

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. 3 - REBUTTAL PROOF

Prepared for: *Bristol City Council*

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1 Introduction

1.1 Authorship & Instructions

This Rebuttal Proof addresses points arising from the Proof of Mr Francis Hesketh ("FH") for the Appellant on arboricultural (and ecological) matters. It has been prepared by me, Julian Forbes-Laird, under the same introductory terms as my Proof of Evidence.

1.2 Format

This Rebuttal Proof takes the form of a review and comment on a number of statements within Mr Hesketh's Proof, referenced hereafter in the style FH-x.y (for paragraph numbers). Quoted extracts from FH Proof appear in italics. Quoted text from other sources is indented and set in Roman type.

1.3 Caveat

The absence of comment on any particular section or paragraph should not be interpreted as indicating my agreement with its contents.

2 Review of and comment on selected points in FH Proof

2.1 Comments on FH-3.3

A tree survey in accordance with BS5837:2012 and an Arboricultural Impact Assessment (AIA) informed the planning application.

2.1.1 British Standard BS5837:2012 (CD8.9) has the following to say in relation to hedgerow surveying:

4.4.2.8 Hedgerows and substantial internal or boundary hedges (including evergreen screens) should be recorded in a similar fashion to groups, with the lateral spread and average (or maximum and minimum) height and stem diameter ranges recorded, to allow the potential constraints associated with the features to be fully assessed. All woody species present should be recorded. Where woody plants are present within a hedgerow that are significantly different in character from the remainder of it, these should be identified and recorded separately, especially where they comprise distinct trees.

2.1.2 Insofar as a) the tree survey failed to identify individually any of the eleven hawthorns which I consider to be veteran trees, and b) given that said eleven trees are highly dissimilar (regardless of their veteran status) to the descriptions within the tree survey that are applied to the hedgerows within which they stand, I would strongly dispute that the tree survey referred to is compliant to BS5837:2012.

2.1.3 However, I note that the tree survey classifies the hedgerows (wrongly, in my view) as tree groups (the Appellant's ecology survey correctly lists them as hedgerows). Whilst it might be said that it is because of this approach that the survey is compliant to the British Standard, in fact the same provision regarding individual recording applies:

4.4.2.3 Trees growing as groups or woodland should be identified and assessed as such where the arboriculturist determines that this is appropriate. However, an assessment of individuals within any group should still be undertaken if there is a need to differentiate between them, e.g. in order to highlight significant variation in attributes (including physiological or structural condition).

NOTE The term "group" is intended to identify trees that form cohesive arboricultural features either aerodynamically (e.g. trees that provide companion shelter), visually (e.g. avenues or screens) or culturally, including for biodiversity (e.g. parkland or wood pasture), in respect of each of the three subcategories (see 4.5).

2.1.4 To summarise, regardless of whether the arboricultural features concerned should be classified as hedgerows (being both my opinion and that of the Appellant's ecologists), or tree groups (FH), the key individual specimens of the eleven hawthorns, whether veterans or not, should have been picked out and assessed as individuals.

2.1.5 Had this been done in July 2020 (when the tree survey was undertaken), I am confident that this information would have led to the identification of veteran trees at a sufficiently early stage in the process to avoid Reason 3. Even if this early identification had not happened, the Council would have been informed that very large, and thus very old hawthorns were present at least on submission of the planning application (April 2022), with a consequent red flag being waved many months ago.

2.2 Comments on FH-3.10

At the Case Management Conference of 14th December 2022, the Council indicated it wished to identify further veteran trees. A final map locating these alleged veterans was provided to me on 6th January 2022 [sic], but with no supporting evidence alongside.

I expect that the Council's witness will provide more evidence at the date of exchange, but given the late notice of this, I reserve my position on this matter and will address the Council's evidence during the period allowed for rebuttal evidence.

2.2.1 The disingenuous narrative at FH-3.10 omits mention of the Council's clear pre-application advice (CD7.1), issued in January 2020 and hence predating the tree survey by several months. This advice reported (at pre-app advice Appendix D) the comments of the Tree Officer which included the following (with my emphasis):

The site topography consists of seven arable fields that slope from the north down to the southeast where it meets Victory Park and a number of tenanted grazing fields. **The fields a[re] divided by ancient hedgerows that contain ancient oak, holly and hawthorn trees...**

During my site visit I have measured the girth of a number of trees of varying species to demonstrate their age...

Due to the significant amount of blackthorn sucker growth it has been impossible to measure the girth of the many of the largest Hawthorn and holly, many of which have a multi stem form with large root bases.

2.2.2 The Tree Officer's comments continue with a section titled *Ancient and Veteran Trees*. This section features a slightly adapted version of the chart from Lonsdale found in my Proof at Figure 8 (p.27), therefore making an unambiguous link between the size of the hawthorns, their age and potential life-stage as ancient or other veteran trees.

2.2.3 It is difficult to imagine a more straightforward signpost to the presence of veteran trees and the need for a detailed tree survey than these comments, and yet for some reason the necessary work to assess the hedgerow components was not done until I also drew this matter to Mr Hesketh's attention on 16th December 2022.

2.2.4 It is, therefore, from the poisonous tree of inadequate professional diligence, that the Appellant has now plucked the unpalatable fruit of Reason 3. This being so, it is highly invidious of Mr Hesketh to complain about *late notice* of the presence of veteran trees (restated at 3.48 as *limited notice*) nearly three years after their likely presence was drawn to the attention of TEP's arboriculture section. This rod for the Appellant's back is hardly of the Council's manufacture.

2.2.5 With this context in mind, it is grossly unreasonable that the Council is now expected to wait to discover the Appellant's position on veteran trees until barely a week before the Inquiry opens.

2.2.6 At Appendix JFL/RP-1 of this Rebuttal Proof is an email from me to Mr Hesketh dated 17 January, chiefly relating to common ground matters. However, at the close of this email, I directly asked Mr Hesketh if the Appellant would be calling an additional witness on veteran tree matters, an issue I raised due to the need to start common ground discussions with any new witness. At Appendix JFL/ RP2 is Mr Hesketh's reply, from which it is apparent that he declined to provide an indication either way, thereby minimising the opportunity for constructive dialogue between experts.

2.3 Comments on FH-3.39

The application is of course in outline and the Inspector would be able to impose conditions to require protection of specific trees shown in amber, or to control removal of such trees via approval of reserved matters applications, if deemed appropriate.

2.3.1 The comment “trees shown in amber” refers to the plan titled “Consolidated AIA drawing” that FH reproduces as Figure 1 of his Proof, being also Drawing 1 within his Appendix volume. Reference to the key on this drawing finds that trees shown in amber are described as:

Trees in conflict with Masterplan. Trees that would be removed if development were to proceed in accordance with the Illustrative Masterplan. Scope exists for changes to be made at Reserved Matters.

2.3.2 This would be fine as a principle if it were in fact so. However, it is not. Yes, the amber trees are in conflict with the Masterplan, which is illustrative, but they are also in conflict with the Parameter Plans, which are not: I understand them to be subject to determination as part of this Appeal.

2.3.3 Whilst it *might* be the case that adjustments to the Masterplan *might* enable *some* additional tree retention – rather begging the question why has this not been done in the first place – a) a revised Masterplan is not presently before the Inquiry (Mr Hesketh appears to be holding a magic wand to be waived at Reserved Matters), and b) the greater scale of losses, including of important hedgerows and their associated veteran trees, would seem to require fundamental changes to that which is scheduled for determination here.

2.3.4 This latter being the case, the point becomes moot as to whether the Appellant is offering up a different animal, in which event it is my understanding that a fresh application would be required. On the upside, at least such an application would have the benefit, one hopes, of a proper tree survey and its positive downstream effects.

2.3.5 However, for a rather different take on matters, we can turn to the Ecological Impact Assessment (EcIA; CD1.21). At its paragraph 2.31 this document states (with my emphasis):

The Landscape Parameter Plan... sets the layout and (minimum) extent of green space within the development. It **fixes areas of tree retention** and presents indicative layout for the Primary Street and play locations. **The Landscape Parameter Plan is the primary layout used to inform this EcIA.**

2.3.6 With this in mind, we can look at what the EcIA says about hedgerow impacts (recalling that it is these impacts that bear on veteran hawthorns). Paragraph 5.33 of the EcIA states:

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

2.3.7 Paragraph 5.34 summarises the impact of the assessed scheme as shown in the Landscape Parameter Plan:

Habitat loss is assumed to occur not just completely across the residential platforms but also in additional areas along the indicative route of the Primary Street, in areas where regrading is anticipated and where the sustainable drainage basins and cycle/footpath network are proposed.

2.3.8 Finally, paragraph 5.35 states (with my emphasis):

The majority of hedgerow losses occur within residential parcels. Loss of hedgerows H2 and H4 and partial loss of H3 (southern end) to deliver new dwellings is considered **very likely to be unavoidable**.

Even if detailed design was able to retain additional lengths of hedgerow within the site, it is likely these would need to be incorporated into private garden boundaries and consequently functional loss would still be presumed.

2.3.9 TEP's ecological assessment of hedgerow impacts arising under plans for determination here seems not to have contemplated Mr Hesketh's magic wand solutions at Reserved Matters. Absent feasible proposals that can be tested at this Inquiry, I would respectfully urge the Inspector to consider that which is real, not that which might – or might not – be conjured out of a hat at some future time.

2.4 Comments on FH-6.100

Drawing 2 summarises the likely loss of hedgerows based on the parameter plan and the illustrative masterplan. It assumes a worst-case scenario, although it is noted that detailed design stages might allow retention of more sections of hedgerow than envisaged, depending on whether ground levels might enable use of low retaining walls for example

2.4.1 When considering this statement, we should remain mindful that the veteran hawthorns reside in the important hedgerows, such that hedgerow impact is directly relatable to loss and deterioration of Irreplaceable Habitat, thereby squarely engaging NPPF 180c. Mr Hesketh explains that Drawing 2, which essentially shows the same hedgerow impact as that concluded in the EcIA, is a “worst-case scenario”. This may be so, but as he also explains, the worst-case scenario is the likely outcome.

2.4.2 In plain terms, Mr Hesketh is now saying – contrary to his optimistic assertions at 3.39 – that the likely outcome is the hedgerow impact shown in Drawing 2, which concurs with the EcIA.

2.4.3 I would highlight the conclusions of FH-6.100 as being extremely important: there is no universe in which they can co-exist in equal terms with the lofty claims of FH-3.39. It is for this reason that I submit that the Inspector should determine that which is before him, and would urge that he not attach any weight whatsoever to assurances which even those making them say are unlikely to be realised.

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



APPENDIX JFL/ RP-1

EMAIL FROM JULIAN FORBES-LAIRD
TO FRANCIS HESKETH
17 JANUARY 2023

Julian Forbes-Laird

From: Julian Forbes-Laird
Sent: 17 January 2023 08:55
To: Francis Hesketh
Cc: Richard Sewell
Subject: Matters of possible common ground



42-1061_JFL
BRISLINGTON MEADOWS

Dear Francis,

I have been through relevant sections of your evidence in the quest for points of common ground. Given that the can of veteran trees has, as a topic, been substantively kicked down the road, unfortunately there seems to me to be little on which we might reach CG agreement. I would welcome any suggestions you might have, but for now, I think that we might be able to agree the minimum age of the key hedgerows, and the policy implications arising from veteran trees.

Latest date for hedgerow origin

I note that at 6.5.3 you conclude that they are probably the result of planting associated with a private enclosure of the land. Given that private enclosure died out ca. 1750, after which enclosure became the preserve of parliament, as set out in my evidence this leads me to date the hedgrows to before ca. 1750 (JFL 3.6). I think that this is equally the logic of your conclusion and hence we might agree that point. What do you think?

Policy implications arising from veteran trees

It is a matter of fact that if the Inspector concludes that veteran trees on the site would suffer loss or deterioration, this would trigger engagement of NPPF 180c. In this event, is it the Appellant's case that it can show a) a wholly exceptional reason to justify this harm, and b) provide a suitable compensation strategy? If so, perhaps we could agree what the latter would look like?

Whilst writing, have you folks decided if you are calling someone else yet? If so, it seems to me that he or she and I might seek CG on at least some details pertaining to those trees which I identify to be veterans.

Best wishes,

Julian.



APPENDIX JFL/ RP-2

EMAIL FROM FRANCIS HESKETH
TO JULIAN FORBES-LAIRD
17 JANUARY 2023

Julian Forbes-Laird

From: Francis Hesketh <FrancisHesketh@tep.uk.com>
Sent: 17 January 2023 15:54
To: Julian Forbes-Laird
Cc: Richard Sewell
Subject: RE: Matters of possible common ground

Follow Up Flag: Follow up
Flag Status: Completed

Hello Julian, sorry to be a bit slow getting back to you. The hedgerow age and private enclosure dates are really something I'd have to see if our historic environment consultant can agree. It depends on whether he would agree private enclosures died out ca 1750, but I'll get back to you if there is anything to agree here.

On the second point, I think a) is really a matter for the planning witness and client, so I've pinged the request onto them. On b) – a suitable compensation strategy – I am sure we could agree a strategy without prejudice to our clients' positions on exceptional circumstances and our own position on VT status. On that basis, my view is that deterioration of the retained trees can be avoided through design measures at RM and construction stages. So we'd be looking at compensation for the four lost hawthorns assuming the illustrative masterplan was given the full go-ahead. So I imagine a combination of phasing excavations and clearance, translocation of live stem, formative pruning, translocation of dead wood, veteranisation of existing mature and semi-mature hawthorns, new planting, LHMP measures. More than happy to agree something with you

We have taken your approximate tree positions and plotted them onto the topo and added crown dimensions and calculated RPA and buffer zones. Am hoping to get that finalised and over to you for agreement later this week. As we didn't get the last 5 hawthorns till Friday 6th, we've not yet been able to get back to site to measure them and check them out – weather permitting we will be there tomorrow.

You will have seen from my evidence that whilst we may not agree on T5 size criteria, nevertheless the importance of the tree has never been in doubt so we can hopefully agree that the expanded buffer zone to be shown on amended parameter plans is appropriate?

I also hope we can get agreement on some of the details of the trees in question but will get back to you on that.

On less controversial matters, are you able to agree the AMS/TPP for the access points and the Bristol Tree Replacement calculations appended to my evidence?

Many thanks

Francis

Francis Hesketh MCIEEM
Director
Ecology

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