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Protecting Everyday Nature

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ABSTRACT

'Everyday nature', understood as people's ability to access nature nearby, should be protected in law and planning policy, facilitating three key benefits: (1) human health and wellbeing; (2) intrinsic and extrinsic ecological advantages; and (3) supporting the UK's 30by30 nature conservation commitment. Yet there are three obstacles to the protection of everyday nature: (1) the prioritisation of 'special' and 'priority' nature conservation habitats; (2) the lack of protection for Local Wildlife Sites; as well as (3) counter-intuitively, the rise of biodiversity as a preferred governing concept. Addressing these obstacles, the paper develops the concept of everyday nature, making four proposals for change: (1) improved conceptual analysis; (2) confirming current policy on Local Wildlife Sites; (3) implementing the concept of everyday nature in legislation and planning policy; and (4) implementing the Government's target that everyone lives within a 15-minute walk from a green or blue space.

KEYWORDS: nature, nature conservation, biodiversity, just transition, planning, housing, everyday nature

1. INTRODUCTION

In April 2023, a planning inspector in Bristol, England, approved a planning application to build 260 houses with associated car parking on Brislington Meadows, a protected Local Wildlife Site.[1] The primary reason for approving the application was that in 2014, Bristol City Council

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1 Appeal Decision, Appeal Ref: APP/Z0116/W/22/3308537 Land at Broomhill/Brislington Meadows, Broomhill Road, Bristol BS4 4UD, para 129.

had allocated the Meadows for housing in its local plan, despite their being designated as a Site of Nature Conservation Interest (SNCI) and graded 'strong' for both diversity of species and habitats as well as rarity of habitats, fragility and irreplaceability.[2] Campaigners, and by the time of the planning determination the city council who had changed its view on the housing allocation, were unable to persuade the planning inspector to spare the site from development. When local campaigners were unable to raise £50,000 within six weeks of the planning determination in order to pay lawyers to seek judicial review of the decision,[3] the permission was fixed, enabling the development of most of one Bristol's oldest open landscapes and designated Local Wildlife Site for housing, removing a site of everyday nature from local people.

Drawing on the planning decision at Brislington Meadows, this article uses multi-stranded research to argue that 'everyday nature', defined as people's ability to access nature nearby, should be better protected for three reasons: (1) to support human health and wellbeing; (2) to facilitate ecological connectivity and nature recovery; and (3) to support the UK Government's 30by30 international biodiversity commitment.[4] These objectives are particularly important at a time when an incoming Government is proposing facilitating a major increase in housebuilding.[5]

For despite the benefits of everyday nature, three conceptual and governance difficulties in England limit everyday nature's protection. The first obstacle is that outside nature reserves, access to nature is not conventionally a criterion for designation in nature conservation law, which prioritises 'special' or 'priority' species and habitats determined on scientific grounds, instead. A second concern is that Local Wildlife Sites, where everyday nature is mostly found, are non-statutory, precariously administered and often poorly understood.[6] A third hurdle is that the concept of biodiversity, which does not consider public access, has become the predominant form of nature conservation, limiting the scope to consider benefits for humans other than as a separate 'co-benefit'. There are strong arguments for increasing housing supply, however, we should at the very least be explicit if planning decisions are taken to build homes on designated Local Wildlife Sites hosting everyday nature.

To explain the significance of everyday nature, this article will begin by explaining the origins of this research, including the methodology used. It will then set out the concept and its benefits – for humans, species, habitats and ecological systems – before introducing the case study at Brislington Meadows and explaining the governance problems. The analysis concludes with four proposals for change: (1) improved conceptual analysis; (2) confirming current policy on Local Wildlife Sites; (3) implementing the concept of everyday nature in legislation and planning policy; and (4) implementing the Government's target that everyone lives within a 15-minute walk from a green or blue space.

2. RESEARCH METHODOLOGY

This article brings together three strands of research. The main method is doctrinal, drawing on legal and policy analysis. It aims to understand the current legal and policy framework for 'everyday nature', in particular the relative lack of safeguards for Local Wildlife Sites, the most extensive designation protecting everyday nature.

2 Brislington Meadows, *SNCI Scorecard*, 2010, <https://www.whatdotheyknow.com/request/deregistration_of_the_snci_at_br/response/2058472/attach/html/2/Brislington%20Meadows.doc.html> accessed 17 July 2024.

3 Bristol Tree Forum, 'Farewell to the Meadows', 24 May 2023 <https://bristoltreeforum.org/2023/05/24/farewell-to-the-meadows/> accessed 17 July 2024.

4 The objective is to protect 30% of land and marine areas for nature by 2030, agreed in accordance with the post-2020 Global Biodiversity Framework formally adopted under the Convention on Biological Diversity in 2022.

5 The King's Speech 2024, Prime Minister's Office, 17th July 2024.

6 DEFRA, *Local Sites: Guidance on their Identification, Selection and Management*, 2006 <https://webarchive.nationalarchives.gov.uk/ukgwa/20130402204735/http:/archive.defra.gov.uk/rural/documents/protected/localsites.pdf> accessed 17 July 2024.

The second methodological strand is a case study of the planning decision at Brislington Meadows in Bristol in 2023. This case study was selected to investigate a contemporary phenomenon – the decision to allocate a Local Wildlife Site for housing development – in order to investigate how, legally, this conclusion was reached and justified. While a single case study is not authoritative and may limit the robustness of the analysis,[7] this approach is suitable in situations where there is a limited choice of case studies, such as here where the research team found no equivalent allocation of a Local Wildlife Site for housing development.[8] The aim of the case study is to illustrate how the nature conservation governance framework operates: it supplements the legal analysis.

The third strand draws on the outputs from a research project on *Just Transitions for Biodiversity*.[9] This study aimed to understand how 'nature' is understood in the context of social justice, drawing on 23 qualitative interviews in three cities: Bristol in England (6); Yubari in Japan (5) and Cape Town in South Africa (8), as well as interviews with experts working in nature conservation (4). The project investigated whether the concept of just transitions could usefully be understood and implemented in the biodiversity context using a multi-site case study approach.[10] Participants were recruited through existing networks and snowballing techniques with sampling aiming to include participants from different sectors in each city, especially harder-to-reach perspectives such as people working for small organisations and local activists. The semi-structured interview protocol provided flexibility to reflect specific local challenges, focussing in Bristol's case on housing needs in a city that declared an Ecological Emergency in 2020.[11] A qualitative thematic analysis of the data was undertaken with the content of each interview coded manually by at least two coders, with preliminary codes focussing on capturing different understandings of biodiversity and just transitions, reflecting the design of the interview questions to ensure construct validity.[12] Subsequently, substantive analytical themes were identified inductively through dialogue among the research team in order to emphasise participants' perspectives. Ethical considerations were prioritised throughout the study, ensuring participant privacy, confidentiality, and informed consent. Ethical approval was obtained and the research was undertaken in accordance with the SLSA Ethics statement.[13]

The *Just Transition* interviews included research participants at two sites allocated for housing, not including Brislington Meadows, where participants were or had been involved in campaigns to try to save their local sites from development.[14] It was these interviews that raised the project team's awareness of the vulnerability of Local Wildlife Sites in the planning process, as well as, subsequently, the Brislington Meadows campaign and the planning appeal in early 2023. Though the *Just Transitions* project had concluded by the time of the Brislington Meadows appeal, the lead author supported the Bristol Tree Forum's attempts to resist the planning application for development. While this connection provided insight into the case study, it also raises issues of positionality for the lead researcher,[15] influencing analysis of the interviews

7 Andrew Yin, *Case Study Research and Applications: Design and Methods* (6th edn, SAGE 2018).

8 The lead author would be interested to know from readers if they know of similar applications or developments. Bristol City Council have also approved a planning application to extend its cemetery into a Local Wildlife Site, see Application No. 22/05714/FB: South Bristol Crematorium And Cemetery Bridgwater Road Bristol BS13 7AS.

9 Funded by the British Academy in 2021-2022, VSFoFJT\100003.

10 Drawing on Yin (n 7).

11 Bristol City Council, *One City Ecological Emergency Strategy* (Bristol 2020).

12 Virginia Clarke et al, 'Thematic Analysis' in Jonathan Smith (ed), *Qualitative Psychology: A Practical Guide to Research Methods* (SAGE 2015).

13 Ethical approval was obtained from the University of Bristol Law School, where the lead author worked at the time of the *Just Transitions* project. The key project findings are outlined in Leslie Mabon et al, 'What does a just transition mean for urban biodiversity? Insights from three cities globally' (2024) 154 Geoforum 1.

14 In particular, Bristol research participants 5 and 6.

15 Mark Fathi Massoud, 'The price of positionality: assessing the benefits and burdens of self-identification in research methods' (2022) 49 J Law Soci 64.

in the context of this article. These difficulties were addressed by using the data to raise questions about, and reflect on, the legal and policy framework, rather than using the interviews as robust empirical findings in their own right.

3. EVERYDAY NATURE

3.1 Understanding 'Everyday Nature'

The concept of 'everyday nature' is commonplace. Early naturalists provided near daily records of species, habitats and seasons[16], while Indigenous people have long recorded their interrelationship with the natural environment.[17] In 2010, Natural England, used the term 'nature nearby' to call for recognition of the nature 'on our doorsteps' in 'woodland or a country park' often located in 'local neighbourhoods – a village common, the local park, the scrap of land at the bottom of the street.'[18] Pandemic lockdowns highlighted the importance of these connections between humans and the natural environment when people sought access to green spaces for wellbeing alongside daily exercise. Capturing a widespread conviction in 2020 when writing for the National Trust, Andy Beer noted that: 'nature isn't something you visit from to time to time; it's everywhere.'[19]

Protecting everyday nature brings three key benefits. The first is that spending time in nature is associated with good health and wellbeing,[20] with evidence that a 'nature dose'[21]can alleviate common health symptoms including high blood pressure and depression.[22] The significance of connection with access to greenspace, acknowledging that humans need nature as part of daily life, is now widely accepted in government, including the promotion of green infrastructure,[23] as well as the National Health Service (NHS) development of forests.[24] In 2024, Natural England concluded that: 'Exposure to green space, particularly urban, is associated with improved psychological well-being, physical activity and linked health outcomes', identifying benefits including reduction of stress, improving cognitive capacity, increased physical activity, reduced exposure to environmental hazards and greater social contact.[25]

Secondly, protecting everyday nature has intrinsic ecological benefits – protecting species and habitats for their own sake – as well as extrinsic benefits, facilitating ecosystem services, networks of wildlife-rich habitats to support nature recovery, carbon capture, water quality improvements and natural flood risk management.[26] Ecological networks are increasingly recognised as critical. For instance, national planning guidance recognises '[h]igh-quality networks of multifunctional green infrastructure contribute a range of benefits, including ecological connectivity, facilitating biodiversity net gain and nature recovery networks',[27] while the 30by30 target focuses both on 'biodiversity areas' as well as 'ecosystem functions and services'.[28]

16 Donald Worster, *Nature's Economy: A History of Ecological Ideas* (CUP 1994).

17 Enrique Salmón, 'Kincentric Ecology: Indigenous Perceptions of the Human–Nature Relationship' (2000) 10 Ecol Appl 1327; Robin Kimmerer, *Braiding Sweetgrass: Indigenous Wisdom, Scientific KKnowledge and the Teachings of Plants* (Milkweed 2013) and Warren Cariou, 'Sweetgrass stories: Listening for Animate Land' (2018) 5 Cambridge J Postcolonial Literary Inq 338.

18 Natural England, *Nature Nearby: Accessible Natural Greenspace Guidance* (Natural England 2010).

19 Andy Beer, *Every Day Nature* (National Trust 2020).

20 Matthew P White et al. 'Spending At Least 120 Minutes a Week in Nature is Associated With Good Health and Wellbeing' (2019) 9 Scient Rep 1–11.

21 Hannah Cohen-Cline, et al, 'Access to Green Space, Physical Activity and Mental Health: A Twin Study' (2015) 69 J Epidemiol Commun Health 523.

22 Danielle F. Shanahan et al, 'Health Benefits From Nature Experiences Depend on Dose' (2016) 6 Scient Rep 28551.

23 Natural England, *Introduction to the Green Infrastructure Framework–Principles and Standards for England*, <https://designatedsites.naturalengland.org.uk/GreenInfrastructure/Home.aspx> accessed 17 July 2024.

24 NHS, *NHS Forests* <NHSforests.org> accessed 17 July 2024.

25 Natural England, 'A narrative review of reviews of nature exposure and human health and well-being in the UK, March 2024', *Natural England Evidence Review* NEER030, 60.

26 Natural England, *Nature Networks Evidence Handbook* (Natural England 2020).

27 National Planning Policy Guidance (NPPG), Natural Environment, para. 006 (2019).

28 Kunming-Montreal Global Biodiversity Framework, Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity, 15/4, CBD/COP/DEC/15/4 19 December 2022, Target 3.

Emphasising ecological connectivity, writer Richard Mabey has argued for 'neighbourliness … based on sharing a place, on the common experience of home and habitat and season.'[29] Similarly, social scientists Büscher and Fletcher promote 'convivial conservation', advocating a move away from a reserve model, encouraging us to live with nature. Rather than separating species, habitats and ecosystems into distinct legal and spatial boundaries, they suggest that coralling nature into reserves, however, well-intentioned, causes unsuitable governance boundaries.[30] By re-imagining our approach to conservation – facilitating everyday nature for nature recovery – we can gain both intrinsic and extrinsic ecological benefits.

Thirdly, recognising and protecting everyday nature would help the UK achieve compliance with its 2020 commitment, contributing to the Kunming-Montreal Global Biodiversity Framework, to protect 30% of its terrestrial, inland water, coastal and marine areas by 2030 (known as 30by30).[31] The UK is currently set to miss this target, with only 6.5% of land protected in England,[32] a figure that reduces still further if the quality of management is taken into account, for instance, reaching only 3.22% of Sites of Special Scientific Interest (SSSIs) in favourable condition.[33] Addressing the 30by30 objective in England, the previous Government stated that in 'line with the global target', the goal 'should primarily focus on our most important areas for biodiversity'.[34] While the international framework requires that 'especially areas of particular importance for biodiversity and ecosystem functions and services' should be effectively conserved and managed 'through ecologically representative, well-connected and equitably governed systems of protected areas'[35], this wording does not exclude the possibility of protecting nature as well. Meeting the 30by30 target need not focus exclusively on sites of 'particular importance for biodiversity and ecosystem functions and services'. Strategies could also include greater protection for Local Wildlife Sites and everyday nature, even if not these are not 'the most important areas for biodiversity': they could still contribute to 30by30.

3.2 Nature Conservation in England

In *Making Space for Nature* in 2010, Sir John Lawton distinguished between three tiers of nature conservation protection. The first tier is: 'Sites whose primary purpose is nature conservation, and which have a high level of protection either due to their statutory status or to their ownership'. This includes the best-known protections: Ramsar Sites, Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), most of which are also designated as domestic Sites of Special Scientific Interest (SSSIs), as well as National and Local Nature Reserves (almost all of which are also designated as SSSIs). The third tier, 'Areas designated for landscape, culture and/ or recreation and with wildlife conservation included in their statutory purpose', includes statutory landscape designations, even if these do not necessarily impose binding nature conservation protections. These also include National Parks and Areas of Outstanding Natural Beauty (AONBs), with Lawton finding in 2010 that 12% of the area of AONBs and 24% of the area of National Parks were designated as SSSIs.[36]

While these Tier 1 and 3 sites are familiar to environmental lawyers, it is Lawton's Tier 2, 'Sites designated for their high biodiversity value but which do not receive full statutory protection', which covers most everyday nature. These are non-statutory Local Wildlife Sites, which

29 Richard Mabey, *Turning the Boat for Home* (Penguin 2021).
30 Bram Büscher and Robert Fletcher, *Convivial Conservation* (Verso 2020).
31 See DEFRA, *Delivering 30by30 on land in England* (DEFRA 2023).
32 House of Lords Environment and Climate Change Committee, An extraordinary challenge: Restoring 30 per cent of our land and sea by 203: 2nd Report of Session 2022–23, HL Paper 234, 2023.
33 ibid.
34 DEFRA, *Delivering 30by30* (n 31) 4.
35 Kunming-Montreal Global Biodiversity Framework (n 28) Target 3.
36 John Lawton, *Making Space for Nature* (2010) 26 <https://www.gov.uk/government/news/making-space-for-nature-a-review-of-englands-wildlife-sites-published-today> accessed 17 July 2024.

go by a number of names, including Sites of Interest for Nature Conservation (SINCs), Sites of Nature Conservation Interest (SNCIs), 'local sites' or Local Wildlife Sites (the term used in this paper). They are designated to reflect the quality of their species and habitats as well as their location and public accessibility, in effect, providing everyday nature.

In the absence of a reliable national list,[37] Local Wildlife Sites are difficult to tally, though they appear to be declining. Estimates vary from the Department of the Environment, Farming and Rural Affairs (DEFRA)'s 2024 suggestion that there are 'more than 40,000' sites,[38] to the 42,000 identified by the Lawton Report in 2010, or the 43,992 identified by the Wildlife Trusts in 2018. At a minimum, these designations appear to protect at least 694,000 hectares or 5.2% of England,[39] close to where people live. The extent of their coverage and location ensures that Local Wildlife Sites provide everyday nature in ways that other better protected sites do not. Even National Nature Reserves (NNRs) and Local Nature Reserves (LNRs)[40] where 'recreational purpose' is also a criterion,[41] cover only 1.1-1.5% of land in England[42], with the more extensive NNRs often located far from cities and inaccessible by public transport.

Yet despite their leading contribution to everyday nature, Local Wildlife Sites are vulnerable to development, as Section 5.2 explains, lacking statutory protection, governed primarily by local planning policy. While local plan policies conventionally prohibit or restrict development on Local Wildlife Sites, protections conventionally rest on assessments of 'planning balance', an evaluation influenced by three hierarchies: scalar, mitigation and biodiversity gain, explored in Sections 5.2 and 5.3. The third hierarchy implements biodiversity gain under the Environment Act 2022, which despite requiring an increase in biodiversity after most developments, allows the gain to be provided offsite if there is insufficient space to increase biodiversity onsite.[43] Not only are 'nature' and 'biodiversity' different concepts, as Section 5.3 explains, but this also means that local people can lose access to everyday nature with the benefits this has for health and wellbeing, even if biodiversity is improved elsewhere.

These risks to Local Wildlife Sites matter, since there is growing recognition that humans need everyday nature, including in the 2023 UK's *Environmental Improvement Plan*, which contains a target that 'everyone should live within 15 minutes' walk of a green or blue space'.[44] Strikingly, however, the Plan frames the significance of access to nature in terms of 'beauty' (unlike the health effects attributed to clean air).[45] Moreover, there are no indications of how a Government would reach its 15-minute target or which legal and policy provisions it might

37 DETR Committee on Environment, Transport and Regional Affairs, 20th Report (2000) para 68.

38 The Wildlife Trusts, *The status of England's Local Wildlife Sites*, 2018 <https://www.wildlifetrusts.org/sites/default/files/2019-02/LWS%20Infographics%202018%20FINAL.pdf> accessed 17 July 2024, Lawton (n 36) 30. DEFRA, *Official Statistics: Nature conservation: Local Sites in positive conservation management in England*, 2008–09 to 2022–23 <https://www.gov.uk/government/statistics/local-sites-in-positive-conservation-management--2/nature-conservation-local-sites-in-positive-conservation-management-in-england-2008-09-to-2021-22> accessed 17 July 2024.

39 Lawton (n 36) 30.

40 Nature reserves manage land both solely for a conservation purpose and also for a recreational purpose (as long as this does not compromise conservation management), National Parks and Access to the Countryside Act 1949, s. 15(1) as amended by the Natural Environment and Rural Communities Act 2006.

41 Access to the Countryside Act 1949, s15 (as amended).

42 The figures for NNRs vary. Current Government figures identify 219 NNRs in England covering 109,000 hectares (0.8% of England's land surface). Most NNRs are managed by English Nature (in 2019 the figure was two thirds (141)), the majority of which are in coastal areas, with less than 1% in urban areas, Natural England, 2019, *Accounting for National Nature Reserves: A Natural Capital Account of the National Nature Reserves managed by Natural England*. Lawton (n 36) found that 95% of NNRs by area are also designated as SSSIs. The figures for LNRs also vary. Box identifies 1,666 LNRs covering 86,365.3 hectares or over 0.5% of England, while Lawton found 1437 LNRs covering 37,768 hectares covering 0.28% of England. Taking NNRs and LNRs together this combines to between 1% and 1.5% of land coverage in England. Only 51% of NNRs are assessed to be in 'favourable' condition, Natural Capital Committee, *Final Response to the 25 Year Environment Plan Progress Report* (2020) 65.

43 See generally, John Condon, 'Biodiversity Offsetting and the English Planning System: A Regulatory Analysis' (2020) 32 JEL 529.

44 HM Government, *Environmental Improvement Plan 2023 First revision of the 25 Year Environment Plan* (2023).

45 ibid 13.

introduce to achieve this aim.[46] This lack of implementation comes despite the Plan's recognition that 38% of people currently have no such access to blue or green space, a figure rising to 90% of people in one in ten neighbourhoods who have no access to nature within 15 minutes' walk.[47] Everyday nature suggests that access is not simply a 'co-benefit' of biodiversity protection but worth achieving in its own right.

It is worth noting that green and blue spaces are not specifically protected, other than as an *ad hoc* collection of parks, town and village greens, commons or open spaces (which are conventionally green, rather than blue[48]). There is no equivalent body for access to open spaces, analogous for example, to Natural England or the National Parks Authority.[49] There is also no national policy strategy for access to open space. Instead, local authorities are tasked with provision, confirmed in 2006 where guidance stated that the 'Government believes that open space standards are best set locally',[50] instructing local authorities to undertake needs and opportunity assessments to elicit information to underpin 'locally derived standards' for the provision of open space.[51] While national planning policy continues to emphasise the importance of access to open space and underlines the responsibilities of local authorities to protect such spaces,[52] it provides national recognition of only a narrowly defined designation of 'Local Green Space', with local planning authorities responsible for any other designations.[53] And as the Brislington Meadows case study shows, even if a green space is protected in local planning policy, authorities can undertake an assessment identifying these spaces as 'surplus' and available as sites for development, even if they are designated as a Local Wildlife Site.

3.3 Everyday Nature and Just Transition

Everyday nature draws together strands that are often kept separate, including access, social justice and nature conservation, threads which are rarely drawn together in legal analysis. Even the environmental justice movement has primarily – and understandably – focussed on the effects of inequitable pollution rather than differential access to nature.[54] Similarly, just transition analyses have begun with concepts of energy justice and climate justice, only more recently considering how the framework might apply in nature conservation.[55]

The *Just Transition* research project this study builds on, investigated these connections, defining a just transition as one where there are winners and losers, where 'winners' benefit from the transition to a green economy and where there is a need to consider how to promote equity in times of change.[56] In both the Bristol and South Africa research, where deindustrialisation was less of a concern and the focus was on urban development, participants linked the 'winners' to people accessing new homes, some of which may be affordable, while existing local residents, species and habitats were 'losers' in ecological, health and wellbeing terms. For such

46 Helena Horton, 'Tories Shelve Pledge for Everyone in England to Live 15 Minutes From a Green Space', *The Guardian* (9 December 2023).

47 Wildlife and Countryside Link, *Mapping Access to nature in England*, 2023, 4.

48 *Newhaven Port and Properties Ltd v East Sussex County Council* [2015] UKSC 7.

49 Even in national parks, where 'relevant' authorities are required to '[promote] opportunities for the understanding and enjoyment of the special qualities of those areas by the public', these obligations are subject to the 'Sandford Principle', which provides that conservation interests should take priority where there are conflicts between conservation and public enjoyment, see 1949 National Parks and Access to the Countryside Act 1949, ss5 and 11A respectively (as amended).

50 Planning Policy Guidance 17, *Planning for Open Space, Sport and Recreation*, 6 (withdrawn in 2014).

51 ibid 6.

52 NPPF 2023 para. 102.

53 ibid, paras. 105–107.

54 See, for example, Robert D. Bullard, 'Race and environmental justice in the United States' (1993) 18 Yale J Int Law 319, Paul Mohai et al, 'Environmental JJustice' (2009) 34 Ann Rev Environ Resources 405.

55 For examples where these connections are being made, see ILO, UNEP and IUCN, *Decent work in Nature-based Solutions*, 2022 and Jonathan Pickering et al, 'Rethinking and Upholding Justice and Equity in Transformative Biodiversity Governance' in Ingrid Visseren-Hamakers and Marcel T.J. Kok (eds), *Transforming Biodiversity Governance* (CUP 2022).

56 Mabon et al (n 13).

a transition to be just, how should the benefits be allocated between 'winners' (new residents) and 'losers' (local people who have lost access to the Local Wildlife Site)? This debate raises further questions of how and when housing is 'affordable' – at Brislington Meadows the planning application submitted that 78 homes (30%) would fall within this category – as well as how more economically deprived communities can engage with planning processes alongside more affluent objectors, who may be 'squeaky wheels'.[57] These issues are clearly key but are beyond the scope of this article.

A more fundamental, conceptual, concern, is that justifying the destruction of everyday nature by balancing this against additional housebuilding, facilitates a nature/human binary, a frequent, though underacknowledged, tension in modern environmental governance.[58] Such a distinction is not ubiquitous or inevitable. As Zoe Todd and Juanita Sundberg remind us, the tension comes from a European ontology that does not reflect indigenous conceptions.[59] A distinction between nature and humans also fails to resonate with an Arcadian vision of nature or holistic formulations of ecology,[60] both prominent in the writings of ecologists and nature writers, including Gilbert White and Richard Mabey.[61]

Nevertheless, the binary is widespread in modern nature governance, with two implications. The first is the distinction between nature (or biodiversity) and human wellbeing.[62] This separation is evident in the designation criteria for the best protected species and habitats outlined in Section 5.1, which focus on scientific criteria without regard for human access or wellbeing, implemented through a reserve model where nature is conserved within a legal and spatial boundary. The binary is also evident in current government policy. For instance, the Office of Environmental Protection (OEP)'s 2024 ten goals to improve the natural environment in England, identify Goal 1 as 'Thriving Plants and Wildlife' and Goal 10 as 'Enhancing beauty, heritage and engagement with the natural environment'.[63] Similarly, DEFRA, in its histor2023 Local Nature Recovery Strategy statutory guidance, a key new approach aiming - in part - to contribute to the 30by30 commitment, suggests that access is a 'non-environmental co-benefit'[64]that can be delivered alongside 'helping biodiversity.'[65] In these policies, as in most nature conservation law, humans and nature fall into different categories.

Everyday nature challenges this approach by encouraging human and nature benefits to be considered collectively, addressing the separation of humans and nature in a country regularly recognised as one of the most nature-depleted countries on earth.[66] Ultimately, we may wish, as Büscher and Fletcher propose, to abandon the reserve model in environmental law, in favour of 'convivial conservation', reflecting better understanding of ecological connectivity. Yet, in the short to medium term, reserves, particularly Local Wildlife Sites, are required to protect sites

57 On housing affordability see Bob Colenutt, *The Property Lobby: The Hidden Reality Behind the Housing Crisis* (Policy Press 2020) and Maria Lee, 'Slippery Scales in Planning for Housing' in Maria Lee and Carolyn Abbot (eds), *Taking English Planning Law Scholarship Seriously* (UCL Press 2022) 182. On 'Squeaky Wheels' see Todd C. Hanson, *Now Is the Time!: Detroit Black Politics and Grassroots Activism* (Duke UP 2009).

58 Büscher and Fletcher (n 30).

59 Juanita Sundberg, 'Decolonising Posthumanist Geographies' (2014) 21 Cult Geogr 33, and Zoe Todd, 'Indigenizing the Anthropocene' (2015) Art in the Anthropocene: Encounters among Aesthetics, Politics, Environments and Epistemologies 241.

60 For instance, Stephan Harding, *Gaia theory and deep ecology* (Schumacher 2010).

61 See Worster (n 16), Gilbert White, *The natural history of Selbourne* (OUP 2013) and Richard Mabey, *The common ground: A place for nature in Britain's future* (Hutchinson 1980).

62 Particularly under the 1949 National Park Access to the Countryside Act, though note LNRs and NNRs which are an exception, see John Sheail, 'Nature Reserves, National Parks, and Post-War Reconstruction, in Britain' (1984) 11 Environ Conserv 29.

63 Office for Environmental Protection, *Progress in improving the natural environment in England 2022/23* (OEP 2024) 11.

64 DEFRA, *Local nature recovery strategy statutory guidance: What a local nature recovery strategy should contain* (DEFRA 2023) para. 70.

65 ibid 13.

66 State of Nature Partnership, *State of Nature* (2023) 3.

from neglect or development benefitting species including humans, alongside extending nature protection into gardens, streets, hedgerows, the 'unofficial countryside'[67] and beyond.

The second implication of the human/nature binary is that nature conservation governance does not conventionally take inequality into account. This matters since the health and well-being effects of a nature dose depend on people being to access species and habitats, in one study for around 120 minutes a week,[68] limiting these effects to people who can reach nature. As Public Health England have noted, there is significant inequality, with accessibility often lacking in areas of deprivation.[69] The *State of Nature* report notes that 'people in poorer socio-economic settings [have] less access to wildlife-rich natural spaces',[70] while in their green infrastructure plan, Nature England conclude that one third of people in England are estimated to lack access to good quality green or blue space within 15 minutes of their home[71] with Friends of the Earth calculating that ethnic minority people are more than half as likely to live within England's most green-space deprived neighbourhoods than white people.[72] And although the 10 most nature deprived local authorities are in London where urban nature spaces are often smaller and in poorer condition, rural communities also face challenges in accessing nature, particularly people who lack access to private transport.[73] As one expert research participant noted:

> Most people see nature from their kitchen or their bedroom window
>
> *Just Transitions*, General Interview 1

The type of nature we see is closely linked to where we live and our personal mobility: it is not equally distributed.

Access to everyday nature could be facilitated, particularly at the local planning stage, by combining indices of deprivation data with nature conservation decisions.[74] Social context is not currently a relevant factor,[75] a point emphasised by one research participant in the *Just Transitions* project, who lived close to a site developed on a council estate in the north of Bristol. Asked to identify the social challenges in the city in the context of biodiversity, they responded:[76]

> The main one, tremendous inequality, I would say that's the main one. And a quite brutal lack of interest. From the people that could make a difference, and I mean sometimes people say very promising things like our Mayor, you know we were all hoping for a lot of change.
>
> *Just Transitions*, Bristol, Interview 6

As a campaigner trying to save a local wildlife site allocated for housing near their home observed:

67 Richard Mabey, *Unofficial Countryside* (Little Toller Books 2010).
68 White et al, '120 minutes a week' (n 20).
69 Public Health England, *Improving access to greenspace a new review for 2020* (2020).
70 State of Nature (n 66) 7. This triannual report benchmarks wildlife protection in the UK.
71 Natural England, *Green Infrastructure Home*, <https://designatedsites.naturalengland.org.uk/GreenInfrastructure/Home.aspx> accessed 17 July 2024.
72 Friends of the Earth, 'England's Green Space Gap' <https://policy.friendsoftheearth.uk/sites/default/files/documents/2020-10/Green_space_gap_full_report_1.pdf> accessed 17 July 2024.
73 ibid 5.
74 For a discussion of the contribution of working-class activists to environmental protection, including open spaces and access to Kinder Scout as well as nature conservation, see Karen Bell, *Working-Class Environmentalism: An Agenda for a Just and Fair Transition to Sustainability* (Springer 2019).
75 While evaluations of 'planning balance' are key, as Section 5.2 explains, this spatial assessment does not conventionally consider social data, eg, ward profiles outlining average health or 'car availability', eg, see the ward profile for Brislington East at Bristol City Council, Ward Profile Data, <https://www.bristol.gov.uk/council/statistics-census-information/ward-profile-data> accessed 17 July 2024, where the Meadows are located.
76 Mabon et al (n 13).

> …you know it's on their doorstep and the amount of wildlife that we have on that site, birds of prey, otters were found recently. It's quite unique to have that in here what is one of the most deprived areas in the country so I would say the challenges that people face is just being able to access this around here.
>
> *Just Transitions*, Bristol, Interview 5

Despite these concerns, the planning process provides no clear mechanism to include social context – this was not a factor the Appeal Inspector considered at Brislington Meadows.

Understanding the human/nature binary and its implications both for human health and wellbeing as well as inequality, enables us to appreciate the significance of everyday nature and the relevance of social context. Reflecting a decade after his 2010 report, Sir John Lawton noted that Local Wildlife Sites continue to be lost, despite the 'compelling evidence' of the health benefits to people, particularly children, of 'regular access to nature'. He called for a 'levelling up' of access to nature, noting that pandemic lockdowns led people to seek out local greenspaces to connect to nature, highlighting inequity of access, noting that 'too many people [have] no natural spaces close to where they live'.[77] This is true in urban, suburban and rural parts of England.

4. BRISLINGTON MEADOWS CASE STUDY

Brislington Meadows were enclosed in the 1780s, with hedgerows dating back at least to the 1840 Tithe Map, with evidence of medieval use.[78] Providing rare openness within a city, the Meadows are a space for nature and are protected as a Local Wildlife Site: a Site of Nature Conservation Interest (SNCI).[79] Developing the Meadows will destroy 74% of the hedgerows and 25% of the tree and woodland habitat, including approximately 162 trees creating an area of woodland important for nature conservation[80]of which four are 'notable' hawthorns.[81] While the development will not cover the entire Local Wildlife Site, increased human residential and vehicle activity are likely to disturb much of what remains, reducing habitats for an estimated 80 grassland species, 19 butterfly species, 26 bird species, slow worms, and several mammal species including moles, hedgehogs, and badgers.[82]

Developing the Meadows will result in a loss of local habitats and species as well as a site of everyday nature. Located in the east of Bristol, Brislington Meadows is primarily within East Brislington where 19.3% of children live in relative low-income families (broadly average for Bristol), with 56.5% of residents less likely to do enough regular exercise each week (lower than the city-wide average of 63.7%), while 37.2% of people have an illness or health condition that limits day-to-day activities (higher than the city-wide average of 29.6%).[83] Of course, there is also a need for affordable housing in the city, which participants in the Just Transition research acknowledged. Yet as one respondent asked:

77 John Lawton, *Letter to The Right Honourable Boris Johnson MP - Making Space for Nature – 10 years on* (16 September 2020) <https://nbn.org.uk/wp-content/uploads/2020/09/MakingSpaceforNature_10years_final.pdf> accessed 17 July 2024.

78 Appeal Decision (n 1).

79 This was confirmed by Bristol City Council in July 2022 (n 2).

80 Appeal Decision (n 1) paras. 53 and 65.

81 The Inspector concluded that the hawthorns were not 'veteran' trees, preferring the methodology of the developer rather than the Council. He acknowledged that had he found the notable hawthorn trees to be veteran, then under the then NPPF, para. 180(c), they would have had to be preserved, with implications for the design of the development proposal, Appeal Decision (n 1) para. 56. See also para. 141 on hedgerows.

82 SNCI scorecard (n 2).

83 Bristol City Council, Brislington East: Ward Profile Report, November 2023, <https://www.bristol.gov.uk/files/documents/1964-brislington-east-ward-profile-report/file> accessed 21st June 2024.

> … if there's the need to develop better housing, then in an urban area, how do you do that without using the green space that is needed and vital for our health and well-being?
>
> *Just Transitions*, Bristol, Interview 4

Another respondent developed this point in relation to a nearby Local Wildlife Site allocated for housing development:[84]

> That quality of green space that that the site offers; they don't have that anywhere else around here, so they would have to drive to Ashton Court [a park approximately two miles away] to get something similar.
>
> *Just Transitions*, Bristol, Interview 5

The housing development allocation came after a strategic decision to release open spaces for development when Bristol City Council integrated Natural England's Access to Natural Green Space Standards (known as ANGSt criteria) into its 2008 Parks and Green Space Strategy,[85] setting out targets for areas which were considered to have insufficient provision as well as identifying 'surplus' sites for disposal. Following the process in planning guidance at the time,[86] the Council identified 48 surplus sites for sale, using both quantitative and 'value criteria', which included both 'community value' and 'custodial value', the latter focussing on the intrinsic value of the site, including nature conservation.[87] Of the 48 sites identified for disposal, seven were Local Wildlife Sites,[88] including Brislington Meadows.

The ward report for Brislington East, where most of the Meadows are located, indicates that a fifth of all residents have no access to a car or a van,[89] so that once most of the Meadows are gone, while some of the Local Wildlife Site will remain alongside nearby Victory Park (a 20-hectare site in a built-up urban area) and residents can access Eastwood Farm to the north or Nightingale Valley to the west, local residents will be further away from a larger green and nature-rich space. For people with limited mobility, in a city with unreliable and expensive bus services,[90] the possibility of experiencing nature on an everyday basis becomes more difficult. As the Council for the Protection of Rural England (CPRE) noted in their objection to Bristol Council's 2010 land disposal proposals, applying the same quantity and quality greenspace standards across the city, 'neglects the fact that residents in deprived areas are far less likely to be able to make regular visits to open countryside than those in less deprived neighbourhoods'.[91] Yet all seven of the Local Wildlife Sites allocated for housing are (or were, now that some have been developed[92]) located in more economically deprived areas of the city.

While many residents were concerned about the loss of local green spaces, few were aware of the planning processes or their implications, as one *Just Transition* research participant explained in relation to another Local Wildlife Site allocated for housing:

> We had to really engage people and help them understand what was happening, because they just didn't even know, and some of these people don't even have the internet. We're still

84 This was not Brislington Meadows.
85 Bristol City Council, *Bristol Parks and Green Spaces Strategy* (2008).
86 *Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation* (PPG17) (2002).
87 Bristol City Council, *Parks and Green Spaces* Strategy, 2008, Appendix 5.
88 For a list see, Bristol Tree Forum, 'Saving Sites of Nature Conservation Interest from Development, <https://bristoltree-forum.org/2023/06/13/saving-sites-of-nature-conservation-interest-from-development/> accessed 21st June 2024.
89 ibid.
90 Antonia Layard (with Room 13 at Hareclive E-Act Academy) 'Vehicles for Justice: Buses and Advancement' (2022) J Law Soc 49, 406.
91 Bristol City Council, *Cabinet Report*, 16th December 2010, CAB 39.12/10.
92 Bristol Tree Forum (n 88).

> dealing with that down here. There's just a real difference in the lives of people down here, compared to other parts of city.
>
> And I just think the way the council just keep saying these sites [are] coming forward. But no one even knows what the local plan is. Most people don't even know it exists. No one even knows the processes of planning. I mean we had to learn on the job, and it's so difficult to get your head round. The amount of time we have to spend so that we can help our group understand stuff and know how to respond and that's coming out of our time. I'm not being paid for any of this, you know.
>
> *Just Transitions*, Bristol, Interview 5

For reasons that remain disputed but are most likely due to unfamiliarity with Local Wildlife Site governance, the SNCI label was removed from local plan proposals.[93] The designation disappeared, even though, as the Council later confirmed in response to a freedom of information request, the site had not been de-designated[94], and the nine sites' SNCI designations had been included in a 2012 Sustainability Appraisal.[95] Approving Bristol's local plan in 2014, the Local Plan Inspector consequently did not apply the local nature conservation policy, which prohibited developing SNCIs, to these nine allocated sites.[96] In relation to Brislington Meadows, the Examination Inspector did not even mention that they were designated as an SNCI, concluding that the Meadows had 'no overriding ecological quality'.[97] These analyses lacked clarity and consistency, leading campaigners to call the Brislington Meadows designation 'Schrödinger's SNCI'[98] – once removed from the paperwork during the local plan process (for reasons that remain unclear) the designation was never consistently restored, despite confirmation that the sites had not been de-designated. The lack of clarity illustrated a widespread lack of understanding of the effects of the Local Wildlife Site designation.

Once the local plan had been approved in 2014, allocating the site for development, Bristol City Council's Cabinet (established by the Mayor), recommended approving the sale of the city's part of the site.[99] When the development allocations for green spaces were publicised, nearby residents gradually understood the effect of the local plan and proposed sales. Appreciating the impact of the allocation on their access to existing everyday nature, campaigners felt unsupported in their efforts to resist the development, as one *Just Transitions* research participant explained:

93 The Sustainability Appraisal accompanied the local plan documents, so the Local Plan Inspector should have seen the designation.

94 Request for information in relation to planning application 20/05675/SCR | Land At Broom Hill (Brislington Meadows) Broomhill Road Bristol, 2 June 2022, <https://www.whatdotheyknow.com/request/request_for_information_in_relat_9#incoming-2054631> accessed 17 July 2024. Despite this confirmation, the Appeal Inspector assumed that 'if' Brislington Meadows were still designated as an SNCI, this would need to be considered in the context that the site had been allocated for development and that allocation, rather than the SNCI designation and DM19, had primacy, Appeal Decision (n 1).

95 Bristol City Council, *Site Allocations and Development Management Policies: Publication Version* (March 2013). This document was sent to the Local Plan Inspector.

96 DM19 stated that 'development proposals which would harm the nature conservation value of an SNCI will not be permitted', Bristol City Council, *Site Allocations and Development Management Policies Local* Plan, 2014.

97 The Appeals Inspector suggested that the LSP had been involved in the local plan allocation process (Appeal Decision (n 1) para. 106). No evidence of this involvement has been provided.

98 A term coined by Mark Ashdown at the Bristol Tree Forum.

99 Bristol City Council, *Cabinet: Parks and Green Space Strategy surplus land incentive scheme* (31 May 2012). While the Brislington Neighbourhood Partnership resisted the loss, following the introduction of a mayoral system in 2012, facilitating action by a central administration, the decision to agree to sell the land at Brislington Meadows passed to a cross-party working group, which recommended that all the sites should be referred to their Neighbourhood Committees for decision. Although Brislington Neighbourhood Committee resolved not to declare this land surplus to their green space requirements, in 2016, under a new mayoral governance system, this was declared a 'key decision … [being] likely to impact on two or more wards' (Brislington East and Brislington West) and so was held to be a decision e that 'must be taken by Cabinet', Bristol City Council, *Cabinet: Development of Land at Broomhill Road, Brislington* (1 November 2016).

> To be honest, no one really wanted to help us. It's quite strange. Bar the Wildlife Trust, who came out eventually. They had commented on [the site] during the [area] regeneration framework, and the 2014 Local Plan, they said back then, what an important site it was, and the Bristol Tree Forum are actually supporting us a lot more and have been fantastic, but other than that it's actually strange. We don't really understand the silence on it. And all we can deduce is that my group is sort of questioning a lot of things that are a bit awkward for a lot of organisations.
>
> *Just Transitions*, Bristol, Interview 5

In 2022, Homes England[100] who had by then purchased the site to facilitate development, applied for planning permission to build 260 houses on the site. By this time, following electoral commitments made that year, including in light of the city's 2020 Declaration of an Ecological Emergency, Bristol City Council had changed its view on allocating the Meadows for housing development and was in the process of removing the allocation from the next iteration of the local plan.[101] The Council also resisted the planning application on site specific grounds.[102] However, as the Council had failed to determine the application within the time limit, Homes England sought an appeal by way of non-determination.[103] After a six-week hearing in early 2023, the Appeal Inspector concluded in April 2023 that outline planning permission should be granted to develop a large part of the Meadows, a Local Wildlife Site, for housing.[104]

The Appeal Inspector's grant of permission was based primarily on the fact that 93% of the development site lies within the 2014 housing allocation,[105] reasoning that as this was a site-specific designation, the local wildlife designation and local plan policy prohibiting development no longer applied.[106] The Inspector (in an argument both the developer and the Council agreed with, though this was unsupported by legal authority and, indeed, there is legal authority in the opposite direction[107]) concluded that the development allocation had 'primacy'[108] as it was a site-specific policy, while the local nature conservation policy was a city-wide policy[109], even though this is applicable to individual sites.

Despite not considering the effect of the Local Wildlife Site designation and the local plan policy prohibiting its development, the Appeal Inspector did consider the natural assets of the site, assessing arguments on veteran trees, hedgerows, landscape and biodiversity net gain in his evaluation of planning balance as part of an analysis of planning balance. He weighed the ecological impacts as both positive, placing significant positive weight on the voluntary provision of 10% biodiversity gain,[110]

100 Homes England is the trading name for the Homes and Communities Agency (HCA), an executive non-departmental public body, sponsored by the Department for Levelling Up, Housing and Communities, which facilitates housing development, by bringing land parcels together, collaborating with public and private partners and applying for planning permission before selling the development site.

101 The Appeal Inspector placed 'very limited weight' on the emerging local plan in reaching his decision, Appeal Decision (n 1) paras. 9 and 13.

102 Bristol City Council, Land at Broom Hill/Brislington Meadows, Broomhill Road, Brislington, Bristol: Proof of Evidence of Gary Collins BA(Hons) DipTP MRTPI, hereafter Bristol City Council Evidence (2023).

103 Town and Country Planning Act 1990, s78. The permission granted was 'outline', enabling a developer to return to confirm 'reserved matters' within three years, Town and Country Planning Act 1968, s66.

104 Appeal Decision (n 1).

105 The Inspector did not note that some of the remainder of the development site fell within an Important Open Space (IOS) designation, see Bristol Tree Forum, 'Farewell to the Meadows' (n 3).

106 Policy DM19 (n 96).

107 Where there is a conflict between development plan policies, section 38(5) PCPA 2004 requires that policies should be balanced, see also National Planning Policy Guidance (NPPG), para 012. See also *TV Harrison CIC v Leeds City Council* [2022] EWHC 1675 where Eyre J. rejected the suggestion that a development allocation took priority over a playing fields policy. He held that the local authority should 'grapple' with the consequences of the thematic policy [51].

108 Appeal Decision (n 1), paras. 55 and 107.

109 DM19 (n 96). This is a rather semantic approach to site specific. While each development allocation had its own allocation number and was in that sense site-specific, the nature conservation policy also applied to designated sites.

110 Appeal Decision (n 1), para. 130. The application preceded the coming into force of the biodiversity gain provisions under the Environment Act 2021 and so exceeded the then policy requirement for 'a' net gain, as then set out at NPPF, para. 174. The Inspector also placed moderate positive weight on the provision of open space and recreation, despite the extensive development, in part due to links to nearby parks, Appeal Decision (n 1) para. 133.

and negative, in relation to the destruction of hedgerows, the time taken to secure the gain as well as the loss of biodiversity.[111] However, the Appeal Inspector placed 'limited negative weight on these harms because they must be seen in the context of the site allocation.'[112] Essentially, he concluded that since all of nature conservation factors must have been considered when the site was allocated for housing, the development allocation 'explicitly acknowledged' the biodiversity loss so that the Local Wildlife Site designation, and the local plan policy that protected SNCIs, had to cede primacy to the housing allocation.[113]

Consequently, Homes England's planning application for the Meadows was approved, with local people and activists unable to raise the funds needed for a judicial review. In 2024, Homes England advertised the Meadows for sale with planning permission for development.[114] The political context has now changed (in 2021, Bristol citizens voted to abolish the position of city mayor, who left in May 2024, returning the Council to more collaborative forms of working), and the housing allocation has been removed in the new formulation of the 2025 local plan. At the time of writing (in July 2024), Homes England have still not sold the Brislington Meadows site. To keep the planning permission alive, either Homes England or a new purchaser would need to apply for reserved matters consent by April 2026 (three years from the grant of the outline permission).[115] It remains to be seen whether market forces can save Brislington Meadows, even if the planning system could not.

5. OBSTACLES FOR EVERYDAY NATURE

There are three reasons the English legal framework does not effectively protect Local Wildlife Sites, such as the SNCI at Brislington Meadows. The first is that nature conservation law prioritises 'special' or 'priority' species and habitats rather than common species and habitats or access to the site; the second is that Local Wildlife Sites are non-statutory, lacking explicit legal protection; while the third reason is that the legal framework's focus on biodiversity does not address more holistic nature conservation or human well-being. Although some of the facts in Brislington Meadows may be unusual, these three reasons explain how any Local Wildlife Site could be developed, particularly as the need for affordable housing continues to grow.

5.1 Designation criteria for nature conservation

Designations for nature conservation – including Sites of Special Scientific Interest (SSSIs), Special Protected Areas for Birds (SPAs) and Special Areas of Conservation (SACs) – focus on scientific rationales without considering human access or wellbeing. For SSSIs, the designation rests on a site being 'of special interest by reason of any of its flora, fauna, or geological or physiographical features'[116] and while public access may be negotiated as part of a management agreement between local authorities and landowners,[117] this is voluntary rather than legislatively required. Similarly, designation for SPAs is 'for bird features only',[118] while SACs are identified as being of 'national importance', defined as including the 'maintenance, or restoration, at

111 Appeal Decision (n 1) para. 142.
112 ibid. Again, the Inspector's reasoning was echoed his conclusions on the loss of open space and recreation, at para. 143.
113 Appeal Decision (n 1) para. 62. There is no evidence that the Local Sites Partnership (LSP) was involved in the development allocation in the 2014 local plan.
114 Homes England, *Land Hub* <https://www.gov.uk/guidance/using-the-homes-england-land-hub> accessed 17 July 2024.
115 Town and Country Planning Act 1990, s92.
116 Wildlife and Countryside Act 1981, s28(1), as amended by the Countryside and Rights of Way Act 2000. See JNCC Guidelines for selection of biological SSSIs (2013) and *R. (on the application of Fisher) v English Nature* [2003] EWHC 1599 (Admin), *R. (on application of Aggregate Industries UK Ltd) v English Nature*, *R. (on the application of Boggis and Easton Bavants Conservation) v Natural England* and Part II of Circular 06/2005.
117 Wildlife and Countryside Act 1981, s39 (as amended).
118 DEFRA, Outcome Indicator Framework for the 25 Year Environment Plan: 2022 update, 2022, 53.

favourable conservation status in their natural range of the natural habitat types … or species' listed in the Annexes to the Habitats Directive.[119]

These designations for 'special' or 'priority' sites rest on international nomenclature, implementing a shared classification system, emerging from nineteenth century scientific developments as well as early twentieth century initiatives to create nature conservation reserves.[120] This scientific approach underpins lists of priority habitats and species in England published to help public bodies meet their 'biodiversity duty'[121] based on criteria of 'international importance, rapid decline and high risk' for habitats and species, defined as biodiversity.[122] The lists are binary: species and habitats on the list are protected as biodiversity, while unlisted species and habitats (as well as human wellbeing) are unprotected by these lists and the statutory protections they underpin.[123] Conversely, development safeguards for Local Wildlife Sites rest primarily on assessments of 'planning balance', rather than legislative protections premised on scientific grounds.[124]

Of course, even if listed, protections for 'special' and 'priority sites' are not absolute, instead, designation requires conservation concerns to be taken into an account before decisions are made. Yet these Tier 1 conservation sites (in Lawton's terminology), benefit from explicit protection in national planning policy.[125] Plans are required to promote 'conservation, restoration and enhancement' for 'priority' species and habitats.[126] Development is inhibited on or near an SSSI 'likely to have an adverse effect on it (either individually or in combination with other developments), [which] should not normally be permitted … unless the benefits 'clearly outweigh … [the] likely impact'.[127] All Tier 1 sites are designated 'habitat sites' to which the 'presumption in favour of sustainable development' and the related 'tilted' balance' in favour of housing development do not apply.[128] Planning policy grants 'habitat' nature conservation sites preferential treatment, so that although developments harming Tier 1 sites can, exceptionally, be permitted, their planning protections are far stronger than those for Local Wildlife Sites.

When decision-makers designated a site as 'special,' prioritising its protection in environmental law or planning policy, this has implications for undesignated, or differently designated, sites. As historian Tom Williamson, writes of the 1949 Access to the Countryside and National Parks Act in the context of landscape designations:[129]

119 The Conservation of Habitats and Species Regulations 2017, r. 13.

120 John Sheail describes the early process of 'scheduling' in An Environmental History of Twentieth Century Britain (Palgrave, 2002) 221. See also John Sheail, *Nature in Trust* (Blackie & Son 1976) and Miriam Rothschild and Peter Marren, *Rothschild's reserves: time and fragile nature* (Brill 2023).

121 Under ss 40 and 41 of the Natural Environment and Rural Communities (NERC) Act 2006, see <https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england> accessed 17 July 2024.

122 The list was first produced in [1997] to comply with the Convention on Biological Diversity 1992, then updated in the UK Biodiversity Action Plan (UK BAP), updated in 2007. The courts have consistently emphasised that the criteria are scientific, see for instance, *R v Secretary of State for the Environment, Transport and the Regions, Ex p. First Corporate Shipping Ltd* (Case C371/98 [2000] ECR I-9253).

123 Report on the Species and Habitat Review (UK BAP, 2007) 3. The lists have changed over time both dropping and adding species and habitats as well as reflecting increasing devolved governance, ibid.

124 See section 5.2.

125 This planning protection is in addition to protection for SSSIs under the Wildlife and Countryside Act 1981 (as amended) and the Environmental Damage (Prevention and Remediation) Regulations 2015.

126 Para. 185(b) NPPF December 2023.

127 Para. 186(b) NPPF December 2023.

128 The 'tilted balance' is shorthand for para 11(d) of the NPPF, which states that if the most relevant Local Plan policies for determining a planning application are out of date (or the Local Plan is silent on a matter), then the planning application should be approved unless e.g., it is in a habitats site, or the harms caused by the application significantly outweigh its benefits. In December 2023, the NPPF was changed so that local planning authorities who have a current local plan, including 'at least a five-year supply of specific, deliverable sites at the time that its examination concluded', can avoid the tilted balance but the presumption remains, demonstrating a strong central policy demand for housing. At Brislington Meadows, the Inspector avoided considering the effect of the presumption and the titled balance on the basis that the Meadows had been allocated for housing under the 2014 Local Plan. For an overview of how the tilted balance works and the significance of a five-year housing supply see Lee, 'Slippery scales in planning for housing' (n 57) 182. See NPPF 2023 para 11, footnote 7, and para 188. 'Habitats Sites' are defined in NPPF, Annex 2.

129 Tom Williamson, *An Environmental History of Wildlife in England 1650–1950* (Bloomsbury 2013) 185.

> Even the new modes of spatial planning, and the enthusiasm for nature reserves, SSSIs and National Parks, had their downsides. The designation of certain areas as 'special' carried with it the implication that undesignated ones were not, while tighter controls on the spread of suburban sprawl increased the density of housing and factories within areas zoned for development, posing an increasing threat to the gardens and derelict industrial land, suburban farms and smallholdings, where a higher and higher proportion of the nation's wildlife was now to be found.

Historian Terry O'Connor echoes this point, noting that prioritisation places great weight on the criteria for designation: 'Specify that this or that place is 'special' and you imply that the rest is not; designate a patch of landscape as of Outstanding Natural Beauty and you beg the questions 'In whose eyes?' and 'What is natural anyway?'.'[130]

Research participants in the *Just Transitions* project also noted that prioritising 'special' habitats or species involves choices in times and places with limited space and resources, particularly where space is limited. As one conservation expert remarked:

> You know we're probably going to have to make some decisions in London, where from a nature conservation perspective, we're going to just say you know what, the skylark's going to be gone soon, there's nothing we can do. But on the other hand, we are still providing good quality green space of a slightly lower quality, but it still brings those benefits, improving people's well-being and making it reasonably resilient.
>
> *Just Transitions*, General Interview 1

Similarly, author Richard Mabey has argued that we should be careful in prioritising some species and habitats over others, both because we do not yet fully understand the workings of ecological connectivity, and because:[131]

> it is the common species that keep the living world ticking over and provide most of our everyday experiences of wildlife … maintaining the abundance of these is as important a conservation priority as maintaining the existence of rarities.

This is an issue not just for people's health and well-being but also about the purpose and concept of nature conservation itself. The debate asks what nature or biodiversity we protect and why. As the expert in the *Just Transition* project continued, there could be a real gain here:

> [This is a] much more interesting kind of nature conservation, and perhaps in some of the other parts of the wider countryside, I'm not saying it's more important, but I will say that if we are wanting to conserve polar bears, tigers in Sumatra, and the lions in South Africa, then that's all very well, but nature starts at our doorstep. We need to conserve what we've got that's close to home, first and foremost, and how can we possibly get others to advocate changes to conserve their flora and fauna if we're not doing it ourselves. So, you know, the house sparrow almost became extinct in London, because it's seen to be too common to be worthy of attention. And the same could be happening to many other species, so it's about making the familiar exciting and awe inspiring and wondrous as much as the rare things that most people in our cities will never see.

130 Terry O'Connor, Review of An Environmental History of Wildlife in England 1650–1950 by Tom Williamson, Reviews in History (2014) <https://reviews.history.ac.uk/review/1665> accessed 17 July 2024.
131 Mabey (n 61) 33.

By prioritising the protection of some species and habitats over others on the basis of their scientific qualities, we are effectively downgrading other forms of nature, particularly if, as the next section explains, the protection for 'non-priority' habitats and species is primarily relegated to an analysis of 'planning balance'.

5.2 Protecting Local Nature

The second difficulty for everyday nature is that, unlike Tier 1 sites, Local Wildlife Sites are precariously administered and often poorly understood. In 2010, the Lawton review, stated that despite their importance, Local Wildlife Sites are often 'neglected and frequently damaged or lost',[132] while in 2019 the Wildlife Trusts found that of the 15% sites they monitored, 12% had been damaged or lost.[133] One difficulty is that there are significant issues with data gaps: in 2022-23 only 46% of local authorities submitted information on the local wildlife performance indicator in 2022-23,[134] yet even of these reported Local Wildlife Sites, DEFRA found that only 43% were in positive conservation management.[135] These losses are increasingly recognised. When, in 2023, the Government suggested that Local Wildlife Sites are 'granted protection from inappropriate development or change of use'[136] this was challenged by the House of Lords Environment and Climate Change Committee.[137] Similarly, the IUCN UK National Committee concluded in 2014 that Local Wildlife Sites are insufficiently protected to contribute to the 30by30 target.[138]

The governance regime for Local Wildlife Sites is primarily voluntary, lacking a statutory basis, governed at national level by DEFRA's 2006 *Local Sites* guidance, currently hosted on the archive gov.uk site.[139] This guidance provides that regional, non-statutory Local Sites Partnerships (LSPs), generally consisting of representatives from bodies concerned with conservation[140], are responsible for designating (and de-designating) Local Wildlife Sites on ecological, biological and geological grounds, while also taking into account public enjoyment and education.[141] Once designated, local authorities should include Local Wildlife Sites in local plans,[142] while LSPs should monitor and review these areas,[143] which should be managed by the local authority.

This framework is both unfamiliar and lacks legal enforceability. Unlike SSSIs or Tier 1 'habitat sites', Local Wildlife Sites have no explicit protection in national planning policy and are subject to the presumption of sustainable development and often the 'tilted balance' in favour of

132 Lawton (n 36) 26.

133 The Wildlife Trusts, *Local Wildlife* Sites, <https://www.wildlifetrusts.org/local-wildlife-sites> accessed 17 July 2024.

134 The local authority performance indicator is NI 197 *Improved local biodiversity*, see <https://www.gov.uk/government/statistics/local-sites-in-positive-conservation-management--2/nature-conservation-local-sites-in-positive-conservation-management-in-england-2008-09-to-2021-22> accessed 17 July 2024.

135 DEFRA, *Nature conservation: local sites in positive conservation management in England,* 2008-09 to 2022-23, <https://www.gov.uk/government/statistics/local-sites-in-positive-conservation-management--2/nature-conservation-local-sites-in-positive-conservation-management-in-england-2008-09-to-2021-22#missing-data> accessed 17 July 2024.

136 DEFRA, *Local nature recovery strategy statutory guidance: What a local nature recovery strategy should contain* (DEFRA 2023).

137 House of Lords Environment and Climate Change Committee, *An extraordinary challenge: Restoring 30 per cent of our land and sea by 2030* (2023) paras. 102 and 129.

138 Roger Crofts et al, *Putting Nature on the Map: A Report and Recommendations on the Use of the IUCN System of Protected Area Categorisation in the UK* (IUCN National Committee UK 2014).

139 DEFRA, *Local Sites*, see n 4. The archive.gov.uk site is used to host old versions of documents and policies, though the DEFRA *Local Sites* guidance has never been replaced or abolished and so continues to be valid.

140 In Bristol, the LSP for the West of England, is formed by ecologists from Bristol, Bath, North Somerset and South Gloucestershire, Avon Wildlife Trust, BRERC, Natural England, Forestry Commission, Environment Agency, and the local RIGS group.

141 DEFRA, *Local Sites* (n 6) paras. 44–48.

142 ibid, para. 24.

143 ibid para. 20. Once the partnership has agreed and documented the criteria, candidate sites should be assessed against them. The objective of site selection is to select all sites that meet the criteria (para. 31).

housebuilding.[144] When applications are made to build on Local Wildlife Sites, local planning authorities should have regard to the development plan, unless 'material considerations'[145] indicate otherwise, making decisions on the basis of 'planning balance', a key concept in planning decision-making, considering both ecological and non-ecological factors (such as the need for new housing).

In most local planning authority areas, once Local Wildlife Sites are designated and included in local plans, they are protected by local plan policies that prohibit or restrict their development.[146] However, such protection may not be absolute if the local planning authority decides that the balance favours development. In *Littlewood v Bassetlaw DC*, the local authority had indicated that 'environmental benefits' at a Local Wildlife Site were a 'material consideration', so that Sir Michael Harrison held that as long as planning decision-makers are not 'under any misapprehension as to the nature or status of the site', planning permission could be granted despite possible ecological harm.[147] Rejecting a challenge to the Council's decision that it would be impractical to change the layout of the development even though it would involve 'an inevitable impact' (as well as loss of some areas of ancient woodland), Harrison J. held that:[148]

> weighing the adverse impacts on the [Local Wildlife Site] and the areas of ancient woodland against the social, economic and environmental benefits of the proposal, they considered that the balance came down in favour of permitting the proposed development. That is a classic example of the exercise of planning judgment with which the Court will not interfere unless it can be shown to be *Wednesbury* unreasonable.

Following this line of reasoning, a Local Wildlife Site can be developed in accordance with planning balance as long as the local planning authority are acting intentionally, are not under any 'misapprehension' that the site is designated and the decision is not unlawful (eg, *Wednesbury* unreasonable).[149] There is no explicit legal or national planning protection for Local Wildlife Sites other than as part of an assessment of 'planning balance' or 'material considerations' taking into account local policies.[150]

In addition to this emphasis on planning balance, Local Wildlife Sites are vulnerable to three hierarchies used in planning policy.[151] These are (1) a scalar hierarchy; (2) a mitigation hierarchy; and (3) most recently, a biodiversity gain hierarchy. These three hierarchies can combine to enable offsite biodiversity gain to replace everyday nature, even while complying with planning law and policy.

The first hierarchy, the scalar hierarchy, was explicitly created when the National Planning Policy Framework (NPPF) was introduced in 2012.[152] This had established that Local Wildlife

144 SSSIs are explicitly protected under NPPF 2023, para. 186(b), while footnote 7 disapplies the presumption in favour of sustainable development (para. 11, NPPF) and the consequent 'tilted balance' in favour of housing (see n 128).

145 Planning law requires decision-makers to determine in accordance with the local development plan unless 'material considerations' indicate otherwise, Town and Country Planning Act 1990, section 70(2) and Planning and Compulsory Purchase Act 1994, s38(6) as well as National Planning Policy Guidance, para. 8. A material consideration is understood as a matter that should be taken into account in deciding a planning application or in an appeal against a planning decision.

146 Bristol Local Plan, DM19 (n 96). Some SNCIs also overlap with open space policies, notably GI1 Local Green Space & GI2 Reserved Open Green Space.

147 [2008] EWHC 1812 (Admin), paras. 5, 42, and 50.

148 ibid, para. 50.

149 ibid, para. 42. Unlike, for instance, an SSSI (explicitly protected by WCA 1981 (as amended) and para. 186(b) NPPF), there is no specific constraint in legislation or the NPPF for Local Wildlife Sites.

150 For material considerations see n 145.

151 This is in addition to the measures local authorities should be taken according to the (currently archived) DEFRA 2006 guidance (n 6), which appears, at least in Bristol, not to have been accurately understood.

152 This built on earlier planning guidance, notably, 1984, *Planning Policy Guidance 9* (PPG 9), 2005 *Planning Policy Statement 9* (PPS 9) and the accompanying 2006/05 Circular, which drew a distinction between nature conservation on designated and non-designated sites, with local sites included in the 'non-designated' category, Circular 2006/05, Parts II and III. Neither PPS 9 nor the Circular took up the recommendation by the 2000 DETR committee that designation as a Local Wildlife Site should constitute a 'material consideration' in planning determination, DETR 2000. The 2006 DEFRA Guidance was issued to cover the 'non-designated' category outlined in Circular 2006/05.

Sites were the responsibility of local authorities who were to set 'criteria-based policies against which proposals for any development on or affecting' the sites would be judged[153] (as Local Wildlife Sites have no direct, national institutional oversight). The next sentence stated that:[154]

> Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.

The implication here was that Local Wildlife Sites had less 'status', constituting the lowest rung of the hierarchy.[155]

The explanation for this lower level of protection for Local Wildlife Sites, emerging through local planning processes post-1947[156] seems to lie in the development of the scientific basis for nature conservation designation.[157] While there may be good, scientific, reasons to prefer the conservation of some species and habitats over others, prioritising representative and rare species over holistic nature conservation and access to nature has had the implicit consequence that local sites can be more easily allocated for development. Yet as Maria Lee has explained: 'There is no such thing as a 'natural' scale at which housing (or anything else) *should* be governed, and no single scale can be assumed to be preferable'.[158] Analogously, there is no natural scale at which nature conservation should be governed yet by confining everyday nature to a local scale, assuming this to be at the bottom of a conservation hierarchy with stronger protections for international and national 'special' and 'priority' species and habitats 'above', everyday nature is identified as less significant and, consequently, more vulnerable to development.

Yet, the DEFRA 2006 guidance is clear that Local Wildlife Sites are not necessarily of a lower ecological quality than statutory Tier 1 sites. For Local Wildlife Sites to be designated, the features of nature conservation value must be 'substantive', the guidance noting that:[159]

> Although the system of statutory designations contains well over a million hectares, it is widely recognised as leaving out many sites that are, nevertheless, of significant value for the conservation of wildlife and geological features. This is because the purpose of such statutory designations is to provide a representative rather than a comprehensive suite of sites, the individual sites exemplifying the nation's most important wildlife and geological features, rather than including every site with such interest.

This is a key point, often overlooked in planning decisions, especially in the scalar hierarchy. By focussing on holistic, rather than representative, nature conservation, as well as amenity and access, Local Wildlife Sites are providing a different, but not necessarily lower, form of nature conservation.

Further difficulties arise when the mitigation hierarchy is applied. Here national planning policy states that local planning authorities making determinations should apply 'principles' whereby, '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'.[160] This means

153 Echoing the approach taken in PPS 9.
154 NPPF 2012, para. 113, referring back to Circular 2005/6.
155 NPPF 2023, paras. 181 and 185.
156 Town and Country Planning Act 1947.
157 For histories of the National Parks and Access to the Countryside Act 1949, which still underpins much of modern nature conservation framework, see Sheail and Rothschild and Marren (n 120).
158 Lee (n 57).
159 DEFRA (n 6) 4.
160 NPPF December 2023, para. 186. This wording contrasts with 'adverse effects' used in the biodiversity gain hierarchy, The Town and Country Planning (Development Management Procedure) (England) Order 2015, Part 7A inserted by The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (S.I. 2024/50).

that if development can be compensated for (including through biodiversity gain), then a Local Wildlife Site can be vulnerable to development as it has no independent protection, other than that afforded to it through a local plan, the DEFRA 2006 document or evaluations of 'planning balance'.

Consequently, the combination of the scalar hierarchy (where Local Wildlife Sites' protection is to be determined in accordance with their 'status') and the mitigation hierarchy (where harm can be compensated for) renders these sites vulnerable unless they are protected by a local authority, either in their planning capacity (e.g., through local plan policies) or as landowner declining to develop the site.[161] If, as in Bristol, a local authority decides to develop a Local Wildlife Site by allocating it for housing and sells the land, the designation confers little explicit protection. As the next section explains, the biodiversity gain hierarchy exacerbates these difficulties still further.

5.3 Everyday Nature, Nature and Biodiversity

A third obstacle to everyday nature is that biodiversity has become the predominant form of nature conservation, limiting the scope to consider benefits for humans other than as a separate 'co-benefit'. Historically, campaigners and politicians called for 'nature preservation', before turning to 'conservation', recognising the need for positive site management.[162] More recently, however, the concept of 'biodiversity' has evolved, traced to the late 1970s and early 1980s, focussing on biotic or biological diversity, culminating in the 1992 Convention on Biological Diversity, which defines biodiversity as 'the variability among living organisms from all sources …'.[163] Most definitions of biodiversity exclude humans, though this is not inevitable. Vandana Shiva's definition, for instance, is broader: 'Biodiversity is life in all of its self-organised complexity, collective agency, and evolutionary unfolding'.[164] Yet this is an unusual use of the term, which predominantly focuses on variability, including the distribution and relative abundance of species and habitats, including representativeness and rarity. This conventional formulation, drawing on the pioneering work by conservation biologists,[165] is now widely implemented into national, regional and local rules and practices, providing, in effect, a form of insurance for the Earth.

Critically, as Section 5.1. has explained above, the legal definition of biodiversity includes some species and habitats and excludes others. Domestically, the definition rests on 'priority lists' made up 'of the living organisms and types of habitat, which in the Secretary of State's opinion, are of principal importance for the purpose of conserving or enhancing biodiversity.'[166] If a species or habitat is on a priority list, it constitutes biodiversity; if it is not, it does not legally qualify. The criteria for inclusion rest on the distribution and relative abundance of species and habitats as well as rarity and representatives, rather than any benefits such species or habitats hold for human wellbeing.[167]

Biodiversity thus differs from 'nature', understood as the physical world and everything in it: embracing plants, animals, mountains, oceans and stars but also often excluding people. As a

161 Although, unlike LNRs, where local authorities must have an ownership interest (Natural England, *Local Nature Reserves in England: A guide to their selection and declaration* (2010)), Local Wildlife Sites are often privately owned.

162 John Sheail, 'From Preservation to Conservation: Wildlife and the Environment, 1900–1950' (1987) 32 Biol J Linnean Soc 171. See also Georgina M. Mace, 'Whose Conservation?' (2014) 345 Sci 1558.

163 The definition continues 'Including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems' (Art. 2).

164 Vandana Shiva, 'The Wisdom of Biodiversity' (2022) <https://atmos.earth/vandana-shiva-wisdom-of-biodiversity/> accessed 17 July 2024.

165 See definition at Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IBPES), <https://www.ipbes.net/glossary-tag/biodiversity> accessed 21 June 2024. David Takacs, *The Idea of Biodiversity: Philosophies of Paradise* (Johns Hopkins UP 1996); Sahotra Sarkar, 'Origin of the Term Biodiversity' (2012) 71 BioScience 893.

166 Section 41, Natural Environment and Rural Communities Act 2006 (as amended).

167 See guidance on Habitats and species of principal importance in England, <https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england> accessed 17 July 2024.

concept, nature captures the physical world without regard to variability of species or habitats so that, for many Westerners, nature is pristine and also external to humans. Nature also differs from everyday nature in that it is conventionally unconcerned with human access. Clearly, however, nature and everyday nature overlap as concepts, notably that nature does not depend on definitions of diversity. It just is.

Recognising that biodiversity, nature and everyday nature are not synonymous matters in environmental law where biodiversity is increasingly prioritised. The Environment Act 2021's objective to conserve and enhance biodiversity, committing the Government to implement a legally binding target to halt declines by 2030[168] as well as a target for species abundance by 2030, with a requirement to increase species populations by 10% by 2042[169] are both underpinned by the priority lists. Similarly, the Act's call for over 500,000 hectares of 'wildlife-rich habitats' to be restored or created by 2042,[170] defines 'wildlife-rich' primarily in accordance with the priority lists.[171]

These legal formulations mean that new conservation efforts are premised on 'biodiversity', rather than including all the species and habitats that also make up 'nature'. From a regulatory perspective, Local Wildlife Sites may not contain 'biodiversity', even though they are abundant with nature. Their protection lacks the priority accorded to Tier 1 sites, and Local Wildlife Sites can be developed as a matter of 'planning balance', even though they do so much to strengthen nature conservation as well as providing for human health or wellbeing. While preferring some species and habitats makes good ecological sense in attempting to protect domestic and global variability, these 'priority' formulations do not help strengthen holistic nature conservation. As Richard Mabey notes, we might:[172]

> draw up a list of 'community indicator species', an inventory of those plants and animals and natural features that people, wherever they live, find the greatest pleasure in sharing their lives with, and miss the most when they disappear.

This, for many, is what Local Wildlife Sites set out to achieve.

These differences between everyday nature, nature and biodiversity become even clearer when considering the introduction of the biodiversity gain hierarchy.[173] This builds onto the mitigation hierarchy, so that 'harm' to biodiversity can be compensated (other than for 'irreplaceable habitats'[174]), either offsite or through biodiversity credits if onsite compensation is not possible. The hierarchy requires decision-makers to consider:[175]

> first, in relation to onsite habitats which have a medium, high and very high distinctiveness (a score of four or more according to the statutory biodiversity metric), the avoidance of adverse effects from the development and, if they cannot be avoided, the mitigation of those effects; and then, in relation to all onsite habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising in order, where possible, the

168 Section 102, Environment Act 2021 amends s.40 of the 2006 Act, changing the wording 'to conserve and enhance'.
169 The Environmental Targets (Biodiversity) (England) Regulations 2023, 2023/91, Part 4.
170 ibid Part 3.
171 This is primarily – not exclusively premised on the priority list (n 161). Schedule 1 of the Environmental Targets (Biodiversity) (England) Regulations 2023 includes some useful additions, including acid grassland, boundary and linear features as well as native woodland.
172 Mabey (n 61) 248.
173 The 'net' is increasingly dropped in legislation and policy, see Town and Country Planning Act 1990A, Part 7A, inserted by the Environment Act 2021.
174 The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024.
175 DEFRA, *Biodiversity Net Gain*, para. 008 <https://www.gov.uk/guidance/biodiversity-net-gain> accessed 17 July 2024 set out in Articles 37A and 37D of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

enhancement of existing onsite habitats, creation of new onsite habitats, allocation of registered offsite gains and finally the purchase of biodiversity credits.

This biodiversity gain hierarchy provides that if it is not feasible to increase biodiversity onsite, net gain can be provided off-site or acquired through purchased biodiversity credits. All types of biodiversity gain should be secured for 30 years,[176] although this may be particularly difficult for poorly resourced, and often non-specialist, local authority officers to enforce onsite,[177] especially if developers have sold the site to householders and withdrawn to focus on the next development.

Critically, while biodiversity can (arguably) be substituted,[178] location cannot. As Womble and Doyle note, some environmental protections are 'prisoners of geography'.[179] Consequently, while internalising the cost of nature protection has economic advantages,[180] and raises the profile of biodiversity loss in development projects, offsite biodiversity gain has significant implications for everyday nature, both for humans and for connectivity of habitats and species.[181] To take an extreme hypothetical, the logic of biodiversity gain, applied without broader judgments, might allow the whole of the south of England to be developed with all the biodiversity gained in the north.[182] Further, even where biodiversity is improved, sites may not be publicly accessible. There is no requirement to facilitate public access, though if this is envisaged, provision should be included in either a s106 agreement or a conservation covenant.

These decisions also often shift in time. Biodiversity gain decisions are often for a future developer to make, including at Brislington Meadows where Homes England assembled the site and applied for planning permission, aiming to sell the land on. If an application returns for approval of 'reserved matters' (as it presumably will at Brislington Meadows[183]), members of the public will be able to comment. However, if there is a full planning application that includes a biodiversity gain condition, some councils, including Bristol City Council, prevent members of the public from commenting on the delivery of that provision when the condition's fulfilment is submitted to the local planning authority for approval.[184] This limits public scrutiny.

Consequently, while Natural England state that biodiversity gain 'is additional to existing habitat and species protections'[185], in the absence of explicit protection, biodiversity gain poses a real risk enabling Local Wildlife Sites to be developed as a consequence of the scalar, mitigation and biodiversity gain hierarchies. This conclusion echoes findings identified by Zu Ermgassen et al, who found that 'planning applications achieving "net gain" in a set of early-adopter councils were associated with a 34% reduction in the area of greenspace despite claiming a 20% improvement in biodiversity overall' as well as 'major governance gaps'.[186] Everyday nature

176 Town and Country Planning Act 1990, Schedule 7A, para. 9(4).

177 Emily Rampling et al, 'Achieving Biodiversity Net Gain by Addressing Governance Gaps Underpinning Ecological Compensation Policies' (2024) Conservat Biol 1.

178 See eg Colin Reid, 'Between Priceless and Worthless: Challenges in Using Market Mechanisms for Conserving Biodiversity' (2013) 2 TEL 217.

179 Philip Womble and Martin Doyle, 'The Geography of Trading Ecosystem Services: A Case Study of Wetland and Stream Compensatory Mitigation Markets' (2012) 36 Harv Envtl L Rev 229, 274.

180 This assumes that biodiversity itself is a 'tradable market commodity'', JW Bull et al, 'Biodiversity Offsets in Theory and Practice' (2013) 47 Oryx 369, 370–371.

181 While early versions of the Biodiversity Metric included an 'Ecological Connectivity multiplier', DEFRA removed it from the Metric in 2021 responding to concerns that in the absence of an agreed methodology this led to inconsistency. As well as disregarding access, the current biodiversity gain process also does not explicitly consider how local ecological networks and green infrastructure will be protected.

182 We thank Reviewer 1 for this point.

183 At the time of writing, the site is still for sale, see n 114.

184 Email confirming Bristol City Council practice on file with the lead author.

185 Brochure, undated, no page numbers <https://naturalengland.blog.gov.uk/wp-content/uploads/sites/183/2022/04/BNG-Brochure_Final_Compressed-002.pdf> accessed 17 July 2024.

186 Sophus zu Ermgassen et al, 'Exploring the Ecological Outcomes of Mandatory Biodiversity Net Gain Using Evidence From Early-Adopter Jurisdictions in England' (2021) Conservation Letters e12820.

is particularly vulnerable in urban contexts where medium-sized developments take place on 'surplus' green spaces.

6. PROPOSALS FOR CHANGE

To address the lack of protection for everyday nature, particularly at a time of proposed increasing housebuilding, this article calls for four changes. The first appeals for greater conceptual recognition, acknowledging that everyday nature, nature and biodiversity are not synonyms. Policymakers should also recognise that to the extent that governance focuses on biodiversity, this prioritises the relative health of priority species and habitats and diversity of species rather than unlisted species or habitats or everyday nature. This can inhibit ecological connectivity as well as health and wellbeing benefits.

The second proposal is to confirm current policy on Local Wildlife Sites. The 2006 DEFRA guidance on Local Wildlife Sites urgently needs to be taken off the archive.gov.uk site and located clearly on English Nature, DEFRA and the Department for Levelling Up, Housing and Communities' websites. This would publicise the governance framework for Local Wildlife Sites, explaining that de-designation decisions are for Local Sites Partnerships on ecological grounds, rather than for councils on policy grounds (including housing delivery).

The third proposal is to better protect Local Wildlife Sites. The first step is to statutorily underpin them, for example, by including them in the 2017 Habitat Regulations. We should also introduce protection in national planning policy equivalent to that for SSSIs, so that development that would harm a Local Wildlife Site would not 'normally be permitted' if it is 'likely to have an adverse effect on a Local Wildlife Site (either individually or in combination with other developments)'.[187] Next, we should include Local Wildlife Sites (and nature reserves) in the definition of 'habitat sites' so that they are not subject to the presumption of sustainable development or the 'tilted balance' in favour of housebuilding.[188]

A fourth proposal is that we take English Nature's 15-minute target seriously, requiring local authorities to identify localities where the objective is not achievable. This could take two parts. The first requirement would be a data-gathering exercise. Local authorities should be required to report on the quality of the green and/or blue space available, including whether it is accessible within 15 minutes.[189] The second obligation, in order to help achieve the 15-minute target, would be to redraft national planning policy, echoing existing protection for SSSIs, so that development on green spaces delivering the 15-minute target, should also not 'normally be permitted' if development is 'likely to have an adverse effect' on these green or blue spaces 'either individually or in combination with other developments'.[190] National planning policy protection would promote consistency, although local planning authorities should be encouraged to consider both the number of people accessing a green space (for example, in a city centre surrounded by high rise residential buildings) as well as the implications for people living in low income communities who may lack access to a motor vehicle to reach everyday nature elsewhere.

These four proposals would acknowledge the importance of nature to people's health and wellbeing as well as providing ecological connections for species and habitats. There may be

187 Drawing on para. 186(b) NPPF 2023.

188 Appendix 2 NPPF 2023.

189 Some current analyses draw on DEFRA's greenspace GIS layer which identifies greenspaces even if these are not publicly accessible (for example, including school playing fields, allotments and/or golf courses). See, for example, West of England Nature Partnership, *Accessibility to open green space in the West of England* <https://www.wenp.org.uk/wp-content/uploads/2018/12/Accessibility-to-open-green-space-in-the-West-of-England.pdf> accessed 17 July 2024.

190 Again, this could echo the protection for SSSIs para 186(b) NPPF (December 2023).

objections that these restrictions would discourage development, particularly of housing, however, it would still leave open the possibility of developing a Local Wildlife Site. The statutory and policy changes would simply make this an explicit decision, acknowledging that the presumption is against this outcome.

7. CONCLUSION

England is in the grip of an ecological emergency, with a 13% decline in the average abundance of wildlife in the UK since the 1970s,[191] 97% of wildflower meadows lost between the 1930s and 1984,[192] a 15% decline in urban bird species between 2005 and 2017, with the Birds of Conservation Concern Red List increasing from 36 to 67 species between 1996 and 2015[193], with the abundance of 753 terrestrial and freshwater species having fallen by 19% across the UK since 1970.[194] This is a familiar litany of loss.

While solutions to these problems appear to be in short supply, this article has argued that everyday nature, understood as 'nature nearby', can provide a conceptual and practical basis for improving conservation governance for both nature and humans benefitting human health and wellbeing, ecological connectivity as well as helping the UK achieve its 30by30 target. The study has identified three key obstacles to protecting everyday nature: the prioritisation of 'special' and 'priority' nature conservation habitats; the lack of protection for Local Wildlife Sites where most everyday nature is found; as well as counter-intuitively, the rise of biodiversity as a prioritised governing concept. As at Brislington Meadows, Local Wildlife Sites can be developed on the basis of planning balance[195], as they lack statutory or explicit policy protection and are vulnerable to the three planning hierarchies (scalar, mitigation and biodiversity gain). Here, we call for four changes to acknowledge the significance of everyday nature: greater conceptual recognition; the confirmation of current policy on Local Wildlife Sites; better protection for Local Wildlife Sites; and implementation of planning measures to realise the 15-minute target.

In *Big Yellow Taxi*, Joni Mitchell included the line: 'They took all the trees, put 'em in a tree museum. And they charged the people a dollar and a half just to see 'em', written on encountering a denuded hotel in Hawaii. For residents near Brislington Meadows who have access to mobility, it is possible to immerse themselves in nature either at local nature sites elsewhere or even at the National Arboretum, a 40-minute drive away at a cost of £12, a genuine 'tree museum'. However, particularly for less mobile residents, if Brislington Meadows are developed, then even if biodiversity gain increases species and habitats, much, if not all, of this improvement is likely to be off-site, further away from where local people can access nature today.

Losing everyday nature and the opportunities to experience the health and wellbeing benefits this brings, matters for all species, including humans, as well as for habitats and ecosystems. Nature is not limited to nature conservation reserves, as one *Just Transition* research participant noted after the discovery of a deceased otter (assessed globally as 'near threatened' and 'largely depleted'[196]) in a relatively deprived part of Bristol:

191 State of Nature (n 66).
192 ibid 15.
193 Office of National Statistics, *Environmental Accounts*, <https://www.ons.gov.uk/economy/environmentalaccounts/bulletins/uknaturalcapital/urbanaccounts> accessed 17 July 2024.
194 State of Nature (n 66) 4.
195 While this approach was not the one the Inspector took, This balancing approach was advocated in *TV Harrison CIC v Leeds City Council* [2022] EWHC 1675 and *Littlewood v Bassetlaw DC* (n 141) and can be undertaken at either the allocation or decision-making stage.
196 State of Nature (n 66) 46.

> And when we found the otter last week, you know we almost broke the internet. It was just mad. I mean I know it was a deceased one, but people were just so pleased that we had them down here, and they were absolutely distraught it wasn't alive, but it was just like 'Oh, my goodness, the Hartcliffe Way has otters'. I mean, who would have thought that?
>
> *Just Transitions*, Bristol, Interview 5

Protecting everyday nature and Local Wildlife Sites, rather than creating tree or biodiversity 'museums',[197] benefits all species, understanding that humans are part of – and not separate from – their environment.

197 The 1947 Huxley Wildlife Conservation Special Committee report initially proposed nature conservation protections as akin to national museums (para. 37), see also Mabey (n 61) who distinguishes between a 'living museum' and a 'nature sanctuary'.