

BRISLINGTON MEADOWS

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

PINS Ref: APP/Z0116/W/21/3308537



EXPERT EVIDENCE OF JULIAN FORBES-LAIRD



ON BEHALF OF THE LOCAL PLANNING AUTHORITY,
IN RELATION TO ARBORICULTURAL MATTERS

Vol. 1 - SUMMARY & PROOF

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Summary

My name is Julian Forbes-Laird, Expert Witness on Arboricultural Matters for the Local Planning Authority, and I will say:

- i) My evidence addresses two of the Deemed Reasons for Refusal. Firstly, I explain how the proposals fail to retain important trees and hedgerows (DRR2). Secondly, I show that they would lead to loss and deterioration of Irreplaceable Habitat (DRR3) (veteran trees).
- ii) These Deemed Reasons state that the proposals fall foul of a number of Policies, both national and local, including the Site Allocation Policy BSA1201. I explain why this is so.
- iii) The Site Allocation Policy includes a Development Consideration that requires retention of important hedgerows and trees. However, Policy DM19 tacitly accepts *some* loss of important features, which I consider to be reasonable in the present context.
- iv) Arising from the above, my evidence answers two questions: which are the important hedgerows and trees, and what level of loss is acceptable?
- v) The important hedgerows comprise those which the Appellant's ecology and heritage advisors consider to be important, and which I date to at least 1750.
- vi) Important trees comprise a) veteran trees and b) trees protected in the public interest by TPO.

vii) I explain why and how I identify thirteen veteran trees (of which the Appellant's advisors failed to identify twelve). I set out my assessment of the impact of the Appeal Scheme on veteran trees. I show that four of them would be lost, and a further eight would suffer deterioration.

viii) In addition to the local policy implications, these effects trigger engagement of NPPF 180c and its two tests, *wholly exceptional reasons* and *suitable compensation*. These tests are not passed by the proposals before this Inquiry.

ix) The Council decided that a small proportion of the site's tree stock should be retained and protected in the public interest by TPO. The Council considers these trees to be important.

x) The TPO was made in October 2021, some six months before the application, as now appealed, was submitted. The Appellant elected not to exercise its statutory right of objection to this Order. It now seeks planning permission to remove three of the protected trees.

xi) I consider that the developer should have made strong efforts to retain these trees. This is not what I see in the proposals before this Inquiry, and accordingly I consider that their loss is contrary to Policy (and to the public interest).

xi) Overall, I conclude that the Appeal Scheme is contrary to the various local and national policies cited in DRR2 and DRR3. These Deemed Reasons having been made out, I submit that the Appeal should be dismissed.

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1 Introduction

1.1 Authorship

1.1.1 This Proof of Evidence addresses arboricultural issues in relation to proposed development. It has been prepared by me, Julian Forbes-Laird, Director and Principal Consultant 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 Society of Biology
- 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'
- Chairman of the British Standards Institution technical committee on trees and tree work, B/213

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

1.2 Instructions

I am instructed on this occasion by Bristol City Council ("BCC"; "the Council"). My instructions arise pursuant to an appeal (PINS' ref. 3308537) against non-determination by the Council of a planning application (BCC ref. 22/01878/P) submitted by Homes England ("the Appellant").

1.3 Direction of Evidence

1.3.1 The Council has provided Deemed Reasons for Refusal, of which Deemed Reasons 2 and 3 ("DRR2" and "DRR3") relate to arboricultural matters and are addressed by me.

1.3.2 Reason 2 states:

The proposed development fails to retain important hedgerows and trees within the proposal site and is therefore considered contrary to the development considerations of allocation BSA1201 of the Site Allocations and Development Management (2014), policy BCS9 of Bristol Development Framework Core strategy (2011) policies SA1, DM15, DM17 and DM19 of the Site Allocations and Development Management (2014).

1.3.3 Reason 3 states:

The proposal would lead to the loss and deterioration of Irreplaceable Habitat without either a wholly exceptional reason or a suitable compensation strategy. It is therefore contrary to the development considerations of allocation BSA1201 of the Site Allocations and Development Management (2014), policy BCS9 of Bristol Development Framework Core strategy (2011) policies SA1, DM15, DM17 and DM19 of the Site Allocations and Development Management (2014) and paragraph 180c of the NPPF.

1.3.4 In light of the foregoing, the direction of my evidence is:

- i) To identify which trees and hedgerows on the Appeal Site are to be considered important;
- ii) To set out the impact on these features arising from the Appeal Scheme; and
- iii) To put these matters into their policy context.

1.4 Proof Structure

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

- 2. Relevant Planning Policy, Statutory considerations, and National Guidance
- 3. Identification of important hedgerows
- 4. Identification of important trees
- 5. Arboricultural impact of the Appeal Scheme
- 6. Conclusions

1.4.2 My Proof is supported by the following Appendices:

- | | |
|------|--|
| JFL1 | Qualifications & experience of the author |
| JFL2 | Objection submitted by the Appellant to BCC TPO/1400 |
| JFL3 | Guidance on interpreting <i>Standing Advice</i> on veteran trees |
| JFL4 | Veteran tree identification method, RAVEN |
| JFL5 | RAVEN data for confirmed veteran trees |
| JFL6 | Buffer zone radii for veteran trees |
| JFL7 | Veteran tree location and impact assessment plans |

2 Relevant Planning Policy context, Statutory considerations and National Guidance

2.1 National Planning Policy Framework 2021

2.1.1 Paragraph 180c of NPPF 2021 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 reasons⁶³ and a suitable compensation strategy exists.*

My emphasis. The term *wholly exceptional reasons* is clarified/expanded upon by Footnote 63 ("Fn63"), 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.

2.1.2 Attention is drawn to the fact that Fn63 lists examples and is, therefore, not intended to be an exhaustive list of all potentially applicable cases. This is in contrast to Fn7, for example, which is framed as a closed list.

2.1.3 Attention is also drawn to the fact that the Framework refers to two different modes of harm to Irreplaceable Habitat trees and woodland: **loss** and **deterioration**. In relation to the engagement of the protection for those features covered by para. 180c, the two modes of harm are treated equally.

Whilst one might infer that loss is more serious than deterioration, in reality this is a question of fact and degree: loss of a very small area of ancient woodland, for example, may give rise to less serious harm than deterioration of a much larger area.

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 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 be said to have 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 (and, via biological linkage, attained substantial size for its species), that its condition can be taken into consideration.

2.2.3 Finally, whilst the Planning Practice Guidance contains material relating to veteran trees which treats their identification slightly differently, the effect of this difference is to broaden the definition, capturing more trees as veterans.

2.2.4 I have used a recognition method to identify the veteran trees on the Appeal Site that is closely geared to the Framework. This method, known as RAVEN (for *Recognition of Ancient, Veteran and Notable trees*), has been endorsed as a correct and policy-compliant approach at two Public Inquiries (PINS refs. 3227293 and 3261154, per my paragraph 4.2.3 (CD6.6 and CD6.17 respectively)).

2.3 Local Planning Policy - general

2.3.1 So far as is material to my topics, the Local Plan comprises the Bristol Development Framework Core Strategy (2011) ("Core Strategy"; CD5.5); Site Allocations and Development Management Policies ("SADMP"; CD5.2); and an Annex to the SADMP, *Site Allocations Information* (2014) ("the Annex"; CD5.3).

2.3.2 Policy BCS9 of the Core Strategy:

Aims to protect, provide, enhance and expand the green infrastructure assets which contribute to the quality of life within and around Bristol. In protecting important open space it acknowledges that not all open land can be left unchanged and so sets a strategic framework for the choices to be made

(BCS9 contextual text from the Core Strategy at its para. 4.9.1)

2.3.3 Relevant sections of Core Strategy Policy BCS9 seek retention, protection and enhancement of the integrity and connectivity of green infrastructure. This includes the retention of individual green assets, wherever possible.

Loss of green infrastructure is only acceptable under this policy where either it has been agreed within a Development Plan Document, or where it is necessary to deliver the aims of the Core Strategy.

2.3.4 Turning now to DRR2 and DRR3, these site four additional Policies that reside within the SADMP:

- SA1 *Site Allocations*
- DM15 *Green Infrastructure Provision*
- DM17 *Development Involving Existing Green Infrastructure*
- DM19 *Development and Nature Conservation*

2.3.5 Policy SA1 directs that the Appeal Site be allocated for housing, and it is to the Annex that we must turn for site-specific Policy details (see section 2.4). However, the introductory text to this plain makes clear that other relevant policies of the Development Plan, as well as the Annex, are to be applied, stating:

The sites listed below and shown on the Policies Map will be developed for the uses identified and in accordance with the accompanying development considerations set out in the Annex 'Site allocations information' and with all other relevant development plan policies.

2.3.6 Policy DM15 seeks inter alia new or enhanced management of existing trees, thereby presupposing their retention.

2.3.7 Policy DM17 seeks conservation of existing green infrastructure assets:

All new development should integrate important existing trees. Development which would result in the loss of Ancient Woodland, Aged trees or Veteran trees will not be permitted.

The term “aged trees” has been superseded by “ancient trees” (NPPF at 180c and Annex 2). Policy DM17 also sets out a compensation standard for tree replacement. However, whilst not explicit in the Policy, this compensation standard cannot apply to veteran trees. As the *Standing Advice* explains:

Compensation measures are always a last resort. These measures can only partially compensate for loss or [deterioration] [to Irreplaceable Habitats].

2.3.8 Policy DM19 provides Policy support for preservation and enhancement of nature conservation interest as part of new development. Whilst wishing to avoid overlapping with Mr Higgins’ evidence, I note that DM19 states:

Development which would be likely to have any impact upon habitat, species or features, which contribute to nature conservation in Bristol will be expected to:

- *Be informed by an appropriate survey and assessment of impacts; and*
- *Be designed and sited, in so far as practicably and viably possible, to avoid any harm to identified habitats, species and features of importance; and*
- *Take opportunities to connect any identified on-site habitats, species or features to nearby corridors in the Wildlife Network.*

2.4 Local Planning Policy – site specific

2.4.1 The Appeal Site benefits from an allocation for residential development under site reference BSA1201, under development management policies adopted in 2014. The allocation policy for the Appeal Site sets out (inter alia) the following Development Consideration:

Development should retain or incorporate important trees and hedgerows within the development which will be identified by a tree survey.

2.4.2 Importantly, BSA1201 states in terms that 300 houses is an estimate (neither a minimum nor a target). It is, then, within this context that the Development Consideration in question should be understood: it establishes a site-specific, starting presumption against loss of important trees and hedgerows. Insofar as I understand the practicalities of site layout design, and the balance of often fiercely competing interests that must be struck, I would be disinclined to interpret this Consideration in absolutist terms.

2.4.3 However, in relation to trees and hedgerows, it seems to me that whilst the Council allocated the Appeal Site in a reasonable expectation of a few eggs being broken to make an omelette, it clearly did not have in mind demolition of the henhouse and the hens being shot.

2.5 Tree Preservation Orders - general

2.5.1 Section 197 of the Town and Country Planning Act 1990 (as amended; “the Act”) confers a general duty on local planning authorities (“LPAs”) when granting planning permission to make appropriate provision for the preservation and planting of trees.

Two mechanisms for discharge of this duty are set out in this section of the Act:

- i) Use of planning conditions; and
- ii) Imposition of orders under section 198.

2.5.2 Section 198 of the Act establishes the power to make Tree Preservation Orders ("TPOs"), as referred to in S.197, where LPAs consider it *expedient in the interests of amenity* to do so. TPOs protect specified trees from, inter alia, removal absent consent, and, furthermore, require replacement planting for any losses due to, for example, storm damage or disease. The clear framing and intention of the law is, therefore, a presumption towards permanency.

2.5.3 It follows that, where a LPA determines that it is in the public interest that a tree or trees should be retained as part of new development, they can secure this position by the use of a TPO. All new TPOs are provisional for up to six months, requiring confirmation by the LPA within this period, after which they expire if not confirmed. The landowner (or other interested party) has a statutory right of objection to the imposition of a new TPO, which the LPA must consider before making the Order permanent (by confirming it).

2.6 Tree Preservation Orders – site specific

2.6.1 It is with the foregoing in mind that we should approach the two TPOs that the Council made on certain trees on the Appeal Site. The first such Order (BCC ref. TPO 1400; CD8.6) was made by the Council on 28 April 2020. Homes England objected to this Order on 27 May ditto.

2.6.2 A copy of this objection is appended at JFL2, from which it is apparent that it rested variously on technicalities or alternatively generalities (some of which latter being subjective), rather than on specific concerns regarding the suitability for statutory protection of any of the trees concerned.

2.6.3 Regardless of the merits of any point raised in the objection, the Council decided to make a new TPO, number 1404 (CD8.7), to replace Order 1400. The replacement of TPO 1400 is in line with the statement in the Homes England objection at its paragraph 5.1:

Whilst Homes England objects to... TPO [1400] it is nevertheless seeking to cooperate with BCC to find an alternative solution, either without the need for a TPO, or by way of a variation to a TPO if lawfully made.

2.6.4 In essence, TPO 1404 is a variation of TPO 1400, albeit this has been delivered by way of an ab initio Order rather than a variation of that as then extant. This is an important distinction: whilst there would have been no right of objection to a variation of TPO 1400, there was, of course, a right of objection to 1404 as a new Order. It is, then, correct to note that the Council was being very fair with Homes England in affording it a second opportunity to question the TPO.

2.6.5 TPO 1404 was made on 26 October 2021. It covers 16 individual trees, three groups of trees (comprised of 23 trees in total) and one area of (off-site) woodland. Insofar as no objection was made to this Order by Homes England (or any other party), it is reasonable to conclude that:

- i) The technical/ general faults alleged in the Homes England objection to TPO 1400 have been cured either to its satisfaction or to a level below a threshold of objectionability; and
- ii) The trees placed under TPO 1404 are agreed to merit retention in the public interest.

2.6.6 To set the scope of TPO 1404 in a site-wide context, we can turn to the tree survey (CD1.19) submitted with the planning application at first instance. This identifies:

- i) 36 individual trees;
- ii) 47 groups of trees, comprised of well over a thousand tree in total; and
- iii) Two areas of woodland.

It is apparent from this list that TPO 1404 is highly selective: it has clearly been applied judiciously and with the intention of identifying those trees which the Council considered, at the time, to be important within the meaning of this term in the site allocation policy (BSA1201, as referenced above).

2.6.7 Because trees generally are a material consideration within the planning system, trees subject to a TPO must logically be afforded higher weight: their retention in the public interest has already been established. This point can be illustrated by the following words from the lead judgment in the case of *Perrin v Northampton Borough Council* [2007] EWCA Civ 1353 (CD6.16):

The underlying principle is that a tree preservation order is made for the benefit of the inhabitants of the locality – or, as it is put in the legislation, because "it is expedient in the interests of amenity".

Parliament intended that... a protected tree should remain protected unless there was a real need to lift that protection (Chadwick LJ at 55f).

Although *Perrin* dealt with subsidence matters, this decision of the Court of Appeal provides helpful guidance on the importance of trees subject to TPO.

2.6.8 To conclude on this topic, in my opinion the tasks before this Inspector in respect of trees subject to TPO 1404, are:

- i) To consider whether the trees in question are indeed important within the meaning of policy; and
- ii) To decide whether the Appellant has established a need to remove such trees, or whether a different approach to development of the Appeal Site might not enable their retention.

2.7 Hedgerows – Regulatory framework and related matters

2.7.1 Pursuant to the Hedgerows Regulations 1997, hedgerows in England – except those forming part of domestic curtilage (usually referred to as *hedges*) – are protected from removal absent submission to, and consideration by the jurisdictional LPA of a *Hedgerow Removal Notice* (“HRN”).

2.7.2 On receipt of a HRN, the LPA must decide a) whether the hedgerow in question is “important”, and b) if it is important, whether to allow its removal or to serve the landowner with a Hedgerow Retention Notice, to prevent its removal. This regime is analogous to that applying to trees within Conservation Areas with, in this latter case, service of a TPO being the broad equivalent of a Hedgerow Retention Notice.

2.7.3 The 1997 Regulations contain a series of criteria for determining “importance”, one of which is the date from which the hedgerow was known. Pursuant to criterion 5 of Schedule 1 to the Regulations, Additional Criteria for Determining “Important” Hedgerows, a threshold date is given for importance where a hedgerow is recorded in an official document dating from before the Inclosure Acts. The Inclosure Acts is the “short title” name for Acts of Inclosure dating from 1845 to 1882 (pursuant to the Short Titles Act 1896), and hence the threshold date for importance under this criterion is 1845.

2.8 National-level guidance

2.8.1 Two 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 14 January 2022 (CD8.10); and
2. British Standard BS5837:2012 (CD12.9), titled *Trees in relation to design, demolition and construction – Recommendations* (“BS5837”) (CD8.9). Whilst also referencing veteran trees, BS5837 serves to operate much more broadly, covering all trees (regardless of whether or not they are veteran trees).

2.8.2 Whilst no ancient woodland is present on or immediately adjacent to the Appeals Site, as noted it does host veteran trees. In respect of such trees, the most pertinent guidance within the Standing Advice relates to their protection by and within a ‘buffer zone’.

2.8.3 The size of a veteran tree's buffer zone is found either as a radius of 15 times the tree's stem diameter, or its crown spread plus five metres, whichever is the greater. It is axiomatic that if a veteran tree is not protected by the recommended buffer zone, that is, if development is proposed within what should be the buffer, the tree is subject to adverse effects, leading either to loss or to deterioration as the case may be. I shall return to this topic in due course.

2.8.4 Whilst previous versions of the *Standing Advice* have focussed on paragraph 180c of the Framework, loss or deterioration to Irreplaceable Habitats, the current version also draws attention to paragraph 180a, significant harm to biodiversity. This paragraph contains the so-called Mitigation Hierarchy, which comprises a four-step process as follows:

If significant harm to biodiversity would occur:

Step 1 Relocate the proposal to a site with less harmful impacts;

Or, if this is not possible:

Step 2 Mitigate the harm to below the level of significance;

Or, if this is not possible:

Step 3 Compensate for the harm;

Or, if even this is not possible:

Step 4 **Refuse planning permission.**

2.8.5 The interplay within the *Standing Advice* of NPPF paragraphs 180a and 180c is not entirely straightforward. I offer my view on how this operates in the short note appended at JFL3, in case this is helpful.

2.8.6 BS5837 is considered seminal to appropriate management of the development interface with trees and hedgerows. It will be referenced throughout my evidence.

3 Identification of important hedgerows

3.1 A number of hedgerows internal to the Appeal Site are shown on the Brislington Parish Tithe Map of 1843, thereby confirming importance because this Map precedes the Regulatory threshold date of 1845. In addition, therefore, to the hedgerows' importance for biodiversity (covered in Mr Higgins' evidence), they are important due to their age.

3.2 Figure 1 is an extract from the 1843 Tithe Map, which I have overlaid with the modern OS base map, and marked up with:

- i) The Appeal Site boundary; and
- ii) The important hedgerows.

3.3 The field pattern apparent in the Tithe Map remains through the subsequent Ordnance Survey mapping series (see, for example the 1884 and 1965 map extracts at Figures 2 and 3) and is further apparent in historic aerial imagery from 1938 (Figure 4), as well as more recent aerial imagery from 1990 (Figure 5).

3.4 Whilst the hedgerows are known from the 1840s, we can, perhaps, travel a little further back in time. Hedgerows were typically set at the time of enclosure, as formerly open land was sub-divided. In this case, we have extant an Enclosure Map dating from 1780 (Figure 6). This plan shows enclosure of land partly around the Appeal Site, with the Site itself left unmapped. However, this unmapped land, largely comprising, or at least including the Site, bears the legend *BRISLINGTON OLD ENCLOSURE*.

Figure 1 – Extract from Brislington Parish Tithe Map 1843 overlaid with modern OS base and FLAC markups of Appeal Site boundary and important hedgerows



Figure 2 – Extract from Ordnance Survey 6" to a mile map, 1884, with Appeal Site boundary and important hedgerows added

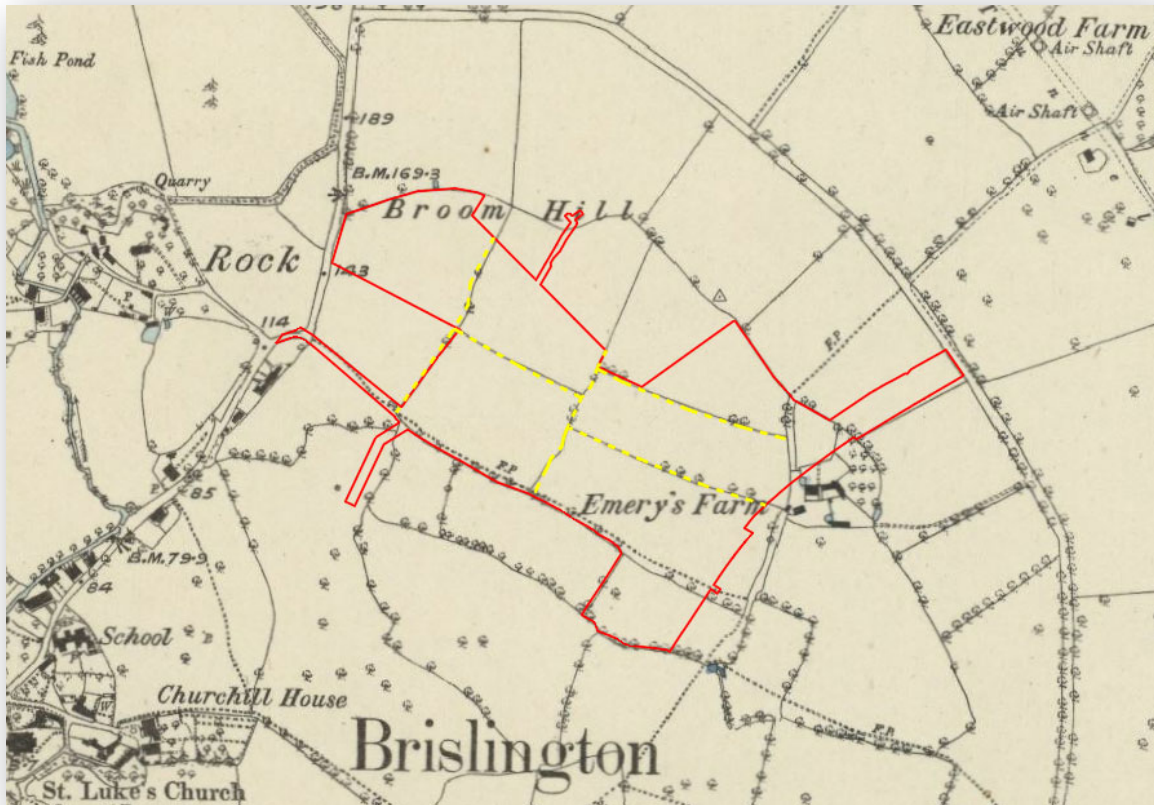


Figure 3 – Extract from OS 1-10,000 1965

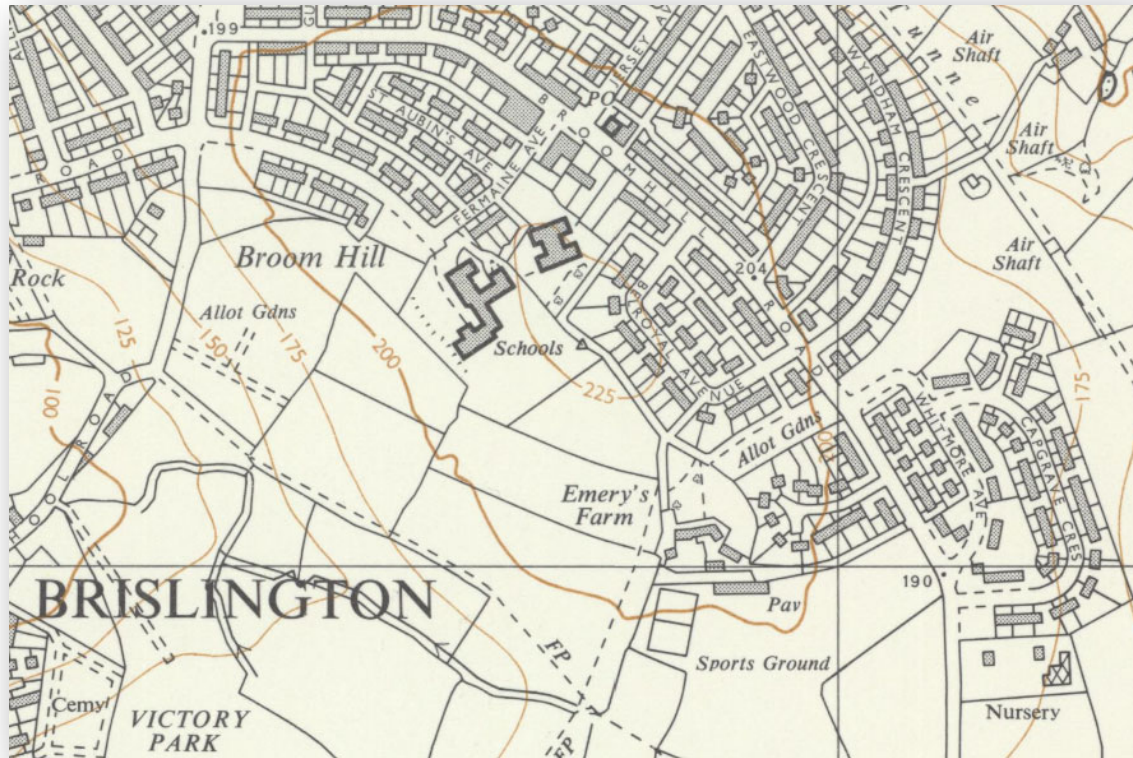


Figure 4 – Extract from 1938 oblique aerial image, looking northeast

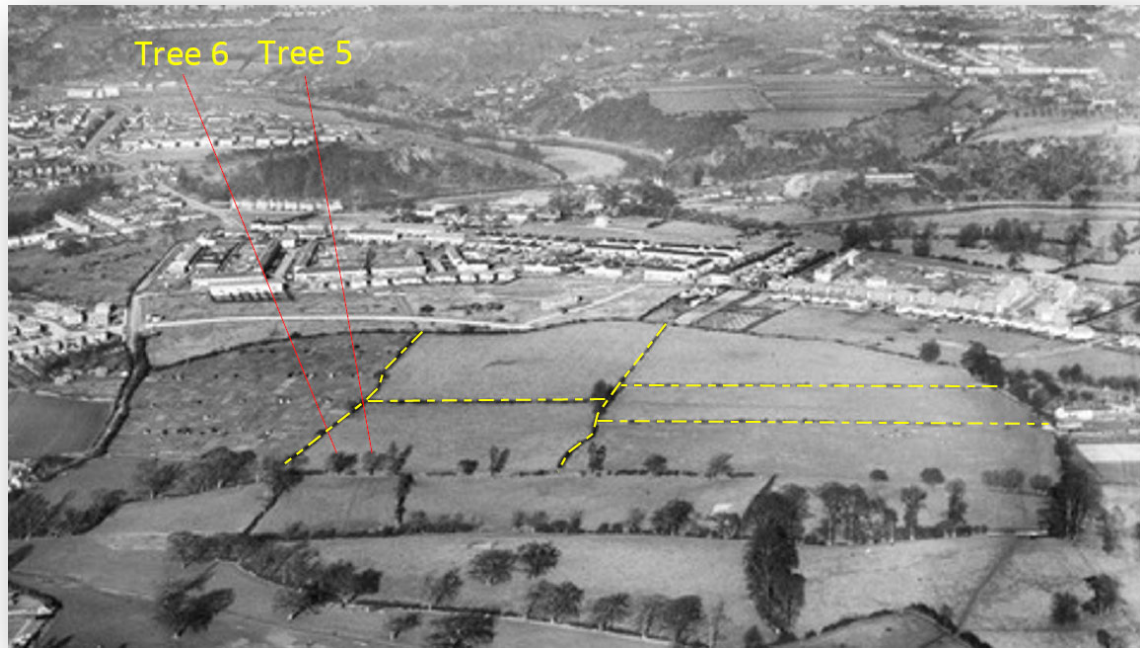


Figure 5 – Extract from 1990 aerial imagery

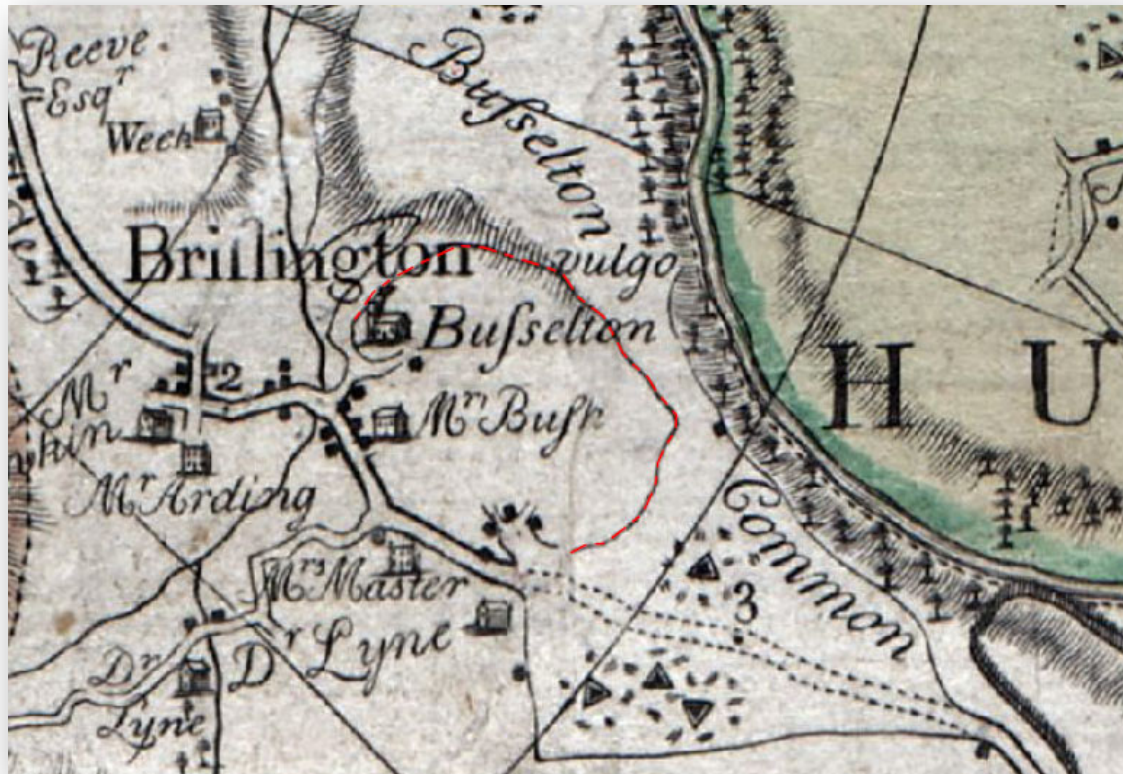


Figure 6 – Extract from 1780 Enclosure Map with annotations by FLAC



3.5 The extent of the Old Enclosure is apparent on the well-known Bristolian map by Donn dating from 1769 (Figure 7). This map shows *Bussleton Common* to the east of the Appeal Site, lying between the distinctive arc of what is now Broomhill Road and the River Avon. It is this Common land which appears to have been enclosed in 1780. To the west of the Broomhill Road arc lies the hamlet of Bussleton, and within the enclosure of the arc is a farm identified as belonging to or tenanted by Mr Bush. This confirms that land covering what is now the Appeal Site was already enclosed by 1769, giving us a firm youngest probable age for the hedgerows of just over 250 years old.

Figure 7 – Extract from Donn 1769 marked up to show extent of pre-existing Brislington Old Enclosure (approximates to line of Broomhill Road); note the then unenclosed Common to east



3.6 However, it was not until ca. 1750 that enclosure became a normal function of Parliament¹ (by means of Acts thereof). Insofar as no Act of Enclosure is known for land at Bussleton (or Brislington), we can infer from this that the Old Enclosure of the land now encompassing the Appeal Site probably predated 1750. This winds back the clock for the probable establishment of the hedgerows to at least 270 years ago.

¹ See, for example: [Enclosing the land - UK Parliament](#)

3.7 It is important to note that the minimum age of the Appeal Site hedgerows is more than simply an historical curiosity. In addition to the 1845 Regulatory threshold for importance, **the origin of the hedgerows is relevant to a determination of the potential age of trees within them.** This, in turn, feeds into the topic of identifying ancient and other veteran trees (to which I return below).

4 Identification of important trees

4.1 Veteran trees – general information

4.1.1 The (now superseded) 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 2021, 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 candidate trees 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 Fn7 (list of restrictive policies which, where engaged, cause disapplication of the tilted balance) and at para. 180c;
- iv) The latter sets a new test at §180c for acceptability of loss or deterioration of irreplaceable habitats, including therefore veteran trees, of *wholly exceptional reasons*, with these latter being elucidated at Fn63 as *public benefit clearly outweighing the loss or deterioration of habitat*.

4.1.2 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 relevant definition is that found in NPPF Annex 2. It is this definition that informs the policy – and level of protection – found at §180c.

4.1.3 Together, the definition and policy establish three tests which articulate the Government's view as regards what constitutes a veteran tree:

- i) The tree exhibits specific characteristics of age, and size, and condition;
- 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).

Trees meeting these tests are held to have exceptional value under at least one heading from biodiversity, culture, or heritage.

4.1.4 Trees not meeting all three of these tests fall outside the intended reach of the Framework, and accordingly are not subject to protection under paragraph 180c.

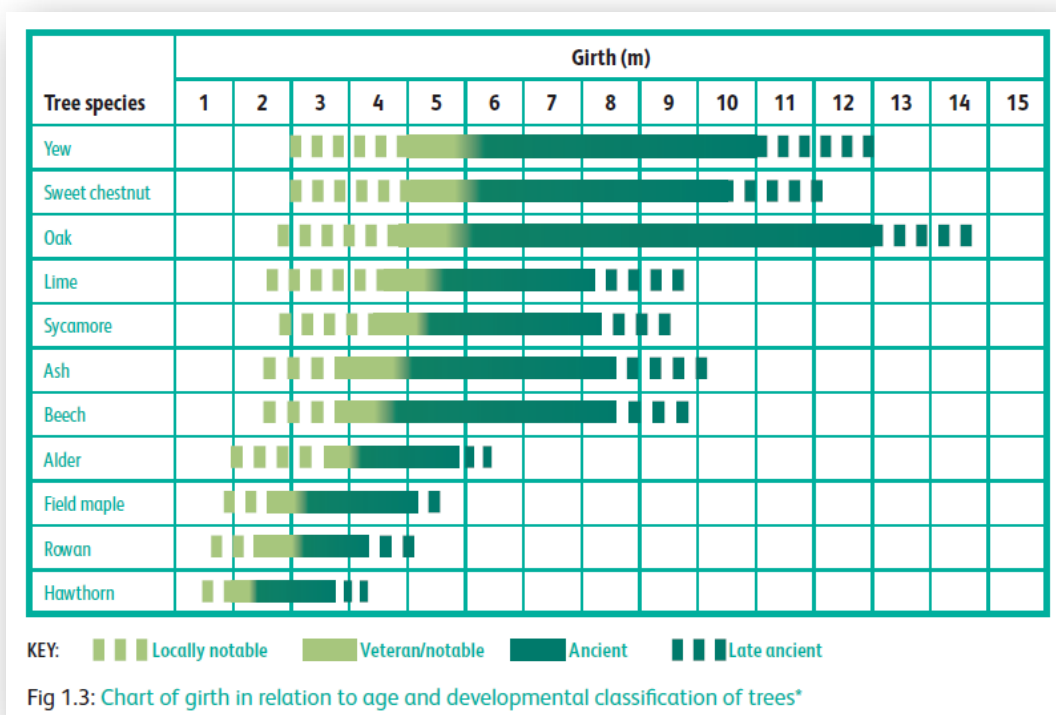
4.1.5 Turning to the question of whether a tree is "old relative to others of the same species", as noted already this is biologically linked to the stem diameter of the tree, though in some cases severe trauma (e.g. loss of significant crown area to storm damage) can reduce the age/size ratio such that smaller trees can be older (and hence *old relative to other trees of the same species*) than suggested by stem diameter alone.

4.1.6 Of considerable assistance in this regard is Lonsdale 2013² (CD8.20), published by the Ancient Tree Forum, which includes at its Figure 1.3 a chart setting out the relationship between stem girth, tree age and life stage (Figure 8).

² *Ancient and Other Veteran Trees: Further Guidance on Management*, Lonsdale, Dr D, Ancient Tree Forum 2013

My Table 1 (below my para. 4.1.8), sets out the stem diameter thresholds for the two species of which the veteran trees on the Appeal Site are members.

Figure 8 – Extract from Lonsdale 2013 showing its Figure 1.3



4.1.7 One further step is necessary, namely the conversion of stem size to likely tree age. In order to do this, we apply the White Method³ (CD8.8) from which we estimate tree age, as shown in Tables 1 & 2, below. As a corollary, hawthorn is not a species listed in the White Method; I use black mulberry as an analogue due to the very similar growth patterns of these two species.

³ Estimating the age of large and veteran trees in Britain, White, Dr J, Forestry Commission 1998

4.1.8 However, as noted already, in cases where a tree is undergoing senescence or has suffered significant crown loss (from pollarding or very severe storm damage, for example) it is important not to apply the age/ size guidance thresholds too rigidly. Under these circumstances, these guidance thresholds should be adjusted/ treated with some flexibility to reflect the slower stem growth rate resulting from these traumas.

*Table 1 – Information taken from chart at Figure 8, interpreted for relevant tree species with respect to **veteran** status*

<i>Tree species</i>	<i>ATF Fig. 1 girth for veteran state</i>	<i>Dia. equivalent (rounded)</i>	<i>White Method age estimate</i>
Hawthorn	1.8m	570mm	165yrs
Pedunculate oak	3.7m	1180mm	200yrs

4.1.9 The final matter to cover is the onset stem diameter thresholds indicated by Lonsdale for probable *ancient* status. These are set out in Table 2.

*Table 2 – Information taken from chart at Figure 8, interpreted for relevant tree species with respect to **ancient** status*

<i>Tree species</i>	<i>ATF Fig. 1 girth for ancient state</i>	<i>Dia. equivalent (rounded)</i>	<i>White Method age estimate</i>
Hawthorn	2.3m	730mm	265yrs
Pedunculate oak	5.8m	1850mm	400yrs

4.2 Identification of veteran trees – RAVEN

4.2.1 It was because of the need for clarity over what constitutes a veteran tree that I designed RAVEN (JFL4) in 2018. RAVEN is directly geared towards identifying those trees which meet the criteria within the Framework definition.

4.2.2 Since its release in 2018 as a free-to-use method, RAVEN has become widely adopted by a growing number of local authorities, and by many arboriculturists in private practice. RAVEN remains the only method for in-field identification of ancient, veteran and notable trees (the latter being the successor generation to today's veteran trees).

4.2.3 RAVEN has been confirmed as a fit-for-purpose method for use within the planning system by two planning Inspectors at Inquiry (PINS refs. 3227293 CD6.6 and 3261154 CD6.17). In the latter, more recent, of these Appeal Decisions, Inspector Searson concluded as follows:

I find that RAVEN accords with the Framework definition and has provided a detailed assessment for identifying veteran trees on age, size, and condition in respect of their values (DL66)

4.3 Veteran trees present on the Appeal Site

4.3.1 The identification of veteran trees on the Appeal Site was undertaken using RAVEN during site visits on 30 November and 16 December 2022, and 05 January 2023. The data recorded under this assessment is appended at JFL5. Figures 9-14 comprise my photographs of features on several of the veteran trees. Forensic photographic scales visible in Figures 10 and 11 are 10cm x 10cm. Appellant's tree survey number 6 is agreed between us to be a veteran.

4.3.2 Figure 9a shows Appellant's tree number 5, a pedunculate oak. This tree has a stem diameter of 1140mm by my measurement (the Appellant's tree survey records 1120mm), a little under the 1180mm guidance threshold. The Appellant's tree survey correctly notes that the tree has *deadwood and cavities throughout*. The latter comprise both stem cavities (see Figure 9b) and basal hollowing; it appears that these two features have coalesced into a substantial internal void.

4.3.3 The condition of the decaying wood around the stem cavity visible in Figure 9b indicates brown rot decay. This type of decay has three causal agents in pedunculate oak: Beefsteak Fungus (*Fistulina hepatica*), Chicken-of-the-Woods (*Laetiporus sulphureus*) and Mazegill (*Daedalea quercina*).

4.3.4 All three of these fungi are listed within Table 8, *Oak deadwood fungi*, of the Joint Nature Conservation Committee's *Guidelines for the Selection of Biological SSSIs*, Chapter 14 *Non-lichenised fungi*. In other words, these are all species of higher conservation importance (chiefly for the invertebrate associations with brown rot decay).

4.3.5 Not recorded in the Appellant's tree survey is the fact that tree 5 is clearly a grown-out pollard. This is confirmed by:

- i) The small diameter of the primary members of its crown architecture compared to the stem at their points of origin; and
- ii) The mutual co-proximity of their origin points (with only one exception).

4.3.6 It is known that pollarding significantly retards stem increment, and it is for this reason that pollard trees are older than their stem diameter would indicate. Specifically, the White Method computes age based on an average annual ring width (increment) of 3.5mm once maturity is reached (at about 100 years). However, stem increment of pedunculate oak after pollarding drops off to as little as 1.5mm annual ring width for around 40 years: this reduction equates to 160mm of 'lost' stem diameter (2mm ring width reduction per year = 4mm lost diameter, for 40 years). Multiple pollard treatments aggregate lost increment, thereby distorting age calculations based solely on stem diameter.

4.3.7 In the case of tree number 5, if it was only pollarded once, and has lost only 160mm of stem diameter, its 'true' stem diameter would be around 1300mm, giving an age of about 220 years (origin in late C18). It is clearly going to be older than this if it has been subject to more than one pollard treatment. Although these are approximations, they are derived reasonably from published sources and experience: there is no reason to doubt their utility for present purposes.

4.3.8 The other 11 veteran trees are all hawthorns, three of which are ancient in years (VH2, VH3 and VH10). Most of the veteran hawthorns bear the signs of hedgerow management and for this reason they are difficult to date with precision. However, all are clearly old or very old for their species and all have a number of veteran features, including significant decay, mainly taking the form of brown rot.

4.3.9 I wish to draw to the Inspector's attention the fact that on my site visit of 30 November 2022, I could only gain access to the hedgerow interiors in two locations, and in both locations I found a veteran tree.

4.3.10 For this reason, I asked the Council's Arboricultural Officer to return to the site to see whether he could find a way into other interiors of the hedgerows. He did this on 16 December 2022, and found an additional four veteran hawthorns.

4.3.11 In tandem, I discussed the discovery of additional veteran trees with Mr Hesketh (who covers these matters for the Appellant). In correspondence with Mr Hesketh, I suggested that some bramble clearance work would be helpful to enable better access into the hedgerows, in order to check for the presence of further veteran trees.

4.3.12 Mr Hesketh kindly put this work in hand, and it was undertaken on 05 January 2023, with the Council's Arboricultural Officer in attendance. This operation enabled confirmation of the four veteran trees first identified on 16 December, as well as the discovery of five more veteran hawthorns, taking us to eleven veteran hawthorns in total (13 veteran trees are present including the two veteran oaks).

4.3.13 The work done recently to enable access into the hedgerows' interiors was neither complicated nor, one imagines, particularly costly. Given the patent failure of the Appellant's tree survey to find the 11 veteran hawthorns, in my view their late discovery results from insufficient professional endeavour when the tree survey was undertaken in mid-2020.

Figure 9a – Veteran oak, Appellant’s survey number 5 (hole in stem circled)



Figure 9b – Close-up view of entry hole to stem cavity on Appellant's tree 5



4.3.14 Hawthorn VH1, Figure 10, is located towards the northerly end of G10 in the Appellant's tree survey. Hawthorn VH2, Figure 11, is located within G24. The Appellant's tree survey records a stem diameter range of 80-220mm for G10 and 50-240mm for G24. Referring to the forensic scale in Figures 10 and 11, it is apparent that both trees very significantly exceed these modest dimensions.

4.3.15 This confirms that veteran hawthorns VH1 and VH2 were not identified by the tree survey and have not been considered – at all – within the design process. In like manner, the other veteran hawthorns present within the important hedgerows have similarly been overlooked.

Figure 10 – Ancient hawthorn VH1, located within Appellant’s survey group G24



4.3.16 What is particularly disappointing is that these large, old hawthorns exhibit many classic indicators of veteran status (please refer to the RAVEN data at JFL5 for details). Frequent examples of such indicators include the presence of fungi, extensive decay, hollow stems, brown rot, and saproxylic invertebrate activity.

Figure 11 – Ancient hawthorn VH2, located in Appellant’s survey at G10



Figure 12 – Fungal fruitbody in large, decaying stem wound on VH3



4.3.17 Due to this presence of textbook veteran features, I would very much like to think that had these trees been properly viewed back in 2020, they would have been identified as veterans and incorporated into the proposals within suitable buffer zones. This is certainly the approach that I would have taken had I been advising the Appellant (as it has now become).

Figure 13 – Saproxylic invertebrate activity on dead branch on VH5 (example boreholes circled)



Figure 14 – Hollow stem with brown rot on VH8



4.4 Trees subject to TPO 1404

4.4.1 As noted already, TPO 1404 protects a number of trees, tree groups and an area of woodland. We can park the latter for now as it is off-site beyond a watercourse and hence very unlikely to be impacted by the Appeal Scheme. This leaves 16 trees listed individually, and 23 trees listed within three groups.

4.4.2 Figure 15 is an extract from the Map for Order 1404, onto which I have added the redline boundary of the Appeal Site. From this it is apparent eight of the individual trees (8, 9, 10, 11, 12, 13, 15, 16) and one tree group (G3) are located within the site itself, with the remainder being situated on the site boundaries.

Figure 15 – Extract from official Map of BCC TPO 1404 with site redline added by FLAC



5 Arboricultural impact of the Appeal Scheme

5.1 General

The planning application was accompanied by a tree survey which, as noted, omits key details of veteran trees. As such, this survey is not appropriate, and so fails the test in Policy DM19 (my paragraph 2.3.8). It follows that the tree survey cannot be relied upon to correctly inform the arboricultural impact assessment (whether CD1.19 or CD2.2 editions), which is thus invalid too (also contrary to DM19). My assessment of arboricultural impact on veteran trees should therefore be preferred.

5.2 Hedgerows

5.2.1 The *Ecology Impact Assessment* (CD1.21) advises that:

Five internal field boundaries were classified to comprise hedgerows, and these qualify as [Habitats of Principal Importance]. These hedgerows are also considered to be important under the wildlife and landscape criteria of the Hedgerow Regulations 1997.

These hedgerows also qualify as important under the historical criterion of the 1845AD threshold (*Historic Environment Assessment* CD1.18a).

5.2.2 Table 7 of the *Ecology Impact Assessment* sets out hedgerow retention and removal outcomes, concluding that 74% of the existing important hedgerows would be lost to the Appeal Scheme. Whilst Mr Higgins considers the acceptability of this, and the suitability of proposed mitigation in biodiversity terms, I wish here to draw attention to the presence of ancient and other veteran trees within these hedgerows. I return to this topic in section 5.3.

5.2.3 Commenting here on the loss of historically important hedgerows, it does seem to me that a near three-quarter reduction is difficult (putting it mildly) to square with the Policy requirement towards retention of these features. Indeed, I would say that the proposed removal to retention ratio of 74:26 is essentially the inverse of acceptability.

5.3 Veteran trees - general

5.3.1 Insofar as the loss or deterioration of even a single veteran tree engages paragraph 180c of the NPPF, the loss or deterioration of multiple veteran trees progressively increases the magnitude of the adverse impact on Irreplaceable Habitat.

5.3.2 In order to assess the impact of the Appeal Scheme on veteran trees, I have prepared a series of plans in CAD (appended at JFL7) which show their location, accurate to within a very few metres, within four different contexts:

- i) The existing situation: veteran trees shown on a recent aerial image;
- ii) Proposed ground modelling: veteran trees shown on the Appellant's Isopachytes Plan (CD2.3b);
- iii) Landscape Parameter Plan (CD1.5); and
- iv) Illustrative Masterplan (CD1.10)

5.3.3 It is my understanding that the Landscape Parameter Plan ("LPP") is a drawing for determination before this Inquiry. I further understand that the LPP is informed by and cannot be delivered without the ground modelling shown in the Isopachytes Plan. As such, impacts arising from these plans are matters of direct relevance to this Appeal, insofar as they show what would occur if the Appeal were to be allowed.

5.3.4 As I have already explained (2.8.3), in order to safeguard veteran trees from development-related harm, the *Standing Advice* stipulates use of a protective buffer zone around them with a radius of 15 times their stem diameter. The stem diameter should be measured where possible on the tree, with basal measurement being acceptable for low-crowned specimens. Where the tree comprises several stems from ground level, these can be measured individually, with the total aggregated to derive the required input into the buffer zone multiplier.

5.3.5 As part of my veteran tree impact assessment, I have identified the buffer zone radius for each of the thirteen veteran trees known to be present on the Appeal Site; the results of this exercise are appended at JFL6. I have used this information to add buffer zone circles of the correct radii to the plans at JFL7, in order to show and understand the relationship between these protective areas and relevant details of the Appeal Scheme.

5.3.6 With this exercise complete, I find that tree VH10 would not be subject to adverse impact. **All 12 other veteran trees would suffer either loss or deterioration**, as detailed below.

5.4 Veteran trees – loss

Four veteran hawthorns, VH1, VH4, VH5 and VH6, are located within the body of areas for development. They would all be lost as a result of the Appeal Scheme.

5.5 Veteran trees – deterioration

5.5.1 Three veteran trees, T6, VH8 and VH11, would be subject to deterioration due to insertion of minor elements of development (e.g. paths) within their protective buffer.

I accept that it might be possible to design out these impacts, however the Appellant is put to proof on this point, for example via a revised masterplan.

5.5.2 The remaining five veteran trees, T5, VH2, VH3, VH7 and VH9, would suffer deterioration due to insertion of significant elements of development within their buffer zones. It does not appear to me to be possible to design out these problems within the scope of plans submitted for approval.

5.5.3 In this regard, it should be understood that the *Standing Advice* is clear that development should be excluded from veteran tree buffer zones, with even the insertion of gardens being considered unacceptable. Whilst formation of new hard surfacing might seem to be a low-impact proposition, in the case of veteran trees this is contrary to the recommendations of BS5837:2012 (at its 7.4).

5.5.4 This point was considered in detail in Oakhurst Rise 1 (3227239), in relation to a proposed no-dig path through the buffer zone of veteran trees. In that case, Inspector Sims dismissed the Appeal, concluding that:

I am satisfied that the measures proposed to safeguard the long-term welfare of all the retained protected and veteran trees from the potential impacts of the proposed built development have a reasonable prospect of success. However, that cannot be certain. I am persuaded that there would remain some degree of risk to the longevity of the trees concerned, given the relative degree of density of those parts of the proposed development closest to those concerned, leading to greater public access and activity in close proximity (DL65, CD6.6)

5.6 Summary of effects and resulting policy considerations

5.6.1 The effects of development on veteran trees arising from the Appeal Scheme is summarised in Table 3 below.

Table 3 – Summary of development effects on veteran trees

Tree ref	Effect	Cause
T5	Deterioration	Major earthworks & path
T6	Deterioration	Path
VH1	Loss	Tree located within development area
VH2	Deterioration	Domestic curtilage & path
VH3	Deterioration	Domestic curtilage & turning head
VH4	Loss	Tree located within development area
VH5	Loss	Tree located within development area
VH6	Loss	Tree located within development area
VH7	Deterioration	Dwelling, turning head, path
VH8	Deterioration	Path
VH9	Deterioration	Paths to south and east
VH10	None	No incursion within buffer zone
VH11	Deterioration	Path

5.6.2 The impacts on veteran trees detailed above engage the protective policy at NPPF 180c, thereby requiring the Appellant to demonstrate:

- i) Wholly exceptional reasons to justify the harm to Irreplaceable Habitat; and
- ii) The availability of a suitable compensation strategy.

Unless the Appellant can do both of these things, paragraph 180c of the Framework is clear that planning permission should be refused.

5.7 Loss of trees subject to TPO 1404

5.7.1 Three trees protected by the TPO are identified for removal, as set out in Table 4:

Table 4 – Correlation between TPO listing reference and TEP survey reference for trees identified for removal

Note – TPO tree 15 is situated within TEP survey ref. woodland W2

Species	TPO ref.	TEP ref.
Pedunculate oak	10	9
Pedunculate oak	15	W2
Field maple	16	18

5.7.2 As discussed already, the three TPO trees proposed for removal were protected in the public interest because the Council considers them to be important. This protection was not found objectionable by the Appellant: it had an opportunity to object to TPO 1404 but did not take it. I have seen no evidence that the removal of these three trees is necessary to deliver the allocation, and accordingly their loss is contrary to Policy.

5.8 Other trees

5.8.1 The Appellant's Isopachytes Plan (CD2.3b) comes overlaid with information from its Tree Conflicts Drawing (CD2.3c). It is apparent from this information that the majority of trees along the Appeal Site's various northerly boundaries have been identified for retention.

5.8.2 However, the Isopachytes Plan also shows ground level reduction of as much as 500mm right up to the site boundary. In all cases, these earthworks would be well within the Root Protection Areas ("RPAs") of the supposedly retained trees. BS5837:2012 defines the RPA as:

Minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability, and where the protection of the roots and soil structure is treated as a priority (CD8.9 at its 3.7)

5.8.3 It is known that around 90% of tree roots are found in the upper 600mm of soil in natural growing conditions. As such, excavation of a high portion of the RPA down to 500mm would be likely to result in non-survivable root trauma, potentially leading to the loss of the tree concerned. Whilst I take no point on such losses in relation to important trees, Ms Whatmore is concerned over the effect of boundary vegetation losses in landscape terms.

6 Conclusions

6.1 In relation to matters within my scope, the Council has deemed that, had it determined the material application, it would have refused planning permission for two reasons. Firstly, the proposals fail to retain important trees and hedgerows (DRR2). Secondly, they would lead to loss and deterioration of Irreplaceable Habitat (DRR3) (veteran trees).

6.2 As a result of these difficulties, the Council considers that the proposals fall foul of a number of Policies, both local and national.

6.3 In terms of local policies, these are both general policies (BCS9, SA1, DM15, DM17 and DM19), i.e. those applying to all sites, and the specific policy that applies to the Appeal Site (BSA1201).

6.4 Focussing in on the latter, being, by definition, that of most direct relevance to the present Appeal, this includes a Development Consideration that straightforwardly requires retention of important hedgerows and trees. I have already stated that I would not seek to interpret this requirement in absolute terms. That is, I would accept that *some* loss of important trees and hedgerows is acceptable in order to deliver the allocation. In my view, this position is in good agreement with Policy DM19 (my paragraph 2.3.8), which seeks avoidance of harm, rather than prohibiting it.

6.5 This position begs two questions. Firstly, which are the important hedgerows and trees? Secondly, what level of loss is acceptable?

6.6 In this case, it is relatively straightforward to identify the important hedgerows and trees. The former comprise those which the Appellant's ecology and heritage advisors consider to be important, and which I have dated to at least 1750 (my section 3).

6.7 The latter comprise a) veteran trees and b) trees protected in the public interest by an unchallenged TPO.

6.8 I have identified thirteen veteran trees, of which the Appellant's advisors failed to identify twelve. This lapse (there is no other word for it) has led directly to a Scheme that entails the loss of four veteran trees and the deterioration of eight. In addition to the local policy implications, which are plain to see, these effects trigger engagement of NPPF 180c, the strict tests of which are well known. Prima facie, these tests are not passed by the proposals before this Inquiry.

6.9 Beyond the very serious policy failings arising from the Appellant's botched treatment of veteran trees, there is also the issue of loss of trees subject to the TPO. In relation to these, the Council decided that a small proportion of the site's tree stock should be retained and protected in the public interest by TPO 1404.

6.10 This Order was made in October 2021, some six months before the application, as now appealed, was submitted. In other words, the Council considered, and considers, these trees to be important. Notwithstanding the statutory opportunity to do so, the Appellant did not object to this protection, and yet sought, and seeks to remove three of them.

6.11 In my opinion, this raises an important issue: Parliament has equipped local planning authorities with statutory tools to enable them to identify trees for preservation in the public interest. With the passage of time, and with changing circumstances, such trees can be proposed and agreed for removal. This happens as a matter of routine in the planning context.

6.12 However, where both parties to potential development agree that certain trees are suitably protected, I consider that the developer should make strong efforts to retain them. This is not what I see in the proposals before this Inquiry.

6.13 For these reasons, I conclude that the Appeal Scheme is indeed – as the Council alleges – contrary to the various local and national policies cited in DRR2 and DRR3. These Deemed Reasons having been made out, I submit that the Appeal should be dismissed.

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