

## APPEALS PANEL – 21 AUGUST 2008

### **OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 07/08, LAND OF PEPPERCORN COTTAGE, 44 BARTON COMMON LANE, BARTON ON SEA, NEW MILTON.**

#### **1. INTRODUCTION**

- 1.1 This meeting of an Appeals Panel has been convened to hear an objection to the making of a Tree Preservation Order.

#### **2. BACKGROUND**

- 2.1 Tree Preservation Orders (TPOs, or Orders) are made under Sections 198, 199 and 201 of the Town and Country Planning Act 1990 (the Act). This legislation is supported by guidance issued by the Office of the Deputy Prime Minister on 17 April 2000 called "Tree Preservation Orders A Guide to the Law and Good Practice". This is commonly referred to as the "Blue Book".
- 2.2 This Council follows a procedure that ensures that as soon as an Order is made it gives immediate protection to the specified tree or trees. The owners and occupiers of the land on which the tree or trees are situated, together with all the owners and occupiers of the neighbouring properties, are served with a copy of the Order. Other parties told about the Order include the Town or Parish Council and District Council ward members. The Council may also choose to publicise the Order more widely.
- 2.3 The Order includes a schedule specifying the protected trees, and must also specify the reasons for protecting the trees. Normally this is on the grounds of their amenity value.
- 2.4 The procedure allows objections and representations to be made to the Council, in writing, within 28 days of the Order and corresponding documentation being served on those affected by it. The Council must have a procedure for considering those representations.
- 2.5 Where an objection is made to the Order, in the first instance, the Tree Officers will try to negotiate with the objector to see if it can be resolved. If it cannot, then the objection is referred to a meeting of the Appeals Panel for determination.
- 2.6 The Order, when first made, usually has a life of 6 months. Within that period of 6 months, the Council should decide whether or not to confirm the Order, with or without amendment. If a decision on confirmation is not taken within this time, the Council is not prevented from confirming the Tree Preservation Order afterwards. But after 6 months the trees lose protection until confirmation.

### **3. CRITERIA FOR MAKING A TREE PRESERVATION ORDER**

3.1 A local planning authority may make an Order if it appears to them to be:

“expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”.

### **4. TYPES OF TREE PRESERVATION ORDER**

4.1 The Tree Preservation Order may specify one or more individual trees, groups of trees, woodlands or, more rarely, refer to an area of land.

4.2 As a general rule, an individually specified tree must meet the criteria for protection in its own right.

4.3 A group of trees must have amenity value as a group, without each individual tree necessarily being of outstanding value. The value of the group as a whole may be greater than that of the individual trees.

4.4 A woodland order would be imposed over a more significant area of trees, where it is not practical, or indeed perhaps even desirable, to survey or specify individual trees or groups of trees. While each tree is protected, not every tree has to have high amenity value in its own right. It is the general character of the woodland that is important. In general terms a woodland will be a significant area of trees, that will not be interspersed with buildings.

4.5 An area designation covers all the trees, of whatever species, within a designated area of land, and these may well be interspersed among a number of domestic curtilages and around buildings. An area order may well be introduced, as a holding measure, until a proper survey can be done. It is normally considered good practice to review area orders and replace them with one or more orders that specify individuals or groups of trees. This process has been underway in this District, with the review of a number of older area orders that were imposed some years ago in response to proposed significant development. An area order is a legitimate tool for the protection of trees. It is not grounds for an objection that the order is an area order.

### **5. THE ROLE OF THE PANEL**

5.1 While objectors may object on any grounds, the decision about confirmation of the Order should be confined to the test set out in 3.1 above.

5.2 The Secretary of State advises that it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.

#### **5.3 Amenity value**

This term is not defined in the Act, but there is guidance in the Blue Book. In summary the guidance advises:

- TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- There must be a reasonable degree of public benefit. The trees, or part of them, should therefore normally be visible from a public place, such as a road or a footpath. Other trees may however also be included, if there is justification.
- The benefit may be present or future.
- The value of the tree or trees may be from their intrinsic beauty; for their contribution to the landscape; or the role they play in hiding an eyesore or future development.
- The value of trees may be enhanced if they are scarce.
- Other factors, such as their importance as a wildlife habitat, may be taken into account, but would not, alone, be sufficient to justify a TPO.

As a general rule, officers will only consider protecting a tree where they are satisfied that it has a safe life expectancy in excess of 10 years.

#### 5.4 **Expediency**

Again, this is not defined in the Act, but some guidance is given in the Blue Book. In essence, the guidance says:

- It is not expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.
- It may be expedient to make a TPO if the local authority believes there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. It may be a general risk from development pressures.
- A precautionary TPO may also be considered appropriate to protect selected trees in advance, as it is not always possible to know about changes in property ownership and intentions to fell.

## 6. **THE EFFECT OF THE ORDER**

6.1 Once the TPO has been made, it is an offence to do any works to the protected tree or trees without first gaining consent from the Council through a tree work application unless such works are covered by an exemption within the Act. In this respect of the Local Planning Authority consent is not required for cutting down or carrying out works on trees which are dead, dying or dangerous, or so far as may be necessary to prevent or abate a nuisance. Great care should be exercised by individuals seeking to take advantage of an exemption because if it is wrongly misjudged offences may be committed. There is no fee charged for making a Tree Work Application.

6.2 If consent is refused, the applicant has the right of appeal to the Secretary of State.

## 7. CONSIDERATION

7.1 Members are requested to form a view, based on the evidence before them, whether it appears to them to be expedient in the interests of amenity to confirm the TPO taking into account the above guidance. Members will have visited the site immediately prior to the formal hearing, to allow them to acquaint themselves with the characteristics of the tree or trees within the context of the surrounding landscape.

7.2 The written evidence that is attached to this report is as follows:

**Appendix 1** The schedule and map from the Order, which specifies all the trees protected.

**Appendix 2** The report of the Council's Tree Officer, setting out all the issues he considers should be taken into account, and making the case for confirming the Order.

**Appendix 3** The written representations from the objectors to the making of the Order

Members will hear oral evidence at the hearing, in support of these written representations. The procedure to be followed at the hearing is attached to the agenda.

## 8. FINANCIAL IMPLICATIONS

8.1 There are some modest administrative costs associated with the actual process of serving and confirming the TPO. There are more significant costs associated with the need to respond to any Tree Work Applications to do works (lopping, topping or felling) see 8.3 below. The officers will normally visit the site and give advice on potential works to the trees.

8.2 The Council does not become liable for any of the costs of maintaining the tree or trees. That remains the responsibility of the trees' owners.

8.3 TPOs make provision for the payment by the Local Planning Authority of compensation for loss or damage caused or incurred as a result of:

(1) their refusal of any consent under the TPO, or

(2) their grant of a consent subject to conditions.

To ascertain whether someone is entitled to compensation in any particular case it is necessary to refer to the TPO in question. It is especially important to note that the compensation provisions of TPOs made on or after 2 August 1999 differ substantially from the compensation provisions of TPOs made before that date.

### **TPOs made before 2 August 1999**

Under the terms of a TPO made before 2 August 1999 anyone who suffers loss or damage is entitled to claim compensation unless an article 5 certificate has been issued by the Local Planning Authority.

### **TPOs made on or after 2 August 1999**

In deciding an application for consent under a TPO made on or after 2 August 1999 the Local Planning Authority cannot issue an article 5 certificate. There is a general right to compensation. However, the TPO includes provisions which are intended to limit the Local Planning Authority's liability to a fair and reasonable extent, and so the general right to compensation is subject to the following exceptions:

- (1) no claim for compensation can be made if the loss or damage incurred amounts to less than £500;
- (2) no compensation is payable for loss of development value or other diminution in the value of the land. 'Development Value' means an increase in value attributed to the prospect of developing land, including clearing it;
- (3) no compensation is payable for loss or damage which, bearing in mind the reasons given for the application for consent (and any documents submitted in support of those reasons), was not reasonably foreseeable when the application was decided;
- (4) no compensation is payable to a person for loss or damage which was (i) reasonably foreseeable by that person, and (ii) attributable to that person's failure to take reasonable steps to avert the loss or damage or mitigate its extent; and
- (5) no compensation is payable for costs incurred in bringing an appeal to the Secretary of State against the Local Planning Authority's decision to refuse consent or grant it subject to conditions.

## **9. ENVIRONMENTAL IMPLICATIONS**

- 9.1 The trees must have significant value within their landscape to justify the confirmation of the TPO.

## **10. CRIME AND DISORDER IMPLICATIONS**

- 10.1 There are no crime and disorder implications arising from this report.

## **11. OTHER IMPLICATIONS**

- 11.1 The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy his possessions but it is capable of justification under Article 1 of the First Protocol as being in the public interest (the amenity value of the tree).

11.2 In so far as the trees are on or serve private residential property the making or confirmation of a Tree Preservation Order could interfere with the right of a person to respect for his family life and his home but is capable of justification as being in accordance with the law and necessary in a democratic society for the protection of the rights and freedoms of others (Article 8).

**12. RECOMMENDED:**

12.1 That the Panel consider all the evidence before them and determine whether to confirm Tree Preservation Order 07/08 relating to land of Peppercorn Cottage, 44 Barton Common Lane, Barton on Sea, New Milton with, or without, amendment.

**For Further Information Please Contact:**

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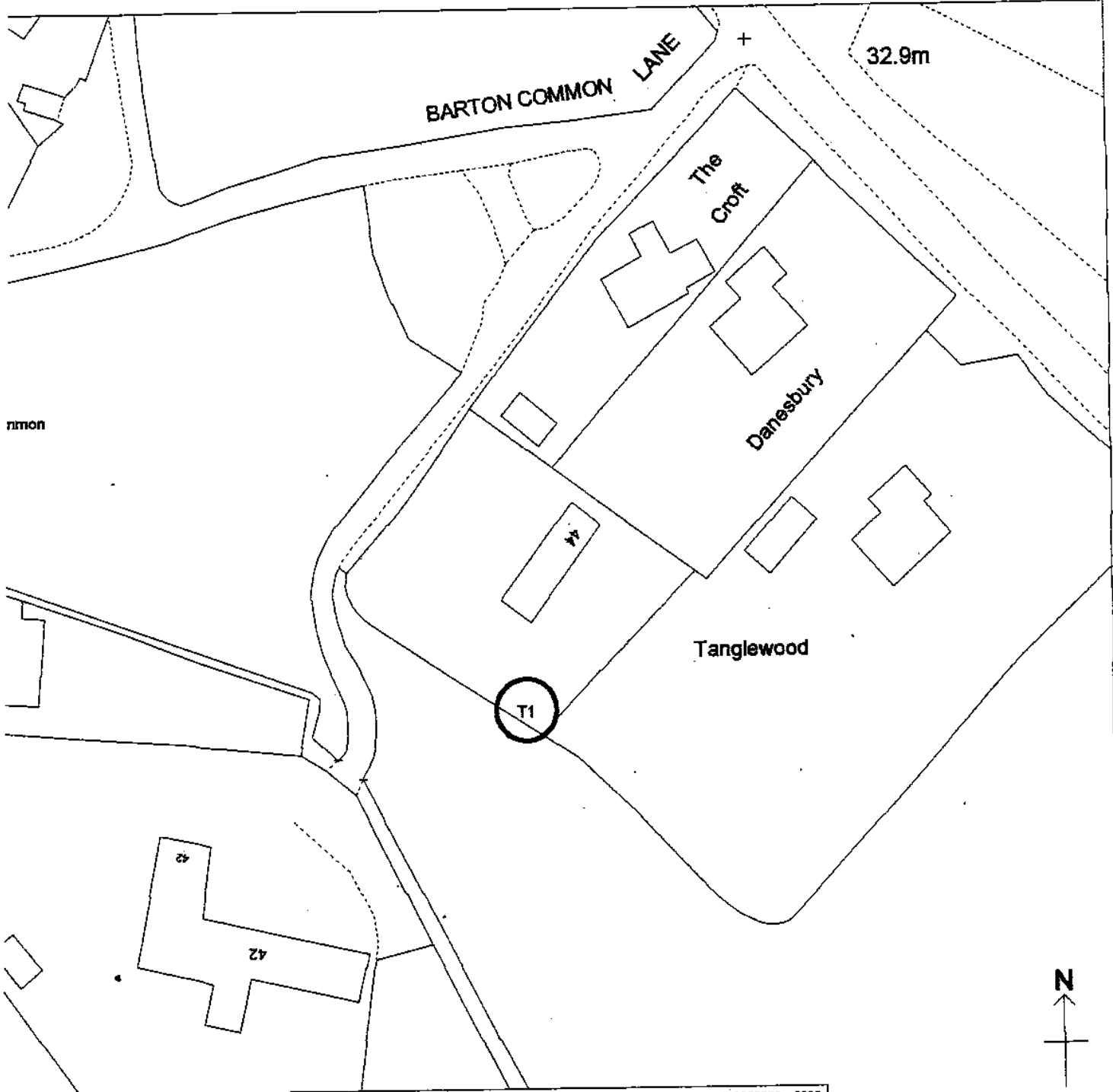
**Background Papers:**

Attached Documents:

TPO 07/08

Published documents

# **APPENDIX 1**



## Tree Preservation Order Plan

**Town and Country Planning Act 1990**

**T.P.O Number: 07/08**  
**Approximate Scale: 1:750**  
**Date Printed: 27/02/08**

Martin Devine  
 Assistant Director of Leisure Services  
 Community Services Directorate  
 Appletree Court  
 Lyndhurst  
 SO43 7PA

**Key**

- Individual Trees Covered by TPO
- Area of Trees Covered by TPO
- Groups of Trees Covered by TPO
- Woodland of Trees Covered by TPO
- Trees Noted but not Worthy of Preservation



*[Signature]*  
 AN AUTHORISED SIGNATORY



**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
T1	Oak	Southern boundary of Peppercorn Cottage, 44 Barton Common Lane. As shown on plan.

**Trees specified by reference to an area**  
(within a dotted black line on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
None		

**Groups of trees**  
(within a broken black line on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
None		

**Woodlands**  
(within a continuous black line on the map)

<b>Reference on Map</b>	<b>Description</b>	<b>Situation</b>
None		

# **APPENDIX 2**

APPEALS PANEL – 21 AUGUST 2008.

**OBJECTION TO TREE PRESERVATION ORDER NO. 07/08  
LAND OF PEPPERCORN COTTAGE, 44 BARTON COMMON  
LANE, BARTON ON SEA, NEW MILTON.**

**REPORT OF COUNCIL'S TREE OFFICER**

**1 TREE PRESERVATION ORDER HISTORY**

- 1.1 Tree Preservation Order (TPO) No.07/08 was made on 28 February 2008. The TPO plan and first schedule are attached as Appendix 1 to Report B. The Order protects a single English Oak tree situated on the southern boundary of Peppercorn Cottage, 44 Barton Common Lane, Barton-on-sea.
- 1.2 The TPO was made after the submission of a planning application (Ref: 08/91769) to erect a replacement single story extension to the south western side of the existing cottage. The proposed extension was considerably larger than the existing and would be sited within the Root Protective Area (RPA) of the Oak. As such it was likely to cause root damage to the tree, threatening its long term retention.
- 1.3 The Council's Tree Officer inspected the Oak which is clearly visible to the public and makes a positive contribution to the landscape of the immediate and surrounding area. It was considered that the tree's premature removal would be to the detriment of the area and as such it was considered to be expedient to protect the tree via a TPO.
- 1.4 Mr R Wade, a Solicitor, representing his clients Mr and Mrs Mountevans wrote to the Council objecting to the making of the TPO on 6<sup>th</sup> April 2008.

**2 THE TREE**

- 2.1 The tree in question is a mature English Oak (*Quercus robur*), situated on the southern boundary of Peppercorn Cottage, 44 Barton Common Lane, Barton on Sea.
- 2.2 The tree is some 17m in height and has a stem diameter of approximately 750mm.
- 2.3 From a ground level inspection the tree appears to be in good health and of normal vigour based on shoot extension and leaf size and is exhibiting no major defects that would necessitate the requirement for a further investigation.
- 2.4 The tree offers a good level of visual amenity to the immediate and surrounding areas as it is sited immediately adjacent to and clearly visible from a well used footpath leading from Barton Common Lane to Barton Common Road.

### 3 THE OBJECTION

A copy of the objection is included in Appendix 3 to Report B.

The grounds for objection are:

- The tree was not the subject of a Tree Preservation Order in June 2006
- Extension of the property falls within New Forest District Council's Policy CO-H2
- A standard condition respecting the protection of the tree could be applied.

### 4 OBSERVATIONS ON THE GROUNDS OF OBJECTION

- 4.1 While in June 2006 the tree was not the subject of a Tree Preservation Order, circumstances change. In this instance the submission of the planning application (ref: 08/91769) has placed the Oak tree under threat of premature loss as the applicants have not designed the proposed extension considering the constraints of the site posed by the Oak tree.
- 4.2 The grounds for believing that the proposed extension would be likely to prejudice the retention of the Oak tree is that it is sited within the Oak tree's Root Protection Area as calculated in accordance with the recommendations in section 5.2 table 2 of the British Standard BS5837.2005: Trees in relation to construction. It has therefore become expedient to make an Order.
- 4.3 Peppercorn Cottage is located within the Green Belt and shares boundaries with the Barton Common SINC (Sites of Importance for Nature Conservation). The premature loss of the Oak tree would have a potential environmental impact as Oak trees are host to numerous vertebrates and invertebrates and provide roosting opportunities for bats and birds.
- 4.4 Placing a planning condition to protect the tree requires the tree to be protected by a Tree Preservation Order to ensure the condition is enforceable. Without the Order the tree could simply be removed. In this case a condition would not address the issues and the size and location of the proposed extension would not allow the safe retention of the Oak
- 4.5 The planning application is not a relevant issue in deciding whether or not the oak tree is worthy of protection by a Tree Preservation Order. The only tests to be applied are the amenity value of the tree and whether it is expedient to confirm the Order. Should the Order be confirmed, the effect of any planning application on the protected tree would be a material consideration in determining that application.

## **5 CONCLUSIONS**

- 5.1 This oak tree offers significant amenity value within the wider area and forms part of the visual context of the Barton Common Site of Interest for Nature Conservation. The test of amenity value is therefore satisfied. The submission of a planning application satisfies the test for it to have been expedient to make the Order. It is considered that the objections do not outweigh the need to protect the tree and it is therefore recommended that TPO 07/08 is confirmed without modification.

### **Further Information:**

Andrew Douglas  
Senior Arboricultural Officer

Telephone: 02380 285205

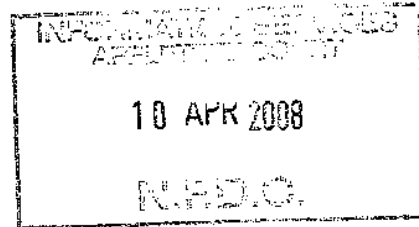
### **Background Papers:**

Tree Preservation Order No. 07/08

# **APPENDIX 3**

**Robertson Wade**  
**Solicitor**  
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Head of Legal & Democratic Services  
New Forest District Council  
Appletree Court  
Lyndhurst  
Hampshire  
SO43 7A



6<sup>th</sup> April 2008

Dear Madam,

**Tree Preservation Order No 07/08 – Land at Peppercorn Cottage 44 Barton  
Common Lane, Barton on Sea**

I refer to the above Tree Preservation Order made in respect of an oak tree on my clients land.

My clients accept that the Council has a duty to ensure, wherever appropriate, that in granting planning permission for any development, adequate protection is made for the preservation and planting of trees and that the Council may make such orders as are necessary under S.198 of the Town & Country Planning Act 1990.

The Council should only make a Tree Preservation Order when it is expedient in the interests of the amenity in their area. This particular tree in isolation or in the overall context of the Barton Common area makes no contribution to the amenity value. Indeed this is confirmed by the Tree Group in their letter dated the 6<sup>th</sup> June 2006 which stated

“ I can confirm that there are no Tree Preservation Orders in force in respect of the trees referred to and the property is not within a Conservation Area as at 6<sup>th</sup> June 2006. Therefore you do not require permission from the New Forest District Council to undertake tree works.”

Given the recent date of this letter my clients are at a loss how this tree should have suddenly be worthy of a TPO in the interest of amenity when its apparent value was not recognised some 18 months before the TPO was made. I would suggest that they have a legitimate expectation that no such Order would be made as there has been no material change within that period,

I should be grateful if you would please take this letter as a formal objection to the confirmation of the above TPO.

It would be helpful if you would copy this to the appropriate planning officer as it does seem to me that my clients proposal to extend the property fall within Policy CO-H2 in any event. I am sure that my clients would give favourable consideration to a condition not to use the loft area as a habitable space and the standard condition respecting the protection of trees during any construction works.

Given the lack of any evidence on the amenity value of this tree and my clients accepting such planning conditions as may be reasonable I trust that the Council will recognise that a TPO is unnecessary and potentially unlawful in the circumstances.

I look forward to hearing from you.

Yours faithfully,  
**Robertson Wade**