



Town & Country Planning Act 1990

APPEAL UNDER SECTION 78(1)

By

Mr Anthony Hardy (Capital Community Developments LTD)

At

Land North of Gardenia Close and Garden Square

Rendlesham

Suffolk

Proof of Evidence

By

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Ecologist

Planning Inspectorate Ref: APP/X3540/W/19/3242636

ESC Ref: DC/19/1499/FUL

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Contents

- 1. Introduction**
- 2. Application**
- 3. European Designated Sites Reason for Refusal and Scope of Evidence**
- 4. Background to Habitats Regulations Assessment (HRA) in East Suffolk**
- 5. The application site and proximity to European designated sites**
- 6. Application Shadow HRA (sHRA) Document**
- 7. Consideration of Application**
- 8. Potential Mitigation**
- 9. Conclusion**

1. Introduction

- 1.1 My name is James Meyer and I am employed by East Suffolk Council as an Ecologist. I hold a BSc Honours degree in Ecology. I am a full member of the Chartered Institute of Ecology and Environmental Management. I have worked in ecology and planning for over 13 years and have been employed by East Suffolk Council since April 2019. Before being employed by East Suffolk Council, I was Senior Conservation Planner for Suffolk Wildlife Trust (November 2016 to April 2019), Conservation Planner for Suffolk Wildlife Trust (August 2010 to November 2016) and Assistant Planning Policy Officer for Forest Heath District Council (December 2006 to August 2010).
- 1.2 In that time, I have given evidence on ecological matters at two Nationally Significant Infrastructure Project examination hearings and was lead council officer at the 2010 biodiversity hearing session for Forest Heath District Council's Core Strategy DPD examination. This session centred on the potential impact of the Plan on European designated sites.
- 1.3 As part of my role at East Suffolk Council I undertake review of Habitats Regulations Assessment information submitted with planning applications and provide planning officers with expert advice in the preparation of Habitats Regulations Assessments, including Appropriate Assessment, as part of the decision-making process. I have also been involved with the preparation of the Suffolk Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS), both for the council and in my roles at Suffolk Wildlife Trust.
- 1.4 The evidence which I have prepared and provide for this appeal reference APP/X3540/W/19/3242636 is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2. Application

2.1 The proposal subject to this appeal is for full planning permission for a phased development of 75 dwellings, car parking, public open space, hard and soft landscaping and associated infrastructure and access on land North of Gardenia Close and Garden Square, Rendlesham, Suffolk. Further description of the site and proposal is contained within the Statements of Common Ground and Planning Proof of Evidence.

3. European Designated Sites Reason for Refusal and Scope of Evidence

3.1 Reason for refusal 6 sets out the reason for refusal in relation to impacts on European designated sites.

Reason for Refusal 6

This application is for more than 50 dwellings and is inside of the 13km Impact Risk Zone of Designated Sites. The current submitted Habitats Regulations Assessment of on site and off site mitigation measures is not adequate for the level of development that is being proposed.

The level of development proposed, without adequate on site space to address recreational pressures on European Sites, the proposal would lead to likely significant effects on European Sites and therefore does not pass an Appropriate Assessment. Therefore, the Local Planning Authority cannot conclude 'no likely significant effects' from the development proposal on the designated site(s).

The proposal is therefore contrary to the NPPF, and Policies SP14 and DM27(i) (Biodiversity and Geodiversity) of the East Suffolk District - Suffolk Coastal District Local Plan Core Strategy & Development Management Policies Development Plan Document (2013), which seek to protect designated sites in accordance with The Conservation of Habitats and Species Regulations (2017).

3.2 With regard to the provision of open space and walking route connections, the Officer's report **[CD3.1]** highlights the consideration that "...land that is proposed within the site the layout includes one area of greenspace in the north-eastern part of the site and another, smaller area, on the western side. However, it has not been demonstrated that residents of the development would have access from the development to a 2.7km circular walking route, either within the site or connected to existing rights of way. In the absence of demonstration that such a route is available there remains the potential that nearby designated sites will be used for regular recreational activities (such as dog walking) which may result in significant adverse effects on such sites". This makes it clear that it was not considered that a 2.7km circular walk needed to be delivered wholly on the application site, but that the onsite open space should form a component of such a route.

3.3 This proof sets out the council's consideration of the information provided as part of the planning application in relation to impacts on European designated sites and measures necessary to mitigate these impacts. As set out in the council's Statement of Case (paragraph 5.49) and the Habitats Statement of Common Ground it is understood that there is common ground that the 13km Impact Risk Zone/Zone of Influence exists and that a Suffolk Coast RAMS financial contribution would be secured by S106 agreement. As the proposal is in Zone B of the Suffolk Coast RAMS, £321.22 per

dwelling is required, this would be a total of £24,091.50 for the whole development to deliver strategic mitigation for in-combination impacts.

- 3.4 Disagreement remains over the requirement to address the impacts arising from the scheme “alone”, through mitigation in the form of on-site and/or local off-site measures. It is considered that measures to provide adequate mitigation could be achieved or demonstrated as part of the scheme, however to date these do not form part of the proposal. In particular, the provision or creation of walking routes from the site which would offer residents access to the countryside and connections to other Public Rights of Way which would create circular walking routes away from the Sandlings SPA. Timely delivery of attractive and accessible on-site green space could also be achieved as part of this, which would enhance the open space and walking routes available to residents away from European designated sites.
- 3.5 It is important to note that it is the appellant’s responsibility to demonstrate that the development will not adversely affect the integrity of designated sites. The Council has been clear that information to support this requirement has not been provided sufficiently (including the mitigation required). Irrespective of the planning judgement of this appeal, the Council (as the original competent authority) and the Inspector (as the appeal competent authority) had/have a legal duty to consider this and to undertake an Appropriate Assessment influenced by it prior to consenting this development. It is therefore essential that the Council sets out its professional position on this important matter in full through this proof of evidence.

4. Background to Habitats Regulations Assessment (HRA) in East Suffolk

- 4.1 In accordance with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations (2017) (as amended), Habitat Regulations Assessments (HRAs) have been completed for the current development plan including the Core Strategy (2013) and Site Allocations and Area Specific Policies document (2017). In their examination and in finding the plans sound, it was necessary for the Council, as competent authority for the purpose of plan making, to undertake plan level Appropriate Assessments. The conclusion of these is that a number of planning policies, including those relating to housing allocation, would have a Likely Significant Effects (LSE) on European designated sites and in the absence of suitable mitigation measures would result in an Adverse Effect on the Integrity (AEOI) of these sites.
- 4.2 The 2011 Appropriate Assessment of the Core Strategy and Development Management Policies document [CD9.5] concluded that, at a district scale, housing developments within 1km walking distance and 8km driving distance of a European designated site are likely to result in increased visitor recreation at these sites (paragraph 5.6.5). The mitigation identified included strategic visitor management on European designated sites, with the provision of wardening and visitor management measures a part of this (paragraph 7.2.16). At that time the visitor management was purely a concept and Natural England expected the Council to go on to develop a mitigation strategy.
- 4.3 The Core Strategy did not allocate sites and it only included one specific site for strategic scale housing growth of 2000 homes (Land to the South and East of Adastral Park). That site was approximately 1.45km (as the crow flies) from a European Site (approximately 2km walking route). At that time, it was anticipated that it may provide or contribute to a country park which may also have wider mitigation benefits. That was not required at project level (as the author of the appellant's sHRA is aware, having undertaken the project level HRA review for that site for the Council).
- 4.4 The Core Strategy did seek a following plan to allocate housing sites. The 2011 Appropriate Assessment of the Core Strategy stated that development sites allocated within 1km of a European designated site would be expected to provide green space to Suitable Accessible Natural Green Space (SANG) standard (subject to the scale of the site) is expected, however this does not mean that sites allocated beyond 1km do not need to provide onsite green space. The scale, location and design of such green space would be established through a project specific HRA.
- 4.5 In 2015 the Site Allocations and Area Specific Policies document and the Felixstowe Peninsula Area Actions was subject to an Appropriate Assessment [CD9.15] which considered sites to be allocated across the district. No sites within 1 km of a European designated site were allocated. Land South and East of Adastral Park remained the only site expected to deliver SANG (which it did in its 2018 approval (25.12ha of SANG)). Since sites were allocated the Council has been undertaking HRA screening and

Appropriate Assessments of sites both allocated and not allocated at a project level and there has been wide acceptance by applicants on the need to demonstrate on/off site mitigation for recreational impacts.

- 4.6 At the time of the examination of the Site Allocations and Area Specific Policies document the distance from the site to the Sandlings SPA was considered, however crucially bridleway 12 did not connect to the SPA as the full extent of the route was not confirmed on the definitive map as a Right of Way until April 2017. Previously walking access from Rendlesham to the SPA either involved use of the road network (via the A1152, Hollesley Road and Friday Street) or unofficial access around the outside of the Bentwaters perimeter fence. The existence of this direct pathway therefore did not inform site specific plan level considerations in the AA. The joining up of the footpath 10/bridleway 12 route created a safer, more desirable official route which creates both impacts and benefits for recreational pressure in the area. It is therefore necessary for the presence of this route to be considered in the project level HRA for this proposal.
- 4.7 The HRA of the emerging Local Plan **[CD9.7]** maintained the use of a distance of 1km between development site and European designated site as a trigger for policy to include requirement for SANG provision. As with the 2011 Core Strategy, this does not mean that sites beyond 1km for a European designated site do not require a project level HRA or potentially onsite/local offsite mitigation measures, rather that the policy which allocates them does not need to secure the delivery of SANG provision. The use of the 1km distance was a screening tool to determine whether sites could be allocated and whether their allocation required detailed policy requirements in relation to avoiding effects on the integrity of European designated sites.

Suffolk Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS)

- 4.8 To advance the delivery of this mitigation East Suffolk Council, in partnership with Ipswich Borough Council and Babergh and Mid Suffolk District Councils, have prepared the Suffolk Coast Recreational Disturbance Mitigation Strategy (RAMS). The Suffolk Coast RAMS is underpinned by a Technical Report **[CD9.6]** prepared by Footprint Ecology.
- 4.9 As part of the HRA of the emerging East Suffolk Council (Suffolk Coastal area) Local Plan **[CD9.7]** and the production of the technical report for the Suffolk Coast RAMS the distance within which new residential development would result in an impact on European designated sites as a result of increased recreational disturbance (and in the absence of mitigation) was assessed further. The available evidence showed that people were travelling a greater distance to use European designated sites for recreation than previously identified. Evidence indicates that new residential development within 13km of European designated sites will contribute to in-combination recreational disturbance impacts. This area is referred to as the Zone of Influence (ZOI). The use of 13km reflects the 75th percentile for visitors to the Sandlings

and the Deben (taken from visitor surveys undertaken for these sites), drawn from data from multiple survey points. The consistency between the 75th percentile for the two surveys provides confidence that this is likely to define the draw of the Suffolk Coast for people living inland. 13km is on the larger side compared to some other strategic mitigation strategies but reflects the particular draw of the sites and the spatial distribution of current housing relative to the sites.

4.10 All planning applications for residential development within the 13km ZOI must be subject to HRA prior to approval. The Council has a template Habitats Regulations Assessment document **[CD9.8]** used to consider and inform the decision-making process, specifically where it is intending to consent a development. This was developed with Natural England and it therefore builds in the ability not to require an appropriate assessment consultation where mitigation has been addressed, particularly on smaller projects below 50 dwellings and with a Suffolk Coast RAMS contribution having been secured. For developments greater than 50 dwellings, the template identifies the need for developments to deliver well-designed open space/green infrastructure, based on SANG guidance, alongside making a financial contribution to the Suffolk Coast RAMS (see below).

4.11 In order to provide a strategic mechanism to mitigate the identified in-combination recreational disturbance impact arising from new residential development within 13km of European designated sites, East Suffolk Council, in partnership with Ipswich Borough Council and Babergh and Mid Suffolk District Councils, have developed the Suffolk Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS). This provides developers with the opportunity to make a financial contribution (based on a per dwelling tariff) to strategic measures to mitigate in-combination recreational disturbance impacts. The strategy is now being implemented across the four council areas to provide a strategic approach to mitigate the identified impacts on European designated sites.

4.12 Financial contributions to the Suffolk Coast RAMS and the mitigation required are calculated based on development in the adopted Core Strategy (planning for 7,900 dwellings). Developments exceeding this are unplanned additional housing and therefore must be assessed for additional effects as part of project level HRAs at the planning application stage. This is particularly relevant for the application site as the proposal is for 75 dwellings, 25 above the 50 dwellings for which the site is allocated.

5. The application site and proximity to European designated sites

5.1 The application site is located within the 13km zone of influence of the following European designated sites:

- Alde-Ore Estuary Special Protection Area (SPA)
- Alde-Ore Estuary Ramsar site
- Alde-Ore and Butley Estuaries Special Area of Conservation (SAC)
- Deben Estuary SPA
- Deben Estuary Ramsar site
- Sandlings SPA
- Staverton Park and the Thicks, Wantisden SAC
- Orfordness-Shingle Street SAC

6. Application Shadow HRA (sHRA) Document

6.1 As part of the planning application a shadow Habitats Regulations Assessment was submitted **[CD1.10]**. The report identifies the European designated sites within 13km of the application site. Section 4.9 of the report considers the “alone” impacts and concludes that the development will not result in any Likely Significant Effects on European designated sites (paragraph 4.9.11). Sections 4.10 and 4.11 of the report considers the “in-combination” impacts and concludes that the development will result in a Likely Significant Effect on European designated sites (paragraph 4.10.1) and that this will be mitigated via a financial contribution to the Suffolk Coast RAMS (paragraph 4.11.3) and the provision of on-site green infrastructure for recreation (paragraph 4.11.4).

7. Consideration of Application

7.1 In considering the likely impacts of the proposed development on European designated sites the information available as part of the Local Plan HRAs, information from the Suffolk Coast RAMS, information published by Natural England (European designated sites Conservation Objectives and MAGIC Map) and information provided as part of the application have been reviewed. Based on this consideration, two areas of impact have been identified.

Incorrect conclusion of No Likely Significant Effects from the development "Alone"

7.2 Paragraph 4.9.7 of the shadow HRA [CD1.10] submitted as part of the application states that:

7.3 *"When considered alone the likely significant effect of residents from the proposed development site using European sites is likely to be negligible. This is due to the location of the development and the provision of open green space on the site (which include suitable provision for daily dog walking), a good infrastructure of cycleways and footpaths within the village, as well as the policies for Rendlesham and the rest of the District which support and promote new leisure and recreation facilities."*

7.4 I consider that this conclusion is flawed in relation to both the location of the development and the provision of open green space on the site.

7.5 As set out in the Council's Statement of Case (paragraph 5.48) the site is considered to be within walking distance of part of the Sandlings SPA. This is via a footpath (FP10) and bridleway (BR12) which is the only countryside walk available from the village of Rendlesham and therefore offers a popular route and the only route for Rendlesham's population of approximately 3,013 people (based on its Parish Profile). Whilst the submitted sHRA acknowledges that this route is to be provided as part of the Bentwaters Master Plan (paragraph 4.9.2) it does not consider the fact that it is now available for use. Survey work undertaken in winter 2009/2010 at the now closed Friday Street car park (which was only 2.4km drive from Rendlesham and was the closest access point to this part of the Sandlings SPA) identified that the median travel distance for visitors interviewed was 1.61km, demonstrating that the site is predominantly used by local residents [CD9.9]. Of the visitors surveyed at the site 78% gave dog walking as a reason for visiting.

7.6 Data from the Pet Food Manufacturer's Association [CD9.10] shows that in the East of England 23% of households have dogs, with an average of 1.4 dogs per household. Rendlesham has 1,224 dwellings [CD9.11], which gives a population of approximately 395 dogs in the village. The proposed development of 75 dwellings would add approximately 24 dogs to this total.

- 7.7 Whilst it is acknowledged that the walking route from the appeal site to the Sandlings SPA is 2.45km (a 4.9km round trip) which would take approximately one hour, data from PDSA **[CD9.12]** identifies that 15% of dog owners walk their dog for more than one hour per day. Based on 1,224 current dwellings, a development of 75 dwellings is approximately a 6% increase and therefore, assuming dog ownership is broadly similar between existing and new residents and based on the figures set out above, a 6% increase in dog ownership can be predicted.
- 7.8 Data from previous years of both the PFMA and PDSA surveys (reports for both are published annually) have previously been relied upon by the Council and applicants for HRA and accepted by Natural England. In particular in the very carefully considered Adastral Park planning application (DC/17/1435/OUT) which was subject to a comprehensive Council instructed HRA review and Counsel review before gaining support from Natural England.
- 7.9 As part of the Habitats Statement of Common Ground the appellant identifies a 2.55km circular walking route. However, the majority of this route (74%) is an urban route within the village, with the rest being comprised of single-track rural road (8%), field margin bridleway (11%) and cross arable field footpath (7%). Including the rural road element only 26% of the identified route is outside of the urban area. This is almost wholly within arable farmland which is in the lowest category (Level 4) within Natural England's definition of natural greenspace **[CD9.13]** and therefore when combined with the predominantly urban part does not create an attractive route for walkers. The route is currently well used as it is the only public right of way available from the village and it is considered that the attractiveness of Sandlings SPA woodland (woodland is in the highest category (Level 1) within Natural England's definition of natural greenspace) will be an enhanced draw to residents, particularly as the existing route would become busier as a result of new development.
- 7.10 By comparison, both Wickham Market and Framlingham are settlements within East Suffolk and within the 13km ZOI which are of a similar size to Rendlesham (1,006 dwellings **[CD9.16]** and 1,513 dwellings **[CD9.17]** respectively). Both of those settlements do not have direct walking links to any designated site. The map excerpts (Figures 1 and 2) below (shown in full in Appendix 1 and Appendix 2) show that both of these settlements have a greater number of public rights of way leading from them into the countryside and allowing for circular walks to be undertaken through a variety of levels of attractiveness. These are considered to be a more normal number of available routes and demonstrates that the single route available in Rendlesham is very unusual for such a large village when compared with other nearby similar settlements in its deficiency of connected routes to access the countryside and natural open space. Figure 3 (and Appendix 3) shows the definitive map excerpt for Rendlesham. This is as a result of the past airbase use of Rendlesham and historic routes having been cut off and stopped when military use commenced. It is however the current circumstance of this

growing community and a highly relevant consideration when assessing the recreational effects of an increase in its population.

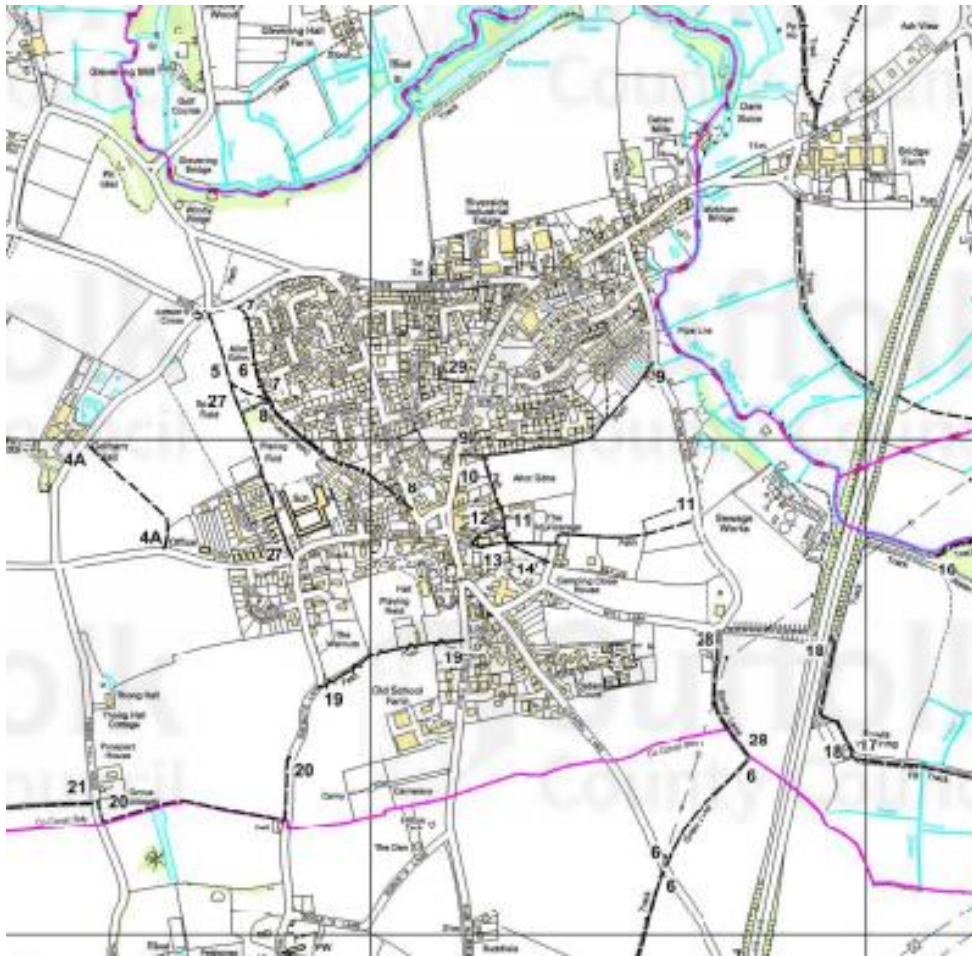


Figure 1. Excerpt of definitive map for Wickham Market



Figure 2. Excerpt of the definitive map for Framlingham



Figure 3. Excerpt of the definitive map for Rendlesham

7.11 The applicant's conclusion that there will be no "alone" LSE as a result of the location of the development site in relation to European designated sites, and that provision of on-

site open green space (which includes suitable provision for daily dog walking) will mitigate this, is also considered to be contradictory. There is either no LSE pathway between the development site and a European designated site, due to the distance or other barriers between the two (and so potential for LSE is avoided), or there is an LSE pathway and mitigation is required (including in the form of on-site green space). If an LSE is identified and a proposal is to be consented, an Appropriate Assessment must be undertaken to assess effects on the integrity of the European designated site and identify adequate mitigation measures. For the application site there is evidence of a direct walking link to the Sandlings SPA and therefore an LSE pathway exists.

7.12 Whilst provision of on-site green space is included as part of the development proposal, no evidence is provided to support the claim that it will form “*suitable provision for daily dog walking*”, or that it will form part of a route for daily dog walking by residents of the development. The dog walking route recently shared by the appellant as part of the Statement of Common Ground does not take the open space in as part of the route. Guidance provided by Natural England as part of the East Suffolk HRA Template [CD9.8] includes a number of recommendations to make green spaces and new developments attractive to dog walkers. This includes features such as dedicated ‘dogs-off-lead’ areas and access to circular dog walking routes of 2.7km within the site and/or with links to surrounding public rights of way. This distance is taken from published guidance on planning for dog ownership in new developments [CD9.14]. Whilst the main green space in the north-eastern corner of the site could in time (and with the correct long term management) become a high quality, informal, semi-natural area, the lack of ‘dogs-off-lead’ area and connections to circular dog walking routes mean that the conclusion that provision of on-site greenspace will contribute to there being No LSE on European designated sites cannot be substantiated.

7.13 Also, in terms of the phasing of the development, Site Plan Phases of Construction drawing number 84 SL/Pp Rev. A [CD 9.20] indicates that the bulk of the on-site green space in the north-east of the site will not be available until the final phase of the development. Pending Section 106 negotiations, any benefit of this space for dog walkers (and other recreational users) will therefore not be derived until at least the end of the construction phase, and given the time it will take for new habitats to mature it is considered likely to be several years beyond the end of the construction of the development before the green space becomes attractive for residents to use.

Use of on-site Green Infrastructure as mitigation for “In-combination” impact

7.14 The submitted shadow HRA [CD1.10] (paragraph 4.11.4) identifies “*provision of on-site open space suitable for daily dog walking or other recreation types*” as mitigation for the identified “in-combination” recreational disturbance impact. However, as set out above the attractiveness, suitability and availability of the open spaces for residents of the development is considered sufficiently uncertain for the conclusion in paragraph 4.12.1 that “*there would be no adverse affect on the integrity of any European site*

caused by the proposed development acting alone or in-combination with other plans or projects” to be disagreed with.

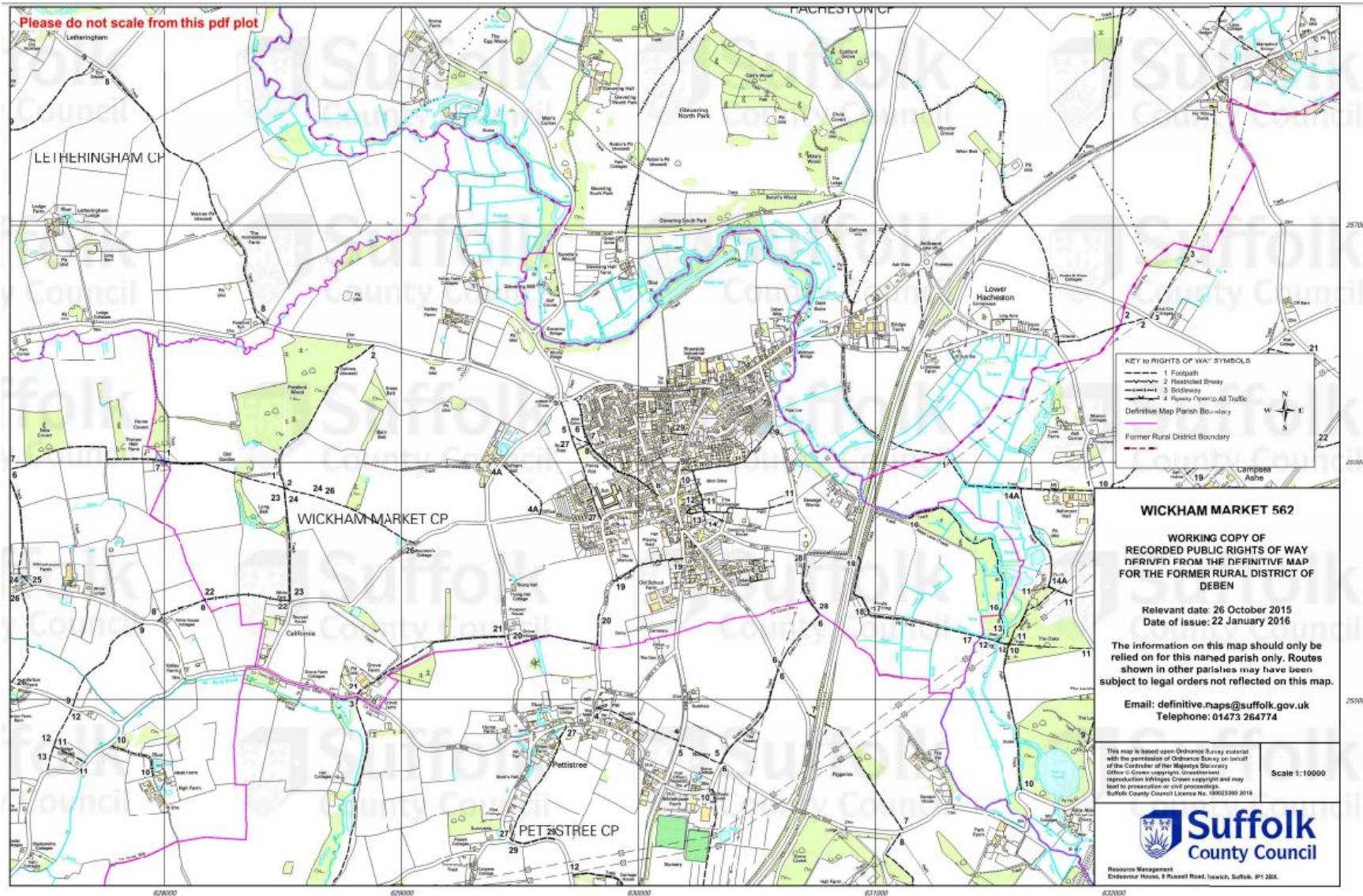
8. Potential Mitigation

- 8.1 As is set out in Ben Woolnough's Planning Proof of Evidence, the reason for refusal covered in this proof of evidence does not relate to a shortfall in the design of the development but instead the information it is supported by and how mitigation has been addressed. The HRA considerations do imbed themselves in design considerations but the legislative consideration is one which is subsequent to the planning considerations. The reason for refusal was entirely reasonable to ensure that the appeal may be supported by suitable information and mitigation and the Council has been willing to receive and consider that so that the inspector, as the competent authority (irrespective of this reason for refusal or not) is suitably informed.
- 8.2 Whilst the appeal is not yet supported by additional information in respect of the sHRA or additional mitigation and/or routes referred to in the sHRA, the Statement of Case makes clear that opportunities to address this are available. In particular through the delivery of local Rights of Way delivery and improvements to the north and east of the site. This PROW request sought by the County Council in their responsibility for maintaining and enhancing the rights of way network is supported by the Council as a Section 106 request.
- 8.3 If funding and mechanisms to deliver this are agreed for the County Council's requirements for order making, then it can be a material consideration for other purposes. In this case the appellant could give weight to the prospect of the delivery of this route in considerably expanding the rights of way network for the area. This would be relevant to the consideration of any Appropriate Assessment in relieving recreational pressure on the only walking route for the village, to the south, leading to the Sandlings SPA.
- 8.4 Therefore, if that is secured the Council consider that there is the potential for an Appropriate Assessment to reach a conclusion of no effect on the integrity of European designated sites (providing that contribution the Suffolk Coast RAMS is also secured).

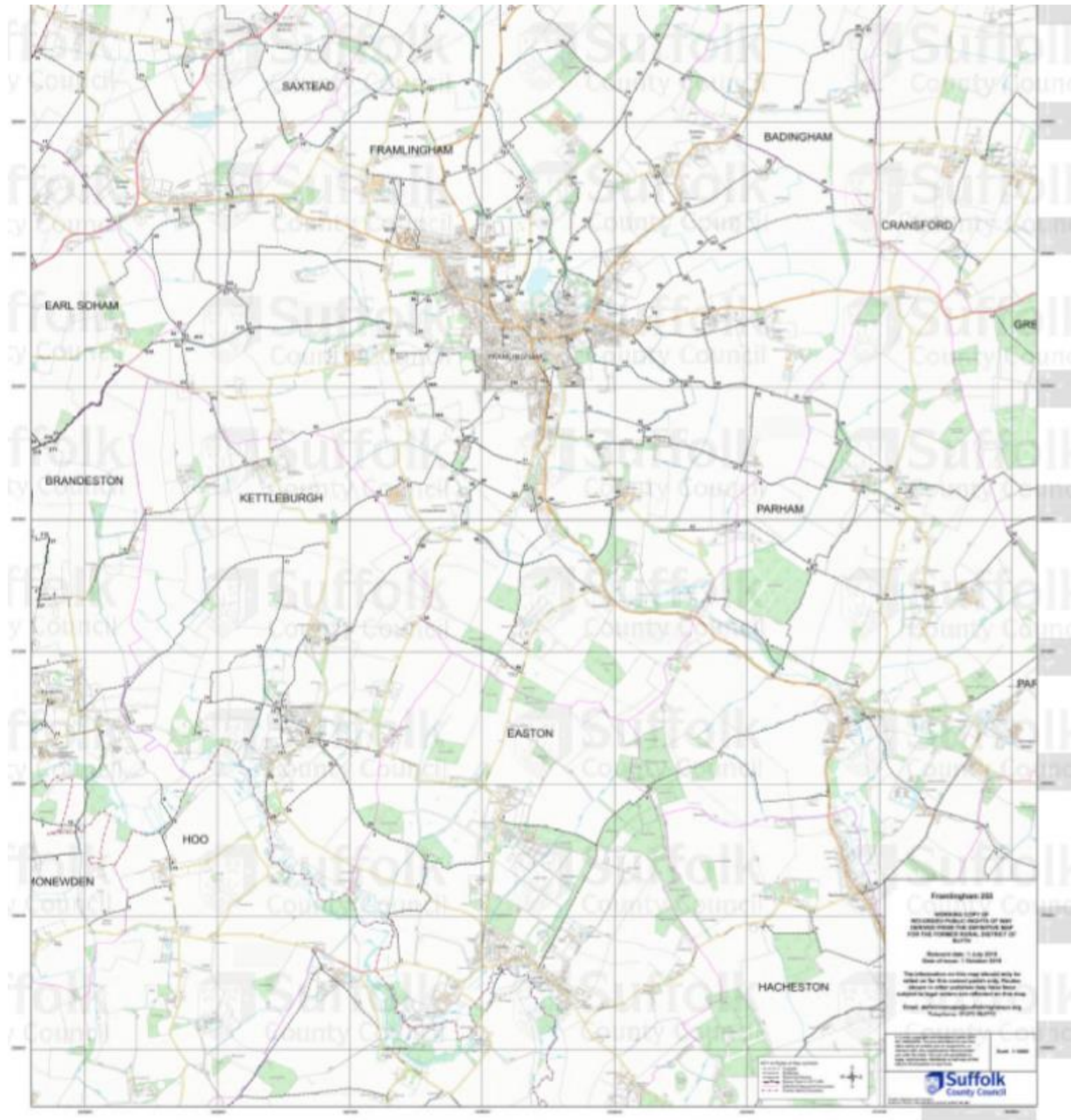
9. Conclusion

- 9.1 The Conservation of Habitats and Species Regulations (2017) (as amended) requires that the alone and in-combination impacts of new developments on European designated sites are assessed. This is undertaken through a Habitats Regulations Assessment (HRA).
- 9.2 A shadow HRA was submitted with the planning application. This did not provide sufficient information to allow the council (as competent authority under the Habitats Regulations) to fully assess the alone or in-combination impacts that could arise from the development through increased recreational disturbance pressure on the nearby Sandlings SPA. The conclusion of No Likely Significant Effect set out in the shadow HRA is not agreed with.
- 9.3 As set out in this Proof an alone Likely Significant Effect pathway exists and therefore Appropriate Assessment, including consideration of adequate mitigation measures, is required before permission could be granted. The measures as included in the application, are considered to be insufficient to provide available and attractive regular, circular, dog walking routes which are outside of the Sandlings SPA. Subject to a formal Appropriate Assessment, it is considered that it cannot be concluded that there will be no Adverse Effect on the Integrity of the Sandlings SPA based on the mitigation measures presented. Should alternative measures be presented by the appellant and taken into consideration during the course of the appeal, then the Council may confirm that it is of the view that there would be no adverse effects on integrity.

Appendix 1 – Wickham Market Public Rights of Way Definitive Map



Appendix 2 - Framlingham Public Rights of Way Definitive Map



Appendix 3 – Rendlesham Public Rights of Way Definitive Map

