



21/05164/F | Erection of 157 no. dwellings (MAJOR). | Land On The West Side Of Novers Hill Bristol

Bristol Tree Forum -Comments relating to the SNCI status of the proposed development site

We refer to our previous comments on the application. These comments relate to the issue that continues about the status of Site of Nature Conservation Interest (SNCI) which we say includes the development site and so makes this pending application subject to the full policy protection set out in the Site Allocations and Development Management Policy (SADM) SADM19. Our reasons are set out below.

1. The SNCI designation

1.1. The whole proposed development site, including those parts of BSA1114 & BSA1108 that it covers, is designated as part of the **Pigeonhouse stream and adjacent meadows SNCI** (the SNCI). The SNCI has been designated since, at least, January 1985. This designation was made in recognition of the ecological importance of the combination of stream, grassland and scrub, semi-improved calcareous grassland and species-rich neutral grassland. It includes Priority Habitat Lowland Meadow and Lowland Calcareous Grassland which is important for the invertebrates that it supports. This, taken together, form a combination of habitats that is of nature conservation value in a city-wide context.

1.2. SNCIs are designated by the Local Sites Partnership (LSP) in accordance with Government guidance¹ (DEFRA, 2006). In Bristol, designation is - according to information published on the .GOV website² - undertaken by the LSP for the West of England, formed by ecologists from each of the four unitary authorities (the Council being one) as well as Avon Wildlife Trust, BRERC³, Natural England, Forestry Commission, Environment Agency as well as the local RIGS group.

1.3. In March 2011, the LSP adopted version 12 of the Designated Sites Protocol (Ecology

¹ <https://bristoltreeforum.files.wordpress.com/2022/10/defra-local-sites-guidance-on-their-identification-selection-and-management.pdf>

² [https://www.data.gov.uk/dataset/60974c59-62d1-4539-94e9-6221cd117d83/sites-of-nature-conservation-interest-snci#:~:text=Sites%20of%20Nature%20Conservation%20Interest%20\(SNCIs\)%20are%20sites%20which%20contain,an%20agreed%20set%20of%20criteria.](https://www.data.gov.uk/dataset/60974c59-62d1-4539-94e9-6221cd117d83/sites-of-nature-conservation-interest-snci#:~:text=Sites%20of%20Nature%20Conservation%20Interest%20(SNCIs)%20are%20sites%20which%20contain,an%20agreed%20set%20of%20criteria.)

³ Bristol Regional Environmental Records Centre



and Geology)⁴ (PROTOCOL, 2011). This protocol still applies. It confirms that: ‘The Local Sites Panel [LSP] are the determining body for decisions on new Local Sites⁵, and amendments or deletions to Local Sites, in accordance with the agreed criteria and procedure.’ BRERC is responsible for maintaining a GIS data layer for each Authority showing new sites, amended sites, and sites for de-designation.

- 1.4. The DEFRA 2006 guidance notes that SNCIs can be de-selected ‘if their nature conservation interest deteriorates to such an extent that they no longer qualify as Local Sites’ (para. 36) i.e., on ecological grounds. This is confirmed in PROTOCOL 2011. These are the only grounds upon which an SNCI may be de-selected. The SNCI has not been de-selected by the LSP, nor has BSA1114 or BSA1108 been removed from its ambit.
- 1.5. Consequently, as Bristol City Council confirmed in their response to a Freedom of Information Request dated 24 October 2022⁶ given on 16 December 2022, there has been no change to the SNCI information for the entire SNCI. This includes the land comprising BSA1114 & BSA1108.
- 1.6. The 2006 DEFRA guidance requires that ‘Local Development Frameworks [Development Plans] should identify all local nature conservation areas on the proposals map’ (by reference to PPS 12). This does not mean that LDFs or local plans designate SNCIs, rather that they identify the SNCIs designated by the LSP. Similarly, the National Planning Policy Framework (NPPF) at para. 179(a) states that ‘...plans should: identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks ...’. Designation is the responsibility of the LSP, identification is the task of the LPA. They are two separate tasks.
- 1.7. Despite this wording, during the plan-making process, the Council mistakenly thought that the plan-making process designated SNCIs rather than identifying the LSP-designated SNCIs. The Policy Delivery section of BCS9 of the 2011 Core Strategy states that ‘The Site Allocations & Development Management DPD and Bristol Central Area Action Plan will designate important open spaces and Sites of Nature Conservation Interest’, and, under the heading Nature Conservation, adds ‘The Site Allocations &

⁴ <https://bristoltreeforum.files.wordpress.com/2022/08/designated-sites-protocolcriteria-v12-march-2011.pdf>

⁵ As defined by DEFRA 2006.

⁶ https://www.whatdotheyknow.com/request/deregistration_of_the_snci_at_la



Development Management DPD and Bristol Central Area Action Plan will designate local Sites of Nature Conservation Interest. The Proposals Map will also show international, national and local biological and geological conservation sites designated outside the development plan process'. This statement fundamentally misunderstands the designation process set out in government and NPPF guidance (DEFRA 2006 and NPPF para. 179(a)).

- 1.8. It is notable that the actual policy (BCS 9, p. 74) is silent about this and that paragraph 4.9.9 states that 'In Bristol, Sites of Nature Conservation Interest are designated through the Development Plan process as local sites' (our emphasis) (p.76). The term 'local sites' is the term adopted in the 2006 DEFRA guidance for sites such as SNCIs (Introduction at the 3rd paragraph, p. 3).
- 1.9. Furthermore, the December 1997 Local Plan policy, NE5 - which provided limited policy protection to SNCIs - was not replaced until the SADM was adopted in July 2014 (more than three years after the Core Strategy was adopted) when it was upgraded to the stronger SNCI protection set out in SADM19.
- 1.10. As DEFRA 2006 makes clear, the Council does not have, and has never had, the power to designate SNCIs. LPAs are required to identify sites designated as SNCIs taking the requisite steps to maintain and enhance the sites (NPPF para.175). As the Council confirms, the SNCI, including BSA1114 & BSA1108, remains a designated SNCI.

2. *The Policies Map*

- 2.1. The second question is whether, although the SNCI (including BSA1114 & BSA1108) continues to be identified as an SNCI on the Council's "Pinpoint" map (as well as on two other publicly-available maps maintained by the Council and the GIS data maintained by BRERC, the failure to show BSA1114 & BSA1108 as part of the SNCI on the Policies Map has planning consequences.
- 2.2. The NPPF (para. 23) states that 'Broad locations for development should be indicated on a key diagram, and land-use designations and allocations identified on a policies map.' This requires a policies map, a requirement also set out in the Town and Country Planning (Local Planning) (England) Regulations 2012, Regulation 9 which states that: 'The adopted policies map must ... illustrate geographically the application of the



policies in the adopted development plan.’⁷

- 2.3. As Regulation 9 indicates, the adopted policies map is not itself a planning document, it is simply a geographical illustration of the ‘adopted development plan’.
- 2.4. Neither SA1 nor SADM19 altered the SNCI designations (they could not do so as SNCI designations are the responsibility of LSPs). The policies map nevertheless represents BSA1114 & BSA1108 as not being part of the SNCI. This is incorrect. Repeated caselaw has indicated that if mistakes are made on the policies map, the map can be changed to represent policy accurately.
- 2.5. The policies map is a geographic illustration of policies, it has no planning significance of its own. This was confirmed by the Court of Appeal in *Fox Land & Property v SSCLG* [2005] EWCA Civ 298, where Richards LJ held in relation to adopted policies maps: ‘28. ... *The Proposals Map is not itself policy, but it illustrates detailed policies, to use the term in section 36(6)(a) of the 1990 act. In particular, it identifies the geographical areas to which the detailed policies apply. Just as the supporting text is relevant to the interpretation of a policy, so the Proposals Map is relevant to the geographical scope of application of a policy and thus to a proper understanding of the policy. One looks at the supporting text and the Proposals Map not because they are themselves policy - they are not - but because of their relevance to a proper understanding of the policies properly so-called.*’
- 2.6. This geographic status was also confirmed by Waksman J in *Jopling v Richmond upon Thames LBC* [2019] EWHC 190 (Admin) who held that the proper scope of an AP map is as follows: ‘14. *By Regulation 2 (1) and (9) of the 2012 Regulations, an “adopted policies map” is a map which, among other things, illustrates geographically the application of the policies in the adopted development plan. It follows that the adopted policies map itself is not a DPD. 15. The reason for this is clear, in my view. The map is simply a geographical illustration or representation of policies themselves contained in the local plan upon which it is parasitic.*’
- 2.7. Most recently, the geographic nature of the AP map was confirmed by Lang J. in *Bond v Vale of White Horse District Council* [2019] EWHC 3080 (Admin), holding that: ‘*the*

⁷ <https://www.legislation.gov.uk/ukxi/2012/767/regulation/9/made>



AP Map does not form part of the Local Plan'. Lang J confirmed that the policies map can be altered without following the statutory procedure for changing the development plan.

- 2.8. The Council say that, for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004⁸ (PCPA 2004), BSA1114 & BSA1108 is not within the SNCI as evidenced by the development plan Policies Map. This approach is flatly contradicted by the caselaw. The policies map does not have this significance.
- 2.9. The policies in the Bristol development plan did not change the SNCI designation of BSA1114 & BSA1108. They could not do so, as this is a task for the LSP rather than the LPA (DEFRA 2006 & PROTOCOL 2011). The geographical representation of BSA1114 & BSA1108 on the policies map is consequently faulty in so far that it does not show the site as part of an ongoing SNCI.
- 2.10. While this mistake should certainly be rectified (and can be corrected without engaging the statutory procedures, per Lang J in *Bond v Vale of the White Horse District Council* [2019] EWHC 3080 (Admin), para. 58), even as the faulty map stands, it merely provides a geographic representation of the plan's policies, both SADM19 and SA1. No policy in the development plan de-designated the site (they could not do so as de-designation is solely a task for the LSP on ecological grounds only (DEFRA 2006, para. 36 & PROTOCOL 2011)) and the adopted policies map has no planning consequence of its own as is confirmed by caselaw.

3. *Planning consequences of SNCI Designation & "Pricing In"*

- 3.1. The third question considers the planning consequence of designating the site both as an SNCI and allocating it for development. This 'dual allocation' means that both SA1 and the SADM policies identified by it apply in full to BSA1114 & BSA1108. Development Plan policy SADM19 also states that: 'Development which would have a harmful impact on the nature conservation value of a Site of Nature Conservation Interest will not be permitted.'
- 3.2. Can the site allocation negate the SNCI designation? There is no Development Plan provision which allows for one policy to 'trump' another or for planning harm to be

⁸ <https://www.legislation.gov.uk/ukpga/2004/5/section/38>



‘priced in’ at the time of designation. A conflict between contemporary policies must be determined as a question of planning balance.

- 3.3. Where there is a conflict between development plan policies, Section 38(5) PCPA 2004 requires that ‘If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan’. Both the SADM19 and SA1 policies were adopted into the development plan at the same time.
- 3.4. DLUHC Guidance - Determining a planning application (para. 012) adds that: ‘Conflicts between development plan policies adopted, approved or published at the same time must be considered in the light of all material considerations, including local priorities and needs, as guided by the National Planning Policy Framework’.⁹
- 3.5. The balancing of policies remains a question of planning judgement, a point confirmed by Eyre J in *TV Harrison CIC v Leeds City Council* [2022] EWHC 1675 (Admin) (06 July 2022), who held that: *‘the assessment as to whether different policies in the development plan are in conflict is a matter of planning judgement. Section 38(5) makes provision as to the way in which such a conflict is to be resolved but it does not operate without more to effect the supersession of policies in earlier documents nor, more significantly, does it remove the requirement to have regard to the terms of the development plan and to consider whether particular parts of that plan are or are not in conflict.’*
- 3.6. In *TV Harrison CIC*, the LPA’s barrister had attempted to argue that ‘the tension’ between a structural allocation policy and playing fields policy ‘had already been resolved in favour of the SAP’ (in other words it had been ‘priced in’). The judge, Eyre J., held that *‘in his oral submissions Mr Tucker [the barrister] moved away from that position and disavowed reliance on that provision. In my judgement he was right to do so.’*
- 3.7. Section 38(5) requires policies agreed at the same time to be balanced. In *TV Harrison CIC*, Eyre J. held that when two policies applied, the Council had to ‘grapple’ with the

⁹ <https://www.gov.uk/guidance/determining-a-planning-application>



consequences of the competing policies. In this case, this would mean ‘grappling’ with both the status as BSA1114 & BSA1108 1 and the effect of SADM19. Rather than engaging with this balancing process, both the Appellant and the Council have asserted that the site allocation supersedes the SNCI designation and consequently SADM19. However, as both s38(5) and TV Harrison CIC confirm, one policy does not trump the other, an allocation cannot be ‘priced in’. Balancing the policies is a matter of planning judgement.

Bristol Tree Forum
10 March 2023