

**IN THE MATTER OF  
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF  
LAND AT HUMBER DOUCY LANE**

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**APPELLANTS' OPENING SUBMISSIONS**

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**Introduction**

1. These are the Opening Submissions of the Appellants in respect of two appeals brought under s. 78 of the Town and Country Planning Act 1990. The appeals concern the refusal of two applications for planning permission seeking outline permission for up to 660 new homes together with 400 sq. m. non-residential floorspace and an early years facility on Land at Humber Doucy Lane, and full planning permission for the means of vehicle, cycle and pedestrian access to and from the site.
2. The Appeal Site comprises three parcels of land approximately 31.52 hectares in size and is situated 3km from the centre of Ipswich. The site is partly within the Borough of Ipswich and partly within East Suffolk District. On the requirements of the Councils, identical applications for planning permission were submitted to both authorities. The refusal of both applications has led to these two appeals before the Inspectorate.
3. The principle of development of the Appeal Site is not disputed by any of the main parties to this appeal. It is an allocated site in both Councils' recently-adopted local plans, and, as the Councils acknowledge in their Statement of Case, "... the principle of residential-led, mixed development on this site is settled".<sup>1</sup> This is a highly sustainable site, closely connected to Ipswich, and in close proximity to Ipswich Garden Suburb – an allocation for a significant

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<sup>1</sup> Joint Councils' Updated SoC [CD/SC4], para. 7.1.

amount of residential development. The appeal scheme presents a compelling opportunity to deliver the homes and infrastructure identified by the Councils in their allocations policies.

4. The delivery of this site is even more urgent when viewed in the context of the acute shortage of housing, both regionally and nationally. The majority of the Appeal Site is within the Borough of Ipswich. Ipswich Borough Council resists the development of this allocated site with a scheme which would deliver up to 660 homes. However, Ipswich Borough Council failed the Housing Delivery Test in 2023, delivering only 77% of the homes required by its local plan. That was against a stepped trajectory in its local plan by which approximately 300 homes were required per annum between 2018-2024.<sup>2</sup> From this year (2025) onwards, the local plan requires **540** per annum. On the new standard methodology, that could be **723** new homes per year.<sup>3</sup> In April 2023 to March 2024, however, only **206** new homes were built in Ipswich.<sup>4</sup> It is acknowledged that looking forward, Ipswich does not have a five year housing land supply.<sup>5</sup>
5. The Borough's failure to deliver affordable housing is even more acute. Its Local Plan identifies that the total annual affordable housing need in Ipswich is 239 homes per year. A mere 150 affordable homes in total have been delivered in the first six years of the plan period. 1,434 affordable homes ought to have been delivered over that period.<sup>6</sup> Notably, delivery of the appeal site formed part of the "action points" in the Borough's Housing Delivery Action Plan (2022).<sup>7</sup>
6. It is against that manifest failure to meet the needs of future residents that both Councils resist the development of up to 660 homes on an allocated site which is not disputed as being suitable in principle for residential development.

### **The issues for determination**

7. Given that the Appeal Site is an allocated site in both Councils' local plans, they did not dispute the principle of development in determining the applications for

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<sup>2</sup> Kevin Coleman Proof of Evidence [CD/AP1.1], para. 7.4 onwards.

<sup>3</sup> Kevin Coleman Proof of Evidence [CD/AP1.1], para. 7.6.

<sup>4</sup> Kevin Coleman Proof of Evidence [CD/AP1.1], para. 7.4

<sup>5</sup> Lisa Evans Proof of Evidence [CD/CP1.1], para. 4.15.

<sup>6</sup> Kevin Coleman Proof of Evidence [CD/AP1.1], 7.13.

<sup>7</sup> Kevin Coleman Proof of Evidence [CD/AP1.1], appendix 8 [CD/AP1.3].

planning permission. However, the Councils identified no fewer than 13 reasons for refusal.<sup>8</sup> That led to 13 main issues being identified by the Inspector at the CMC.

8. Fortunately, as at the opening of the Inquiry, a number of those issues have now been resolved following further discussion by the parties.
9. Archaeology, air quality, and on-site ecology are no longer in dispute: it is now accepted that these issues can be addressed by way of condition and/or planning obligation.<sup>9</sup> A holding objection on drainage was initially issued by Suffolk County Council. However, the Appellants understand that the County is no longer maintaining a drainage objection. Provision has been made for a round table session on drainage matters to assist the Inquiry with any questions that may arise.
10. As to highways, again, the County issued a holding objection. However, additionally, the impact of the proposed access to the Appeal Site from Humber Doucy Lane was alleged by Ipswich Borough Council to be unacceptable – both in principle as to its location, and because of its landscape impact. Neither allegation is any longer maintained at this Inquiry.<sup>10</sup>
11. Access junction design and the off-site modelling of highways impact was raised by the County in its holding objection. However, the Appellants understand that the County is no longer pursuing the modelling point. In addition, following recent engagement with the County Council, it appears that it is now content with the access junctions if the County’s technical requirements are included by condition. Mr Hassel’s evidence will demonstrate how the Appeal Scheme can accommodate the County’s requirements. We therefore appear to have arrived at an outcome where no party is alleging that the appeals should be dismissed on highways grounds of “safety” or “severity”.<sup>11</sup> In respect

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<sup>8</sup> 13 in the case of IBC and 11 in the case of ESC.

<sup>9</sup> Joint Councils’ Updated SoC [CD/SC4], para. 5.12 for air quality and ecology; 7.42 for archaeology.

<sup>10</sup> Joint Councils’ Updated SoC [CD/SC4], paras. 5.12, 7.11, 7.19, 7.20.

<sup>11</sup> Para. 116 of NPPF.

of active travel opportunities, a package of measure will be discussed at a conditions/s. 106 session.

12. The heritage impact was initially said to be unacceptable. That position is also no longer maintained by the Councils. Both Councils' allocation policies in respect of the Appeal Site require the preservation of two off-site heritage assets, Allens House and Laceys Farmhouse. It is now common ground with the Councils that, despite the policy requirements with respect to the listed buildings, the allocation site could not be developed for the amount of houses provided for in the allocation in a manner which would avoid, or materially reduces, the level of harm to the significance of Allens House and Laceys Farmhouse.<sup>12</sup>
13. It is also agreed that the harm caused by the Appeal Scheme to the significance of both listed buildings will be a "low level" of less than substantial harm. That is the lowest level of harm possible in policy terms, and it is common ground that the benefits of the proposal outweigh the limited harm to the significance of the heritage assets, in accordance with paragraph 215 of the NPPF.<sup>13</sup> Heritage therefore is agreed no longer to be a reason for withholding permission.
14. The above disposes of main issues 3 to 6 and 7 and 8 as identified by the Inspector and the associated reasons for refusal. That leaves the following.

***Landscape impacts (main issue 2)***

15. First, there is a limited landscape dispute. There will inevitably be some landscape changes caused by any development of this site. This is not in dispute. Indeed, Ms Evans, on behalf of the Councils, observes that by allocating the site the Councils have: "...accepted there would be development introduced into a previously undeveloped site and this would expand the urban edge of Ipswich into the rural landscape of East Suffolk. This would undoubtedly change the landscape character of the site and immediate area..."<sup>14</sup>.

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<sup>12</sup> Heritage SoCG [CD/SOCG3], para. 8.

<sup>13</sup> Lisa Evans Proof of Evidence [CD/CP1.1], para. 7.25.

<sup>14</sup> Lisa Evans Proof of Evidence [CD/CP1.1], para. 5.56.

16. The Councils do not suggest that this change is an in principle reason for refusal. Rather, the only remaining point of dispute in respect of landscape character is the suitability in landscape terms of the Appellants' proposed "buffer" to the development. The Appellants' illustrative landscape strategy includes a green infrastructure network (or "buffer") which surrounds the proposed development and provides a clear boundary to the appeal scheme and which also accommodates recreational and other uses.<sup>15</sup> Ipswich Borough Council originally described this buffer as "substantial".<sup>16</sup>
17. The Councils now say that the buffer is not sufficient on the north/north eastern boundary of the site and the frontage to Humber Doucy Lane. The Appellants' evidence will show that the proposed landscape strategy will result in a development which reads as a natural extension to Ipswich and results in a robust boundary between the scheme and wider countryside.

***European sites (main issue 7)***

18. The issue in dispute between the parties in respect to European sites is whether the package of recreational mitigation measures provided in respect of those sites is adequate to enable the Inspector to conclude that the proposed development will not have an adverse effect on the integrity of the identified European sites.<sup>17</sup>
19. The Appellants' recreational mitigation measures involves three elements:
- (i) Payment of the tariff set out in the Suffolk Coast RAMS;
  - (ii) Provision of extensive well-designed open space and walking routes on-site, accessible to new and existing local residents; and
  - (iii) Promotion and facilitation of connections to wider walking routes/public footpaths across the surrounding landscape, accessible to new and existing local residents.

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<sup>15</sup> Set out in "CSA Illustrative Landscape Strategy (CSA/6675/116 REV.A)", [CD/AD17].

<sup>16</sup> IBC Officer Report [CD/DD4], para. 1.9.

<sup>17</sup> HRA SoCG [CD/SOCG9], para. 8.

20. The dispute between the parties is whether the quantum and design of the open space in point (ii) is adequate (when seen in combination with (i) and (iii)).
21. The Appellants' proposals include the provision on site of c. **11.23ha** of open space and green infrastructure.<sup>18</sup> This is in excess of the **10ha** of "Neighbourhood Natural Greenspace" recommended by Natural England in its consultation response. The Councils do not dispute that the proposed quantum is in principle insufficient.<sup>19</sup>
22. The Appellants will show that the proposed alternative green space is sufficient to enable the Inspector to conclude that the proposed development will not have an adverse effect on the integrity of the identified European sites.

***Sports pitches (main issue 10)***

23. This was a point in Ipswich Borough Council's Decision Notice only. There is no dispute that the delivery of the Appeal Scheme would result in the loss of a portion of land currently used as rugby pitches. In private law, the continuing use of that land as rugby pitches is subject to a licence from the landowner which can be terminated. In planning terms, that use appears to be either unlawful, or alternatively, if it has the benefit of planning permission, the use of the pitches is limited by condition to 2.5 hours on Sundays when no other matches are being played.<sup>20</sup>
24. In any event, the issue is whether the scheme presents replacement sports facilities, i.e. not like for like rugby provision. The Appellants' evidence is that there is a surplus of playing fields locally. Moreover, the Appeal scheme offers a multi-use sports area which would offer access to a greater range of sports. That facility would be open all year round, and available for use every day of the week for an extensive number of hours. The Appellants will show that this is in accordance with both local and national policy, and in any event is a substantial benefit and a compelling factor in favour of the proposals.

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<sup>18</sup> Aidan Marsh Rebuttal Proof, para. 3.2.

<sup>19</sup> James Meyer Proof of Evidence, [CD/CP2.1], para. 7.15.

<sup>20</sup> See Kevin Coleman Proof of Evidence [CD/AP1.1], para. 10.5.

## ***Green Infrastructure***

25. The total amount of open space comprised in the Appeal Scheme exceeds the amount required by local plan policy. That is accepted by the Councils.<sup>21</sup> On a policy requirement of **5.11ha**, the Appeal Scheme includes **11.44ha** – a surplus of **6.33ha**.<sup>22</sup> The dispute focuses on the typology of spaces provided. The Appellants will show that the significant proportion of proposed natural and semi-natural green space is an entirely appropriate response to the context of the Appeal Site, and therefore in accordance with local policy.

## ***The makeweight issues***

26. Finally, there are two issues raised by the Council which in truth are best described as “makeweight” and add nothing of substance to the points in dispute.

### *(1) Quantum of development (main issue 11)*

27. The first is the quantum of development. Both LPAs maintain that too much housing is being proposed by the Appellants. That is a surprising allegation, particularly in the case of Ipswich Borough, given its failure to deliver housing and it having identified the delivery of the Appeal Site as an action point in its Housing Delivery Plan.
28. Ultimately this objection does not represent a further substantive planning reason against the appeal scheme. There is an indicative yield in the allocation, but no cap on numbers. Rather, as the Councils Updated Statement of Case explains, the Councils allege that *because* of the quantum of housing, the Appeal Scheme results in unacceptable impacts, such as an insufficient landscape buffer or a failure to comply with open space standards.
29. However, these allegations are separate issues identified in the other reasons for refusal. Therefore, if the Inspector resolves those substantive issues in favour of the Appellants – and a number of the issues relied upon by the Councils have now been resolved - there is no standalone reason why the delivery of more

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<sup>21</sup> Councils’ Updated SoC, para. 5.140.

<sup>22</sup> Clive Self Proof of Evidence [CD/AP5.1], Table 5.

homes than the allocation requires should be a reason for refusing planning permission. As the Appellants will show, this is in fact a matter which is a substantial benefit to the proposals. This issue therefore adds nothing of substance to the Councils' case.

*(2) Master planning (main issue 1)*

30. Finally, there is the non-issue of "master planning". Both Councils cited the absence of a "master plan" as a reason to refuse the application.
31. That position has since changed. The Councils now accept that there is no requirement in either of the relevant allocation policies for a document with that title to be submitted.<sup>23</sup> If the Councils really wish to engage in this semantic analysis, the Appellants would note that the overall site-wide Framework Plan it submitted would plainly meet the requirement of submitting a "masterplan". The Councils also now state that "It is not disputed that there would have been a level of masterplanning undertaken" by the Appellant.<sup>24</sup>
32. What the Councils appear to take issue with under the guise of "master planning" is whether the appeal scheme as a whole is acceptable in planning terms, i.e. in terms of the other (substantive) reason for refusal. It therefore adds offers nothing to their case overall. If the Inspector accepts the Appellants' case on the substantive issues in these appeals, the "master planning" issue falls away. It would be non-sensical for the Councils to submit that, if the Inspector is with the Appellants on the substantive issues, planning permission should nonetheless be refused as the process which produced an otherwise acceptable scheme did not suit the Councils. This is, therefore, a non-issue which should never have been a reason for refusal in its own right.
33. That the Councils took and maintain this makeweight point encapsulates their attitude to the Appellants' proposals in the round. Rather than engage with the Appellants as to the planning merits of the proposal, and rather than work pro-actively with the Appellants to deliver the allocation in accordance with Chapter

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<sup>23</sup> Lisa Evans Proof of Evidence [CD/CP1.1], para 5.24.

<sup>24</sup> Joint Councils' Updated SoC, para. 5.25.



4 of the NPPF, they even now raise makeweight procedural quibbles as the substantive issues fall away.

34. The Appellants are at a loss to understand why the Councils have adopted this overall attitude in respect to the delivery of an allocated site on which the principle of development is established. It is contrary to the spirit and the letter of the NPPF. Even at this stage of the proceedings, the Councils appear to be more focused on contriving an impression of the Appellants as submitting a premature scheme – notwithstanding that it was the Councils which put an end to pre-application engagement<sup>25</sup> – rather than working pro-actively to achieve the delivery of this high-quality scheme on an allocated site. The Appellants, however, will continue to focus on the substantive planning merits of delivering this allocated site in the public interest.

### **Conclusion**

35. Following the evidence, the Appellants will invite the Inspector to allow both appeals which would enable up to 660 homes to be delivered on an allocated site by two well-known developers with a track record of successfully delivering the new housing this country desperately needs.

CHRISTOPHER BOYLE KC  
HARLEY RONAN

21<sup>st</sup> January 2025

Landmark Chambers  
180 Fleet Street  
London  
EC4A 2HG

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<sup>25</sup> Kevin Coleman Proof of Evidence, para. 2.2-2.9.