

**APP/Z0116/W/22/3308537 - Appeal by Homes England**

**Land at Broom Hill / Brislington Meadows, Broomhill Road, Brislington,  
Bristol**

**Rule 6 Party's Statement of Case on behalf of:**

- I. Bristol Tree Forum**
- II. Greater Brislington Together**
- III. Save Brislington Meadows Group**

**09 December 2022**

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Appendix A - Rule 6 Party Documents List

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## 1. Summary

- 1.1. The Appellant's proposal is contrary to the policies contained in the National Planning Policy Framework (NPPF) and in Bristol's Development Management Plan<sup>1</sup> (DMP).
- 1.2. The Appeal site was at the time of the last local plan and remains a designated Site of Nature Conservation Interest (SNCI). Policies SA1 (the *Site Allocations and Development Management Policies* & the *Site Allocations and Development Management Policies - Annex: Site Allocations Information*) and DM19 both apply to the site, there is no priority.
- 1.3. This conflict between local plan policies that relate to the appeal site must be determined in accordance with ss38(5) and (6) of the PCPA 2004.
- 1.4. The Appeal site is and always has been within the Brislington Meadows SNCI. No evidence has been produced to contradict this and the internal review of the Bristol Tree Forum Freedom of Information request dated 14 May 2022 (The FoI) (R6.6.2),<sup>2</sup> confirms this.
- 1.5. There is no evidence to suggest that SA1 'trumps' the pre-existing SNCI status (whose existence is independent of the DMP).
- 1.6. If, despite the application of DM19, permission was given to develop the site, then it is also the case that the Appellant's proposal will have a significant ecological impact, including substantial habitat loss. Whilst the Appellant might suggest that matters can be addressed through mitigation and offsetting, it is clear that, due to the resulting significant loss of habitat and ecology, the ecological quality of the Appeal site would be substantially lowered post-development. This would be contrary to both the DMP and the NPPF.
- 1.7. Our position on the severe ecological consequences of development that would result is supported by the submissions and responses from Avon Wildlife Trust, The CPRE, the RSPB<sup>3</sup>, Bristol Tree Forum and the Council's Ecologist, along with its Landscape and Tree Officers, and many others.

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<sup>1</sup> <sup>1</sup> [Core Strategy](#) - adopted June 2011; [Site Allocations and Development Management Policies](#) - adopted July 2014; [Site Allocations and Development Management Policies - Annex: Site Allocations Information](#) - adopted July 2014; [Site Allocations and Development Management Policies - Policies Map](#) - adopted July 2014.

<sup>2</sup> [https://www.whatdotheyknow.com/request/deregistration\\_of\\_the\\_snci\\_at\\_br#incoming-2090304](https://www.whatdotheyknow.com/request/deregistration_of_the_snci_at_br#incoming-2090304)

<sup>3</sup> <https://group.rspb.org.uk/bristol/news-blogs/blog/the-battle-to-save-brislington-meadows/>

- 1.8. In the face of this overwhelming evidence, we are of the view that the Appellant's attempts to mitigate the ecological impact of the proposed development are flawed and so fail to meet the requirements of the NPPF, the DMP and BSA1201. In particular, these mitigation attempts cannot meet any requirement of balancing both SA1 and DM19. The development would effectively destroy the habitat on the site and its SNCI designation would almost certainly have to be removed.
- 1.9. The Appellant's Masterplan shows the inevitable loss of a substantial number of existing hedgerows, the trees growing within and around them as well as the underlying ecology (R6.9.1). These features are fundamental to the ecological importance of the site and justified the Appeal site being recognised as part of the Brislington Meadows SNCI in the 1997 Local Plan (R6.7.1). The evidence available indicates that many of the hedgerows and trees may be considered to be ancient though this is only one basis upon which they must be preserved. Whilst the Appellant's outline proposals may only be illustrative at this stage, it is our view that the approach of The Appellant to the development of the site has failed properly to account for the retention and protection of this and other important green infrastructure.
- 1.10. We make the same observations in relation to the threatened destruction of the Appeal site's heritage and archaeology (R6.3). Ancient, species-rich hedgerows and the trees associated with them, the ridge and furrow, ditched enclosures, lynchet rises and the wagon pond cannot simply be dug up and placed in a museum. This is an irreplaceable historic landscape. The suggestion by the Council's Principal Historic Environment Officer<sup>4</sup> that 'Preservation by record' can be conditioned cannot suffice for the irreparable harm that will be done. They must be protected under paragraphs 189 - 202 of the NPPF, BCS22 and DM31 which states that: '... non-designated archaeological sites of equivalent importance should be preserved in situ.'
- 1.11. Furthermore, the recent publication of the Council's Draft Policies and Development Allocations proposals (R6.8.3) makes it clear that the Council now intends to remove this site from future development. A key reason for this is a change in policy approach of seeking to bring forward underused brownfield land within the City, especially in locations where higher densities can be achieved.

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<sup>4</sup> 22\_01878\_P-ARCHAEOLOGY-3325287

- 1.12. The Inspector is also invited to note the age of SA1, which pre-dates the most recent iteration of the NPPF by nearly a decade. As NPPF paragraph 48 makes clear, Local Planning authorities may give weight to relevant policies in emerging plans according to, inter alia, the stage of preparation of the emerging plan. The publication of the Bristol Local Plan Review - Further Consultation (Nov 2022) (R8.8.3) makes it clear that the emerging local plan is well-advanced.
- 1.13. The proposed development would deliver only very limited benefits that will not outweigh the harms identified - the impact upon well-established habitats including trees, hedgerows and other landscape and ecology features, as well as the destruction of unique heritage assets - significantly and demonstrably outweighs the limited benefits that building housing on this designated SNCI might deliver.

## **2. Statement of Case**

- 2.1. This Statement of Case (SoC) has been prepared on behalf of the Bristol Tree Forum, Greater Brislington Together & Save Brislington Meadows Group (the Rule 6 Party).
- 2.2. The Rule 6 Party reserves the right to add to its SoC and provide additional evidence in response to issues raised by the Appellant or the Council (including reasons for refusal, if any) and third parties during the course of the appeal.
- 2.3. A draft Statement of Common Ground (SOCG) will also be submitted, which the Rule 6 Party will seek to agree with the Appellant and the Council.
- 2.4. Where matters in the SOCG cannot be agreed, evidence will be presented at the Inquiry to address such matters. Every reasonable attempt will be made to ensure that agreed details will not be repeated in written evidence.

## **3. Structure of this Statement**

- 3.1. We adopt the Appellant's model structure.
- 3.2. Subject to the Council creating a jointly-shared document repository, we make the following observations about the Appellant's Core Document List:
  - 3.2.1. CD3 - Statutory Consultee Responses Received - Was Wessex Water asked to comment? This is a major development with surface water drainage and so Wessex Water should have been consulted under Schedule 4(ze) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.<sup>5</sup>
  - 3.2.2. If so, did they respond, and how?
  - 3.2.3. CD4.1 - Please include our additional statement published on the Planning Portal - Further Comment - Freedom of Information request outcome - dated 11 August 2022.<sup>6</sup>
- 3.3. Once we know what documents the Council produces, we shall add ours as appropriate and to avoid duplication.

## **4. Appeal site and Surrounding Area**

- 4.1. We note the Appellant's paragraphs 2.1 to 2.13 except for paragraph 2.9: we do not

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<sup>5</sup> <https://www.legislation.gov.uk/uksi/2015/595/schedule/4/made>

<sup>6</sup> <https://bristoltreeforum.files.wordpress.com/2022/08/further-comment-freedom-of-information-request-outcome.pdf>

accept that the Appeal site is well served by public transport (see 9.2 below).

## **5. The Appeal Scheme**

5.1. Noted.

## **6. Planning Policy Context**

6.1. Save for the items set out below, we note the Appellant's paragraphs 4.1 to 4.8.

## **7. The Case for the Appellant**

7.1. The Appellant's Statement of Case is noted. The specific matters we take issue with are set out in our SoC at 9 below.

## **8. The Case for the Council**

### ***8.1. Status of the Council's case***

8.1.1. The council has yet to publish its SoC. However, the Authority's planning officer has now published a report (with the amended reasons for refusal shown at Appendix B) which was adopted Development Control Committee B on 7 December 2022. It is anticipated that this document will form the basis of the Council's SoC. Our response is based on these documents. We reserve the right to alter our SoC should a different case be advanced.

8.1.2. Save for the specific issues discussed below, we adopt the Council's case as set out in the planning officer's report and as amended in the Council's reasons for refusal set out at Appendix B.

## **9. The Rule 6 party's case**

Our heads of argument:

- (I) The SNCI designation and application of DM19.
- (II) 'Pricing In'.
- (III) Complying with the BSA1201 criteria.
- (IV) Heritage and archaeology.
- (V) The emerging plan.

### ***9.1. The SNCI Designation***

9.1.1. The Appellant argues that '*The formulation of Policy SA1 and the allocation, as well*

*as the subsequent adoption of the DMP<sup>7</sup>, represents the conclusion by the Council that the benefits of developing the Appeal site for housing outweigh the disbenefits, including in relation to ecology (the allocation was made in full knowledge of the site's then SNCI status and the level of ecological value connoted by that)' (5.17).*

9.1.2. The appellant's argument here is premised on the submission that designation of SA1 was taken with full awareness of the Appeal site's SNCI status. We do not accept this for two reasons: (i) the Council appeared to have mistakenly believed that designating a site for housing would somehow de-designate SNCI status, this is explored further below; and (ii) we do not agree that it is clear that the Inspector was fully aware of the SNCI designation of the appeal site when approving the SA1 allocation.

9.1.3. Our review of the documents which formed the basis of the Inspector's review of the draft Local Plan in 2013 (PINS/Z0116/429/5).

9.1.4. The Inspector wrote:

*'BSA1201: Land at Broom Hill, Brislington*

*121. The proposed allocation for housing purposes of land at Broom Hill, Brislington has attracted a significant number of representations. Concerns cover a wide range of matters. These include ecology and trees; historic environment and archaeology; flood risk; traffic, congestion and highways infrastructure; pollution and air quality; amenity and loss of open space; local facilities; and allotments.*

*122. In my judgement, this large site (9.1 ha) would make an important contribution to the housing needs of Bristol. It is a site of no overriding environmental quality. Matters of significance could be addressed through the normal processes of development management. There is no evidence before me to indicate that the allocation should not be confirmed.'*

9.1.5. The Inspector's words that the Appeal site 'it is a site of no overriding quality' are hard to reconcile with knowledge that the site had been designated as an SNCI. While the 2013 Sustainability Appraisal documents identified BSA1201 as a SNCI, the local plan documents submitted to the Inspector did not. Since, it appears, the Council mistakenly thought that designating the sites for development would somehow,

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<sup>7</sup> Development Management Plan



automatically, de-designate them as SNCIs, this would explain why they were not identified as SNCIs in the local plan documents submitted to the Inspector. However, it strongly suggests that the Inspector did not appreciate that the Appeal site was a designated SNCI when he approved the allocation for housing.

9.1.6. The Appellant suggests that ‘the allocation was made in full knowledge of the site’s then SNCI status and the level of ecological value connoted by that’ (at 5.18). Given the Inspector’s statement that the site was of ‘no overriding quality’ and the fact that he does not mention that the site was designated as an SNCI, we consequently find this assertion hard to accept.

9.1.7. The Council suggests that the application site is not considered to be an SNCI for different reasons, we think, on the mistaken understanding that the site was de-designated as part of the local plan process:

*‘... Members are advised that in policy terms the application site is not considered to be within the SNCI, as evidenced on the Council’s Local Plan Policies Map. The application site is allocated for housing under policy SA1 of the Site Allocations and Development Management Policies Local Plan. Sites in SNCIs which were allocated for development are to be considered under Policy SA1 and not under the SNCI provisions in policy DM19. For those allocated sites, Policy SA1 sets out specific development considerations which address loss of nature conservation interest with provisions for ecological surveys, mitigation and compensation. The SNCI provisions contained within policy DM19 are directed to the areas shown as SNCI on the Local Plan Policies Map - this is indicated in the supporting text of DM19 at paragraph 2.19.5. Therefore, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, for the purposes of this assessment the proposal site is not considered to be within the SNCI as it is not shown as being so on the Local Plan Policies Map.’*

9.1.8. There are six aspects to the Appellant’s and the Council’s arguments, which are important to separate for clarity: (1) dual allocation; (2) the ‘trumping’ of DM19 by SA1; (3) the circular argument in relation to the Local Plan; (4) the mistaken use of a definitional paragraph and (5) the reference to s38(6) instead of s38(5) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) and (6) the boundaries of

the SNCI.<sup>8</sup>

- 9.1.9. The first issue is dual allocation. The Council confirmed in The Fol request that the Appeal site is part of the Brislington Meadows SNCI. In The Fol and in subsequent correspondence, the Council suggest that the Appeal site is dual allocated: both for housing development (subject to policy SA1) and as an SNCI (subject to policy DM19).
- 9.1.10. The second issue considers the relationship between SA1 and DM19. The Council suggests that dual allocation means that SA1 ‘trumps’ nature conservation policy DM19, which is then not to be applied. The Council writes that: ‘Sites in SNCIs which were allocated for development are to be considered under Policy SA1 and not under the SNCI provisions in policy DM19.’
- 9.1.10.1. Despite our repeated requests, the Council has provided no justification for this argument. The Council now states (in the excerpt above) that ‘For those allocated sites, Policy SA1 sets out specific development considerations which address loss of nature conservation interest with provisions for ecological surveys, mitigation and compensation.’
- 9.1.10.2. This is problematic. The Site Allocations and Development Management Policies Local Plan (adopted July 2014) has no summary of SA1. It merely lists the sites subject to the policy. It does contain a description of DM19. So, it is unclear why the Council thinks that SA1 ‘sets out specific development considerations which address loss of nature conservation interest’, as this is not included in the DMP.
- 9.1.10.3. It is true that individual SA1 allocations in the Site Allocations and Development Management Policies Annex: Site Allocations Information (Adopted 2014)<sup>9</sup> refer to nature conservation (for example, with respect to Brislington Meadows at p. 154). However, there is no mention in that description that the Appeal site is a designated SNCI. There is also no consideration of how SA1 is to interact with DM19 (or any other DMPs). The DMP gives no support to any suggestion that SA1 ‘trumps’ DM19.
- 9.1.11. The third issue, and next error, relates to the Local Plan. The Council’s response states that ‘The SNCI provisions contained within policy DM19 are directed to the areas shown as SNCI on the Local Plan Policies Map’. It is true that the Appeal site is not designated as an SNCI on the Local Plan map. However, it is so designated in

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<sup>8</sup> <https://www.legislation.gov.uk/ukpga/2004/5/section/38/2014-09-01>

<sup>9</sup> [Site Allocations and Development Management Policies - Annex: Site Allocations Information](#)

other maps that the Council published, not least as a layer in its Pinpoint map (R6.1.3)<sup>10</sup> and its published ArcGIS servers (R6.1.4).<sup>11</sup> Identical maps are also available at the BRERC, which is partly funded by the Council and used by it as a repository of all its environmental information.<sup>12</sup>

- 9.1.11.1. It is a circular argument to suggest that the Appeal site is not an SNCI because it is not identified as an SNCI on the Local Plan map. The exclusion of the Appeal site from the Brislington Meadows SNCI on the Local Plan map was solely the consequence of a decision to ignore the Appeal site's SNCI designation. The SNCI at Brislington Meadows has not ceased to exist because of the lack of identification on the map. Had the site been correctly recognised as an SNCI when the map was prepared, the designation would have been reflected on the Local Plan map. It was because the designation was mistakenly ignored that the designation was not reflected on the Local Plan map. Consequently, the Local Plan map cannot be the source of the Appeal site's suggested lack of status as an SNCI. The map itself does not affect the designation which continues unless and until the required ecological criteria and process for its de-designation (which the Council has acknowledged) are met.
- 9.1.11.2. This points to the fundamental error made during the 2013-14 Local Plan process. Either the Council meant to apply to the Local Sites Partnership (LSP) for de-designation and failed to do so, or they mistakenly thought that the Local Plan process somehow automatically de-designated all those SNCIs (we count nine<sup>13</sup>, eight of which are in South Bristol) allocated for development. The Core Strategy BCS9 at paragraph 4.9.9 indicates that the Council mistakenly thought that the local plan process by itself would de-designate the SNCI sites. Had the Local Plan process automatically de-designated SNCIs allocated for housing, then the Appeal site would not need to be identified on the Local Plan map as it would no longer be an SNCI.
- 9.1.11.3. The Appeal site remains an SNCI (see the Council's confirmation in The Fol (R6.6.1)). Only the LSP can de-designate an SNCI and then only on the basis of expert ecological evidence. The Council has frequently alluded to this well-understood de-designation process. As the Appeal site remains an SNCI, the Local Plan map is wrong.

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<sup>10</sup> <https://maps.bristol.gov.uk/pinpoint/>

<sup>11</sup> <https://maps.bristol.gov.uk/arcgis/rest/services/ext/datagov/FeatureServer//206>

<sup>12</sup> <https://www.brerc.org.uk/>

- 9.1.12. The fourth error relates to using a definitional paragraph to prioritise SA1. The Council suggests that: ‘The SNCI provisions contained within policy DM19 are directed to the areas shown as SNCI on the Local Plan Policies Map – this is indicated in the supporting text of DM19 at paragraph 2.19.5.’
- 9.1.12.1. This is simply not the case. Paragraph 2.19.5 of DM19 defines which sites fall within the category of ‘habitats, species and features which contribute to nature conservation value in Bristol’. Bullet 2 identifies SNCIs. The Appeal site is a designated SNCI (again, see The Fol confirmation). The words of paragraph 2.19.5 make no reference to the question of whether a dual-allocated site can be ‘trumped’ by one policy or the other.
- 9.1.13. Fifth, the Council’s case refers to s38(6) PCPA 2004. This is the conventional provision confirming the relationship between the DMP and material considerations. Sub-section s38(6) PCPA 2004 says nothing about whether SA1 trumps DM19 as the Council suggests. The sub-section concerned with competing policies is s38(5) PCPA 2004. This states: ‘If to any extent a policy contained in a DMP for an area conflicts with another policy in the DMP the conflict must be resolved in favour of the policy which is contained in the last document to become part of the DMP.’
- 9.1.13.1. There is no difference in timing here. Both SA1 and DM19 became part of the DMP in the same documents at the same time in July 2014. There is no automatic priority.
- 9.1.13.2. Consequently, the Appeal site is still an SNCI (again, we refer to The Fol). It has never been de-designated. Allocating it for housing in and of itself cannot remove the designation. There is no hierarchy in any of the published Local Plan documents prioritising SA1 over DM19 (or indeed any other DMP). Section 38(5) PCPA 2004 only confirms that both policies are equally valid as they became part of the DMP at the same time.
- 9.1.14. The sixth and final issue concerns the boundaries of the SNCI. Although the map shown at 4.3 in the Appellant’s case is indeed what is shown on the Bristol City Council Local Plan Policies map<sup>14</sup> as published, we say that the location of the Brislington Meadows SNCI boundary as shown is incorrect.
- 9.1.15. Although the map shown at 4.3 is indeed what is shown on the Bristol City Council

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<sup>14</sup> <https://maps.bristol.gov.uk/policies/>

Local Plan Policies map<sup>15</sup> as published, we say that the location of the Brislington Meadows SNCI boundary as shown is incorrect.

9.1.15.1. Para. 4.4. of the Appellant's case says that there is an SNCI called Victory Park SNCI, but this does not exist. Victory Park forms part of the Brislington Meadows SNCI whose northern boundary extends to the northern boundary of BSA1201 (coloured orange in the Local Plan map). The correct boundary for the Brislington Meadows SNCI is as shown in the records maintained by the Environmental Records Centre for the West of England (BRERC) (R6.2.3).

9.1.15.2. Since the corridors within the western and part of the north-eastern red-line development areas are designated Important Open Spaces, they are subject to the protections provided by policies BCS9 and DM17. The same applies to the area outside the development area between its northern boundary and Broomhill Junior School. The Park & Chalet Allotments to the west of the development area and the whole of Victory Park are also so designated.

9.1.15.3. As the Sustainability Appraisal Main Report (2013) (Appendix A - CD8.3 & R6.7.4) noted at the time:

*'BSA1201 contains the large local site, ... and a number of Wildlife Corridors, ... that collectively form important areas of the Bristol Wildlife Network. The existing ... Wildlife Corridor behind Brislington Police Station connect wildlife, to the Eastwood Farm SNCI and greenbelt to the east of the City. The site also forms part of the Strategic Green Infrastructure Network due mostly to connectivity role for wildlife.'*  
(4.88.8.1)

9.1.15.4. Pages 42/23 of the Bristol Proposals Map (Dec 1997) (1997 Local Plan map) (R6.7.2) show the Appeal site as it was described in the 1997 Local Plan (R6.7.1). It shows the Wildlife Networks subject to policy NE6 (Wildlife Network) as they are currently shown in the current (2014) Local Plan map (see 6.1.3 above).

9.1.15.5. It is also notable that the schedule to Policy NE5 (Site of Nature Conservation Interest) in the 1997 Local Plan lists Brislington Meadows as an SNCI (GBNCS 17) (R6.7.1 at page 54). The key to the 1997 Local Plan map (R6.7.2) shows a symbol for 'Citywide Sites'. Though this term does not appear to be defined, SNCIs appear to fall within it (there

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<sup>15</sup> <https://maps.bristol.gov.uk/policies/>

is no separate symbol for SNCIs). The whole of the Brislington Meadows SNCI as mapped by BRERC (R6.2.3) is shown as a 'Citywide Site'.

9.1.15.6. We also note the informative description, with a history, of Sites of Nature Conservation Interest at 3.4.24 - 3.4.29 (R6.7.1).

9.1.15.7. It is our case that the whole of the Brislington Meadows SNCI, including that part within BSA1201, is protected under policies BCS9 & DM19, by virtue of its SNCI designation alone.

## **9.2. Pricing in**

9.2.1. The appellants accept that 'some harms will inevitably be caused by the development of the Appeal Site for housing'. However, they suggest, 'those harms cannot be a reason for refusing to grant outline planning permission. They were "priced into" the allocation.' This claim is unsupported by authority or evidence. Yes, the allocation was made (SA1). However, the appeal site remains a designated SNCI so DM19, as it refers to the protection of SNCIs, applies. The appellants suggest that the ecological harms are not "other" material considerations within the meaning of s.70(2)(c) of the Town and Country Planning Act 1990, because they are considerations priced into the development plan, and therefore they are not capable of amounting to "material considerations" for the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004 the engagement of which is linked to and contingent upon s.70.' It is not clear what the appellants mean by this.

9.2.2. There are two policies that affect the Appeal site: SA1 and DM19. Neither one is 'priced in' any more than the other. The appellants suggest that rejecting the argument that SA1 is 'priced in' would have wider effects, in that: '[o]therwise, every development control decision in relation to an allocated site would involve re-opening the planning merits of the allocation, which would fundamentally undermine the plan led system.' However, this ignores the fact that the site is a designated SNCI and so DM19 still applies. The site has - according to the Council - been dual allocated. A decision-maker cannot simply ignore one of the policies and the site's designation. This is not a question 'every development control decision' has to address but only dual-allocated sites. In these circumstances, nothing is 'priced in'.

9.2.3. We are unable to find any other Local Authority where SNCIs or their equivalent have been allocated for development (R6.4.3). Our research continues, but it would

appear that the Council is an outlier having designated all or parts of seven other SNCIs under SA1:

- 9.2.3.1. BSA0402 - in development - the SNCI element appears to have been destroyed.
- 9.2.3.2. BSA1108 - application pending on north of the site. The rest is proposed to be abandoned for development in latest Local Plan review (R6.8.3).
- 9.2.3.3. BSA1110 - now developed. The SNCI has probably been destroyed.
- 9.2.3.4. BSA1114 - an application is pending.
- 9.2.3.5. BSA1119 - no application pending or approved.
- 9.2.3.6. BSA1124 -there are three elements, one of which has planning approval.
- 9.2.3.7. BSA1305 - no application pending or approved.
- 9.2.3.8. As is evident, the Council's apparent 2013-14 assumption - that by designating sites for development as part of the local plan process, the SNCI designation would be removed - is critical here. The assumption is clearly incompatible with nature conservation policy and practice (see the document with other LPA practices at R6.4.3). The Council now accepts that the Appeal site, and presumably by analogy, these sites listed above, remain designated SNCIs.
- 9.2.3.9. The Council has subsequently changed its argument re SNCIs and, to be candid, it has lacked such clarity that we have not always been able to interpret it. One claim has been that dual allocated sites are governed only by SA1 and not by DM19. Again, this is unsupported by evidence or authority as explained above.
- 9.2.3.10. The issue here is a systematic one, across the city of Bristol. Due to an error made somewhere during the local plan process, presumably a mistaken belief that designating development sites for SA somehow de-designated their SNCI, these sites were proposed for housing without applying policy DM19. At this decision-taking stage, both SA1 and DM19 are applicable policies and should be considered for the reasons explained above.
- 9.2.3.11. We refer to the document we have compiled from comparative approaches taken in other local authorities (R6.4.3). It is clear that the Council's approach to SNCI designation is not conventional. We would suggest that it is irrational.

### **9.3. Complying with the BSA1201 criteria**

- 9.3.1. The Appellant submits that the Appeal Scheme complies with the site allocation in all respects. We disagree based on the following comments. We adopt the same headings used by the Appellant. We challenge four of the appellant's submissions on the application: (2) suitable access; (3) ecological considerations; (4) trees and hedgerows and (11) flood risk assessment.

#### *(2) Provide suitable access*

- 9.3.1.1. The area around the Appeal site has become relatively more deprived than it was in 2015 (R6.8.4)<sup>16</sup> with nearby 'Hicks Gate' in Brislington West ward moving into the most deprived 10% in England since then.
- 9.3.1.2. The Ward Profile Report (September 2022) (R6.8.1) for Brislington East shows that 20.6% of households do not own a car or van and that only 24.7% own two cars or vans. The only proposed vehicle access point to this site will be off Broomhill Road with all other access points being accessible only on foot or by bicycle off School Rd, Allison Rd and Bonville Rd (only during the initial construction phase).
- 9.3.1.3. The nature of this site means that those without access to a car, especially families with children, are unlikely to be able to have 'suitable access' to this site.
- 9.3.1.4. Brislington East, West and the surrounding areas are some of the most poorly served wards when it comes to access to public transport - this was acknowledged by the Council and WECA in its 2021 submission to government for funds to help reopen St Anne's railway station (R6.8.2). The report states:

*'2.60 Despite its relative proximity to the Bristol's city centre, a high proportion of St Anne's and Brislington residents drive frequently, especially for commuting purposes. Data collected from the 2011 census indicates the strong bias for driving to work shown across the Brislington East ward (as outlined within Figure 0-13). Forty-three percent of residents were shown to drive to work either using a car or van (with an additional <1% using a motorcycle, scooter or moped). It should be noted that the data displayed includes the 28% of Brislington East residents who were not in employment as of the 2011 census, as well as 3% of residents working predominantly from home. With these non-working or static residents removed from*

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<sup>16</sup> Figure 3.



*the dataset, percentage use of cars or vans across total journeys to work increases to 62%. ...*

*2.61 In turn, usage of public transport for commuting journeys is low across Brislington East. With non-working residents and those working from home again excluded, a mere 1% of existing journeys to work are made by train, with 11% of residents using a bus, minibus or coach. Whilst 18% of journeys are made via active travel means (c.6% by bicycle, and 12% by foot), there appears to be a significant opportunity for increasing public transport usage across the area, if appropriate and efficient options are implemented.*

9.3.1.5. This situation has been further exacerbated following the recent withdrawal of many First Bus West of England services serving the ward.<sup>17</sup> Whilst the A4, Bath Road has a reasonable bus service, it can only be accessed from the site by walking through an industrial estate, with all the inherent dangers from HGV traffic and empty streets etc. The alternative is to walk the long way around via Broomhill Road. Either way it is between a 14 to 18 minute walk.

9.3.1.6. We also note that the Appellant's traffic surveys (CD1.15) were undertaken during or in the aftermath of the COVID lockdowns, so they can hardly be considered representative of the true state of transport use in the area.

*(3) Be informed by an ecological survey of the site and make provision for mitigation and compensation measures*

9.3.1.7. The Council has not undertaken a detailed analysis or review of the Appellant's Biodiversity Metric calculation or of its habitat type assumptions, especially hedgerow habitats. Notwithstanding this, we still endorse the ecology/nature conservation and arboricultural officers' overall observations.

9.3.1.8. We have set out our detailed reasons why we do not accept the Appellant's habitat and biodiversity assessments in our original comments of 13 July 2022 (CD4.1).<sup>18</sup> We rely on these in this appeal.

9.3.1.9. The Appellant has designated the habitats on the site as of medium strategic significance. Section 5.19 of Natural England's BNG 3.0 User Guide states 'Strategic

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<sup>17</sup> <https://www.firstbus.co.uk/bristol-bath-and-west/news-and-service-updates/news/temporary-journey-cancellations-due-ongoing>

<sup>18</sup> <https://bristoltreeforum.files.wordpress.com/2022/07/btf-comments-brislington-meadows.pdf>

significance will be high if the habitat location is identified in Local Plans, strategies or policies.’ The site is specifically identified for housing development in the 2014 Local Plan Sites Allocations (BSA1201). On this basis alone, all the habitats should be set to High.

- 9.3.1.10. It is not only important to demonstrate positive biodiversity net gain across both area and linear (in this case hedgerows) habitats. Whilst the Appellant has committed to delivering at least 10% overall for each category, it is also important to demonstrate that the Appellant’s proposals meet the trading rules applicable for each habitat.
- 9.3.1.11. In the case of the hedgerow habitats, we say that, because the distinctiveness of these habitats is High or Very High, this will require them to be replaced or enhanced so that what replaces them is at least like-for-like or better. It is hard to imagine any practical way in which this might be done, either on or off site.
- 9.3.1.12. It is also important that a proper benchmark is set for the habitat value of the onsite and offsite baseline habitats and for any habitat enhancement or creation targets to be achieved.
- 9.3.1.13. We calculate that the Appellant’s proposals will result in a net loss of area habitats of 23.04% and a net gain of 2.81% of hedgerow units (R6.5.1). However, even on both our scenarios, some medium distinctiveness habitat mitigation proposals do not meet their respective habitat trading rules.
- 9.3.1.14. Given that the Appellant accepts that their proposals will result in tree and hedgerow loss, we say that there is no realistic prospect that these habitats can ever being replaced. This is significant harm.
- 9.3.1.15. It is not acceptable for the Appellant to say, ‘therefore acceptance of some habitat loss is implicit in the allocation of the Appeal site and the Appeal Scheme is in accordance with the allocation’ (5.50). Even if it were considered acceptable under SA1, such losses are not acceptable under the rules relating to biodiversity net gain metric calculations (R6.5.6).
- 9.3.1.16. Nor are they acceptable under paragraph 180 of the NPPF, which states ‘... if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be

refused ...’

9.3.1.17. DM17 states that: ‘Development on part, or all, of an Important Open Space as designated on the Policies Map will not be permitted unless the development is ancillary to the open space use.’ The Appellant’s proposals are clearly not ‘ancillary to the open space use’.

9.3.1.18. DM19 also makes it clear that ‘Development which would have a harmful impact on the nature conservation value of a Site of Nature Conservation Interest will not be permitted.’

9.3.1.19. There are a number of other technical Biodiversity Metric calculation issues to be resolved, hopefully in discussions with the Appellant and the Council.

*(4) Retain or incorporate important trees and hedgerows within the development which will be identified by a tree survey*

9.3.1.20. We calculate that there are 3.3984 hectares of Urban tree and woodland habitat on the Appeal site and that 0.8539 hectares (25%) will be removed (R6.5.2).

9.3.1.21. We have calculated that there are 1.71 kilometres of hedgerow, most of which is Highly or Very Highly distinctive under the Biodiversity Metric and falls within the definition of important protected hedgerows.<sup>19</sup> Of these, 0.538 kilometres will be removed (31%) (R6.5.2).

9.3.1.22. If anything, this is an underestimate of the potential losses, given the plans significantly to alter the natural ground levels on the site and so jeopardise the survivability of the trees and the hedgerows where most of the trees are found, as well the other habitats and ecology found on the Appeal site. These habitats and the ecology that supports and depends on them are irreplaceable.

9.3.1.23. We do not accept the Appellant’s assertion that ‘the hedgerows on site are related to the Enclosure period and cannot therefore be regarded as irreplaceable.’ This is contradicted both by the Council’s evidence and by the evidence we have exhibited in our comments of 13 July 2022 (CD4.1, R6.3.3 & R6.3.9)) and in the Appellant’s own archaeology and heritage evidence (Historic Environment Desk Based Assessment (CD1.18)).

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<sup>19</sup> <https://www.gov.uk/guidance/countryside-hedgerows-regulation-and-management#check-if-a-hedgerow-is-protected>

*(11) Be informed by a site-specific flood risk assessment as the area of the site is greater than 1 hectare*

9.3.1.24. Whilst the Appeal site may be located entirely within Flood Zone 1, the eventual discharge of any runoff from the Appeal site will flow downstream into Brislington Brook, which is within Flood Zones 2 & 3.<sup>20</sup> This has not been addressed, even though it is likely to be considered under the ‘agent of change’ principles established in the NPPF.

9.3.1.25. The discharge of foul and brown water into existing systems managed by Wessex Water has not been addressed. It would also appear that, even though it is a Statutory Consultee, Wessex Water has not been asked to comment on the Appellant’s proposal to form a connection with their washout drain located in Victory Park.

#### **9.4. *Heritage and archaeology***

9.4.1. We note that the Appellant has not addressed the heritage and archaeology impacts of their proposal. We set out our reasons why this issue also needs to be considered in this appeal.

9.4.2. Whilst the Appeal site is not located within a Conservation Area or subject to any historic designation, it is clear both from the Appellant’s own archaeological evidence and from records published by the Brislington Community museum (R6.2) that the site is far more important than has been formerly realised.

9.4.3. The Council’s Principal Historic Environment Officer Archaeological writes<sup>21</sup>:

*Archaeological evaluation of this proposed development site has established that there is extensive surviving evidence of occupation on the site dating back to the Romano-British period.*

*These remains lie relatively close to the surface and consist of ditched enclosures suggesting agricultural land use from the time. In addition to this agricultural use, the site has yielded evidence of Roman period glass working in the vicinity of the excavated trial trenches. Evidence of Roman period glass working is unique to this site in the Bristol region and is consequently of great archaeological significance.*

*Development of this site will cause a high degree of harm to this archaeological*

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<sup>20</sup> <https://maps.bristol.gov.uk/bfrm/>

<sup>21</sup> 22\_01878\_P-ARCHAEOLOGY-3325287

*material.*

- 9.4.4. The archaeological remains (R6.3) found at Brislington Meadows form part of Bristol's historic natural environmental and one of its heritage assets. They are a unique part of Bristol's heritage and, as such, must be protected under paragraphs 189 - 202 of the NPPF, BCS22 and DM31 which states that: '... non-designated archaeological sites of equivalent importance should be preserved in situ.'
- 9.4.5. If there is substantial harm (or total loss of significance of the heritage asset), paragraph 201 of the NPPF requires that 'Local Planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss.' Alternatively, the application must demonstrate that all the criteria set out in paragraph 201 are satisfied. Even if it were shown that there would be less than substantial harm, that harm must still be weighed against the public benefits of the proposal.

**9.5. *The emerging plan***

- 9.5.1. This appeal must also be seen on light of the well-advanced emerging plan recently published by the Council.
- 9.5.2. The Council has now published a further review of the draft Local Plan.<sup>22</sup> The Draft Policies and Development Allocations proposals (R6.8.5) states:

*'Since the last Local Plan was agreed in 2014, we now include new policies on biodiversity and proposes changes of approach at sites such as the Western Slopes, Brislington Meadows and Yew Tree Farm that aim to give priority to nature conservation and food growing.'* ...

***'Development site allocations Changes to existing site allocations***

*11.15 The Local Plan consultation in 2019 proposed that development site allocations from the existing Local Plan which had not yet been developed should be retained in the new Local Plan. It is proposed that this should remain the approach, with the exception of two locations where a change is considered necessary to reflect the greater priority for biodiversity required in response to declaration of the ecological*

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<sup>22</sup> <https://www.bristol.gov.uk/residents/planning-and-building-regulations/planning-policy-and-guidance/local-plan/local-plan-review>

emergency.

**Brislington Meadows**

*11.20 This site has city wide importance for nature conservation. In 2014 a part of the meadows area was allocated for housing development subject to providing compensation and mitigation for the loss of habitat which would arise from development. Since that allocation was made in the adopted Local Plan, an ecological emergency has been declared by Bristol City Council and it is considered that it would now be more appropriate for the existing site allocation to be discontinued and for the site to be retained as open space with nature conservation interest.*

*11.21 The following existing development site allocations are therefore proposed to be discontinued and not retained in the Local Plan: BSA1201 Land at Broomhill, Brislington.*

*11.22 At the time of this consultation a planning application had been made for residential development. The application will be determined in accordance with planning legislation. The next stage of the Local Plan will reflect the outcome of that application.'*

- 9.5.3. Whilst Planning law requires that applications for planning permission be determined in accordance with the DMP, material considerations can indicate otherwise. As paragraph 48 of the NPPF makes clear, Local Planning authorities may give weight to relevant policies in emerging plans according to, inter alia, the stage of preparation of the emerging plan.
- 9.5.4. The recent publication of the draft Local Plan is at a 'stage of preparation', which makes it just such a material consideration. The proposed development by the Appellant is now clearly in conflict with the emerging plan for Bristol.

## Appendix A - Rule 6 Party Documents List

R6.0 Images	R6.0.1 - X 29 Images of Brislington Meadows
R6.1 Maps	<p>R6.1.1 - 1780 Map of Brislington Common</p> <p>R6.1.2 - 1840s Tithe Map</p> <p>R6.1.3 - Pinpoint - <a href="https://maps.bristol.gov.uk/pinpoint/">https://maps.bristol.gov.uk/pinpoint/</a></p> <p>R6.1.4 - Sites of Nature Conservation Interest:  <a href="https://maps.bristol.gov.uk/arcgis/rest/services/ext/datagov/FeatureServer//206">https://maps.bristol.gov.uk/arcgis/rest/services/ext/datagov/FeatureServer//206</a></p>
R6.2 BRERC Documents	<p>R6.2.1 - BRERC Data</p> <p>R6.2.2 - BRERC MAP KEY</p> <p>R6.2.3 - BRERC_Brislington Meadows</p> <p>R6.2.4 - BRERC_BWNS</p> <p>R6.2.5 - BRERC_Letter</p> <p>R6.2.6 - BRERC_Phase1Habitat</p> <p>R6.2.7 - BRERC_Ponds</p> <p>R6.2.8 - BRERC_SNCI_Eastwood Farm</p> <p>R6.2.9 - BRERC_SNCI_StAnnesValley</p> <p>R6.2.10 - BRERC_SNCI</p>
R6.3 Brislington Community Museum Documents	<p>R6.3.1 - Brislington Community Archaeology Project - Fields around Victory Park (2010)</p> <p>R6.3.2 - Brislington Community Museum - Agricultural since Roman times (2022)</p> <p>R6.3.3 - Brislington Community Museum - Hedges and lynchets (2022)</p> <p>R6.3.4 - Brislington Community Museum - Horse Shoe Nails - Civil War (2022)</p> <p>R6.3.5 - Brislington Community Museum - Horse Shoe Nails - Civil War (2022)</p> <p>R6.3.6 - Brislington Community Museum - Notes on the 1778 Enclosure (2022)</p> <p>R6.3.7 - Brislington Community Museum - Priest's Path (2022)</p> <p>R6.3.8 - Brislington Community Museum - Stock Pond (2022)</p> <p>R6.3.9 - Brislington Community Museum - Stone Age Tools (2022)</p> <p>R6.3.10 - Brislington Community Museum- Ridge and Furrows (2022)</p>
R6.4 SNCI Documents	<p>R6.4.1 - Defra - Local Sites - Guidance on their Identification, Selection and Management (Feb 2006)</p> <p>R6.4.2 - DESIGNATED SITES PROTOCOL &amp; CRITERIA v12 (March 2011)</p> <p>R6.4.3 - How other LPAs manage SNCIs or equivalent</p> <p>R6.4.4 - The Wildlife Trusts - The Status of England's Local Wildlife Sites 2018</p>
R6.5	R6.5.1 - 7507.20.068 Brislington Meadows - Outline BNG Metric3 SUBMITTED - BTF

Biodiversity Metric Documents	<p>COMMENTS v2.xlsm</p> <p>R6.5.2 - Brislington Meadows - BNG Tree Analysis Model v2.xlsx</p> <p>R6.5.3 - Brislington Meadows Master Species List (2022)</p> <p>R6.5.4 - Defra - hedgerow-survey-handbook</p> <p>R6.5.5 - Natural England - Biodiversity Metric 3.0 Technical Supplement</p> <p>R6.5.6 - Natural England - Biodiversity Metric 3.0 User Guide</p> <p>R6.5.7 - UK-Habitat-Classification-Habitat-Definitions-V1.0-May-2018-1</p> <p>R6.5.8 - UK-Habitat-Classification-Habitat-Definitions-V1.1-Sep-2020</p> <p>R6.5.9 - Natural England - Archive Site for the Biodiversity Metric 2.0 and the Biodiversity Metric 3.0:</p> <p><a href="http://nepubprod.appspot.com/publication/5850908674228224">http://nepubprod.appspot.com/publication/5850908674228224</a></p>
R6.6 Freedom of Information Requests re SNCI status	<p>R6.6.1 - Bristol City Council - Internal review response</p> <p>R6.6.2 - Homes England - 220623 RFI3890 Response Annex A</p> <p>R6.6.3 - I want to know what Kevin Slocombe is saying...Fol</p>
R6.7 2010 - 2013 Local Plan Review	<p>R6.7.1 - Bristol Local Plan (Dec 1997)</p> <p>R6.7.2 - Bristol Proposals Map (Dec 1997)</p> <p>R6.7.3 - Planning Inspectorate - REPORT ON THE EXAMINATION INTO THE BRISTOL CORE STRATEGY DEVELOPMENT PLAN DOCUMENT</p> <p>R6.7.4 - Planning Inspectorate - REPORT ON THE EXAMINATION INTO THE BRISTOL SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES LOCAL PLAN</p> <p>R6.7.5 - PPS9 'Biodiversity and Geological Conservation' (August 2005)</p> <p>R6.7.6 - Site Allocations and Development Management Policies R6.7.1 - Examination Core Documents List (December 2013)</p> <p>R6.7.7 - Site Allocations and DM Policies - Sustainability Appraisal Appendices 2013</p> <p>R6.7.8 - Site Allocations and DM Policies - Sustainability Appraisal Main Report 2013</p> <p>R6.7.9 - Site Allocations and DM Policies - Sustainability Appraisal Non-Technical Summary 2013</p> <p>R6.7.10 - Site Allocations and DM Policies Publication Version - Policies Map WEB PDF</p>
R6.8 Miscellaneous	<p>R6.8.1 - Brislington East ward profile report (Sept 2022)</p> <p>R6.8.2 - Bristol City Council - St Anne's - Restoring Your Railway SOBC Final-Submitted</p> <p>R6.8.3 - Bristol Local Plan Review - Further Consultation (Nov 2022)</p> <p>R6.8.4 - Deprivation in Bristol - Summary findings of the 2019 English Indices of</p>



	Deprivation within Bristol Local Authority Area (October 2019) R6.8.6 - Save Brislington Meadows Group - Objection to HE Appeal Case R6.8.1 - Wessex Water map
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## **Appendix B - The Council's amended reasons for refusal**

### **Amendment Sheet - 7 December 2022**

#### **Land At Broom Hill/Brislington Meadows Broomhill Road Bristol BS4 4UD**

Following additional expert witness input, the proposed reasons for refusal have been amended to read as follows:

- 1) The proposed development is considered to result in significant harm to biodiversity, for which it provides neither adequate mitigation nor compensation (whether on or off site). The application 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, DM17 and DM19 of the Site Allocations and Development Management (2014), and paragraphs 174, 179 and 180a of the NPPF (2021).
- 2) 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).
- 3) 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.
- 4) The proposed development fails to adhere to the landscape and urban design policy considerations by virtue of excessive damage to the existing features on the site. The proposed plans and supporting documents present unsympathetic responses to the natural assets on the site and surrounding context and would prejudice the future design and delivery of an appropriate scheme. The proposal will fail to meet the requirements of the NPPF; policy BCS21 of the Core Strategy 2011; and policies SA1, DM26, DM27, DM28 and BSA1201 of the Site Allocations and Development Management Policies 2014.
- 5) In the absence of an appropriate agreement under s106 of the Town and Country Planning

Act 1990, the proposed development fails to make provision for the following:

- Affordable Housing,
- Ecological Mitigation (including BNG Biodiversity Off Setting),
- Financial Contributions towards Fire Hydrants, Public Transport Facilities, amending Traffic Regulation Orders, Tree Planting, Training and Employment Initiatives,
- Management and Maintenance of on-site Public Open Space,
- Travel Plan Audit Fee and contribution,
- Highway works including cycle and pedestrian works though Bonville Trading Estate.

These are required in order to mitigate the impacts of the development. The proposal is therefore contrary to policies BCS10, BCS11 and BCS17 of the Bristol Local Plan: Core Strategy (2011) policies DM15, DM16, DM17, DM19, DM23 of the Bristol Local Plan: Development Management Policies (2014) and the Planning Obligations SPD (Adopted 2012).