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Bristol Tree Forum representations in relation to the Bristol Local Plan 2023 Publication Version consultation

1. Set up in 2008, Bristol Tree Forum is an independent voluntary organisation that exists to protect and enhance Bristol's tree habitats and promote a greater understanding of the value and amenity of trees.¹ We comment on planning applications and participate in planning appeals (either as an Interested or a Rule 6 party) and policy consultations. We contribute to discussions on tree-management issues, both nationally and locally. We have a network of ward-based Tree Champions which helps to maintain a link between the Council and its citizens and a comprehensive website² and a sister website, Trees of Bristol,³ which provides an interactive map of Bristol's trees as well as a range of surveys and tree-management tools.
2. The Forum has a number of concerns about the soundness of the new proposed Bristol Local Plan (the Plan). We set these out below and would welcome the opportunity to participate in the Inspector's hearings under Regulation 20.⁴ Our detailed comments to both of the earlier consultations, in March 2019⁵ and November 2022,⁶ appear to have been largely ignored.
3. We believe our participation is necessary because we represent an informed body of opinion, both locally and nationally. We understand how national planning policy affects decisions on local and national development proposals and we are therefore qualified to comment on the effectiveness and consistency of policy delivery in Bristol.
4. Our concerns go to the core of the Plan, in particular the proposed policies relating to:
 - A. achieving sustainable development as required under the National Planning Policy Framework (NPPF)
 - B. aligning the Plan with the requirements of the Environment Act 2021, the still-emerging regulations and evolving guidance on the obligation for most planning applications to achieve biodiversity net gain⁷
 - C. conducting a proper consultation
 - D. engaging with Bristol City Council's declarations of Ecological and Climate

¹ Papastavrou, V., 2019. Community engagement in urban tree management decisions: the Bristol case study. *Arboricultural Journal*, 41(2), pp.91-104. - <https://bristoltreeforum.org/wp-content/uploads/2021/03/papastavrou-2019-community-engagement-in-tree-management-decisions.pdf>

² <https://bristoltreeforum.org/>

³ <https://bristoltrees.space/Tree/>

⁴ <https://www.legislation.gov.uk/uksi/2012/767/regulation/20/made>

⁵ <https://bristoltreeforum.org/wp-content/uploads/2019/08/btf-response-to-open-spaces-and-local-plan-review.pdf>

⁶ <https://bristoltreeforum.org/wp-content/uploads/2023/07/Local-plan-draft-consultation-2023-Bristol-Tree-Forum-Submission.pdf>

⁷ <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance>



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Emergencies⁸ and its commitment to protect Bristol's Green Belt and Green Spaces⁹

E. ambiguous policy language which may create difficulties for developers, decision makers and stakeholders.

5. All references to the NPPF are to the September 2023 version,¹⁰ the version which was in place at the start of the Regulation 19 draft Local Plan consultation.¹¹ References to NPPF paragraphs use the format 'NPPF x'.

A. Achieving sustainable development as required under the NPPF

6. The NPPF advises that the planning system should be genuinely plan-led, with succinct and up-to-date plans providing a positive vision for the future of each area.

7. NPPF 8 identifies three overarching and interdependent objectives that '*need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives)*'. These three objectives are economic, social and environmental.

8. These objectives are to be delivered '*through the preparation and implementation of plans and the application of the policies in this Framework ... Planning policies and decisions should play an active role in guiding development towards sustainable solutions ...*'

9. The environmental objective - our main focus - must: '*protect and enhance our natural ... environment; including making effective use of land, improving biodiversity, using natural resources prudently ... and mitigating and adapting to climate change, including moving to a low carbon economy.*'

10. NPPF 98 states that '*Access to a network of high quality open spaces ... is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change.*' The same paragraph states that '*Planning policies should be based on robust and up-to-date assessments of the need for open space, ... (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, ... provision is needed, which plans should then seek to accommodate.*'

11. Despite this, there are no specific policies in the Plan directed towards achieving the

⁸ <https://www.bristol.gov.uk/council-and-mayor/policies-plans-and-strategies/energy-and-environment/bristol-ecological-emergency> & <https://democracy.bristol.gov.uk/documents/g3185/Public%20minutes%2013th-Nov-2018%2018.00%20Full%20Council.pdf?T=11>

⁹ <https://democracy.bristol.gov.uk/ieListDocuments.aspx?CId=142&MID=8798>

¹⁰

<https://webarchive.nationalarchives.gov.uk/ukgwa/20230929144819/https://www.gov.uk/government/publications/national-planning-policy-framework--2>

¹¹ The Town and Country Planning (Local Planning) (England) Regulations 2012 -

<https://www.legislation.gov.uk/uksi/2012/767/regulation/19/made>



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environmental objective, save for a generalised expectation that *'Development will be expected to ensure that a sufficient quantity, quality and proximity of open space for recreation is available to serve the new development in accordance with the guidelines set out in the council's strategies'* (Policy GI A).

12. This vague aspiration is further tempered with a warning that *'given the developed nature of Bristol, achieving the desired level of quantity of open space for recreation, within the appropriate distance, may not always be possible due to limited land availability.'*
13. It seems likely that any new open spaces will be privately owned and available to the public only at the developer's discretion as quasi-public spaces. In addition, the Plan suggests that *'Where sufficient private open space cannot be accommodated on site, due to identified constraints, proximity to existing open space may be considered'*.¹²
14. The Plan has few proposals (a small amount in regeneration areas) to create any truly public open spaces and no *'robust and up-to-date assessments of the need for open space'* (NPPF 98) have been undertaken to help achieve this. Nor is there any attempt to set a standard for the quality and extent of open space that will be required.

The Parks and Green Spaces Strategy

15. Whilst the current Local Plan makes a number of references to the 2008 Parks and Green Spaces Strategy¹³ (PGSS), particularly in the Site Allocations and Development Management Policies 2014 (SADMP) in DM16 - Open Space for Recreation and Appendix 1 - Standards for Open Space Recreation,¹⁴ the Plan has now discarded this reference.
16. The concurrent consultation on the PGSS,¹⁵ which has not yet been completed, is also not mentioned in the Plan, so it is impossible to say whether this strategy (or indeed any others) will form part of the Plan.
17. It is unclear whether any strategy or plan, unless clearly adopted into Local Plan policies, carries any obligation under a Local Plan. Indeed, the Council states that, where it adopts a strategy or plan using its discretionary powers (as opposed to its statutory duties), *'that decision doesn't bind future administrations and ...could be called into question at such time as a new administration is elected.'*¹⁶
18. This suggests that strategies or plans adopted using discretionary powers may be vulnerable to alteration or abandonment, and so cannot form part of the Local Plan as defined by Regulations 5 & 6 of the Town and Country Planning (Local Planning)

¹² 2018 Urban Living: Making Successful Places at Higher Densities' Appendix A -

<https://www.bristol.gov.uk/files/documents/2675-urban-living-spd-making-successful-places-at-higher-densities/file#:~:text=The%20highest%20densities%20should%20be,the%20most%20efficient%20ways%20possible>

¹³ <https://www.bristol.gov.uk/files/documents/818-parks-and-green-space-strategy-adopted-feb-2008/file>

¹⁴ <https://www.bristol.gov.uk/files/documents/2235-site-allocations-bd5605/file> - pages 34 & 93

¹⁵ <https://www.bristol.gov.uk/council-and-mayor/policies-plans-and-strategies/parks-and-open-spaces/bristol-parks-and-green-space-strategy>

¹⁶

https://www.whatdotheyknow.com/request/1050495/response/2500473/attach/2/Response%20all%20information%20to%20be%20supplied.pdf?cookie_passthrough=1 The LPA's response to this

Fol: https://www.whatdotheyknow.com/request/incentive_scheme_to_be_used_when.



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(England) Regulations 2012.¹⁷ At the moment these are just core strategies, area action plans and site-specific allocations. Even if section 92 of the Levelling-up and Regeneration Act 2023 ever comes into force, this is unlikely to change as the Act only adds SDPs and the Local Plan Policy map to this list.¹⁸

19. We welcome the proposed aims of the PGSS to increase the amount of land available for nature, tree canopy potential, food growing and recreation, but what is being proposed, both in the Plan and the draft PGSS, suggests that the opposite will happen.
20. The draft PGSS identifies 416 proposed sites. 59 of these are in the three Neighbourhood Development Areas (NDA) with current development plans and are expressly excluded from the Plan.¹⁹ Of the 59 sites in the three NDAs, only 12 were designated Local Green Space (LGS) under the criteria set out in the NPPF²⁰ when their development plans were adopted between March 2016 and March 2019.²¹ There are no Reserved Open Green Space (ROGS) sites as this is a later designation which is peculiar to Bristol and was first proposed in the March 2019 Local Plan review consultation.²²
21. In the Plan, 347 of the 416 sites identified in the draft PGSS are designated either LGS (GI1) or ROGS (GI2) or are a mixture of both. This leaves 69 sites with no LGS or ROGS designation and so vulnerable to future development.²³
22. Whilst LGS sites are said to have the same status as Green Belt land (NPPF 103 - though not subject to the same statutory protections), the Plan makes it clear that ROGS sites may be disposed of if it can be shown that *'the site is no longer required for its open space function'* and that *'a deficiency of open space would not be created through its loss'* when *'measured against the local plan's policies for open space provision (Policy GI A 'Open space for recreation').'*
23. But Policy GI A only states that: *'Development will be expected to ensure that a sufficient quantity, quality and proximity of open space for recreation is available to serve the new development in accordance with the guidelines set out in the council's strategies.'* As we have pointed out (paras. 15-16), these 'strategies' are not mentioned in the Plan, so it is impossible to say what criteria would be applied when deciding whether a site is *'no longer required for its open space function'* or that *'a deficiency of open space would not be created through its loss.'* This makes these ROGS sites (and the 69 sites with no protection whatsoever under the plan) vulnerable to being disposed of using the mechanism set out in section 123 (2A) of the Local Government Act 1972 where they are publicly-owned,²⁴ thereby subverting their statutory trust for public

¹⁷ <https://www.legislation.gov.uk/uksi/2012/767/regulation/5/made>

¹⁸ <https://www.legislation.gov.uk/ukpga/2023/55/section/92/enacted>

¹⁹ Old Market Quarter, Hengrove and Whitchurch Park and Lawrence Weston.

²⁰ Paragraphs 101 - 103.

²¹ <https://www.bristol.gov.uk/residents/planning-and-building-regulations/planning-policy-and-guidance/neighbourhood-planning>

²² <https://www.bristol.gov.uk/files/documents/2279-local-plan-review-new-protection-for-open-space/file>

²³ <https://bristoltrees.space/trees/sites/browse-wards.xq>

²⁴ <https://www.legislation.gov.uk/ukpga/1972/70/section/123>



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recreational purposes, which would otherwise protect these sites.²⁵

Lost Local Plan Protections

24. The protections given to Important Open Spaces (IOS) under the SADMP DM17,²⁶ will be removed and replaced with new designations under proposed policies GI1 - Local Green Space (LGS) and GI2 - Reserved Open Green Space (ROGS). This will result in the 84 IOS sites²⁷ which have not been given LGS or ROGS protection (totalling nearly 43 hectares and listed by ward in this [footnote](#)), losing any protection under the Plan, making them vulnerable to the disposal discussed above (para. 23).
25. The protection given to Urban Landscapes under SADMP DM17 has also been dropped and not been replaced.

The impact on Neighbourhood Development Areas

26. No new LGS or ROGS designations are proposed for the three remaining Neighbourhood Development Areas (NDA),²⁸ even though protection for IOS and Urban Landscape sites within these areas is being dropped. There are 59 sites identified in the proposed PGSS²⁹ but only 12 have been designated at LGS (para. 20).

The impact on Allotments and other food growing sites

27. Of the 117 allotment sites currently run by the council directly or through an association, 24, with a combined area of some 40 hectares, have no LGS or ROGS designation.³⁰
28. Lockleaze allotments on the Bonnington Walk Open Space has already been lost to development³¹ and the grazing land at Highbridge Road is also not designated for protection under the Plan.³²

Sites of Nature Conservation Interest

29. The designation of Sites of Nature Conservation Interest (SNCI) sits outside the Local Plan process and is controlled by Local Sites Partnerships (LSP) acting under guidance issued by Defra³³ and the LSP's own protocol³⁴. Local Sites are sites designated locally for their substantive nature conservation importance, either for wildlife or geology. However, because their designation is not required under statute, they are not protected from development (or indeed from any harmful activity) unless this is done

²⁵ R (on the application of Day) (Appellant) v Shropshire Council (Respondent) - Supreme Court Case ID: 2021/0031 - <https://www.supremecourt.uk/cases/uksc-2021-0031.html>

²⁶ <https://www.bristol.gov.uk/files/documents/2235-site-allocations-bd5605/file> p. 36, pdf p. 42

²⁷ <https://bristoltrees.space/trees/sites/browse-wards.xq>

²⁸ Old Market Quarter, Hengrove and Whitchurch Park and Lawrence Weston.

²⁹ <https://bristoltrees.space/trees/sites/browse-wards.xq>

³⁰ <https://bristoltrees.space/trees/sites/browse-allotments.xq>

³¹ <https://bristoltrees.space/Tree/sitecode/LOC> & <https://bristoltrees.space/Tree/sitecode/BONNWALK>

³² <https://bristoltrees.space/Tree/sitecode/HRR>

³³

<https://webarchive.nationalarchives.gov.uk/ukgwa/20130402204735/http://archive.defra.gov.uk/rural/documents/protected/localsites.pdf>

³⁴ <https://www.bristol.gov.uk/files/documents/5684-cd11-5-a-public-inquiry-for-land-at-broom-hill-brislington-meadows/file>



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specifically in a local plan.

30. At the moment, protection from development is provided under SADMP DM19,³⁵ however, the Plan proposes to do this using policy BG2: Nature conservation and recovery. BG2 states that: *'Development which would have a significantly harmful impact on local wildlife and geological sites, comprising Sites of Nature Conservation Interest (SNCIs) and Regionally Important Geological Sites (RIGS) as shown on the Policies Map, will not be permitted.'*³⁶
31. Within the Local Planning Authority (LPA), 36 of the 88 SNCIs designated have not been given protection under proposed policy GI A. Of the sites that have been given protection, 19 are a mix of LGS and ROGS designations or are designated exclusively ROGS sites. We say that all SNCIs (including those not listed in the Plan - such as the western part of Colliter's Brook SNCI and the Yew Tree Farm SNCI) should be designated LGS sites. SNCIs meet all the criteria set out in NPPF 102, especially because of their *'... beauty, historic significance, recreational value ... tranquillity or richness of its wildlife.'*³⁷

The proposed Site Allocations

32. Of the 96 proposed Site Allocations identified in Bristol Local Plan Annex - Development Allocations 2023 proposals,³⁸ we have identified at least 35, covering some 38 hectares, which do not meet the NPPF brownfield definition and are, in fact, open space (much of it green space). Another eight proposed Site Allocation sites, covering nearly five hectares, are probably also not brownfield sites. And yet the Brownfield Register, maintained by the Council and last reviewed in March 2023, shows that there are 116 brownfield sites comprising nearly 32 hectares available for development.³⁹ It is surprising that these sites have not been allocated.

Lost Green Belt

33. The Plan also identifies two areas of Green Belt, comprising some 32.5 hectares, as suitable for development - the land adjacent to Elsbert Drive, Bishopsworth and Bath Road, Brislington. The Land at Ashton Gate is listed but it has already been granted planning permission, subject to the approval of the Secretary of State.

Summary of comments

34. When the 2008 PGSS was adopted, it noted that: *'In 2007 the current level for Bristol is 3.8 hectares per 1000 residents (38 square metres per capita) although with a predicted population growth of 53,800 by 2026 this figure would reduce to*

³⁵ <https://www.bristol.gov.uk/files/documents/2235-site-allocations-bd5605/file> - page 41.

³⁶ <https://www.bristol.gov.uk/files/documents/6894-bristol-local-plan-main-document-publication-version-nov-2023/file> - page 127. We deal with the effect of this new protection in greater detail at Section E.

³⁷ For example, the Downs is an SNCI which has numerous playing fields.

³⁸ <https://www.bristol.gov.uk/files/documents/6890-bristol-local-plan-annex-development-allocations/file>

³⁹ <https://www.bristol.gov.uk/business/planning-and-building-regulations-for-business/planning-for-business/brownfield-land-register> & <https://bristoltreeforum.org/wp-content/uploads/2024/01/Development-Allocations-Appendix-4.xlsx>



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*approximately 33 sq metres per capita.*⁴⁰ At that time, a minimum per capita standard of 27.8 square metres was adopted.

35. The current PGSS draft recognises that the current citywide per capita area is indeed just over 33 square metres (33.37) but now predicts a further reduction to 29.25 square metres per capita citywide. This is based on the expected population growth over the next 15 years whilst *'aiming to introduce new green space in areas where growth will be highest.'*⁴¹
36. We are then told that: *'This strategy seeks to encourage and guide the development of new spaces in regeneration areas - identified in the Local Plan - rather than specifically outline sites for development. It is most likely that opportunities will be created in parts of the city centre, Temple Quarter, St Philip's Marsh and Frome Gateway,'* but there is no detailed plan for how this will be achieved.
37. Given all this, it is hard to understand how this Plan complies with the principles of sustainable development set out in the NPPF, or that *'Development will be expected to ensure that a sufficient quantity, quality and proximity of open space for recreation is available to serve the new development in accordance with the guidelines set out in the council's strategies'* when they will result in a significant diminution in the open space available across the city.
38. Overall, this Plan fails in that, while it facilitates development, it reduces the spaces set aside for recreation and for the protection of nature and the environment and will inevitably lead to the decline of open space and all that it offers over the lifetime of this Plan. This is contrary to the requirements of the NPPF, in particular the environmental objective.
39. We accept that it is a challenge to increase development whilst enhancing nature, but it is essential that developers and the LPA meet this challenge. The Plan should set out clear guidelines as to how this will be done. A June 2021 survey⁴² shows that there were 829 planning applications for residential housing (many going back decades) capable of delivering 12,335 accommodation units, but still undeveloped. Since then, we are told, 2,152 new residential dwellings have been completed (not necessarily those granted before June 2021),⁴³ leaving a net supply of over 8,183 units still undeveloped. The Plan should make some attempt to address this historic 'land banking', yet it is silent on the matter.

B. Aligning with the requirements of the Environment Act 2021, the still-emerging regulations and evolving guidance

40. NPPF 179 b) expects plans to *'... identify and pursue opportunities for securing measurable net gains for biodiversity.* Part 6: Nature and biodiversity of the

⁴⁰ Section 3, page 34.

⁴¹ Chapter 4, Page 16

⁴² <https://www.bristol.gov.uk/files/documents/1932-5yhls-report-110621/file>

⁴³ [https://www.bristol.gov.uk/files/documents/5897-cd8-21-resi-development-survey-mainfindings2022-november-22/file#:~:text=1.1%202%2C563%20dwellings%20\(net\)%20were,1%2C589%20\(see%20Figure%201\)](https://www.bristol.gov.uk/files/documents/5897-cd8-21-resi-development-survey-mainfindings2022-november-22/file#:~:text=1.1%202%2C563%20dwellings%20(net)%20were,1%2C589%20(see%20Figure%201))



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Environment Act 2021⁴⁴ (EA21) gives this expectation statutory force.

41. The EA21 Regulations, statutory biodiversity metric tools and practice guidance covering biodiversity net gain (BNG) come into force on 12 February 2024.⁴⁵ The draft documents, first published by Defra on 29 November 2023 (after this consultation commenced), have already been updated but are still subject to further consultation, so that their final versions are not yet known, and we do not yet know what the legal framework will require.
42. The Local Government Association (LGA) advises councils that *'LPAs do not need to repeat this [the mandatory requirement for BNG] in policy, but there are good reasons to include BNG policies in Local Plans to support implementation as long as these are consistent with the legal framework. Policies could:*
 - *Set a strategy for delivering BNG locally, in particular off-site BNG: for example by defining what strategies should be used to inform the Biodiversity Metric 'strategic significance' multiplier.*
 - *Set requirements for management and maintenance.*
 - *Ensure BNG helps to deliver other local priorities - water quality, LNRS, GI strategies, important habitats, health, flood risk, recreation and tourism.*
 - *Seek a target higher than 10% BNG. This will need to be backed up by appropriate evidence, including that the approach taken will be viable.'*⁴⁶
43. It adds that *'The local authority should also consider setting out how they baseline, measure and monitor BNG delivery as part of Local Plan monitoring.'*⁴⁷ Examples of model locally-specific policies and the evidence base used to develop policy are also offered.
44. This is not what the Plan does. It attempts instead to anticipate what the requirements for BNG will be. The Plan sets out detailed guidance, explanations and policies at Chapter 9, Biodiversity and Green Infrastructure. However, these are not aligned with what has so far been published by Defra.
45. For example, **Policy BG3: Achieving biodiversity gains** sets out a version of the Biodiversity Gain Mitigation Hierarchy at page 128 but this is at odds with the draft version (called the biodiversity gain hierarchy) of the guidance at Paragraph: 007 Reference ID: 74-007-2023.⁴⁸ Each version is **annexed** below.
46. Both of these definitions are also likely to be subject to interpretation using the

⁴⁴ <https://www.legislation.gov.uk/ukpga/2021/30/part/6/enacted>

⁴⁵ <https://www.legislation.gov.uk/uksi/2024/44/introduction/made>
- <https://www.bdonline.co.uk/news/biodiversity-net-gain-rules-delayed-for-the-second-time/5127226.article>

⁴⁶ <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/journey-biodiversity-net-gain>

⁴⁷ <https://www.local.gov.uk/pas/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-faqs-frequently-asked>

⁴⁸ <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance#determination-of-the-biodiversity-gain-plan>



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mitigation-hierarchy-like definition at NPPF 180 a): *'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.'*

47. **Policy BG4: Trees** also fails to align with what will be required when the BNG obligations take effect. BG4 seeks to preserve the Bristol Tree Replacement Standard⁴⁹ (BTRS), a legacy policy retained from the now-abandoned policy SADMP DM17 and the Planning Obligations SPD adopted on 01 January 2013.⁵⁰ These were designed to provide for offsite mitigation for trees lost to development.
48. Whilst considered innovative at the time, BG4's purpose is now largely superseded with the advent of the BNG requirements of the EA 21, where nearly every grant of planning permission (including Small Site developments from April 2024), with few exceptions,⁵¹ will be deemed to have been granted subject to the general biodiversity net gain condition and required to comply with the BNG obligations. Even residential developments which would normally be required to use the Small Sites Metric will be obliged to use the Statutory Metric where offsite mitigation is required;⁵² BTRS always involves offsite tree planting.
49. We propose that, for all those applications which still require that BTRS is used, should now be aligned with the new BNG obligations.⁵³ This will avoid conflicts the between the different numbers of trees required under the two models and help to reduce the loss of tree habitat and meet the Council's aspirations to increase Bristol's tree canopy over the next two decades.
50. The Plan also lacks any ambition to do anything more than comply with the bare minimum required under EA21 - no less that 10% BNG. This is even though the draft guidance states that: *'plan-makers may seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development,'* though these *'will need to be evidenced including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on viability for development'* and *'consideration will also need to be given to how the policy will be implemented.'*⁵⁴
51. Even Defra's guidance to LPAs allows them to be more ambitious, suggesting that they may develop *'local nature recovery strategies [which] identify the places and habitats that are most beneficial for nature and get 15% more biodiversity units than the same*

⁴⁹ <https://www.bristol.gov.uk/files/documents/81-spd-final-doc-dec2012/file> - page 20.

⁵⁰ We have been advised that this will still apply if and when the Plan is adopted even though it will no longer be aligned with that is being proposed.

⁵¹ <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments#developments-below-the-threshold>

⁵²

https://assets.publishing.service.gov.uk/media/65674019312f40000de5d5c2/The_Small_Sites_Metric_Statutory_Biodiversity_Metric_-_Draft_User_Guide.pdf - page 7.

⁵³ <https://bristoltreeforum.org/2023/12/04/why-we-need-a-new-bristol-tree-replacement-standard/>

⁵⁴ <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance> - Paragraph: 005

*habitat created elsewhere.*⁵⁵

52. However, LPAs are reminded, that *‘if the local nature recovery strategy has not yet been published, they should say what plans are currently in place.’* In response, we are merely told that *‘this will be prepared’* and that a *‘Nature Recovery Network is already emerging, identifying ecological networks at both a West of England level and a Bristol level, which will inform the implementation of the policies.’*⁵⁶ No indication is given as to how and when this will be done even though it is a requirement of the EA21.
53. The LGA notes that a number of LPAs have already adopted policies which go beyond the 10% minima required under EA21, noting, *‘A shift from 10% to 15% or 20% BNG will not materially affect viability in the majority of instances when delivered on-site or off-site ... as the majority of this burden relates to the mandatory 10% BNG, and the increase to get to 15% and 20% BNG are comparably small, this should not be seen as a reason for not going beyond the 10% but is a consideration for LPAs.’*⁵⁷ In our experience, BNG Metric calculations often result in a far greater net gain than 10%, especially when the requirement to comply with the BNG Trading Rules is factored in.⁵⁸
54. The Plan is silent about how it plans to baseline, measure and monitor BNG delivery, or to promote or facilitate offsite biodiversity mitigation opportunities within the LPA.

C. Conducting a proper consultation

55. The NPPF recognises that the presumption in favour of sustainable development *‘has implications for the way communities engage in neighbourhood planning’* (NPPF 13). It is expected that plans should *‘be shaped by early, proportionate and effective engagement between planmakers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees’* (NPPF 16 c)) and that they should *‘also engage with their local communities ...’* (NPPF 25).
56. The Council has not conducted a proper consultation. Lord Woolf stated in the 2001 Coughlin judgment that, *‘It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.’*⁵⁹

⁵⁵ <https://www.gov.uk/guidance/biodiversity-net-gain-what-local-planning-authorities-should-do> - Setting local policies to support BNG.

⁵⁶ Chapter 9, paragraph 9.1.7.

⁵⁷ <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities/journey-biodiversity-net-gain> - *‘Going above 10% BNG.’*

⁵⁸

https://assets.publishing.service.gov.uk/media/65673fee750074000d1dee31/The_Statutory_Biodiversity_Metric_-_Draft_User_Guide.pdf - page 14.

⁵⁹ R v North & East Devon Health Authority, ex parte Coughlan [2001] QB 213, [2000] 3 All ER 850, 97 LGR 703.



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57. We submitted detailed comments to the March 2019⁶⁰ and November 2022⁶¹ consultations, but it seems that these were largely ignored. None of the comments in either consultation have ever been published in full, so we cannot say whether other organisations also shared our concerns or if their comments were taken into consideration; The **Part 4 Summary of main issues raised and how they were addressed** part of the **Statement of Consultation**⁶² is too cryptic to offer any help in this regard.
58. In an attempt to determine if our comments (or indeed any others' comments) were considered, we filed an FOI requesting the minutes of the Local Plan Working Group. The FOI was initially rejected and rejected again following an internal review.⁶³
59. In addition, the Council only provided the proposed Bristol Local Plan Policies map,⁶⁴ the maps in Annex A - Site Allocations of the Plan⁶⁵ and the map showing the proposed LGS and ROGS sites⁶⁶ in a PDF format. These do not provide sufficient detail (on zooming in) to determine the accurate extent of these areas. Our request for the information in GIS format was refused even though it was clear that the published PDF versions could not have been produced without first mapping these sites using GIS software.
60. Publishing this information in GIS format would have allowed consultees to zoom in to see detail of the proposed boundaries at a local level. It is notable that an interactive GIS map has been produced for the concurrent PGSS consultation.⁶⁷
61. When we asked for comparative schedules to allow us to ascertain which sites would be protected and which would not, we were informed that these had not been produced because they are not required for publication and examination purposes.
62. As a result of the Council's refusal, we have been obliged to undertake our own mapping by undertaking a time-consuming visual comparison of the maps in these documents, sometimes using boundary data obtained from the Council's own published GIS maps. The results produced (which we reference in Section A above) therefore constitute our best efforts under these challenging circumstances.
63. This has meant that it was difficult both to determine the implications of the proposed changes at both a large or a more local scale, or to separate out those sites which are overlain by multiple policies, or which are currently protected under the Local Plan - but which will not be if this Plan is, in due course, adopted.

⁶⁰ <https://bristoltreeforum.org/wp-content/uploads/2019/08/btf-response-to-open-spaces-and-local-plan-review.pdf>

⁶¹ <https://bristoltreeforum.org/wp-content/uploads/2023/07/Local-plan-draft-consultation-2023-Bristol-Tree-Forum-Submission.pdf>

⁶² <https://www.bristol.gov.uk/files/documents/6749-bristol-local-plan-statement-of-consultation/file>

⁶³ https://www.whatdotheyknow.com/request/request_for_copies_of_the_minute_3

⁶⁴ <https://www.bristol.gov.uk/files/documents/6891-bristol-local-plan-policies-map-publication/file>

⁶⁵ <https://www.bristol.gov.uk/files/documents/6890-bristol-local-plan-annex-development-allocations/file>

⁶⁶ <https://www.bristol.gov.uk/files/documents/6908-local-green-space-and-reserved-open-green-space-topic-paper/file>

⁶⁷

<https://bcc.maps.arcgis.com/apps/instant/portfolio/index.html?appid=e6d5c707ce3043579303b28dbfd88c41§ionId=7a8afa8d69a547da8032fc2b9e1c8384¢er=-2.6262;51.4698&level=-1>



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D. Engaging with Bristol City Council's declarations of Ecological and Climate Emergencies and its commitment to protect Bristol's Green Belt and Green Spaces

64. The environmental objective at NPPF 8 includes '*mitigating and adapting to climate change, including moving to a low carbon economy.*'
65. It also expects all plans to promote a sustainable pattern of development including mitigating '*... climate change (including by making effective use of land in urban areas) and adapt to its effects*' (NPPF 11) and requires that '*sufficient provision*' is made for '*landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation*' (NPPF 20). NPPF 98 echoes the need to address climate change, while NPPF 131 observes that trees '*... can also help mitigate and adapt to climate change.*'
66. So important is the need to meet the challenge of climate change that a separate chapter of the NPPF (Chapter 14) is dedicated to it and sets out detailed obligations upon planners and developers alike.
67. Likewise, Chapter 15, Conserving and enhancing the natural environment, also requires planners to ensure that '*Planning policies and decisions should contribute to and enhance the natural and local environment.*'
68. It is not surprising therefore, that the Mayor and the Council have declared climate and ecological emergencies.⁶⁸ These are referenced in the Plan's Aim and Objectives. Strategies or plans for dealing with these have also been adopted.⁶⁹ However, these only run to 2025 and it is unclear how and when they will be renewed.
69. The Ecological Emergency Strategy is directly referenced twice in the Plan,⁷⁰ while The Mayor's 2019 Climate Emergency Action Plan gets no mention. There are references to the One City Climate Strategy published in 2020⁷¹ but, as this body is separate from the City Council, it is unclear what its status is in relation to this Plan. This is also described as '*A strategy for a carbon neutral, climate resilient Bristol by 2030*', so it does not cover the period proposed for this Plan - until 2040.
70. In September 2021, the Council voted unanimously to protect the Green Belt and Bristol's green spaces.⁷² This vote resolved to:
- *call for a halt to the proposed redevelopment of or incursion into any remaining productive wildlife-rich agricultural land*
 - *ask the Mayor to give a cast-iron commitment that he will look instead to increase the emphasis placed in the Authority's Site Allocations and*

⁶⁸ <https://www.bristol.gov.uk/council-and-mayor/policies-plans-and-strategies/energy-and-environment/bristol-ecological-emergency#:~:text=In%20February%2020%2C%20Marvin%20Rees,up%20to%2076%25%20of%20insects> & <https://www.bristol.gov.uk/files/documents/766-mayors-climate-emergency-action-plan-2019-final/file>

⁶⁹ <https://www.bristol.gov.uk/files/documents/5241-climate-emergency-action-plan/file> & <https://www.bristol.gov.uk/files/documents/794-ecological-emergency-action-plan/file>

⁷⁰ At 9.1.1 & 9.1.7

⁷¹ <https://www.bristolonecity.com/wp-content/uploads/2020/02/one-city-climate-strategy.pdf>

⁷² <https://democracy.bristol.gov.uk/ieListDocuments.aspx?CId=142&Mid=8798>



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Development Management policies on re-using or repurposing existing and emerging 'brownfield', previously developed or urban centres where not also needed as space for nature, rather than continuing to erode our surrounding fields and countryside

- *make every effort to avoid designating any SNCIs for development In the forthcoming update of the site allocations policies*
- *create policy to prioritise the preservation of the integrity of any wildlife corridors contained within sites designated for development*
- *work with adjacent local authorities and WECA to reinforce our policies on preserving Green Belt, and to work with these bodies to preserve our cherished countryside*
- *assign or instruct officers to consider adopting the Western Slopes and Brislington Meadows as Local Green Space as provided for within NPPF guidance, providing similar planning protection as for the Green Belt*
- *work with local communities across Bristol to similarly make every effort to designate much-loved green space in other parts of the city and noting that such protection for green space was proposed as part of the recent Bristol Local Plan Review.*

71. This resolution has not been honoured. As we observed above (Section A), Green Belt land and other open spaces, including one SNCI,⁷³ have been allocated for development or are losing their current protections and the proposals for the designation of land as either LGS or ROGS omit large tracts of open space, including SNCIs, leaving them vulnerable to the threat of future development.

72. The result is that the new Plan offers weaker environmental protections than the plan it replaces.

E. Ambiguous policy language which will create difficulties for developers, decision makers and stakeholders

73. **Policy BG2: Nature conservation and recovery** states that: '*Development which would have a significantly harmful impact on local wildlife and geological sites, comprising Sites of Nature Conservation Interest (SNCIs) and Regionally Important Geological Sites (RIGS) as shown on the Policies Map, will not be permitted*' [our underlining].

74. **Policies GI1 & GI2** both state that: '*Ancillary development of a proportional scale that supports the function and role of the Local Green Space/Reserved Open Green Space may be acceptable provided it does not have a harmful impact on the space as a whole*' [our underlining].

75. These two different qualifications of 'harm' are materially different and so open to different interpretations (even though planners have sought to suggest that they are

⁷³ BSA1305 - Land to the north-west of Vale Lane, Bedminster Down - in Bishopsworth ward is within the Malago Valley SNCI.



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not⁷⁴). The first is subjective, requiring a decision about what is 'significant', while the second is not and so, arguably, not subject to a planning balance exercise where policies are on conflict.

76. 52 of Bristol's SNCIs are also designated LGS or ROGS sites, or a mix of both these designations. As a result, there is likely to be conflict about how these policies are to be interpreted so that the proper planning weight to be applied.
77. Furthermore, inserting vague terms such as 'should' (rather than 'must' or 'will') and 'it is expected that' (rather than 'will') will inevitably be interpreted by developers and planners to mean that the policies are voluntary, thereby subverting what is intended. This vague wording is found throughout the text of the Plan.
78. By way of example, Plan policy BG4: Trees, which deals with the offsite replacement of trees lost to development '*where the tree compensation standard is not already met in full by biodiversity net gain requirements*', requires that '*replacement trees should be located as close as possible to the development site.*'
79. There is no definition of what '*as close as possible to the development site*' means. Thus, it could be argued that there are no suitable tree-planting sites within the usual one-mile radius of the development site. The one-mile rule has been applied in most such planning obligations created under section 106 Town and Country Planning Act 1990⁷⁵ (local new tree-planting sites are rare, especially in the inner city), so it would be possible to allow for replacement trees to be planted in outer-city locations having no local relationship with the development site, as is permitted under the BNG regulations.
80. As a result, the obligation placed on developers to mitigate the harmful impacts resulting from their plans offsite - by finding suitable local planting sites and securing the long-term maintenance of newly planted trees (as required under the BNG regulations) - will continue to be devolved to the LPA, thereby undermining the intention of the NPPF (in particular, NPPF 131, 180 a) & d and 185). This will result in the further reduction of tree canopy cover of inner city areas along with the associated benefits that such canopy cover provides (cooling, amenity value and nature).
81. As NPPF 9 reminds us: '*Planning policies and decisions should play an active role in guiding development towards sustainable solutions,*' so the more precisely they are drafted, the better are the chances that they will be interpreted consistently so that the original intention of the Plan is realised throughout its 15-year lifespan.

Conclusion

82. In light of all our comments, we invite the LPA to withdraw the Plan pending further modifications.
83. If, however, the LPA proceeds to an Examination, then government guidance advises

⁷⁴ <https://bristoltreeforum.org/2023/09/07/it-seems-that-sncis-are-nothing-special-an-open-letter-to-bristols-chief-planner/>

⁷⁵ <https://www.legislation.gov.uk/ukpga/1990/8/section/106>



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that the Inspector should ‘... raise any potential problems with the LPA as soon as they become apparent and will give the LPA the opportunity to overcome them wherever this is possible. If this involves the LPA carrying out further work, the timetable for the examination will be adjusted as necessary.’⁷⁶ Given the issues we have raised, we invite the Inspector use their powers to recommend the necessary main modifications.

84. However, if the Inspector finds the Plan unsound and/or legally non-compliant as submitted, and that it is not possible to make it sound and legally compliant by making main modifications to it, then we note that the Inspector is obliged to recommend non-adoption of the Plan.

⁷⁶ <https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations#section-1-before-submission>



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Annex - the conflict between the definition of the Mitigation Hierarchy in the Plan and in the draft BNG Guidance

Policy BG3 version⁷⁷

Biodiversity Gain Mitigation Hierarchy

All development required to provide biodiversity gain will be expected to provide appropriate mitigation and compensation in accordance with the mitigation hierarchy.

Only where a development proposal cannot prevent and/or minimise loss to biodiversity using avoidance measures, and this has been clearly demonstrated through a Biodiversity Gain Plan, will habitat remediation and compensation measures be appropriate.

Biodiversity remediation and compensation (through habitat creation, restoration and enhancement) should be provided on site, avoiding, where possible, harm to existing designated and non-designated habitat and species features of conservation value.

If it is demonstrated that the required level of biodiversity net gain cannot be achieved within the site, alternative measures to deliver biodiversity gain through compensation will be appropriate. These may include:

- Off-site biodiversity gain in a location as close as feasible to the site that would contribute to the Nature Recovery Network and, where possible, have a meaningful ecological relationship to the development, comprising the creation or enhancement of habitats on another site or the purchase of biodiversity units from habitat banks.
- As a last resort, if no suitable off-site location can be found, habitat payment compensation through the Biodiversity Credits scheme.

Where biodiversity gain mitigation is proposed to be provided through these alternative mechanisms, evidence should be provided to demonstrate that:

- All impacts are mitigated, including cumulative impacts of habitat losses to enable habitat compensation, and biodiversity gains are achieved; and,
- Mechanisms for off-site delivery have been secured through formal agreement, such as through conservation covenant or S106 agreement.

Proposals which affect statutory designated sites for nature conservation must ensure that biodiversity net gain is delivered in addition to any existing requirements for mitigation. Impacts on irreplaceable habitats cannot be mitigated by biodiversity net gain.

⁷⁷ <https://www.bristol.gov.uk/files/documents/6894-bristol-local-plan-main-document-publication-version-nov-2023/file> - page 129



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The Draft biodiversity net gain planning practice guidance version⁷⁸

What is the biodiversity gain hierarchy?

The biodiversity gain hierarchy for the purpose of the statutory framework for biodiversity net gain is set out in Article 30A of the Development Management Procedure Order. This hierarchy is distinct from the mitigation hierarchy set out in the National Planning Policy Framework.

The biodiversity gain hierarchy means the following actions in the following order of priority:

- avoiding adverse effects of the development on onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than six;
- so far as those adverse effects cannot be avoided, mitigating those effects;
- so far as those adverse effects cannot be mitigated, habitat enhancement of onsite habitat;
- so far as there cannot be that enhancement, creation of onsite habitat;
- so far as there cannot be that creation, the availability of registered offsite biodiversity gain;
- so far as that offsite habitat enhancement cannot be secured, purchasing biodiversity credits.

Developers are encouraged to follow the Biodiversity Gain Hierarchy from the earliest stage possible when selecting a site and considering development proposals.

Local planning authorities must take into account the Biodiversity Gain Hierarchy when considering whether the biodiversity objective has been met and when determining whether to approve the Biodiversity Gain Plan.

Paragraph: 007 Reference ID: 74-007-2023

⁷⁸ <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance#determination-of-the-biodiversity-gain-plan>