

Subject:

Value of Spaces and Constraints in relation to Greenspace use

Background

A co-ordinated picture of value and constraints that relate to greenspace use throughout the city is a key element of the strategy, as they too will guide decisions regarding the future resource.

Values and Constraints, within the parameters of this strategy, and by way of supporting *SPD 9 - Green Space*, have been mapped as individual layers, and include coverage of sites by:

- existing individual planning policies,
- legislative framework, and
- other factors

This paper does not consider the community value of green spaces. The value placed by the community on individual spaces will, nevertheless, be important in determining any change of land use. It was felt that this could only satisfactorily be assessed at local level as the strategy gets implemented.

Existing individual planning policies

Layers have been mapped including all sites covered by geographically applied policies contained in the *Deposit Local Plan, adopted 1997*. The key greenspace-related planning policy layers are associated with the *Natural Environment and Leisure* chapters and are:

- **Open Space/ Playing Fields and Recreation Grounds** (Policies NE1/ L1),
- **Principal Landscape Features** (Policy NE2), including prominent green hillsides, gorges, steep valleys, ridges, promontories and rhines,
- **Sites of Nature Conservation Interest** (Policy NE5), which breaks down into map layers for:
 - **Sites of Special Scientific Interest** (SSSI),
 - **Sites of Nature Conservation Interest** (SNCI),
- **Wildlife Network Sites** (Policy NE6),
- **Local Nature Reserves** (Policy NE7), legal provision for which falls under the *National Parks and Access to the Countryside Act, 1949*,
- **Historic Landscapes, including Historic Parks and Gardens** (Policy NE9),
- **Historic Landscape Restoration Sites** (Policy NE10),
- **Statutory Green Belt** (Policy NE13/4)
- **Greenways** (Policies L3/4). A greenway route section may pass through an open space, but this designation covers the corridor through an open space rather than the overall use area.

Under the *Built Environment* chapter, a layer has been prepared that covers:

- **Sites that fall within Conservation Areas** (Policies B13-18).
- **Archaeology**.
 - **Scheduled Ancient Monuments** (Policy B22).

- **Archaeology, generally** (Policy B22). Sites, structures, landscapes or buildings of archaeological interest and their settings are not the subject of mapped data. Where a change in use of a site becomes the subject of a planning application, assessment of its archaeological significance would need to be the subject of a desk-top study, and, where appropriate, field evaluation. It is only when this stage has been reached that it will be possible to gauge the nature and degree of any value and constraint.

Under the *Management of the Environment* chapter, a relevant layer relates to :

- **Areas subject to Flood Risk** (Policy ME9).

When assessing planning constraints that apply to individual greenspace sites, it will be necessary, in addition to geographically applied policy, to consider the significance of other non site specific policies which may be relevant.

Legislative framework

This map layer includes:

- **Local Act of Parliament**, the only example of which within Bristol, covers Clifton and Durdham Downs,
- **Common Land**, to which the *Countryside and Rights of Way Act, 2000* and *Road Traffic Act, 1988*, s.34 apply. The *Law of Property Act, 1925*, s194 prevents building works, engineering operations, etc taking place on common land, without approval of the Secretary of State.
- **Village Greens**. The *Inclosure Act, 1857*, s12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Under *The Commons Act, 1876*, s29, encroachment or inclosure of a green, and interference with, or occupation of the soil, is unlawful unless it is with the aim of improving the enjoyment of the green.

Other considerations which are not the subject of map layers include:

Restrictive Covenants. In addition to the above, there are also green spaces that are the subject of restrictive covenants within the Council title; these place a legal restriction on what the owner of land can do with it. However, the significance of these can only be established when searches are carried out in conjunction with site specific data collection linked to feasibilities. Typically, covenants apply where land has been dedicated philanthropically, by previous landowners, to the authority in the past, but with conditions in respect of the continuing purpose of use of the land. These are also likely to be the subject of control by a charitable trust. Under certain circumstances it may be possible to apply to the Lands Tribunal, as the appropriate authority, to have a restrictive covenant lifted.

Habitat Protection. The protection of species of animals, birds (including their eggs and nests) and their habitats, covered by the *Wildlife and Countryside Act, 1981*, will at least constrain activities on a greenspace, or their timing (e.g. to avoid bird nesting season) where this is applicable. In addition to this, badger protection is specifically the subject of the *Protection of Badgers Act, 1992*.

Other factors

Map layers covering other constraints include:

- **Sites with the Potential for Contamination.** Whilst not the subject of an adopted planning policy, this map layer embraces sites, acknowledged as having the potential for contamination, as a consequence of historic or recent use. Any alternative use feasibilities for individual sites, would need to be the subject of a desk-top study and preliminary site investigation, with advice from the Pollution Control Team, and possible further investigation by specialist consultants to assess suitability for the proposed use and any remediation required. The degree of constraint will be site specific, depending upon the nature, location and extent of the contamination.
- **Underground Mineral Extraction.** Much of the city, particularly parts of south and east Bristol, is associated with past mineral extraction. Where this has involved underground mining, this is likely to have resulted in constraints on the future use of land at surface level. As a result, where searches establish this connection, further investigation would be required to identify the degree to which change in use may be constrained.
- **Woodland.** All publicly accessible woodland sites within the city have been mapped, and include some areas that are listed on the *Inventory of Ancient Woodlands*, prepared by *English Nature*.
- **Allotments.** Allotments, in their existing form, fall outside the scope of this strategy in that they are not publicly accessible. However their consideration remains relevant in that in certain circumstances, disused allotment may become publicly accessible greenspace, where they fall in parts of the city where there is a shortfall of the latter. In the event of land becoming surplus to allotments use requirements, Secretary of State approval will be required before an alternative use or disposal may be pursued.
- **Let Land.** This includes grazing land and small holdings, which are the subject of letting agreements. Such land may typically be the subject of existing 25-year agricultural tenancy or third party agreements, and restrictive covenants within the Council title.

Other general considerations which are not the subject of map layers include:

- **Public Rights of Way (PROWs),** including those shown on the current Definitive Map, (held by the City Council's, *Transport Operations Service, in PT&SD*). Though the Definitive Map represents conclusive evidence of PROWs it does show, there may be others, not shown, that exist, or may be proven to exist. The *Countryside and Rights of Way Act, 2000* applies. It may also be possible, under the *Wildlife & Countryside Act, 1981*, to claim a 'new' path for addition to the Definitive Map, subject to being able to prove either twenty years' continuous use by the public, or some other dedication by the landowner.

As with greenways, these will function as a constraint in respect of PROW corridors where they pass through the open space.

- **Public Utilities' Services.** Trunk Services, and their associated wayleaves may either act as firm physical constraints, or where re-routable will represent cost/ viability constraints. They include:
 - Gas Pipelines.
 - Oil Pipelines (e.g. Lamplighter's Marsh).
 - Electricity Pylons (e.g. Bonnington Walk, Lockleaze) the presence of which at least constrain the proximity of residential development.
 - Main Sewers.

Where services relate to a more local level of supply, they may be regarded as opportunities rather than constraints in reducing the cost of providing new connections.

- **Trees.** Sites may contain trees, tree groups or woodlands that are the subject of protection under the *Town and Country Planning Act, 1990* as it deals with Tree Preservation Orders and the protection of trees in conservation areas (covered above).
- **Wildlife and Habitats.** The protection of species of animals, birds (including their eggs and nests) and their habitats, covered by the *Wildlife and Countryside Act, 1981*, in conjunction with the *Countryside and Rights of Way Act, 2000*. In addition to this, badger protection is specifically the subject of the *Protection of Badgers Act, 1992*. Other applicable legislation include *Conservation (Natural Habitats & c.) Regulation, 1994*, and *Habitats Regulations, 1994*.
- **Hedgerows**, where protected by the *Hedgerow Regulations, 1997*.
- **Funding conditions.** Where sites have been the subject of investment from external funding bodies, such as the *Heritage Lottery Fund*, or through programmes such as *SRB*, administered by government agencies, it is likely that conditions will involve constraints, that might result in financial penalty. This could well be the case where an alternative use of the site would result in infringement of the conditions under which the City Council and its partners accepted the grant.

Conclusions

- Where the use of any site comes under consideration for alternative uses, existing planning designations will be a strong factor in guiding decisions on what may or may not be compatible.
- The applicability of other general, or site specific constraints, such as those arising from legislation, national utilities' conditions, or funding bodies' conditions, would need to be the subject of individual survey/ search in relation to a specific site.
- Constraints will vary in respect of how significant they are in influencing decision-making.
- Adopted planning policy will hold firm until replaced by subsequent policy or where possibly to justify compelling strategic arguments for material consideration, perhaps reflecting community aspirations that can be substantiated.
- Legislation will, by its nature, result in firm constraint, unless legal opinion is able to challenge applicability under particular circumstances. In some circumstances, legislation may not constrain against a change in site use, but instead, constrain when and how subsequent physical operations are performed (e.g. avoiding disturbance of bird habitat during nesting).

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