APPEAL REF: APP/X3540/W/24/3350673

LAND NORTH-EAST OF HUMBER DOUCY LANE, IPSWICH

OPENING STATEMENT ON BEHALF OF IPSWICH BOROUGH COUNCIL AND EAST SUFFOLK DISTRICT COUNCIL

Introduction

1. Although there are a number of issues in play in this appeal, at its heart is a simple question. Has it been demonstrated that 660 homes can be delivered on the appeal site in a way which accords with local and national planning policy, as well as the requirements of the Conservation of Habitats and Species Regulations 2017? The Local Planning Authorities ('LPAs') contend that it has not.

2. The LPAs want a well-designed development to come forward on this strategically important cross-boundary site. That is precisely why it was allocated in the first place, after careful collaboration between the two authorities. But there are enduring concerns about this development's ability to deliver the necessary landscaping, open space and green infrastructure, sports and recreational provision, and suitable alternative natural greenspace ('SANG') required by policy and the Habitats Regulations.

3. The failure by the Appellant to demonstrate that the appeal scheme can deliver against the relevant policy requirements stems from an overarching failure to adopt a proper approach to masterplanning the site. Both Policy ISPA4 in the Ipswich Borough Council ('IBC') Core Strategy and SCLP12.24 in the Suffolk Coastal Local Plan (together the 'principal policies') emphasise the importance of proper masterplanning. The IBC policy requires development on the allocated site to be "*planned and comprehensively delivered through masterplanning of the site*".[1] The East Suffolk Council ('ESC') policy states that development "*will only come forward as part of a masterplanned approach*".[2]

4. One of the key functions of such a process is to establish the number of homes which can be accommodated on the site, as well as the appropriate balance between development parcels and open space, having regard to policy requirements and site constraints. The

[1] [**DP1**], p. 43.
[2] [**DP2**], p. 273.

process of masterplanning should be landscape-led,[3] to ensure that open space requirements and other secondary uses can be successfully integrated as part of the wider development. Instead, the Appellant has taken 660 homes as its starting point; that figure having been arrived at simply by calculating 60% of the overall site area (18.86ha) and assuming an average density of 35dph across that area.[4] Then, it has sought to squeeze in other land uses around the edges of the residential parcels.[5] This is not a proper approach to masterplanning a development on this scale.

5. The failure to appropriately masterplan the development has resulted in important information for the determination of the applications and of this appeal coming forward late, in a piecemeal fashion, and sometimes with a lack of clarity over the status of newly produced documents. This was the case with the access design drawings submitted with the Appellant's rebuttal evidence, the status of which is still opaque even after an exchange of correspondence between the LPAs, Suffolk County Council and the Appellant,[6] as well as the drainage strategy, which has now been updated three times, with the most recent update accompanying rebuttal proofs and containing a greater level of detail than previous iterations.

6. More importantly than these procedural irregularities, the failure by the Appellant to conduct a proper masterplanning exercise has resulted in an appeal scheme which does not bring forward the entire allocation; which fails to provide sufficient land for SANG, as well as other open space requirements; which does not provide for an effective transition to the countryside, or allow for an appropriate frontage treatment to Humber Doucy Lane; which results in the unjustified loss of sports pitches without appropriate replacement; and which promotes a quantum of housing which has not been justified. Put simply, the Appellant is seeking permission for significantly more homes than the principal policies envisaged coming forward on the allocation[7] on a smaller area[8] and the LPAs are not satisfied that there is sufficient space on the appeal site to deliver 660 homes together with the other

[3] As set out in the ESC Healthy Environments SPD, [**SPD6**], §§1.6, 1.20, 2.3, 2.140.
[4] [**AD33**], §3.13.
[5] Whilst the Land Use Parameter Plan [**AD2(2)**] indicates that the "*precise/detailed boundaries of development parcels will be set at Reserved Matters stage*", the impacts of the appeal proposal are to be assessed on the basis of the application plans before the Inquiry (both the Parameter Plans [**AD2(2)-(9)**] and detailed access plans [**AD2(10)**]). Whilst the precise boundaries are to be finalised at the reserved matters stage, it would not be permissible at that stage to make material amendments to size or location of the development parcels as shown on the Parameter Plans.
[6] See letter of 15 January 2025 from James Mann, Head of Planning and Development at IBC, Ben Woolnough, Head of Planning, Building Control and Coastal Management at ESC, and Neil McManus, Development Contributions Manager at Suffolk County Council, and response dated 17 January 2025 from Kevin Coleman, Planning Consultant for the Appellant.
[7] The principal policies envisaged 599 homes coming forward on the entire site allocation.
[8] The allocation area is 33.18ha; the appeal site is 31.52ha.

required land uses, nor that this can be achieved in a manner which is appropriate for this sensitive edge of settlement location.

7. The Appellant has sought to present the LPAs' concern over the failure to masterplan the site effectively as being solely procedural in nature. It is not. It is rooted in the substantive harms to which the proposed development would give rise, and which could have been avoided if the Appellant had adopted a landscape-first approach to masterplanning the site. We shall deal briefly with these harms in turn.

Habitats Regulations Assessment and Suitable Alternative Natural Greenspace (SANG)

8. It should not be controversial to state that development on this site needs to provide an appropriate quantum and quality of on-site SANG to relieve recreational pressures on nearby protected sites. The appeal site lies within 13km of the Stour and Orwell Estuaries Special Protection Area (SPA) and the Stour and Orwell Estuaries Ramsar Site (both 4.8km south); the Deben Estuary SPA and the Deben Estuary Ramsar Site (both c.6.7km east) and the Sandling SPA (c.11km east). It is agreed between the parties that these European site designations are relevant to this scheme and that recreational disturbance impacts from the proposed development, in-combination with other plans or projects, may give rise to an adverse effect on the integrity of these European sites.[9]

9. The Habitats Regulations (which implement the provisions of the European Habitats Directive) are clear that permission must not be granted for a development which is likely to have significant effects on a European site unless an appropriate assessment of the development's implications for that site has first been carried out.[10] If the conclusions of the appropriate assessment indicate that an adverse effect on the integrity of a European site cannot be ruled out the decision maker must not grant permission for it,[11] unless there are "*imperative reasons of overriding public interest*" ("IROPI").[12]

10. Authoritative guidance on the interpretation of the obligation to carry out an appropriate assessment has been provided by the Court of Justice of the European Union and the UK Supreme Court.[13] The caselaw is clear that a precautionary approach must be taken at every stage of this process.[14] The precautionary principle requires a "*high standard of investigation*";

[9] [**SoCG9**], §§1,5.
[10] Habitats Regulations 2017, reg. 63(1).
[11] *Ibid*, reg. 63(5)
[12] *Ibid*, reg. 64(1).
[13] In particular *Landelijke Vereniging tot Behoud van de Waddenzee v Staatsscretaris van Lanbouw* (Case C-127/02) [2005] All ER (EC) 353; as applied in *R (Champion) v North Norfolk DC* [2015] UKSC 52 ('*Champion*').
[14] *Champion*, §12.

that the appropriate assessment is based on the "*best scientific knowledge in the field….and not merely an expert's bare assertion*"; and that the competent authority must be "*satisfied that there is no reasonable doubt as to the absence of adverse effects on the integrity of the site concerned*".[15]

11. In other words, it is for the Appellant in the present case to satisfy the Inspector that the proposed development will not give rise to an adverse effect on the integrity of the European sites, not for the LPAs to demonstrate that it will or may.

12. Mitigation measures may be considered as part of the appropriate assessment (though not before at the screening stage)[16] and Natural England guidance indicates that SANG is considered an effective mitigation measure where it is of suitable quality, type and size to divert recreational pressures away from protected sites.[17]

13. Policy SCLP10.1 on Biodiversity and Geodiversity in the ESC Local Plan states that SANG may be required for certain development proposals and points to the Healthy Environments Supplementary Planning Document ('SPD') (2024) for more detail on ESC's Recreational Disturbance, Avoidance and Mitigation Strategy. Policy ISPA4(f)(iii) in the IBC Core Strategy explicitly requires the delivery of SANG on the appeal site.

14. The Appellant has queried the requirement for SANG, properly defined, with Dr Marsh indicating in his Rebuttal Proof that he does not consider that the greenspace on site needs to meet SANG standards as set out in the Healthy Environments SPD.[18]

15. We disagree. The terminology – 'suitable alternative natural greenspace' – is both important and accurate, for reasons Mr Meyer will expand upon in his evidence. But regardless of the terminology used, it is clear that the greenspace on site needs to be of a type and quality to perform the important function of diverting the recreational pressures identified by the Appellant away from nearby European sites. The application of SANG standards is the most appropriate way to ensure this function is performed, in line with the required precautionary approach to appropriate assessment under the Habitats Regulations.

16. The LPAs are clear that 11.5 ha is an appropriate figure for the on-site SANG requirement for a development of this scale. This figure is based on Natural England guidance, which

[15] See e.g. *R(Wyatt) v Fareham Borough Council* [2023] P.T.S.R. 1952 at §9(6), (7) & (9).
[16] *People Over Wind and Sweetman v Coillte Teoranta* (Case C-323/17) [2018].
[17] **[B21]**.
[18] Dr Aidan Marsh, Rebuttal Proof, §§2.2-2.3.

sets a standard of 8ha per 1000 people for new development.[19] This standard is reflected in the ESC Healthy Environments SPD.[20] It is quite separate from the more general Natural England recommendation, set out in its Green Infrastructure Standards, that residents of all new development should have access to 10ha of accessible greenspace within 1km, regardless of the proximity of any protected European sites.[21] If the Appellant has interpreted this as a reference to SANG requirements,[22] that is a misreading of Natural England guidance. Moreover, the 11.5ha figure is consistent with that put forward by the Appellant in its own shadow HRA.[23]

17. On any assessment, the Appellant is short of the 11.5ha figure for the on-site provision of SANG but even it were correct that only 10ha of SANG was required, the LPAs would still have significant concerns about the deliverability of that quantum of SANG-quality open space within the parameters of the development as currently envisaged. It is simply not credible to suggest, as the Appellant seems to, that almost every scrap of open space on the site can meaningfully contribute to the development's overall SANG requirement. Regardless of the appropriate nomenclature, it is clear that large swathes of the on-site open space are plainly not of the requisite type or quality so as to divert recreational pressures away from the European Sites.[24]

18. In the absence of any suggested IROPI, if the Inspector cannot rule out the possibility of adverse effects on the integrity of the European sites, then permission must be refused. There is no question of applying a planning balance.

19. Moreover, given the crucial importance of SANG for the integrity of nearby European sites, the Appellants ought to have started the planning process with the on-site SANG requirement and built the rest of the development around it.[25] Failure to do so is one of a number of failures to properly masterplan the proposed development.

Landscape Impact

20. The allocation site occupies a sensitive landscape location, connecting the urban area of Ipswich with the high-quality rural landscape of East Suffolk. This is reflected in the

[19] [**B21**], p.4. This produces a figure of 12.67ha for the proposed development but this has been adjusted downwards to take into account off-site mitigation measures such as links to existing PROW networks and a financial contribution to the Suffolk Coast RAMS.
[20] [**SPD6**], §2.35.
[21] [**B14**], p.33, figure 2.
[22] Dr Aidan Marsh, Rebuttal Proof, Table 1, p.8.
[23] [**AB30**], §4.27.
[24] [**SPD7**], §1.11.
[25] [**SPD6**], §2.35.

principal policies, which require *'the effective use of green infrastructure to create a transition between the new development/Ipswich urban edge and the more rural landscape character of East Suffolk'*,[26] as well as the creation of '*a soft edge to the urban area through the provision of significant landscaping*'.[27] Whilst landscaping is a reserved matter, it is imperative that any outline permission allows sufficient open space – or green buffer – to allow for an effective transition to the countryside, and a soft edge to the urban area, to be achieved.

21. For reasons that Ms Chittock will expand upon in her evidence, the LPAs do not consider that the appeal scheme enables the requirements of the principal policies to be met. While the Green and Blue Infrastructure Parameter Plan shows a band of open space, of varying widths, along the north and north-eastern boundaries, in many places that area is simply insufficient to allow an effective transition to the countryside to be achieved. This is particularly the case given that this green buffer needs to be multi-functional, providing not only significant landscaping, but also SUDS infrastructure, cycling and walking routes, and SANG provision.

22. Moreover, the LPAs have a particular concern about the proposed treatment of Parcel D, which, notwithstanding the railway line to the north (which is largely hidden in a cutting), feels far more a part of the wider rural landscape than a part of Ipswich. This is an especially sensitive part of the allocation, where the transition to the countryside needs to be carefully thought through. And yet, instead of retaining all, or most, of this area as open space – which would allow for both the creation of a meaningful green buffer to the countryside, as well as an area where future residents could have the type of "nature immersion" experience to be expected in natural or semi-natural green space – the proposal includes significant built development in this parcel, brought in close proximity to the site's northern edge.

23. Finally, it appears to be common ground that any successful design must provide a meaningful set back to Humber Doucy Lane.[28] As Ms Chittock will explain, this is at least in part to allow for significant new avenue tree planting to be achieved, consistent with the historical character of the lane. The 10m set back allowed for in the appeal scheme is insufficient to allow such planting, together with the reinstated hedgerow and shared pedestrian and cycle path.

[26] ISPA4(b), [**DP1**], p. 43.
[27] SCLP12.24(f), [**DP2**], p. 273.
[28] [**AD16**], p.53

Loss of Sports Pitches

24. The proposed development would lead to the permanent loss of two well-used rugby pitches and ancillary training space to the south of Ipswich Rugby Football Club ('IRFC'). IBC Policy DM5 is clear that the loss of facilities for outdoor sport and recreation can only be justified where one of three rather narrow exceptions apply,[29] while the site-specific Policy ISPA4 requires that development on this allocated site must provide *"replacement sports facilities if required to comply with Policy DM5"* (ISPA4(f)(ii)). Paragraph 104 of the NPPF also sets out three similar criteria which may justify the loss of outdoor sports provision. The loss of outdoor sports provision where none of these exceptions apply is therefore contrary to both local and national policy.

25. It does not assist the Appellant to argue that the current use of the rugby pitches does not benefit from planning permission (the last temporary permission having lapsed), nor that it would be in the gift of the Appellant to terminate the IRFC's licence to use the pitches. This was true when the allocation policy was adopted. The objective of Policy ISPA4(f)(ii) is to ensure that, as part of the development of this allocation, the rugby pitches[30] are "replaced", unless their loss can be justified in accordance with Policy DM5.

26. The Appellant has sought to suggest that its 34m x 37m, hard-surfaced multi-use games area ('MUGA') can be considered 'alternative and improved provision' to two full-size rugby pitches and ancillary training areas for 'mini rugby', such that exception (b) to Policy DM5 applies.[31] We disagree, and so does Sport England.[32]

Open space – quantum and quality

27. The development is required to provide a level of on-site open space over and above any on-site SANG. This is clear from Policy ISPA4 (which separately requires both SANG and other open space to be provided)[33]; the Healthy Environments SPD (which makes it clear that SANG is *"unlikely to meet all of the open space needs for a large site"*[34]) and common sense

[29] [**DP1**], p. 125.
[30] They are the only "sport facilities" to which Policy ISPA4(f)(ii) could conceivably be referring.
[31] Kevin Coleman, Proof, §10.48.
[32] [**APD6**], §§6.22-6.23.
[33] ISPA4(f)(iii) – SANG; ISPA4(f)(ii) – Open Space
[34] **[SPD6],** §2.69

(not all open space requirements being compatible with SANG, e.g. allotments, outdoor sports facilities, amenity green space etc).

28. Put shortly, the appeal proposal fails to provide a sufficient quantum of overall open space to meet the requirement for an on-site SANG, as well as other open space typologies required by policy. This is true whether the IBC[35] or ESC[36] open space requirements are applied. And even when taking a generous approach as to the open space typologies which are likely to be provided by SANG. The Appellant appears to proceed on the mistaken assumption that if there is surplus of certain types of open space typology in the local area, this reduces the minimum quantum of overall open space required by policy. It does not.

29. We have already touched upon the qualitative concerns to some degree in respect of the SANG provision. Much of the open space which the Appellant claims will operate as natural and semi-natural green space (and therefore as SANG) are simply not of a type or quality to be qualify as such. In particular, the linear open spaces in between development parcels, and at the edge of the appeal site, plainly will not be natural or semi-natural green spaces. Ms Chittock will expand upon these qualitative concerns in her evidence.

Masterplanning and Housing numbers

30. One of the exercises that one might expect to see undertaken as part of a broader masterplanning process for a development of this scale is the production of a 'land use budget', to establish how much space would be required for secondary land uses mandated by policy, and how many homes could be accommodated alongside such uses. As there was no indication of the Appellant having undertaken such an exercise as part of the application or appeal process, the LPAs commissioned Mr Russell-Vick to produce a land use budget for the appeal scheme, as well as for a potential alternative scheme of 599 homes across the broader allocation site.[37]

31. Mr Russell-Vick found that, applying IBC policy requirements and even assuming the maximum plausible degree of overlap between SANG, SUDS, and the various open space typologies set out in Policy DM6, the appeal scheme resulted in a land use deficit of some 6.04ha. By contrast, the potential alternative scheme gave rise to a much smaller deficit of around 0.86ha, which could be overcome altogether by – for example – a slight upwards

[35] Policies DM6, ISPA4(f)(ii) and Appendix 3 [**SPD6**].
[36] Policy SCLP8.2, and the Healthy Environments SPD.
[37] Produced as Appendix A to Lisa Evans, Proof, at pp. 59–70.

adjustment in density in the residential parcels, though not so great as to alter the character of the scheme, and/or the accommodation of some or all outdoor sports facilities offsite.[38]

32. The role of this exercise was not to hold up any particular alternative scheme as the only way the site could be developed in compliance with policy, but rather to demonstrate that a strategic joined-up land use planning process could help to bring forward a better designed development, which would not be subject to the same substantial deficit in quantum of open space that the current appeal proposal suffers from. Such a process would have provided a solid foundation for the delivery of SANG; enabled an effective transition to the countryside to be achieved, by avoiding built development in parcel D, as well as more generous landscape buffers along the north and north-eastern boundaries of the site; allowed for the retention of, or suitable replacement provision for, the sports pitches required by ISPA4/DM5; and enabled the delivery of the full quantity and type of open space typologies required by Policy DM6.

Conclusion

33. Taken altogether, it is apparent that the Appellant has approached the development of this allocated site with a view to maximising the quantum of housing, at the expense of delivering a well-designed and landscape-led development. The Appellant has repeatedly sought to suggest that deficiencies in the design of the proposed development can be addressed at the reserved matters stage. But simply tweaking of the layout, design or landscaping of the development further down the line will not address the fundamental concerns outlined above.

34. The LPAs have good reason to believe that this quantum of housing is undeliverable on this site in a way which complies with the relevant policy and regulatory requirements that we have touched upon. The Inspector can have no confidence that this development will be able to meet these requirements and will be invited, in due course, to dismiss the appeal.

ROBERT WILLIAMS
LOIS LANE
Cornerstone Barristers
21 January 2025

[38] *Ibid*, §7.