

Case Name: Wildfish, R (On the Application Of) v Buckinghamshire Council [2025] EWHC 3060 (Admin) (20 November 2025)

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Commentary: This case relates to Wildfish (an environmental charity that campaigns to protect UK rivers and streams) and Ms Jane Woods (a local resident and a member of local action groups) linked claims to judicially review the decision of Buckinghamshire Council (the “**Council**”) to grant a reserved matters approval and discharge specific planning conditions.

This case will be of interest to practitioners particularly in relation to the Court’s conclusion that in specific circumstances an RMA application could be lawfully modified prior to determination to incorporate reference to a subsequently granted S73 permission without circumventing the restriction in section 73(5) (which relates to extending the time limit for discharge of reserved matters on an outline permission). There is also some helpful commentary in relation to the appropriateness of pre-occupation conditions relating to wastewater capacity.

The key background points were –

1. An outline planning permission for up-to 170 dwellings and associated infrastructure, at land off Walnut Drive and Foscoote Road, Maids Moreton, Buckinghamshire was granted on 24 March 2022 (the “**OPP**”);
2. Condition 2 required any applications for approvals of reserved matters to be made to the Council “no later than eighteen months from the date of this permission”. That time limit expired on 24 September 2023;
3. The applicant made an application for reserved matters for appearance, landscaping, layout and scale for 163 dwellings on 25 May 2023 (the “**RMA**”) along with an application to discharge conditions 22 (biodiversity net gain) and condition 8 (construction management plan) pursuant to the OPP on 25 May 2023;
4. Additional documents were submitted pursuant to the RMA application was subsequently updated on several occasions including the submission of an “amended planning pack” which made changes to the RMA including the reduction of the number of dwellings from 163 to 153;
5. On 20 September 2024 an application was made under section 73 Town and Country Planning Act 1990 to amend condition 13 which related to waste water treatment capacity to remove a pre-commencement element of that condition. The condition however retained the requirement that the development could not be occupied until confirmation had been provided to the Council that necessary upgrades required to accommodate additional wastewater flows had been agreed with Anglian Water and completed. The S73 was granted on 10 December 2024 (the “**S73 Approval**”);
6. The description of the RMA was subsequently amended to include express reference to the S73 Approval;

7. The RMA was granted on 4 March 2025.

The substantive grounds for challenge can be summarised as follows –

1. An error in law in approving a substantial alteration to the application for RMA after expiry of the time limit, and failure to consult on the application (Wildfish Ground 1); and an error in law in accepting resubmission of reserved matters out of time (Woods Ground 3); and
2. An error in law in approving reserved matters “as varied by” the permission granted under section 73 Town and Country Planning Act 1990 (Wildfish Ground 2).

(the “RMA Grounds”)

3. The planning officer’s report (the “**OR**”) was significantly misleading; irrational; insufficiently investigated; failed to refer to material consideration; and it was inadequately reasoned. In addition, the Council did not publish a relevant document as a background paper accompanying the OR – this ground was advanced in respect of both the RMA approval and the discharge of the BNG condition (Wildfish Ground 3 in relation to the RMA, and Woods Ground 3 in relation to the BNG condition).

(the “OR Ground”)

4. An error in law in deciding not to re-consider the screening decision under the Town and Country Planning (Environmental Impact Regulations) 2011 (Wildfish Ground 4).

(the “EIA Ground”)

5. The decision to discharge the BNG condition was ultra vires and irrational (Woods Ground 2).

(the “BNG Ground”)

Mrs Justice Lang DBE dismissed both claims on all grounds.

The reasons for the dismissal of the RMA Grounds can be summarised as follows –

1. The ground had originally been argued on the basis that the RMA application also sought to discharge wastewater treatment capacity matters. This was not the case and condition 13 was required to be discharged prior to occupation. A failure to submit a foul water scheme at the same time as the RMA was not a breach of the reserved matters condition.
2. Adding reference to the S73 Approval to the description of the RMA did not result in a change to the character of the RMA and the applicant was entitled to rely upon the RMA submission as the discharge of reserved matters in relation to the S73 Approval. The Council was rationally entitled to conclude, in the exercise of its discretionary judgment, that the changes made to the RMA application following its submission did not change the character of the application and so did not require a new application to be made.

3. There was no statutory obligation to hold a public consultation on the RMA application and re-consultation was only required where the differences between that which was consulted upon and that which the consulting party subsequently wishes to permit were fundamental and of a very high order of significance. It was relevant that there had been full consultations in relation to the OPP and the S73; that the Claimants were both actively monitoring the RMA and discharge of condition applications; the OR was detailed in relation to all matters that the Claimants were concerned; and objector concerns were raised and considered by the planning committee.

The reasons for the dismissal of the OR Grounds can be summarised as follows –

1. The RMA application did not seek to discharge condition 13, and the Council was not required to reach a view on when the development could be occupied in the context of this application. The uncertainty relating to wastewater capacity did not prevent the RMA from being determined.
2. Notwithstanding the Council was entitled to reach the view, as set out in its officers report, that it relied upon Anglian Water's assurances that AW was obligated to accommodate the additional wastewater flows arising from the development, and in any event condition 13 as amended by the S73 Approval prevented people from occupying the development unless and until relevant capacity had been confirmed.
3. There was no requirement to publish an email from Ofwat to Wildfish relating to its decision not to fund Anglian Water's proposed upgrades to Buckingham Water Recycling Centre as it was not a "background paper" for the purposes of section 100D Local Government Act 1972. In any event the content of that email had been referred to in general terms in officer commentary in the OR. The same conclusion was reached in relation to objector BNG calculations (see the BNG Ground below).

In relation to the EIA Ground, the planning officer had explained the relevant provisions of the EIA Regulations in her OR and had reached the judgment that a further screening opinion was not necessary as the nature and extent of the changes between screening opinion undertaken for the OPP was not different (individually or cumulatively) that they could change the outcome of the 2015 screening opinion. Mrs Justice Lang considered there was no irrationality or other public law error in this approach and dismissed the ground accordingly.

Finally in relation to the BNG Ground, Mrs Justice Lang considered that the Council's discharge of condition 22 was rational and lawful. Ms Woods had raised a technical ground relating to the relevant metric and calculation tool that should be used to apply a "difficulty multiplier" to the BNG hedgerow calculation. Officers had properly considered the differing opinions between the applicant and objector's BNG consultants and had reached a rational conclusion to prefer to the applicant's multiplier.

In the context of the OR Ground and the BNG Ground Mrs Justice Lang also considered the Council's compliance with its duty to carry out sufficient inquiry prior to making its decision – as derived from *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014 -

"The question for the court is, did the Secretary of State ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?".

Mrs Justice Lang confirmed that this duty was a facet of rationality and a decision-maker is only under a duty to take such steps to inform himself as would any reasonable decision maker; emphasising that the Court should not intervene merely because it considers that further inquiries would have been sensible or desirable. The Court found no legal error in this regard.

Case summary prepared by Chris Todman