Case Name: *Save Bristol Gardens Alliance Limited v Bristol City Council* [2025] EWHC 3191 (Admin) (04 December 2025)

Full case: Read here

Commentary: Mr Justice Mould dismissed an application for judicial review of Bristol City Council's ('the Defendant') decision to grant planning permission for the redevelopment of Bristol Zoological Gardens ('the Permission'). The redevelopment proposal, promoted by the Bristol, Clifton and West of England Zoological Society ('the Interested Party'), included the delivery of 196 residential units, community open space, and a number of urban trees ('the Development'). Save Bristol Gardens Alliance Limited ('the Claimant') challenged the lawfulness of the Permission on three grounds.

First, the Claimant submitted that the Defendant acted unlawfully in adopting the planning officer's advice that the Development's contribution to biodiversity net gain ('BNG') should be measured in accordance with Natural England's 'Metric 3.0'. The Claimant contended that the Development's BNG value should have been assessed against Metric 3.1 or Metric 4.0, which would have more accurately quantified the value of urban tree habitats. Mould J held that the Defendant had acted rationally, and had not failed to take into account a material consideration, in accepting the advice that the use of Metric 3.0 was reliable. Nor had the Defendant been given materially erroneous advice by the planning officer in relation to the use of Metric 3.0.

Second, the Claimant submitted that the Defendant acted unlawfully in adopting out-of-date criteria to measure the Development's projected carbon dioxide emissions. Mould J was not persuaded by this argument. The Interested Party's planning application had complied with the relevant criteria at the time it was submitted, and subsequent policy guidance was clear that more recent criteria would not apply to applications which had already been submitted. Although the Defendant retained a legal discretion to assess the Development against the more recent criteria, it did not fail to exercise this discretion. The planning officer's advice, which it adopted, had balanced the relevant considerations and reached the view that applying the more recent criteria would be disproportionate.

Third, the Claimant submitted that the Defendant acted unlawfully in that the planning officer failed to advise whether the Development would lead to a quantitative loss of open space, with the result that the Council was not in a position to properly apply national planning policy in accordance with the approach in *R (Brommell) v Reading Borough Council* ('*Brommell*') [2018] EWHC 3529 (Admin). Mould J held that it was not necessary for the planning officer to resolve any ambiguity as to the quantity of open space to be delivered. He had appropriately proceeded on a precautionary and reasonable worst-case basis.

Ground 1

Background facts

Ground 1 arose in the context of the BNG policies in the National Planning Policy Framework ('NPPF') (2021). Paragraphs 174 and 180 provide that new developments

should seek to minimise impacts on, and generate net gains for, biodiversity. The Planning Practice Guidance on BNG recommends the use of the metric published by Natural England in order to quantify these impacts. The statutory BNG regime in the Environment Act 2021 did not apply in this case, as the Interested Party's planning application was submitted prior to the commencement of that regime.

In July 2021, the Interested Party instructed environmental consultants to conduct a BNG Assessment of the proposed Development ('the BNG Assessment'). A site survey was carried out on 21 July 2021. Using Metric 3.0 – which was published on 7 July 2021 – the consultants concluded that the Development would deliver 39.86% biodiversity net gain.

In April 2022, Natural England published its Metric 3.1. The BNG Assessment was validated by the Defendant on 13 June 2022. An updated version of the BNG Assessment was published on 28 October 2022 to take account of amendments to the Development proposal and feedback from consultees. Metric 4.0 was published in March 2023.

The Claimant subsequently objected to the Interested Party's planning application, in part because the BNG Assessment had used Metric 3.0. Owing to amendments to the recommended approach to quantifying the biodiversity value of urban trees, the Claimant calculated under Metric 3.1 that the Development would cause a 22.4% biodiversity net loss. In response, the consultants submitted two technical notes defending their use of Metric 3.0. In particular, they argued that they had applied Metric 3.0 in a manner which avoided the specific ambiguity which had prompted the changes made by Metric 3.1.

The planning officer's report summarized the Claimant's objection and the consultants's response. The planning officer agreed with the consultants that the use of Metric 3.0 was appropriate. He noted that Natural England's guidance advises against changing metrics mid-project, and concluded that requiring the Interested Party to switch metrics was disproportionate in the circumstances. Accordingly, the officer advised that the proposal would deliver significant biodiversity net gain.

Submissions and analysis

The Claimant's case on Ground 1 comprises three sub-grounds. First, the Claimant contended that the Defendant was given materially erroneous advice that Metric 3.0 was Natural England's most recently published metric at the time when the BNG Assessment was completed, given that the BNG Assessment was both submitted and updated after the publication date of Metric 3.1.

Mould J did not agree that this advice was materially erroneous. Because the planning officer had attached no significance to the date on which the BNG Assessment was completed in his assessment of whether it would be disproportionate to require re-assessment under a subsequent metric, this factual error was immaterial to his decision to endorse the use of Metric 3.0.

Moreover, Mould J cited Natural England's guidance that the same BNG metric could be used throughout 'all stages of a project or scheme'. He rejected the Claimant's submission

that this guidance only applies once a planning application has been submitted. Rather, given the practicalities of large projects with lengthy lead-in times, this guidance applies equally to the pre-application stage.

Second, the Claimant submitted that because the methodology for quantifying urban tree habitats in Metric 3.0 was 'unworkable', and because the true position with respect to biodiversity loss was known to the Defendant owing to the Claimant's objection, the Defendant had failed to take into account a material consideration and/or there was a failure of logic in its decision-making.

In essence, the Claimant believed that the BNG Assessment was not reliable, and had raised this objection prior to the Permission being granted. Had this objection been irrefutable, or, although debatable, accepted as correct by the Defendant's officers, Mould J considered that the Defendant's decision to treat the BNG Assessment as reliable would have been difficult to understand. However, in Mould J's view, this objection *had* been refuted by the environmental consultants.

Specifically, the 'unworkable' Table 7-2 of Metric 3.0 categorised trees by reference to certain sizes (e.g. a small tree has a radius of 1.2cm, a medium tree has a radius of 3.6cm). In their technical notes, the consultants explained that they had reasonably assumed that these values represented ranges (i.e. a small tree has a radius between 1.2cm and 3.6cm). This is precisely the approach which was later adopted by Metric 3.1 in order to clarify Metric 3.0. The consultants had not treated Table 7.2 as being relevant only where trees happened to be these exact sizes, which was the essence of the Claimant's 'unworkability' allegation. On the basis of this explanation, the planning officer had concluded that the BNG Assessment was reliable. Mould J held that it was reasonably open to him to do so.

Third, the Claimant submitted that it was unclear on what basis the planning officer had concluded that applying Metric 3.1 would be disproportionate. Mould J also rejected this submission, given that (a) Natural England was clear that changing metrics was discouraged, and (b) the environmental consultants had credibly explained why the existing assessment was accurate.

<u>Ground 2</u>

Background facts

Ground 2 related to policies in the NPPF and the Bristol Core Strategy which required new developments to contribute to the mitigation of climate change through measures such as high energy efficiency standards. In addition, the Defendant's Climate Change and Sustainability Practice Note ('CCSPN') requires applicants for planning permission to submit an energy statement showing projected annual demand for heat and power – together with associated CO2 emissions – using the methodology contained in the current Buildings Regulations Part L.

At the date of publication of the CCSPN, the 'current regulations' were the 2013 Building Regulations Part L ('L2013'). On 15 December 2021, the 2021 Building Regulations Part L

('L2021') were commenced. On 20 May 2022, the Interested Party issued an energy statement in support of the Development proposal ('the Energy Statement'). The Energy Statement followed the guidance given in the CCSPN and applied the L2013 methodology. In June 2023, the Defendant published an Addendum to the CCSPN which required L2021 to be used for new applications, but clarified that this change would not apply retrospectively to existing applications.

In September 2022, Dr Hogg – a local resident who has professional experience in the science of climate change – submitted a lengthy objection to the proposed Development. Dr Hogg argued that the Interested Party had only been able to demonstrate a policy compliant reduction in carbon emissions and energy demand because the L2013 standards were used. Using the L2021 standards, he calculated that the Development was not able to demonstrate the minimum reduction of 20% required by local policy.

Submissions and analysis

Despite the CCSPN's guidance, the Defendant acknowledged that they retained a legal discretion to assess the Development against any methodology, including the updated L2021 standard. The Claimant argued that by assessing the Development against L2013, the Defendant had unlawfully failed to exercise this discretion. In support of this submission, the Claimant highlighted the fact the Defendant had stated that L2013 was not so significantly different to L2021 as to make it unreasonable to continue to use L2013. The Claimant contended that this rationale failed to account for Dr Hogg's analysis.

Further, the Claimant submitted that because the Defendant's planning committee was not shown Dr Hogg's analysis, it had failed to have regard to a material consideration. For the same reasons, the Claimant alleged that the Defendant had breached its *Tameside* duty to take reasonable steps to acquaint itself with the information relevant to deciding which standard to apply.

Mould J stressed the fact that at the time of its submission, the Interested Party's planning application had been prepared in accordance with all relevant planning policies and guidance. The Addendum was also clear that L2021 should not be applied retrospectively. That was a policy choice made by the Defendant, which struck a balance between the objectives of promoting energy efficiency and providing certainty for developers. The Claimant did not challenge the legality of the Addendum, and the planning officer's reasoning was consistent with this policy balance: in the circumstances he did not consider it to be proportionate to retroactively apply L2021. Mould J held that the Defendant had rationally exercised its discretion on the basis of this advice.

Mould J also held that the gist of Dr Hogg's objection had in fact been put before the committee via another objection. In any event, in order to impugn a decision on the basis that it failed to take into account some consideration, it is necessary to show that that consideration was 'so obviously material' that it required direct consideration (*Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [2020] PTSR 22). Mould J was not persuaded that Dr Hogg's report satisfied this test. The thrust of Dr Hogg's objection

– that there was a significant difference between applying L2013 and L2021 – was not doubted by the planning officer. Instead, the central question to be decided was whether this difference was so significant as to justify retrospectively applying the latest standard. This was a matter of planning judgment, to which Dr Hogg's analysis was not obviously material. The Claimant's *Tameside* duty argument also failed in light of this conclusion.

Ground 3

Background facts

The site of the Development was designated in the relevant development plan as an 'important open space'. Paragraph 99 of the NPPF provides that existing open space should not be built on "*unless … (b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location*". In *Brommell*, the High Court held that whether or not open space provision is equivalent must be assessed in terms of both quantity and quality, and in appropriate cases one may be offset against the other.

With respect to quality, the planning officer noted that despite its designation as open space, there was no free public access to the site. Zoological use of the site had ceased in any active sense, greatly diminishing the value of the site as open space. Redevelopment would deliver the provision of free public access to retained and proposed open spaces. There would also be increased permeability of the site. Turning to quantity, the planning officer considered that there was some ambiguity in the submitted area comparisons. Nevertheless, because of the increased quality of open space, the planning officer advised that the Development was consistent with paragraph 99(b).

Submissions and analysis

The Claimant submitted that because of the planning officer's failure to reach a conclusion as to the quantity of open space delivered by the Development, the Defendant was not in a position to lawfully apply paragraph 99(b) in accordance with *Brommell*.

Mould J did not accept this contention. In his view, it was not necessary for the planning officer to resolve any residual ambiguity in order to lawfully apply paragraph 99(b). It was sufficient for the officer to follow a precautionary approach. Moreover, it could fairly be assumed that the planning officer had proceeded on a reasonable worst-case basis, especially since there was no material before him to suggest, if there were a quantitative deficit, that it was a more than marginal one.

Case summary prepared by Archie Hunter