

1. I own and live at The Old Farmhouse, Frithsden and write on behalf of myself and my neighbours on the southern boundary due to the potential impact this proposal will have on existing residents in the immediate area. We are extremely disappointed that this application is being recommended for approval by officers despite the previous letters of objection that remain entirely valid.

2. This application was submitted in August 2022 and it is normal practice to determine an application of this nature within 8 -12 weeks, although we appreciate they have been taking a little longer of late. The applicant has been allowed on numerous occasions to submit revised information but residents who have previously objected to the application, have not been advised of this information or given the opportunity to comment by the Council. We have continually asked to be advised of any updates to the application and have been left feeling that this application has not been dealt with in a fair manner and from a resident's perspective, there has not been a level playing field for all parties in how the application has been handled.

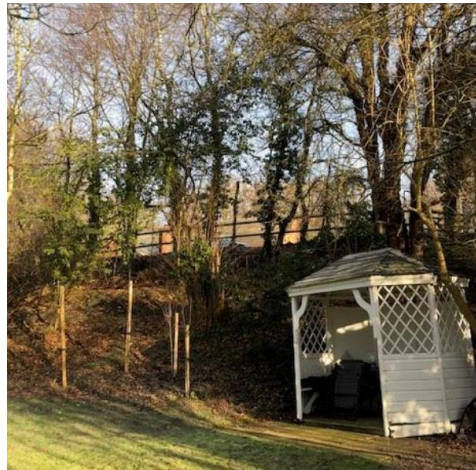
3. We have recently found out that additional section drawings have been submitted to the Council to demonstrate the relationship between the proposed dwelling and existing properties. These section drawings have already been commented on by neighbours as being factually incorrect when compared with KND Surveys data who are the only company who have surveyed the area- but we have not been allowed the time to challenge these errors with the applicant. These section drawings are referred to in the committee report to justify the officers statement that there would be no impact on the amenity of existing occupiers due to the distances stated. This only relates to the internal privacy of the dwelling. There is no reference to the overlooking of the garden which is a material planning consideration. The report however refers to landscaping between the proposed dwelling and Shepherds Cottage and states that this provides suitable screening to protect existing occupiers amenity. Photographs have already been submitted to the Council that clearly demonstrate this screening is not acceptable to protect the amenity of the garden for the occupier. The following photographs demonstrate this point:

1. Photograph taken at the proposed terrace level with the maximum screening that would be available in the summer only



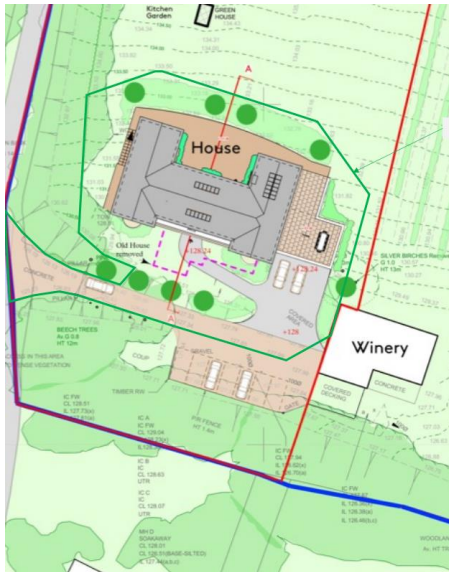
Photo Taken from the proposed Terrace at Level +131.24m

2. Photograph taken from Shepherds Cottage where the sparseness of the screening at the lower level of the canopy is visible.



4. This clearly shows that the private amenity area of Shepherds Cottage will be overlooked from the proposed terrace and the proposed parking area for 7 vehicles along the southern boundary. The latter in particular will lead to immediate and direct overlooking into the garden of Shepherds Cottage with associated comings and goings with noise and disturbance from car doors slamming and people talking. Due to the change in levels, amenity will also be impacted by head lights from the vehicles parking in this area along with the noise from cars stopping, starting and reversing. This will without doubt have a detrimental impact on the amenity of the occupiers and the use of their private garden.

5. The red line on a planning application is of significant legal importance as it defines the application site. This application includes a significant amount of agricultural land that has previously formed part of the vineyard. Whilst drawing 714 P31 A has been submitted to show the residential curtilage that is highlighted by the green line in the extract below, the red line application site extends well beyond this. This remaining land is clearly intended to be used for residential purposes with a green house and kitchen garden shown to the north.



6. The proposed dwelling includes a garage and a driveway for 4 cars , but a further 7 vehicle parking spaces are shown on the drawing. These parking spaces have been shown on a previous application as being used by the winery. The question has to be asked why does a single dwellinghouse require 11 parking spaces as shown within the application site? This is excessive, not required to serve a single dwelling, unsustainable in terms of encouraging the use of cars and adversely impacting amenity and the character of the area. The application should therefore be refused due to excessive parking, unnecessary loss of green areas, impact on the character of the area and impact on residents. If these 7 parking spaces are not to be used in association with the proposed dwelling, they should be removed from the application and the red line boundary updated accordingly.

7. Drawing 714 P31 A also states that the driveway and garage forecourt would be a covered area and yet no details have been submitted as to the design and extent of this area which could severely impact the character and appearance of the area.

8. There is clear information that has been submitted by objectors that the residential amenity of existing occupiers, in particular the use of their private amenity areas, would be impacted by this proposal. This in itself, would be a clear reason to refuse the application.

9. It is vital that the questions that have been raised by residents are addressed and clarity provided to members before any decision is made. As stated previously, there should be a comprehensive plan before the Council that clearly shows the applicants intentions for the entire site. It is unclear on the applicant's own document whether this is a standalone application for a dwelling and there is no intention to continue with the Winery or the applicant still plans to develop the rest of the site as would be suggested by the heritage report and the ecological report with the tree report which states the intended use is for tourism.

10. What is more alarming is that the heritage report has recently been updated but still includes all the details for the Winery redevelopment and 3 treehouses despite this being for a replacement dwelling only. The application should be a full suite of up-to-date documents

for the application applied for only, rather than a blended and misleading version with information relevant to the previously refused scheme still within the documents.

11. It is important that the committee have the full facts before them as the further reduction in land from agriculture to general residential use, even if not the main curtilage to the dwelling, would lead to further issues on viability. In our view, if this application is solely for a single dwelling, the red line application site should be revised to reflect this with the omission of the 7 parking spaces and the area of agricultural land to the north that is outside of the proposed curtilage.

Consultation responses

12. There appears to be confusion in several of the consultation responses in particular from Historic England, (HE) and the Chilterns Conservation Board, (CCB). Both refer to the Vineyard and the economic benefits that would arise. The officers report relies heavily on their responses to justify the proposed dwelling and yet this application is for a standalone replacement dwelling and nothing to do with the vineyard itself.

13. In relation to the HE response, the committee report states on page 7 *“Moreover, Historic England has explicitly stated that they have no objection to the proposal on heritage grounds.”* This is not correct. What they actually say is that there would be harm to heritage assets but as this is at the lower end, it is for the Local Authority to weigh this harm against the public benefits that may occur from the proposal which requires a balancing act of all the issues and is a judgement call. HE full comments are provided at Appendix A, page 40 of the committee report.

14. CCB comments on the application are provided at Appendix A, page 20 of the committee report and state:

“In that regard, the rural enterprise and rural / community benefits of the vineyard use, is material to this application, whilst noting that the application form seeks a replacement dwelling (only). The vineyard use helps to deliver the AONB's visitor economy and increase its economic impact (see SP1 of the 2019-2024 AONB Management Plan and chapter 9 generally which deals with social and economic wellbeing).

The CCB recommends that there is a linkage between the residential replacement of the existing dwelling and the future winery/vineyard use, which is indicated on the submitted block plan and was the subject of economic reports and extensive justification in the previous applications.”

On this basis as the current application does not link the vineyard and the dwelling, it must be assumed that CCB object to the application.

15. Accuracy is extremely important for the technical reports that accompany the application. For example, the Arboricultural Report on page 4 states the site is being developed for tourism – a change of use of the entire site - which on this application for a dwelling house is incorrect – or is the applicant actually trying to get permission for a house which will also be used for tourism? . In addition, the tree constraints plan at the end of the

report that identifies the trees and links to the classification to the quality of each tree is totally illegible. How can a decision be based on this information?

16. The Parish Council and the Chiltern's Society raise serious objections to this application. Both organisations are independent and yet their views are hardly visible in the officer's report. The emphasis on the summarised and not the full comments from HE and CCB compared to the Parish Council, Chiltern Society's and neighbours objections, appears totally unbalanced.

17. We believe members should have full and accurate information on an application and accurate responses from all consultees prior to making a decision to avoid any decision being based on flawed documents that could be legally challenged.

The recommendation and suggested planning conditions

18. Within the report there is acknowledgement to harm to the area and that mitigation measures are required to address this harm and yet appropriate conditions have not been imposed to ensure the harm is addressed and mitigation retained in perpetuity.

19. The suggested Condition 7 in the committee report requires a landscaping scheme to be submitted to the Council for approval after the decision notice is issued. This is a general condition and there is no reference to the importance of the southern boundary despite the fact that the report seeks to justify the proposed dwelling due to the existing screening. Even if the condition was updated, it only requires any trees/plants to be replaced for a 5-year period and as such, after this period, all the planting could be removed leading to exposure for the residents.

20. The residents have **not** been reconsulted on these revised drawings as stated previously. They had asked for this to take place and be allowed the opportunity to employ their own expert to provide details on the overlooking. This request has been refused by officers and the application is now before members to determine. We request that members refuse this application on the many grounds highlighted in this letter and previous objections and that of the Parish Council, Chiltern Society and the many residents who wrote in to object, but at the very least to defer the application as requested because of the errors in the documentation. However, should members be minded to follow the officers recommendations, we seek additional planning conditions to ensure appropriate mitigation is secured as follows:

1. Lighting from the glazed areas of the proposed dwelling at night, in particular from the roof lights is highlighted as harmful in the committee report and requires mitigation. There is reference to the need for automatic black out blinds but there is no planning condition that requires the details to be submitted, agreed and retained in perpetuity. As such, the applicant can leave the glazed windows and rooflights without blinds with lighting causing harm to the AONB.
2. Whilst the glazing has been reduced, there would still be a significant light pollution issue in what are at present very dark skies and a similar condition to that suggested above should be imposed.

3. The balcony area should be restricted solely to a use in association with the residential dwelling. There should be no use of this space in connection with the vineyard.
4. The existing trees along the southern boundary should be retained in perpetuity to ensure no overlooking to existing residents and a TPO served to back this up..
5. Boundary plating in the form of fencing and hedging should be provided to protect the residents from vehicle lights and minimise noise disturbance
6. A barrier should be provided to prevent vehicles rolling over the edge of the slope into the garden of Shepherds Cottage.

21. Of significant importance is the date of the Ecology Survey (ES) and Bat Survey, (BS). According to Condition 9, the ES is dated July 2020 and the BS September 2020. The life expectancy of these surveys is normally 12 months and a maximum of 18 months. The ES is nearly 3 years old and BS, 2 and half years old. The surveys are therefore woefully out of date and in our view, the Council is not able to discharge its legal duty in relation to the impact on protected species without new reports being commissioned.

22. On this basis, we have grave concerns that if the Council decides to make a decision on this application, it will be in breach of its statutory duties and furthermore the suggested planning conditions to not address the harm that officers have referred to in the committee report.

23. Condition 9 also refers to a Heritage Statement by the Historic Environment Consultancy dated 01/08/2022. However, there appears to be a new Heritage Statement that was uploaded to the Council's website only last week and dated June 2023 that is not referenced in the suggested approved documents. However, this document is inaccurate and refers to pre-application discussion in section 1, and at paragraph 4 states:

*"It is proposed to demolish the modern winery building and house to construct a new house and new winery in the vineyard as well as three tree houses.
The proposed development will allow for the expansion of the Frithsden Vineyard business whilst providing accommodation for the owner of the vineyard."*

If this is the case, then the proposed dwelling should be tied to the vineyard through a section 106 agreement. Figure 3 on page 23 of the Heritage Statement (reproduced below) also refers to the proposed site layout that is inaccurate and does not reflect the current proposed scheme. Why has this Heritage Statement document been updated by the applicant as recently as last week yet a plan remained in showing the dwelling house the subject of this application alongside a Winery and 3 treehouses which were the subject of planning applications 2 years ago and were refused? The applicant has had ample opportunity to revise these plans to show the proposed dwellinghouse alongside what is actually on the Site .This plan is in our view extremely misleading as it implies to those not familiar with the history that permission for the Winery and 3 treehouses and by implication change of use of the land was given. They were rejected.

25. As a resident, how can the Council be determining an application with incorrect documents referred to in the decision notice? This will only lead to confusion later on and we are all aware of the previous planning refusals where it has been argued the vineyard is no longer viable. As it stands, land will be lost to the vineyard business which must further question its viability in the short and long term.

Conclusion

26. We hope members will consider all the material planning considerations and come to a different view than that currently expressed by officers.

27. As a minimum we request that committee members defer the application from this meeting, we ask for a site visit so they can see the situation for themselves before a decision is made on such a sensitive application. We also request that residents are given the opportunity to submit their own report in relation to the existing screening prior to the application being determined. We have, as soon as we became aware of the new documents submitted by the applicant, engaged Patrick Stileman, an expert, to carry out a tree assessment. Please allow us the time for him to carry out his survey and produce a report. This seems only fair and reasonable having regard to the number of times that the applicant has submitted revised details and residents have not even been consulted.

28. All we seek, is fairness in relation to how the application is being handled, and accuracy and transparency in the information that is presented to committee members prior to a decision being made so that members do not find they have impliedly approved a lot more than simply a replacement dwelling house, including significant changes of use of the land which has not been made clear to them.

Representation received from Shepherds Cottage with 3 documents attached:

I refer to my letter of 5th September 2022 where I formally advised you and Dacorum Council that the applicants' drawings are incorrect and that we own much more of the bank than has been represented by the applicant's architect.

I have provided you with photos & GPS co-ordinates of old marker posts showing where the boundary line exists in reality on the ground and showed these to you when you inspected the boundary last September.

I am now able to back this up further by attaching a Tree Preservation Order on a substantial Beech tree *Fagus Sylvatica* that was served on the previous owner of Shepherds Cottage, then known as Mellor Cottage. by Dacorum Council on the 5th April 1983, the TPO was unchallenged and came into effect on 12th September 1983.

Mr Chris Smith, the previous owner applied on 18th December 1989 to prune "T1 at Shepherds Cottage" *part of the proposed works was to shorten back heavy limb extending over neighbouring garden by approximates half or at a suitable side branch in order to reduce weight on area where old wounds occur*"; this was approved on 28th February 1990.

Furthermore, in the wording of the 1990 permission there is reference to the fact that part of the tree overhangs the neighbour's property ie the Vineyard and gave permission for Chris Smith to lop certain overhanging branches; this tree was struck by lightning and needed to be lopped.

In the attached order there is a plan which shows that the tree at 21m from our property, this remains correct to the substantial stump of the tree that remains and confirms our northern boundary is situated much higher on the bank. This is a further confirmation of where the boundaries lie.

It also confirms that there are tree species in the bank which have been recognised by your predecessors at Dacorum that are worthy of protection. I did point out this tree to you when you inspected the bank and showed you the old fence posts which I proceeded to photograph and provide you with the GPS co-ordinates which I registered on the Council's planning portal on the 5th September 2022.

My neighbours and I have commissioned a land survey by KND along with a RICS boundary surveyor who have also confirmed the above, and that the boundary line does lie in the position I showed to you during your visit in September last year. KND have also confirmed from their measurements that the true boundary lies only approximately 1.3m below the electricity pole which I also showed you also at your inspection.

I therefore re-iterate the point that the submitted drawings are incorrect, and that the application should be withdrawn otherwise the committee will be making an unsound decision on inaccurate plans.

I do not object to a replacement dwelling on this site, but the design and focus of this property is to our rear boundary and without the trees the way we experience and use our private rear garden will fundamentally be changed due to this proposal.

My wife and I feel very let down and that my rights as immediate neighbours who would be most affected by this proposal have been totally overlooked, we only seek to retain the use of our house and garden without this being fundamentally changed by this proposal if the unprotected trees were removed, I have had virtually no contact or response from you on the matters I have raised with you over the last year while we have been living under the threat of this application. The only thing we have received is your report which suddenly recommends that the application is granted and in the report you have ignored **the substantial and justified objections** from all the neighbours, the Parish Council and the Chiltern Society who have supported the view that to grant the application would be contrary to adopted policies of the Local Plan which seek to protect the natural environment, the beauty of the AONB, the setting of Conservation Areas and neighbouring Listed Buildings and ensuring a high quality, sympathetic development that is both sensitive to the location and protects the residential amenity of surrounding properties.

I call on you to withdraw your report and take it off the agenda for the Council meeting and require the applicant to submit plans and supporting information, which is accurate, up to

(2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of the application, the decision of the authority thereon, any compensation awarded in consequence of such decision and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.

5.—Where the authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied—

- (a) that the refusal or condition is in the interests of good forestry; or
- (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.

6.—(1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless—

- (a) such consent is granted for the purpose of enabling development to be carried out in accordance with a permission to develop land under Part III of the Act, or
- (b) the authority ~~with the approval of the Secretary of State~~ dispense with replanting,

the authority shall give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which he shall replant such land and where such a direction is given and the part is felled the owner shall, subject to the provision of this Order and section 175 of the Act, replant the said land in accordance with the direction.

(2) Any direction given under paragraph (1) of this Article may include requirements as to—

- (a) species;
- (b) number of trees per acre (hectare);
- (c) the erection and maintenance of fencing necessary for protection of the replanting;
- (d) the preparation of ground, draining, removal of brushwood, lop and top; and
- (e) protective measures against fire.

7.—On imposing any condition requiring the replacement of any tree under Article 4 of the Order, or on giving a direction under Article 6 of this Order with respect to the replanting of woodlands, the authority shall if such condition or direction relates to land in respect of which byelaws made by a water authority since 31st March 1974, by any other authority (whose functions are now exercised by a water authority) who at any time prior to 1st April 1974 exercised the functions in respect of which the byelaw was made, by a drainage board, or by the Greater London Council in the exercise of its functions in relation to maintenance, improvement or construction of watercourses or of drainage works, restrict or regulate the planting of trees, notify the applicant or the owner of the land, as the case may be, of the existence of such byelaws and that any such condition or direction has effect subject to the requirements of the water authority, the drainage board, or the Greater London Council under those byelaws and the condition or direction shall have effect accordingly.

8.—The provisions set out in the Third Schedule to this Order, being provisions of Part III of the Act adapted and modified for the purposes of this Order, shall apply in relation thereto.

9.—Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the authority within the time and in the manner prescribed by this Order, be entitled to recover from the authority compensation in respect of such loss or damage:

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any trees the subject of a certificate in accordance with Article 5 of this Order.

10.—In assessing compensation payable under the last preceding Article account shall be taken of:

- (a) any compensation or contribution which has been paid whether to the claimant or any other person, in respect of the same trees under the terms of this or any other Tree Preservation Order under Section 60 of the Act, or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) Act 1943, or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodlands contained in an operative scheme under the Town and Country Planning Act, 1932, and
- (b) any injurious affection to any land of the owner which would result from the felling of the trees the subject of the claim.

11.—(1) A claim for compensation under this Order shall be in writing and shall be made by serving it on the authority, such service to be effected by addressing the claim to the authority and leaving it at or sending it by post to the principal office of the authority.

(2) The time within which any such claim shall be made as aforesaid shall be a period of twelve months from the date of the decision of the authority, or of the Secretary of State as the case may be, or where an appeal has been made to the Secretary of State against the decision of the authority, from the date of the decision of the Secretary of State on the appeal.

12.—Any question of disputed compensation shall be determined in accordance with the provisions of Section 179 of the Act.

13.—[(1) The provisions of section 61 of the Act shall apply to this Order and the Order shall take effect on 5th APRIL 1983 .]†

—[(2) This Order shall apply to any tree specified in the First Schedule hereto, which is to be planted as mentioned therein, as from the time when that tree is planted.]‡

NOTE: Any person contravening the provisions of this Order by cutting down, uprooting or wilfully destroying a tree, or by wilfully damaging, topping or lopping a tree in such a manner as to be likely to destroy it is guilty of an offence and liable on summary conviction to a fine not exceeding £1000 or twice the sum which appears to the court to be the value of the tree, whichever is the greater, or on indictment to a fine. The penalty for any other contravention of this Order is a fine not exceeding £200 on summary conviction and, in the case of a continuing offence when the contravention is continued after conviction, a person is liable on summary conviction to an additional fine not exceeding £5 for every day on which the contravention is so continued.

If a tree other than one to which an Order applies as part of a woodland is removed, uprooted or destroyed in contravention of an Order or is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by section 60(6) of the Town and Country Planning Act 1971 relating to trees which are dying or dead or have become dangerous, it is the duty of the owner of the land, unless on his application the local planning authority dispense with the requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can. Except in emergency, not less than 5 days' previous notice of the removal, etc., should be given to the authority to enable the latter to decide whether or not to dispense with the requirement.

† This provision is not to be included unless it appears to the authority that the Order should take effect immediately.

‡ This provision may be included in relation to trees to be planted pursuant to a condition imposed under Section 59 of the Act.

FIRST SCHEDULE

TREES SPECIFIED INDIVIDUALLY*

(encircled in black on the map)

<i>No. on Map.</i>	<i>Description.</i>	<i>Situation.</i>
T1	Fagus Sylvatica (beech)	On northern boundary of site, 21 metres north of Mellor Cottage

TREES SPECIFIED BY REFERENCES TO AN AREA*

(within a dotted black line on the map)

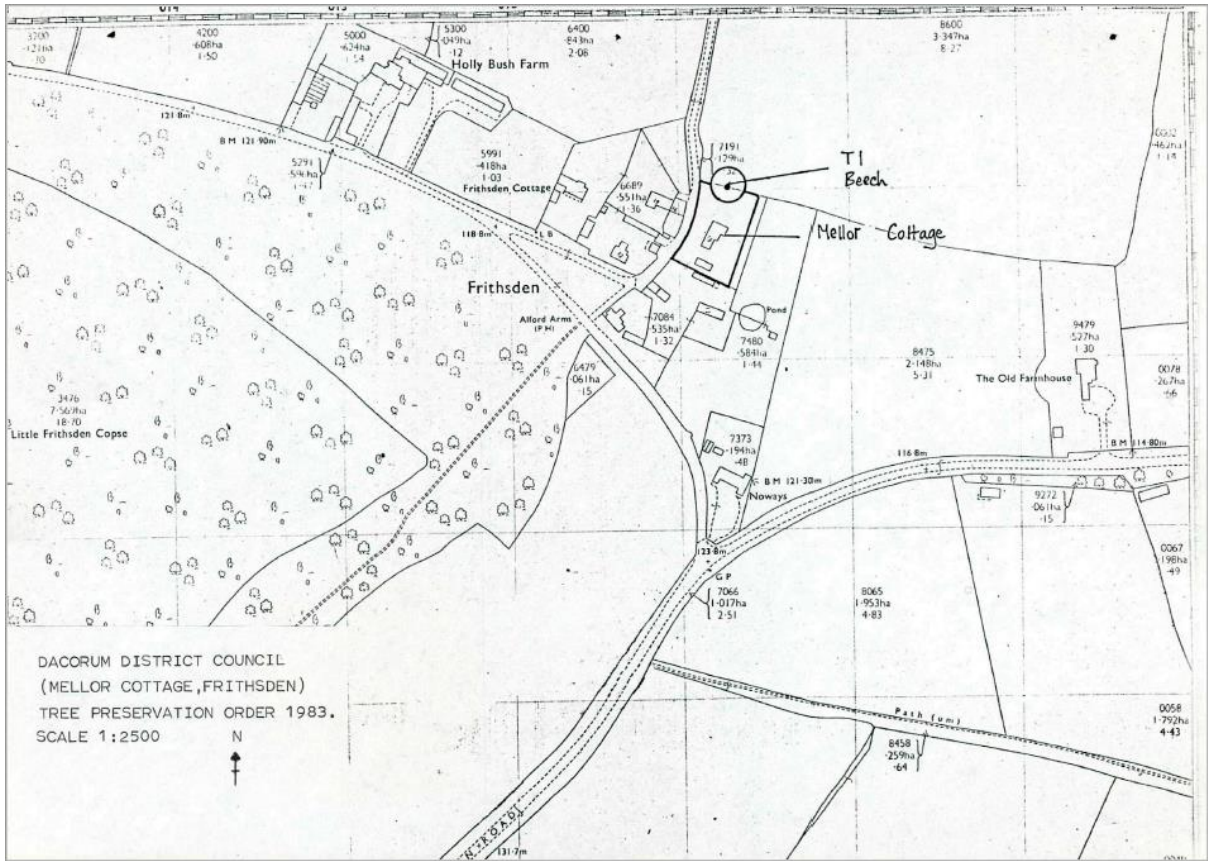
<i>No. on Map.</i>	<i>Description.</i>	<i>Situation</i>
	NONE	

GROUPS OF TREES*

(within a broken black line on the map)

<i>No. on Map.</i>	<i>Description.</i>	<i>Situation</i>
	NONE	

* The word "NONE" must be entered where necessary.



WOODLANDS*

(within a continuous black line on the map)

No. on Map.	Description.	Situation
	NONE	

* The word " NONE " must be entered where necessary.

SECOND SCHEDULE

This Order shall not apply so as to require the consent of the authority to

- (1) the cutting down of any tree on land which is subject to a forestry dedication covenant where
 - (a) any positive covenants on the part of the owner of the land contained in the same deed as the forestry dedication covenant and at the time of the cutting down binding on the then owner of the land are fulfilled;
 - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under section 4 of the Forestry Act 1967 except a scheme which applies to a forestry dedication covenant;
- (3) the cutting down, uprooting, topping or lopping of a tree.
 - (a) in pursuance of the power conferred on the Post Office by virtue of section 5 of the Telegraph (Construction) Act 1908 and section 21 of the Post Office Act 1969, or by or at the request of the Post Office where the land on which the tree is situated is operational land as defined by the Post Office Operational Land Regulations* and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;
 - (b) by or at the request of
 - (i) a statutory undertaker where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the cutting down, topping or lopping is for the purpose of securing safety in the operation of the undertaking;
 - (ii) an electricity board within the meaning of the Electricity Act 1947, where such tree obstructs the construction by the board of any main transmission line or other electric line within the meaning respectively of the Electricity (Supply) Act 1919 and the Electric Lighting Act 1882 or interferes or would interfere with the maintenance or working of any such line;
 - (iii) a water authority established under the Water Act 1973, a drainage board constituted or treated as having been constituted under the Land Drainage Act 1976, or the Greater London Council, where the tree interferes or would interfere with the exercise of any of the functions of such water authority, drainage board, or Council in relation to the maintenance, improvement or construction of water courses or of drainage works; or
 - (iv) the Secretary of State for Defence, the Secretary of State for Trade, the Civil Aviation Authority or the British Airports Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;
 - (c) where immediately required for the purpose of carrying out development authorised by the planning permission granted on an application made under Part III of the Act, or deemed to have been so granted for any of the purposes of that Part;
 - (d) which is a fruit tree cultivated for fruit production growing or standing on land comprised in an orchard or garden;

[Where the trees are within the Thames catchment area]
 - (e) in pursuance of the powers of the Thames Water Authority under section 105 of the Thames Conservancy Act 1932.]

* S.I. 1973/310.

THIRD SCHEDULE

Provisions of the following parts of Part III of the Town and Country Planning Act 1971 as adapted and modified to apply to this Order.

33. (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time being interested therein.

~~35. Reference of applications to the Secretary of State.—(1) The Secretary of State may give directions to the authority requiring applications for consent under the Order to be referred to him instead of being dealt with by the authority.~~

~~(2) A direction under this section may relate either to a particular application or to applications of a class specified in the direction.~~

~~(3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.~~

~~(4) Where an application for consent under the Order is referred to the Secretary of State under this section, the provisions of Articles 4 and 5 of the Order shall apply as they apply to an application which falls to be determined by the authority.~~

~~(5) Before determining an application referred to him under this section the Secretary of State shall, if either the applicant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.~~

~~(6) The decision of the Secretary of State on any application referred to him under this section shall be final.~~

~~36. Appeals against decisions.—(1) Where an application is made to the authority for consent under the Order and that consent is refused by that authority or is granted by them subject to conditions, or where any certificate or direction is given by the authority, the applicant, if he is aggrieved by their decision on the application, or by any such certificate, or the person directed if he is aggrieved by the direction, may by notice under this section appeal to the Secretary of State.~~

~~(2) A notice under this section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as the Secretary of State may allow.~~

~~(3) Where an appeal is brought under this section from a decision, certificate or direction of the authority, the Secretary of State, subject to the following provisions of this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the authority, whether the appeal relates to that part thereof or not, or may cancel any certificate or cancel or vary any direction, and may deal with the application as if it had been made to him in the first instance.~~

~~(4) Before determining an appeal under this section, the Secretary of State shall, if either the appellant or the authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.~~

~~(6) The decision of the Secretary of State on any appeal under this section shall be final.~~

~~37. Appeal in default of decision.—Where an application for consent under the Order is made to the authority, then unless within two months from the date of receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either—~~

~~(a) give notice to the applicant of their decision on the application; or~~

~~(b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 35 above;~~

~~the provisions of the last preceding section shall apply in relation to the application as if the consent to which it relates had been refused by the authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.~~

45. Power to revoke or modify the consent under the order.—(1) If it appears to the authority that it is expedient to revoke or modify any consent under the Order granted on an application made under Article 3 of the Order, the authority may by Order revoke or modify the consent to such extent as they consider expedient.

~~(2) Subject to the provisions of sections 46 and 61 of the Act an Order under this section shall not take effect unless it is confirmed by the Secretary of State, and the Secretary of State may confirm any such Order submitted to him either without modification or subject to such modifications as he considers expedient.~~

~~(3) Where an authority submit an Order to the Secretary of State for his confirmation under this section, the authority shall furnish the Secretary of State with a statement of their reason for making the Order and shall serve notice together with a copy of the aforesaid statement on the owner and on the occupier of the land affected, and on any other person who in their opinion will be affected by the Order, and if within the period of twenty-eight days from the service thereof any person on whom the notice is served so requires, the Secretary of State, before confirming the Order, shall afford to that person, and to the authority, an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.~~

~~(4) The power conferred by this section to revoke or modify a consent may be exercised at any time before the operations for which consent has been given have been completed.~~

~~Provided that the revocation or modification of consent shall not affect so much of those operations as has been previously carried out.~~

~~(5) Where a notice has been served in accordance with the provisions of subsection (3) of this section, no operations or further operations as the case may be, in pursuance of the consent granted, shall be carried out pending the decision of the Secretary of State under subsection (2) of this section.~~

46. Unopposed revocation or modification of consent.—(1) The following provisions shall have effect where the local planning authority have made an Order (hereinafter called "such Order") under section 45 above revoking or modifying any consent granted on an application made under a tree preservation order but have not submitted such Order to the Secretary of State for confirmation by him and the owner and the occupier of the land and all persons who in the authority's opinion will be affected by such Order have notified the authority in writing that they do not object to such Order.

~~(2) The authority shall advertise the fact that such Order has been made and the advertisement shall specify (a) the period (not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by such Order may give notice to the Secretary of State that they wish for an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose and (b) the period (not less than 14 days from the expiration of the period referred to in paragraph (a) above) at the expiration of which, if no such notice is given to the Secretary of State, such Order may take effect by virtue of this section and without being confirmed by the Secretary of State.~~

~~(3) The authority shall also serve notices to the same effect on the persons mentioned in subsection (1) above.~~

~~(4) The authority shall send a copy of any advertisement published under subsection (2) above to the Secretary of State, not more than three days after the publication.~~

~~(5) If within the period referred to in subsection (2) (a) above no person claiming to be affected by such Order has given notice to the Secretary of State as aforesaid and the Secretary of State has not directed that such Order be submitted to him for confirmation, such Order shall at the expiration of the period referred to in subsection (2) (b) of this section, take effect by virtue of this section and without being confirmed by the Secretary of State as required by section 45 of the Act.~~

~~(6) This section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Part III, Part IV or Part V of the Act.~~


~~GIVEN under the Common Seal of the~~

~~the~~

~~19~~

.....
Made by the DACORUM DISTRICT
COUNCIL, acting by the Chief
Planning Officer COLIN BARNARD,
authorised in that behalf.

This fifth day of April 1983

Signed 

Dated 5th April

1983 .*

Confirmed as an unopposed Order by
DACORUM DISTRICT COUNCIL acting by
their Chief Planning Officer, COLIN
BARNARD, authorised in that behalf.

DACORUM DISTRICT COUNCIL
(MELLOR COTTAGE, FRITHSDEN)
TREE PREVERATION ORDER 1983

This 12th day of September 1983

TOWN AND COUNTRY PLANNING ACTS, 1971-74

Signed 

TREE PRESERVATION ORDER

relating to

LAND AT MELLOR COTTAGE, FRITHSDEN

Cat. No. T.C.P. 38

Shaw & Sons Ltd., Shaway House, Lower Sydenham, SE26 5AR
S1396 (a) L


TOWN AND COUNTRY PLANNING ACT 1971 (AS AMENDED)
TOWN AND COUNTRY PLANNING (TREE PRESERVATION ORDER)
REGULATIONS 1969 (AS AMENDED)

REF. NO.

TPO/126
Tree Preservation Order 1983
Mellor Cottage Frithsden

DACORUM BOROUGH COUNCIL
IN THE COUNTY OF HERTFORD

To:


Shepherds Cottage
14-15 Firthsden
Hemel Hempstead

Prune Beech T1 at	Brief description and location of proposed tree work
Shepherds Cottage, Frithsden	
Hemel Hempstead	

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder the Council hereby ~~permit~~ ~~refuse~~ the tree work proposed by you in your application dated _____ received 18 December 1989 subject to the following conditions:

1. That only the following works are carried out:-
 - Shorten back heavy limb extending over neighbouring garden by approximately half or at suitable side branch in order to reduce weight on area where old wounds occur.
 - Clean out remainder of crown by removal of dead wood, snags and any weak, crossing or superfluous branches.
 - Prune to balance crown as necessary.
2. Works must be carried out in accordance with British Standard 3998-1989 Recommendations for Tree Work.

PLEASE TURN OVER

The reasons for the Council's decision are:

The works are in the interests of the health and safety of the tree and will not detract significantly from its amenity value.

Dated: 28 day of February 19 90

Signed: _____
CHIEF PLANNING OFFICER

NOTE

1. If the applicant is aggrieved by:
 - (a) the decision of the local authority to refuse permission for the proposed tree work;
 - (b) by the conditions attached to a permission; or
 - (c) by any certificate or direction given by the authority;









he may appeal to the Secretary of State for the Environment, under the provisions of paragraph 36 in the Third Schedule of the Tree Preservation Order. The appeal must be served within 28 days from the receipt of notice of the Authority's decision. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Eastern Regional Office, Charles House, 375 Kensington High Street, London S14 8QH).

2. In certain circumstances, where a person has suffered loss or damage in consequence of any refusal of consent under the Tree Preservation Order or any grant of consent subject to conditions, a claim may be made against the local planning authority for compensation. The circumstances in which such compensation is payable are set out in paragraphs 9, 10 and 11 in the First Schedule of the Tree Preservation Order. No compensation is payable in respect of trees which are the subject of a certificate in accordance with paragraph 5 of the Tree Preservation Order.

Dacorum Borough Council
Civic Centre, Marlowes
Hemel Hempstead HP1 1HH

Telephone: Hemel Hempstead 60161

Shepherds Cottage 14-15 Frithsden Hertfordshire HP1 3DD – Northern Boundary Datum Coordinates - 14.9.22:

BOUNDARY MARKING POST	PHOTO	COMPASS COORDINATES	GPS COORDINATES
Old Corner Post on North-Eastern Boundary by the Roman Road			51°46'41\" N 0°31'39\" W 120m Elevation
Middle Old Post on the bank at the boundary with Frithsden Vineyard			51°46'43\" N 0°31'37\" W 140m Elevation
Electricity pole at top of the bank at the boundary with Shepherds cottage on the boundary with Frithsden Vineyard.			51°46'43\" N 0°31'35\" W 110m Elevation
Old Corner post on the North-western boundary abutting Frithsden vineyard to the North and Clayton Cottage to the West.			51°46'43\" N 0°31'35\" W 130m Elevation

PROPOSED REDEVELOPMENT OF PART OF THE FRITHSDEN VINEYARD ON THE ROMAN ROAD IN FRITHSDEN HERTFORDSHIRE HP1 3DD

Please find attached photos & GPS Coordinates taken on the 5th September 2022 that establish that the southern Boundary line drawn on the plans submitted with the abovementioned application are incorrectly drawn. The plans incorrectly show that the Vineyard own more of the woodland bank

than they do which is in fact clearly in our ownership and marked on the land by old wooden fence posts that run all along the northern boundaries of Shepherds Cottage & Clayton Cottage.

The application should be immediately withdrawn as they give a false impression of the size of the Vineyard and the distances and impact of the Replacement Dwelling. We are all more directly impacted than has been shown and I would like to invite you to inspect the bank so that you can see in reality where the boundary line exists in reality on the ground. I hope that you will also be able to ascertain the concerns that we have expressed in our earlier letter about Overlooking & Loss of Privacy issues that we are facing if this were approved & built and you will be able to get a clear understanding about the Overbearing nature of the topography.

I also attach photos taken on the Roman Road in line with the north/western boundary post that show how close the southern boundary point is to the entrance to the Vineyard looking north and how long our frontage is from the boundary looking south. Finally, I attach photos and GPS coordinates of all of the above and hope that these will be of assistance to you in determining this matter.

Shepherds Cottage, 14-15 Frithsden, Hertfordshire, HP1 3DD

Representation received from Applicant:

In response to your enquiry, yes Certificate A is the appropriate Certification for this application as no third party land is included, or inferred to be included, within the proposal.

It need hardly be said, but OS Maps are used universally for Planning Applications. All National Government and all public sector organisations use the OS as the definitive map base as it is as accurate as can reasonably be produced for nationwide mapping. We acknowledge that it does not categorically define ownership boundaries but this is immaterial for the purposes of site identification.

We would draw the objectors attention to the following:

"the Land Registration Act 2002, tells us:

60 Boundaries

*(1) The boundary of a registered estate as shown for the purposes of the register is a **general boundary**, unless shown as determined under this section.*

*(2) **A general boundary does not determine the exact line of the boundary.***

In other words, Land Registry is unable to tell you the exact location of the boundary, only its general position.

***Title plans are issued with a warning**, which these days is found on the cover page of the official copy of the title plan. It reads:*

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from the plan may not match measurements between the same points on the ground.

The first sentence of the above quotation alludes to Section 60 of the Land Registration Act 2002.

The second sentence suggests that the title plan may not be true to scale.

The third sentence warns that the Ordnance Survey map on which the title plan is based may be positionally inaccurate or may be selective in detail, either of which may mislead you when you use it in an attempt to ascertain the true position of the boundary.

Ordnance Survey maps, although much used in describing boundaries, are unsuitable for that purpose

Ordnance Survey maps show physical features found on the ground regardless of whether or not a property boundary follows those features. Ordnance Survey does not investigate property boundaries when surveying those physical features."

Nevertheless the OS remains the definitive map base for Planning Applications.

In respect to the matters raised in the objection -

1. The application plans show Shepards Cottage at 21m from the Red Line Boundary
2. The TPO provided from 1983 in the First Schedule says "northern Boundary of site 21 meters north of Mellor Cottage", this is consistent with the plans provided as part of the application.
3. We have overlaid the TPO plan with the OS plans submitted and they match to 95%+ and show the Tree in question is 21m from "Mellor" cottage, matching the OS data used in the application (see appended) Therefore both the OS Mapping data and TPO map are in agreement that the boundary is circa 21m from Shepherds cottage (Mellor Cottage)
- 4. The Replacement Dwelling is still 50m from Shepherds cottage so the exact boundary location does not change the distance between dwellings.**
5. GPS data from a phone does not convey accuracy. The submitted screenshots show two captures of different locations which share the same co-ordinates. This means that single-frequency GPS was used. Single-frequency GPS produces results with a max accuracy of 3m [all location systems enabled] to an average accuracy of 30m [normal usage].

So, in conclusion, whilst we acknowledge the objectors passion we do not agree with his assertions.

I trust this is all useful but please do not hesitate to contact me if any clarification is required.

**Frithsden Vineyard
TPO_Boundary Background
June 2023**

**TPO Plan References 21m From Property to Tree
But does not define point on property measurement taken from**

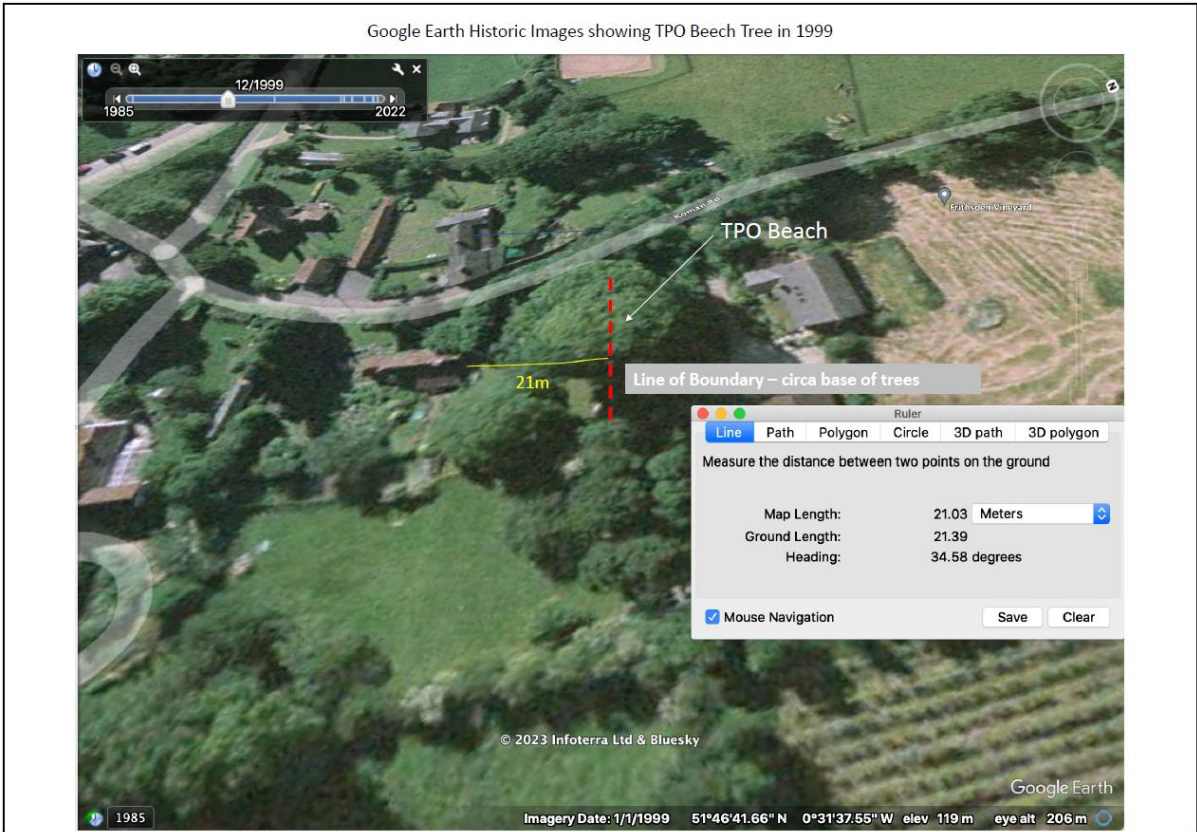
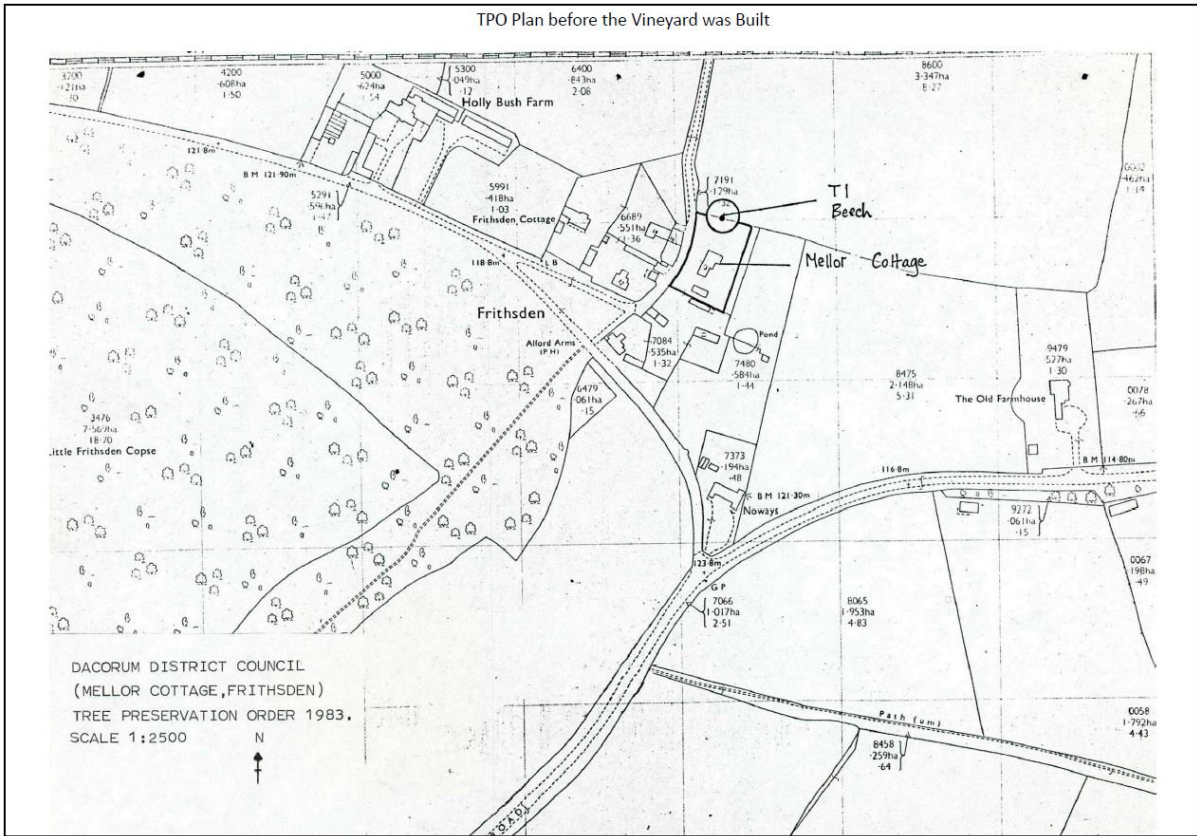
4

**FIRST SCHEDULE
TREES SPECIFIED INDIVIDUALLY***

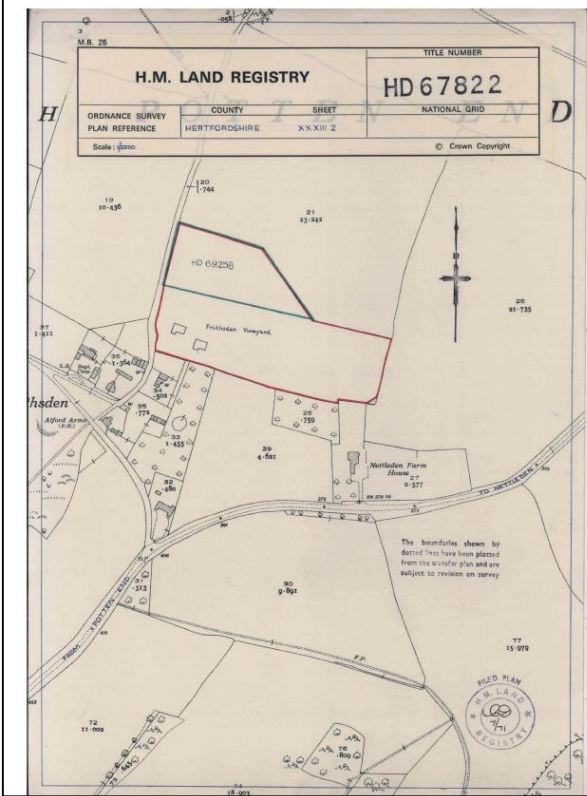
(encircled in black on the map)

<i>No. on Map.</i>	<i>Description.</i>	<i>Situation.</i>
T1	Fagus Sylvatica (beech)	On northern boundary of site, 21 metres north of Mellor Cottage

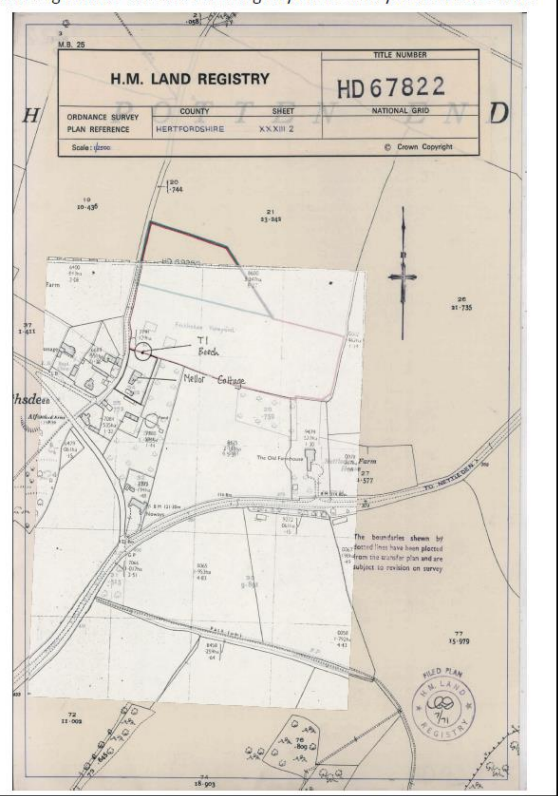
Frist Schedule from TPO Order 1983



Frithsden Vineyard Land Registry Plan

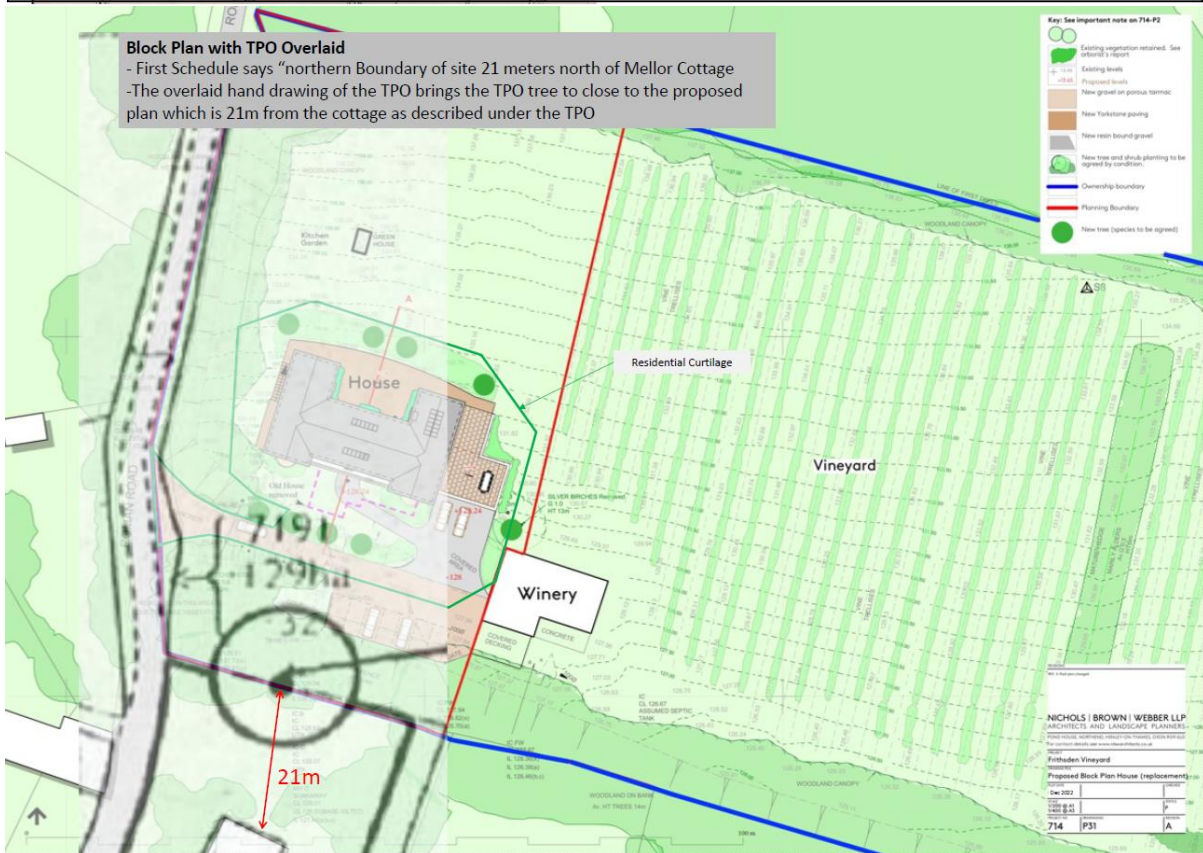


TPO Registered Plans and Land Registry Plan Overlaid with 95% match



Block Plan with TPO Overlaid

- First Schedule says "northern Boundary of site 21 meters north of Mellor Cottage"
- The overlaid hand drawing of the TPO brings the TPO tree to close to the proposed plan which is 21m from the cottage as described under the TPO



Case Officer's Comments:

In relation to boundary disputes, the applicant has confirmed that the correct ownership certificate has been issued. It is not the responsibility of the Planning Department to get involved in a civil matter over land ownership.

Recommendation

As per the published report.

Item 5c

22/03037/FUL Demolition of existing building and the development of the site to provide 1 additional dwelling (Use Class C3)

The Croft Northchurch Common Berkhamsted Hertfordshire HP4 1LR

The Northchurch Parish Council sent an email on 19.6.23 stating:

Please note that NPC is satisfied with the report addressing all our previous concerns, therefore, a member from NPC will not be attending the DMC meeting on 22nd June in regard to the item below.

22/03037/FUL - Demolition of existing building and the development of the site to provide 1 additional dwelling (Use Class C3) - The Croft Northchurch Common Berkhamsted Hertfordshire HP4 1LR

Recommendation

As per the published report.

Item 5d

23/00768/FHA Extension over and behind existing adjacent garage.

Chiltern Summit Chesham Road Wigginton Tring Hertfordshire HP23 6HX

Recommendation

As per the published report.

Item 5e

23/00807/FHA Installation of trellis fencing and two gates.

22 Ashlyns Road Berkhamsted Hertfordshire HP4 3BN

Further comments received from Berkhamsted Parish Council

No Objection, subject to the amendments to the crossing of the verge, to address Highways requirements.

Recommendation

As per the published report.
