APPEAL REFS: APP/X3540/W/24/3350673 (A) & APP/R3515/W/24/3350674 (B)

LAND NORTH-EAST OF HUMBER DOUCY LANE, IPSWICH

CLOSING SUBMISSIONS ON BEHALF OF IPSWICH BOROUGH COUNCIL AND EAST SUFFOLK DISTRICT COUNCIL

I. INTRODUCTION

1. In opening, the Local Planning Authorities ('**LPAs**') posed a question. Has it been demonstrated that 660 homes can be delivered on the appeal site without breaching key development plan policies and the requirements of the Conservation of Habitats and Species Regulations 2017? As the evidence to the Inquiry has demonstrated, the answer to that question is an unequivocal no.

2. The appeal scheme[1] represents the overdevelopment of a sensitive site, without proper justification or adequate mitigation for the harms arising. While the principle of development on this cross-boundary allocation is, of course, accepted, the relevant Local Plan policies explicitly account for the site's sensitivities and require a carefully considered design response. The proposed development falls short of these requirements in a number of key areas.

3. The proposal does not create an effective transition to the countryside, nor allow for an appropriate frontage treatment to Humber Doucy Lane; it fails to provide sufficient Suitable Alternative Natural Greenspace, as well as other open space requirements; results in the unjustified loss of well-used rugby pitches without appropriate replacement; and promotes a quantum of housing which has not been properly justified. These harms are, at least in part, the consequence of an inadequate

[1] It is agreed between the LPAs and Appellant that the description of the development can be varied to read as follows "*Phased Hybrid Application - Full Planning Permission for the means of vehicle, cycle and pedestrian access to and from the site. Outline planning application (all matters reserved) for a mixed use development for up to 660 dwellings (Use Class C3), up to 400 sq m (net) of non-residential floorspace falling within Use Class E and/or Use Class F2(b), an Early Years facility, and associated vehicular access and highway works, formal and informal open spaces, play areas, provision of infrastructure (including internal highways, parking, servicing, cycle and pedestrian routes, utilities and sustainable drainage systems), and all associated landscaping and engineering works*" (amendment added). As the amended description merely reflects that which is secured by condition, the LPAs consider that no prejudice is caused.

masterplanning process, which was a specific requirement of the allocation. Before turning to consider these harms in detail, it is necessary to consider the decision-making context in which the present appeals fall to be determined.

II. THE DECISION-MAKING FRAMEWORK

The development plan

4. Both the Ipswich Borough Council ('**IBC**') Core Strategy and East Suffolk Council's ('**ESC**') Suffolk Coastal Local Plan ('**SCLP**') contain policies relevant to the determination of the appeal, most notably the site-specific allocation policies ISPA4 and SCLP12.24 (together the 'principal policies').[2] Of relevance to the issues in dispute between the Appellant and the LPAs, the principal policies require:

    a. Development to be delivered through comprehensive cross-boundary masterplanning of the site;
    b. High quality design (ISPA4(a); SCLP12.24(a));
    c. Creation of an effective transition between the new development/Ipswich urban edge and the more rural landscape character of East Suffolk (ISPA4(b));
    d. Use of green infrastructure/significant landscaping to create a soft urban edge; ISPA(f)(iv); SCLP12.24(f));
    e. On-site open space provision (ISPA4(f)(ii);[3] SCLP12.24(d));
    f. Suitable Alternative Natural Greenspace ('**SANG**') (ISPA4(f)(iii));
    g. Replacement sports facilities if required to comply with Policy DM5 (ISPA4(f)(ii)).

5. The Rushmere St Andrew Neighbourhood Plan[4] also includes Policy RSA 2: Land at Humber Doucy Lane, which accords with the principal policies by requiring significant reinforcement of existing planting and additional native tree planting along the north-eastern/eastern boundary, to ensure the maintenance of the

[2] [DP1], pp. 43-44; [DP2], p.273; The full text of the principal policies is also set out in Appendices C and D to Ms Evans' proof of evidence.
[3] ISPA4(f)(ii) specifies that open space provision should be in accordance with standards in Appendix 3 to the IBC Core Strategy.
[4] [DP3].

separation between the enlarged urban edge of Ipswich and the rural and tranquil part of the neighbourhood plan area.

6. Other policies of particular relevance to the determination of the appeals include IBC policies DM5: Protection of Open Spaces, Sports and Recreation Facilities and DM6: Provision of New Open Spaces, Sports and Recreation Facilities and SCLP policies SCLP3.5: Infrastructure Provision, SCLP8.2: Open Space, and SCLP10.1: Biodiversity and Geodiversity. The IBC Public Open Space SPD[5] and ESC Healthy Environments SPD[6] also provide important guidance on the application of development plan policies dealing with open space provision, including in relation to SANG. As Ms Evans clarified in her evidence in chief, the Healthy Environments SPD was adopted on the same day that the decisions on the applications were made, with Natural England (amongst others) having been consulted prior to its adoption.

7. As Ms Evans also explained in her evidence in chief, the full suite of development plan policies and SPD guidance are clearly relevant across the allocated site. Although IBC policies do not strictly constitute 'development plan policy' for the purposes of land on the ESC side of the administrative boundary, and vice-versa, policies from the adjacent authority's Local Plan and relevant SPD guidance are so plainly relevant as to be obviously material considerations.[7] That is, in our submission, a failure to have regard to them would be unlawful.

The Habitats Regulations

8. It is agreed between the parties 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 several nearby European sites.[8] The Habitats

[5] [SPD7].
[6] [SPD6].
[7] Some material considerations are made mandatory because they are "so obviously material" that a failure to have regard to them would render the decision unlawful (*In re Findlay*, pg 334; *R(Samuel Smith Old Brewery (Tadcaster) & Others) v North Yorkshire County Council* [2020] UKSC 3 (5 February 2020), §§31–32). In *R(Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52; [2021] PTSR 190, the Supreme Court confirmed that the test for whether a consideration is "obviously material" is whether a failure to have regard to it would be irrational (§§118–119).
[8] [SoCG9], §§1,5. The relevant protected sites are 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).

Regulations[9] (which implement the provisions of the European Habitats Directive[10]) mandate 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.[11] 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,[12] unless there are "*imperative reasons of overriding public interest*" ('**IROPI**').[13]

9. Authoritative guidance on appropriate assessment has been provided by the Court of Justice of the European Union and the UK Supreme Court.[14] Mitigation measures may be considered as part of the appropriate assessment (though not before at the screening stage),[15] but the caselaw is clear that a precautionary approach must be taken at every stage of this process.[16] The precautionary principle requires a "*high standard of investigation*"; 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*".[17] In other words, it is for the Appellant 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.

10. If the Inspector is not satisfied, beyond reasonable doubt, that there will be no adverse effect on the integrity of the European sites then permission must be refused. No IROPI case has been put forward by the Appellant in the present case and there is thus no question of applying a planning balance in such circumstances. In cross-examination, Dr Marsh and Mr Coleman agreed both that this was the correct approach to appropriate assessment under the Habitats Regulations and that, were

[9] Conservation of Habitats and Species Regulations 2017 ('**the Habitats Regulations**')
[10] Council Directive 92/43/EEC)
[11] Habitats Regulations 2017, reg. 63(1).
[12] *Ibid*, reg. 63(5)
[13] *Ibid*, reg. 64(1).
[14] 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*').
[15] *People Over Wind and Sweetman v Coillte Teoranta* (Case C-323/17) [2018].
[16] *Champion*, §12.
[17] See e.g. *R(Wyatt) v Fareham Borough Council* [2023] P.T.S.R. 1952 at §9(6), (7) & (9).

the Inspector to have reasonable doubts about the adequacy of the mitigation proposed as part of the appeal scheme, it would follow that permission must be refused.

National Planning Policy Framework

11. The National Planning Policy Framework ('**NPPF**') 2024 is plainly relevant to the determination of the appeals, though of course it does not displace the statutory primary of the development plan.

12. It is agreed that IBC cannot demonstrate a five-year housing land supply and, therefore, should the Inspector take the view that the HRA mitigation proposed is acceptable, then the tilted balance under NPPF paragraph 11(d)(ii) would apply.[18] In its most recent revised form, this entails granting permission unless:

> "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination*".[19] (Emphasis added).

13. This is an evolution from previous iterations of the NPPF, which simply referred to the policies in the Framework taken as a whole, with no specific policies highlighted for special consideration. One of the paragraphs referred to in the new footnote 9, accompanying the revised text of paragraph 11(d)(ii) is paragraph 139, which stipulates that "*Development which is not well designed should be refused*".[20]

14. As confirmed by the evidence of Mr Self[21] and Mr Coleman[22], the agreed position before the inquiry in respect of the application of these policies is as follows:

    a. If the Inspector were to conclude that the requirements of the principal policies concerning matters of landscape and design had not been met, then the development would not be well-designed;

[18] Lisa Evans, Proof, §4.15, p. 17.
[19] [NP2], p.6.
[20] *Ibid*, p.41.
[21] Cross-examination by RW (day 5).
[22] Cross-examination by RW (day 8).

b. In those circumstances, national policy indicates permission should be refused; and

c. The benefits of the scheme (taken at their highest) would not justify the grant of permission for a scheme which was not well-designed, even applying the tilted balance.

III. BREACHES OF DEVELOPMENT PLAN POLICIES

Masterplanning and housing quantum (Main Issues 1 and 11[23])

15. The principal policies both emphasise the importance of proper masterplanning. ISPA4 requires development to be "*planned and comprehensively delivered through masterplanning of the site*".[24] SCLP12.24 states that development "*will only come forward as part of a masterplanned approach*".[25] The requirement for masterplanning is not arbitrary; rather it is to ensure that development coming forward on the allocation responds appropriately to the particular sensitivities of the site.

16. As Ms Evans highlighted in her evidence, as part of an application for a development on this scale one would ordinarily expect to see, for example, a land use budgeting exercise, a formal illustrative masterplan (not merely an illustrative landscape strategy), and sufficient detail in the Design and Access Statement ('**DAS**')[26] to understand the anticipated distribution of buildings within the development parcels. This information is critical to ensuring that the amount of development proposed, in terms of both housing numbers and area of built development, is achievable in an *appropriate* manner, consistent with the requirements of the principal policies. None of these were provided with the present application.

17. Moreover, important information for the determination of the appeals has come forward late, in a piecemeal fashion, and in some cases accompanied by protracted uncertainty over the status of newly produced documents. The drainage strategy was revised three times, with the most recent revision coming forward as an Appendix to

[23] The Main Issues are identified by reference to the Inspector's CMC Note (15 November 2024), para 8.
[24] [DP1], p. 43.
[25] [DP2], p. 273.
[26] [AD16]

Mr Fillingham's Rebuttal Proof in early January. Important details on highways safety and the design of the main access junctions were still being ironed out during the first week of the inquiry. And important matters of detail — such as whether access roads were to be included in the open space or development parcels — have only been considered through the inquiry process, and then only clarified by way of late amendments to conditions.

18. All of this is indicative of rushed and inadequate pre-application engagement by the Appellant.[27] It also became apparent from the contributions by interested parties throughout the Inquiry that there was a good deal of public concern around issues (especially highways and drainage) which were resolved at the eleventh hour, via the provision of documents which members of the public had had limited previous opportunity to view.[28] The late provision of so much information, which should have fed into a masterplanning process informing decisions about the design of the appeal scheme, necessarily reduces the confidence that can be placed in the thoroughness of that process and the appropriateness of the development which resulted from it.

A housing-led approach

19. One of the key functions of a comprehensive masterplanning process is to establish the number of homes which can be successfully 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 process of masterplanning should be landscape-led. The adoption of a landscape-led approach is not merely a general requirement of good design[29], but is particularly important given the explicit recognition in the development plan that "*Development of this allocation will be required to deliver high quality design, which sensitively addresses adjacent countryside, biodiversity and existing dwellings.*"[30]

20. As Ms Chittock explained in her evidence in chief, a landscape-led approach should start by identifying the relevant open/green space requirements for the development and where these are best located within the proposed development to ensure that

[27] Lisa Evans, Proof of Evidence, §5.17, [AD40.3], [AD40.4].
[28] Evident in particular from the contributions of Barbara Robinson (Day 1) and Brian Samuels (Day 7).
[29] See e.g. ESC Healthy Environments SPD, [SPD6], §§1.6, 1.20, 2.3, 2.140.
[30] [DP1], p45, §8.27

open space and other secondary uses can be successfully integrated as part of the wider scheme.

21. In contrast, the Appellant appears to have taken a housing-led and arithmetically determined approach to planning the appropriate number of houses, with the balance between the land requirements of residential development and other requirements, including landscaping, green infrastructure, and open space, being determined by the mathematically derived size of the development parcels.

22. Prior to the Inquiry the Appellant did not appear to shy away from this approach. Indeed, their position appeared to be that the size of the development parcels, and the number of homes promoted, was the product of, and expressly justified by, development plan policy. The Planning Statement, for instance, explained that the 660 homes being promoted was the product of taking 60%[31] of the overall site area (18.86ha) and assuming an average density of 35dph across that area.[32] The Appellant's Statement of Case is, if anything, more explicit:

> "*With a requirement for 60% of the site to be developed for housing under Policy ISPA4.1, and a minimum requirement of 35 dwellings per hectare, the minimum number of homes for the site to accord with policy would be 660 homes (18.86 ha multiplied by 35 dwellings per hectare). The Appeal Scheme provides the right number of homes to comply with the adopted site allocation and density policies.*" (emphasis added).[33]

23. The LPAs did not accept that the extent of development parcels, and minimum number of homes, is fixed by policy and they led evidence to meet this case.[34] This, it was assumed, would be one of the battlelines.

24. And yet, at the Inquiry, the Appellant changed tack. Mr Self[35] and Mr Coleman[36] both pushed back in cross-examination against the suggestion that the size of the

[31] Excluding the mixed-use areas.
[32] [AD33], §3.13.
[33] [SC1], §3.19. This was repeated in Kevin Coleman's Proof, §6.19.
[34] Lisa Evans, proof, §5.26-5.29. It is notable that, despite filing a lengthy rebuttal proof, Kevin Coleman did not suggest that Ms Evans had misunderstood how the area of the development parcels or number of houses had been arrived at.
[35] Cross-examination by RW (day 5).
[36] Cross-examination by RW (day 8).

development parcels and quantum of housing had been determined arithmetically by reference to policy. And Mr Boyle KC twice sought to suggest, during re-examination of Mr Self[37] and cross-examination of Mr Russell-Vick,[38] that the 18.86ha figure for the size of the housing parcels was in fact what was left over after land for open space (11.44ha) and other secondary uses (a still unquantified amount) had first been accounted for, despite this process not being set out anywhere in the application documents.

25. The reality is that Inquiry has been presented with no written evidence, other than that set out in Planning Statement and Statement of Case, as to how the quantum of housing or size of the development parcels was arrived at. Neither Mr Self nor Mr Coleman could point to any alternative figures having been tested. Indeed Mr Coleman confirmed that no other figures had been, stating in cross-examination that he did not know "*what that exercise would have been. We haven't done it but I don't know what would have been the point*".[39] Mr Coleman was also unable to point to anywhere in the DAS describing the process by which the 11.44ha figure for total open space provision at Table 9 was arrived at as a starting point; and there is nothing in the DAS or elsewhere in the documents before the Inquiry to support his (belated) claim that the policy requirements were nothing more than a sense-check.

26. If the Appellant is truly inviting the Inspector to conclude that the figure arrived at for the appropriate area of the residential parcels after an unevidenced 'landscape-led' masterplanning process just so happens to coincide precisely with the figure for 60% of the site area as set out at §3.13 of the Planning Statement, then it is asking her to accept a rather extraordinary coincidence.

27. The resulting quantum of housing is 10% above the indicative numbers in the site allocation policies, a substantial increase over the allocation on a smaller site area, with no proper justification. The increase in the housing numbers not only reduces the space on site for other required secondary uses but also increases the quantum of

[37] Re-examination by CB (day 5).
[38] Cross-examination by CB (day 7).
[39] Cross-examination by RW (day 8).

open space required by policy, as many of the relevant policy requirements are linked to the population that would be generated by a proposed development.

Land-use budgeting

28. The relationship between additional population and additional open space requirements is one of a number of reasons why the LPAs would have expected to see a land budgeting exercise as part of the masterplanning process for the site. 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 one for a potential alternative scheme of 599 homes across the broader allocation site.[40]

29. As Mr Russell-Vick and Ms Evans explained in their evidence, this was not intended to be a full masterplanning exercise. The purpose of a land-use budget is to determine, in broad terms, the extent of development that a site is able to accommodate (or not accommodate, as the case may be), having regard to policy and other infrastructure requirements. It ought to be undertaken at an early stage in the masterplanning process.

30. In terms of the land-budget for the appeal scheme, Mr Russell-Vick calculated the land take assuming that 11.5ha of SANG[41] and the full suite of typologies required under IBC Policy DM6 were provided on-site, accounting for the fact that SANG is capable of overlapping with a range of other typologies.[42]. He found that, even assuming the maximum plausible degree of overlap between SANG, sustainable drainage systems ('SUDS'), and the various open space typologies required by DM6 and set out in Appendix 3 to the IBC Core Strategy, the appeal scheme resulted in a land use deficit of some 6.04 ha.[43] In evidence he described this magnitude of deficit as "unworkable" and suggested that in such circumstances he would advise a client

[40] Produced as Appendix A to Lisa Evans, Proof of Evidence, at pp. 59–70. Note that Appendix B to Ms Evans' proof was not produced by Mr Russell-Vick. It is the LPAs' replication of his methodology as a sense check to ensure that the use of ESC policy requirements did not result in a significantly different outcome in terms of overall land deficit. It did not and nothing in Appendix B is highly material to the determination of the appeals.
[41] [B17]. This in accordance with the position of the LPAs and, as we understand it, the recommendation of Natural England.
[42] [SPD6], p.52, Figure 5.
[43] Appendix A to Lisa Evans, Proof of Evidence, Table 5, p.68.

that "*they needed to rethink their numbers quite considerably*"[44]. This was not something that could be ironed out by tweaking the design. Had such an exercise been undertaken by the Appellant it would (or at least should) have resulted in the design team going back to the drawing board.

31. By contrast, the potential alternative scheme gave rise to a much smaller and, in Mr Russell-Vick's view, "fixable" deficit of around 0.86 ha. This, he explained could be overcome by – for example – a slight upwards 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 of the outdoor sports facilities required to serve the new residents offsite.[45]

32. The role of this exercise was not to hold up any particular alternative scheme as the only way the site could be developed, but rather to demonstrate that proper masterplanned process could bring forward the allocation in a manner which would not be subject to the same substantial deficit in quantum of open space that the current appeal proposal suffers from. Nor is the indicative drawing, which accompanies the land use budget and indicates where additional open space quantum might be redistributed around the appeal site, intended to be a formal plan for an alternative scheme. Rather, it is designed to show in broad terms, how the additional open space could be deployed in order to overcome the objections raised by LPAs to the appeal scheme.

33. The Appellant (through Mr Boyle) sought to suggest that Mr Russell-Vick's exercise undermined the LPA's case in three respects. First, because the potential alternative scheme did not include replacement rugby pitches. Second, because the alternative scheme resulted in a deficit. And third, because the land-budget exercise for the alternative scheme began with a putative housing number and land-take, this meant that the LPAs' criticisms of the Appellant for doing the same were hypocritical. None of these criticisms withstands scrutiny.

[44] Examination in chief by RW (day ?)
[45] *Ibid*, pp.60-61, §7.

a. As to the first point, it is clear from the evolution and examination of ISPA4 that it was never intended that the allocation site include space for reprovision of the rugby pitches. It was envisaged by both IBC and the then landowner promoting the allocation, that, if required the pitches were to be re-provided, this would be achieved off-site[46];

b. As to the second point, it is true that the potential alternative scheme does result in a small deficit for open space and secondary uses (assuming 599 homes came forward on the allocated site). This only serves to illustrate that Mr Russell-Vick undertook an objective and thorough exercise, and did not seek to 'make the numbers work'. The critical point is that the deficit is simply not of the same order of magnitude as for the appeal scheme. As Mr Russell-Vick explained, a deficit in the order of -0.86ha is fixable through further design refinements or the provision of a small amount of open space offsite. In contrast, a deficit of over 6ha would call for a fundamental rethink of the proposed housing numbers and extent of the development parcels.

c. Mr Boyle's third point in fact underscores the LPA's criticisms of the appeal scheme representing a housing-, rather than landscape-, led approach. Had the Appellant simply *started* with the development area of 18.86ha, and housing numbers of 660 as a *potential option* and used a land use budget of the type undertaken by Mr Russell-Vick to test whether this option was appropriate, the results would (or at least should) have resulted the Appellant revisiting these starting assumptions. That they did not only serves to further illustrate that the Appellant treated the housing numbers and development area proposed as being fixed by the principal policies, and treated them as a constant.

Conclusion on masterplanning

34. 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

[46] See the examining inspector's Q100 at Coleman Proof

masterplanning the site. It also represents a clear breach of the principal policies in its own right, although it is accepted that if the Inspector were to agree with the Appellant on each of the substantive harms identified by the LPAs as reasons for refusal, this policy breach would likely be outweighed by other material considerations. We shall deal with each of these other harms in turn.

Are the effects of the Appeal Scheme on the character and appearance of the area acceptable? [Main Issue 2]

35. As the DAS explains, the site's location *"between the suburb in the south and vast rural open space in the north"* is "*one of* [its] *most prominent characteristics*".[47] This is reflected in the site-specific policy requirements outlined above which, as Mr Self agreed, have been imposed to ensure that development of the site responds *appropriately* and *effectively* to its context.[48]

36. It follows that, in this case, the acceptability of the effects of the appeal scheme on the character and appearance of the area are to be determined not by generalised references to a high-level LVIA, but rather by a careful examination of whether the site-specific policy requirements have been met. Mr Self accepted that, should the Inspector agree with the LPAs' conclusions that the policy requirements concerning an effective transition to the countryside; the creation of a soft urban edge; and/or high-quality design had not been met, then the proposal would not have responded appropriately and effectively to the site context, and that this would constitute poor design.

37. Paragraph 139 of the NPPF tells us that under such circumstances, permission should be refused. As noted above, Mr Coleman went further, clarifying during cross-examination that he would not invite the Inspector to grant permission for a poorly designed scheme even accounting for the full benefits of the scheme and in circumstances where the tilted balance applies.

38. Before turning to those policy criteria, it is necessary to address two preliminary issues. First, the approach to assessing potential landscape effects when considering

[47] [AD16], p11
[48] Cross-examination by RW (Day 5).

an application for outline permission. And second, the parties' respective assessments of the baseline context.

Approach at outline permission stage

39. It should be uncontroversial that the impacts of the appeal proposal must be assessed on the basis of the application plans before the Inquiry (both the parameter plans[49] and detailed access plans[50]). This is because, if permission were granted, it would be these plans which establish the acceptable parameters for the development. It would not be open to the LPAs to refuse an application for reserved matters (or refuse to discharge any other condition) in a manner that would conflict with the principle already established in the grant of permission.[51] Thus, by way of example, it would not be open to the LPAs to refuse permission for dwellings located on the edge of (but within) the development parcels identified on the Land Use Parameter Plan[52] *on the basis* that they were too close to the site boundaries and/or did not allow for an adequate green buffer.[53] The principle of a dwelling in this location would have already been established. Indeed, it goes further because, as the maximum heights of dwellings is also fixed,[54] it would not be open to the LPAs to refuse permission on the basis that it would be inappropriate to locate a two-storey dwelling in this location.

40. In response to a question from the Inspector, Mr Self acknowledged that it would be "*inappropriate…to bring housing close up to the edge* [of the development parcels]".[55] But this is precisely what the parameter plans would allow for. The fact that this may not be the design intention of Mr Self or the Appellant is nothing to the point. At reserved matters stage it would be outside of the LPAs' gift to refuse, as a matter of principle, to allow dwellings to come forward in this location.

[49] [AD2(2)-(9)].
[50] [AD2(10)].
[51] See e.g. *Proberun Ltd v Secretary of State for the Environment* [1990] 3 P.L.R. 79.
[52] AD2(2).
[53] The LPAs could refuse, for instance, on the basis that the layout viz a via other built form was inappropriate; or the design of the dwellings was inappropriate; or their materials incongruous. But this is a conceptually different point.
[54] By the Maximum Heights Parameter Land [AD2(9)].
[55] Day 5. Q: If the site changed hands, what's to stop a scheme coming forward right up to the boundary? What would prevent that interface being pushed to the limit when the Parameter Plan is the governing plan?

41. Indeed, it became increasingly apparent from Mr Self's cross-examination that he had based his assessments of the effects of the appeal scheme primarily, if not solely, on the basis of the illustrative landscape strategy[56] and the DAS. Whilst we do not say these documents are irrelevant to the assessment of landscape effects, it is important not to lose sight of their status. The landscape strategy is merely illustrative of one way in which the green infrastructure on the site *could* come forward (and says nothing about how the built development *could* come forward). And whilst the design code would have to be "broadly consistent" with the DAS,[57] this cannot undermine the principles established by the parameter plans (nor, as a matter of fact, is there anything in the DAS which expressly states that dwellings will be set back from edge of the development parcels). We would respectfully invite the Inspector to assess the impacts of the scheme primarily by reference to the application plans.

42. Furthermore, in keeping with the approach endorsed by paragraph 140 of the NPPF, plans and drawings relied upon in the course of an application and conditioned when permission is granted ought to be clear and accurate. Whilst the parameter plans include a notation that the precise boundaries are to be finalised at the reserved matters stage,[58] as Mr Self agreed[59] it would not be permissible for any party at that stage to make material amendments to size or location of the development parcels as shown on the parameter plans. Contrary to Mr Self's suggestion in his proof, it would not be open to the LPAs at reserved matters stage to " [take] *the view that the transition space is too narrow in specific locations*…[and] *increase the depth in certain areas by varying the boundaries of the land use parcels*"[60]

43. It follows that Mr Self's evidence comes with the significant caveat that he has not based his assessment on what the parameter plans would allow for, nor undertaken an assessment on the reasonably worst-case scenario.

Baseline context

[56] [AD17].
[57] By virtue of proposed condition 25.
[58] The Land Use Parameter Plan [AD2(2)] indicates that the "*precise/detailed boundaries of development parcels will be set at Reserved Matters stage*".
[59] Cross-examination by RW (Day 5).
[60] Clive Self, Proof of Evidence, §5.18.

44. The parties' landscape experts take somewhat differing views on the character and sensitivity of the appeal site and this serves in part to explain the difference between the parties on the issue of compliance with the principal policy requirements on landscape.

45. The site becomes progressively more rural towards the North and North East — this much is agreed between the parties.[61] The distinction between Ms Chittock and Mr Self in terms of the existing site character focuses primarily on Parcel D, at the northern edge of the site,[62] and the relationship between it and the wider countryside, in particular the N2: Culpho and Westerfield Rolling Farmland landscape character area in the Suffolk Coastal Landscape Character Assessment ('**SCLCA**').[63]

46. Mr Self indicated in his evidence that he considered the character of Parcel D to be broadly similar to the rest of the northern part of the site and that it had been treated in the same way as Parcel C in the Landscape and Visual Impact Assessment ('**LVIA**')[64] and his proof of evidence. He considered the railway to form a clear boundary between the "*relatively ordinary and visually contained*" character of Parcel D and the more rolling, rural and wooded character of the landscape to the north.

47. By contrast, Ms Chittock characterised Parcel D as being more sensitive than other parts of the allocation site and also, despite strictly falling outside the N2 landscape character area on the map in the SCLCA, more demonstrative of the qualities of that landscape character type. On her characterisation, Parcel D is far more of a piece with the wider countryside beyond the railway line, which — set down in a cutting as it is — does not greatly interrupt the experience of the landscape for users of the PROW network and drivers through the arable landscape. Mr Self accepted that the railway was in a deep cutting and did not provide a visual barrier, and also that the authors of the SCLCA did not treat the railway as forming the natural boundary of the N2 landscape character area, or indeed any of the other character areas on the map at page 18.

[61] [AD16], p.16.
[62] [AD2(2)].
[63] [L2], PDF p.18.
[64] [L4].

48. The LPAs submit that Ms Chittock's assessment about the sensitivity of Parcel D is to be preferred. If it is, then this has significant ramifications for the assessment of whether the design response to this countryside edge is appropriate and effective. It is to this design response — and specifically the requirement to provide a green buffer — that we now turn.

Provision of a green buffer

49. The principal policies require, variously, "*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*" (ISPA4(b)); "*Landscaping and development proposals [which] provide a soft edge to the urban area where it means the countryside*" (ISPA4(f)(iv)); and "*Provision of a soft edge to the urban area through the provision of significant landscaping*" (SCLP12.24(f)). It is clear therefore that the adopted Local Plan policies not only require development to use landscaping to soften the existing rather harsh urban edge of Ipswich, but go further to require a transition to be achieved between that new edge and the open countryside.[65] As such, it was always envisaged that development of the allocation site would bring forward substantial open space in the form of a green buffer or transitional zone. Indeed at a general level it does not seem to be disputed that a 'green buffer' is required: the dispute is whether what has been provided along the north and north-eastern boundaries is of a sufficient width to achieve that transition.

50. It is important to stress that this requirement goes beyond the simple provision of boundary planting. Of course, boundary planting will form part of a successful landscape strategy, but it is not sufficient in and of itself to satisfy the policy requirements. Ms Chittock's Figure 2 provides a visual representation of the various uses which fall to be accommodated within the transitional space, including an active travel corridor, SANG planting buffer, SUDS features, play space and natural and semi-natural greenspace.[66] Her Figure 1 meanwhile indicates all the parts of currently proposed buffer on the countryside edges of the appeal site which are too constrained for the Inspector to be confident that such uses can be successfully accommodated.[67]

[66] Ruth Chittock, Proof of Evidence, p.29.
[67] *Ibid*, p. 23.

In her evidence in chief, Ms Chittock explained that the buffer at the northern edge of Parcel D at around 15m in width was especially constrained, but she also had concerns about the feasibility of successfully fitting the required uses, together the requisite extent of boundary planting, in the areas to the north-east of Parcels B1 and B2 (around between 17-25m in width at the narrowest points[68]), and to the north of Parcels E1 and E2 (also around 15m).

51. Mr Self did not gainsay, and Ms Chittock was not challenged, on her evidence that a meaningful woodland planting strip would likely require between 10-15m in width.[69] In the areas identified by Ms Chittock in her Figure 1, there is simply not sufficient space to achieve such planting together with other uses/infrastructure proposed in this area.

52. This is plainly not achievable in the 'buffer' areas to the north of Parcel E1-E2 or Parcel D which are the width of what would be required by woodland planting alone, without any account taken for other uses or infrastructure which would be necessary in these area.[70] Indeed, it is notable that in both instances Mr Self fell back on existing boundary planting which is outside of the appeal site, and therefore outside the Appellant's control. This is of particular concern in respect of Parcel D, where the existing planting is not continuous and, being located on top of a railway embankment, is liable to be pruned or removed by National Rail for reasons of safety or operational efficiency (i.e. avoiding leaves dropping on the line).

53. In terms of the buffer area to the north and north-east of Parcels B1 and B2, whilst there are some more generous areas, large parts of it are no more than circa 25m in width, with some pinch points being noticeably smaller. This is an area which, in addition to the woodland planting along the boundary, will be required to include: a

[68] [ID26], Land Use Parameter Plan with measurements marked up.
[69] Ruth Chittock, Proof of Evidence, p.23, §6.10
[70] Both areas are proposed to included infrastructure and uses other than woodland planting. The buffer area the north of Parcel D is shown on the illustrative landscape strategy as including a recreational route of at least 2m in width, which itself would also need verge planting. Parcel E includes the same recreational route (albeit this also forms part of the green trail shown on the Green & Blue Parameters Plan, so is fixed), with some of the areas also being taken up by a strategic swale which would be 8m in width.

pedestrian path[71] (circa 2m wide);[72] a cycleway[73] (circa 3m wide)[74] and, in respect of Parcel B at least, a strategic swale (8m wide).[75] Again, there will be insufficient space to account for these uses, together with a meaningful woodland planting buffer. And certainly not enough space to achieve these uses together with the necessary internal SANG buffer planting, which Ms Chittock notes as one of the key design principles,[76] and which the illustrative landscape strategy provides for, but only in the less constrained areas.[77]

54. Furthermore, Ms Chittock was clear that an effective green transition would require the sensitive Parcel D at the north of the site to be treated differently from other parcels. She suggested that it should either be left free of built form entirely or used to accommodate only a small number of homes with a very substantial set back from the edge of the development envelope. It is telling that this was an approach adopted in the original concept plan produced by Hopkins Homes,[78] which also showed no development in Parcel D and a much more substantial green buffer to the northeast of the site. It is also consistent with Mr Russell-Vick's high level illustrative plan for a potential alternative scheme.[79]

55. Not only is Parcel D <u>not</u> treated as more sensitive than other parts of the site by the proposed development as currently conceived, but its northern edge is not in fact treated as a countryside edge at all. The DAS consistently presents additional green infrastructure as being located to the south of Parcel D along the existing PROW. This is the case in its analysis of site opportunities, its description of so-called 'edge conditions', and its route for a green trail.[80] On the parameter plans,[81] the boundary of Parcel D is narrower than other parcels on the countryside edge, not wider. In quantitative terms it has been treated as more akin to the edges of the site which front

[71] AD2(6)
[72] AD17
[73] AD2(7)
[74] AD17
[75] Thomas Fillingham, Rebuttal Proof, Appendix B
[76] Ruth Chittock, Proof of Evidence, p.23, §6.24 and Figure 2.
[77] AD17, Illustrative Landscape Section A-AA – Thicket Planting. Note that this is not achieved in the far more constrained section B-BB.
[78] [ID17].
[79] Lisa Evans, Proof of Evidence, separate drawing with Appendix A.
[80] [AD16], pp.25, 27, 45, 52, 54, 89-91.
[81] [AD2(2)-(9)].

onto Humber Doucy Lane and is one of the narrowest proposed edges on the appeal site.

56. This treatment can only be justified by Mr Self's characterisation of the railway line acting as a physical boundary, in terms of landscape character, between the site and the wider countryside (although even then, the LPAs would maintain the buffer is too constrained, for the reasons outlined above). If the Inspector agrees with Ms Chittock's analysis that this parcel reads as part of the wider countryside, and that the railway line does not act as an absolute boundary in relation to the landscape character, then the Appellant's approach to the Parcel D is plainly inappropriate, even on their own terms.

57. It follows that, due to the inadequate green buffer *and* the inappropriate treatment of Parcel D, the appeal proposal fails to meet the site-specific policy requirements.

Quality of open space

58. Moving beyond the countryside buffer, the LPAs do not consider that the 9.56ha of natural and semi-natural greenspace proposed in the DAS is achievable within the proposed development as configured.[82] Mr Self accepted that, whether having regard to national[83] or local guidance,[84] the central characteristic of either natural and semi-natural green space is that "*a feeling of naturalness is allowed to predominate*".

59. As Ms Chittock explained in her evidence, the majority of the areas identified by the Appellant as natural and semi natural green space would not achieve this experience. As her Figure 4 demonstrates,[85] this is undoubtedly true of the linear spaces proposed between the development parcels. But, as she also explained in evidence, it is also true of virtually all of the southern side of the appeal site, where users would be surrounded by urban influences both outside the site (Tuddenham Road and Humber Doucy Lane) and internally (from built development and traffic on the site itself). It is also true of some sections in the North and North East where the buffer is too

[82] *Ibid*, pp.114-115.
[83] [B15] Natural England Green Infrastructure Guidance, p44
[84] [SPD6], p.45
[85] Ruth Chittock, Proof of Evidence, Figure 4, p. 37.

narrow to allow for users to be removed (both visually and aurally) from the built development and urbanising influences on the site itself.

60. Mr Self accepted during cross-examination that it would not be possible to have a natural experience in most of the roadside parcels and linear corridor spaces proposed. When asked where on site the type of nature-immersion experience shown in photograph at Figure 3 of his proof might be able to be achieved,[86] he was not able to identify any specific locations. Though he maintained that a semi-natural planting treatment could be achieved in many of the smaller linear green spaces proposed, he conceded that it would be unlikely that any of these green parcels would create a feeling of predominating naturalness. That the Appellant, in reality, accepts that not all of the natural and semi-natural greenspace proposed at page 115 of the DAS is deliverable as such was reinforced in Mr Boyle's questioning of Dr Marsh during the HRA evidence, where he sought to downplay the importance of this typology in providing effective habitats mitigation (despite Dr Marsh's own evidence that "*natural and semi natural green space is <u>the key</u> typology for the delivery of the necessary mitigation*"(emphasis added)).

Treatment of Humber Doucy Lane Frontage

61. The consideration of 'Site Opportunities' in the DAS includes the opportunity to "*Create a meaningful buffer zone that responds to the Humber Doucy Lane environment*".[87] As the etymology of the road's name indicates, Humber Doucy Lane was once characterised by 'sweet shade' from large stature avenue tree planting.[88] There is an opportunity with development of the allocation site to introduce meaningful new planting to strengthen the prevailing character of the road and provide succession for the existing remnant oaks along the southern side of the road.

62. All parties appear to agree that this would constitute an appropriate design response to the site's context in this location. The dispute is whether the appeal scheme allows sufficient room for this to be achieved.

[86] Clive Self, Proof of Evidence, Figure 3, p.32 and cross-examination by RW (day 5).
[87] [AD16], p. 53.
[88] [H5], p.11.

63. The set back from the site boundary is between 10m (Parcel A1) and 20m (Parcel A2). However, this set back is to accommodate a combined formal footpath and cycleway and, in respect of Parcel A2, a strategic swale. The room left over for planting between the footpath/cycle way and the site boundary is much smaller, between 3.7m-5.8m.[89] This area would have to accommodate not only the succession oaks (or similar significant tree planting), but also the replated hedge (repositioned to allow for the junction works and sight lines to be achieved. Ms Chittock was quite clear that the proposed Humber Doucy Lane set-back might provide sufficient space for smaller tree or shrub planting but would not provide sufficient rooting and canopy space for larger avenue trees to be successful in the longer term. They would also face pressure from the inevitable looping as a result of carriage overhang.

64. The failure of the scheme to provide a meaningful buffer to Humber Doucy Lane, in which substantial trees can not only be planted, but can flourish, is a further indication of that it is not a well-designed scheme.

HRA mitigation and SANG [Main Issue 7]

65. All parties agree that payment of the RAMS tariff and the existence of high-quality offsite walking routes in the vicinity of the appeal site would not be sufficient to avoid adverse impacts on the integrity of the European Protected Sites.[90] On-site mitigation is critical.

66. The Appellant's case in respect of the on-site mitigation has been confused to say the least. First and foremost it turns upon the suggestion that Suitable Alternative Natural Greenspace ("**SANG**") is not required. This had been the Appellant's position throughout, from the shadow HRA,[91] which argued that SANG was not required; to Mr Boyle's insistence at the CMC that the term SANG should not be used to define the main issues; to Dr Marsh's proof and rebuttal evidence, in which he expressly disputed that SANG standards applied.[92]

[89] ID27
[90] Cross-examination of Dr Marsh by RW (Day 6)
[91] AD30, paras 4.23-4.26
[92] Dr Marsh rebuttal proof, §2.2

67. The Appellant's case for SANG standards not applying to this development[93] is wholly unconvincing. It relies on: (a) reading in isolation references from the RAMS SPD[94] which applies to any development where there is a net increase in numbers, and which does not purport to determine when SANG is required; (b) a website entry which summarises the same;[95] and (c) a HRA Record[96] which not only does not purport to determine when SANG is required, but which the Healthy Environments SPD indicates should be applied to smaller, Tier 3 sites of less than 150 dwellings.[97]

68. The LPAs contend that SANG plainly is required in order for effective on-site mitigation to be achieved. The concept of SANG is employed by both Councils in their policy documents. The policy requirement under ISPA4(f)(iii) could not be clearer. And, perhaps critically, the requirement for on-site SANG reflects an important distinction between open space which is of a *type* and *quality* to provide effective mitigation, and that which will not. As Mr Meyer explained, meeting the requisite SANG standards is necessary in order that one can be confident, beyond reasonable doubt, that the open space will provide effective mitigation. That is, it will function so as to dissuade a sufficient number of people from visiting the European Protected Sites for recreational purposes.

69. It is the LPAs' case that the on-site open space provided does not provide the requisite mitigation. It is neither of sufficient *quantum* or *quality* to meet SANG standards.

70. ISPA4(f)(iii) does not put a figure on the quantum of SANG required on the appeal site. However, the starting point, derived from Natural England guidance,[98] as incorporated within the Healthy Environments SPD,[99] is that SANG should be calculated at a rate of 8ha per 1,000 people. As explained in Mr Meyer's proof, this would result in a figure of 12.67ha (based on an assumption of 2.4 persons per dwelling), compared to a figure of 11.5ha for the allocation at 599 dwellings.[100] Having regard to the shadow HRA which and, in particularly the availability of off-

[93] As set out in Dr Marsh's Proof of Evidence, paras 7.9-7.11. See also Rebuttal, §2.2
[94] [SPD1.2]
[95] Dr Marsh Proof, §7.9
[96] [B12]
[97] [SPD6, p.60, §2.168]
[98] [B21], p.4.
[99] [SPD6], §§2.35, 2.70.
[100] James Meyer, Proof of Evidence, §7.3.

site mitigation measures, the LPAs were prepared to accept the provision of 11.5ha of on-site SANG in such circumstances, a 9.23% reduction from the starting point of 8ha per 1,000 people.[101] Our reading of Natural England's consultation response and subsequent correspondence is that they agree that this is an appropriate figure for the provision of SANG.[102]

71. If the Inspector agrees with this assessment then, even on the Appellant's own case taken at its highest[103], there is insufficient on-site space provided in order to be able to conclude that adverse effects on the protected sites will be avoided.

72. However, even if the Appellant is correct that Natural England required only 10ha of greenspace, the LPAs' have serious concerns about the deliverability of this quantum at a sufficiently high quality to function as HRA mitigation.

73. As a starting point, it is plainly inappropriate to include the Amenity Green Space (0.87ha) and Parks & Gardens (0.80ha) as part of the HRA mitigation. This is contrary to the guidance in the Healthy Environments SPD,[104] and common sense. Those typologies, at least as provided for in this scheme, will not provide anything like comparable recreational opportunities to those found in the protected sites.

74. Turning, then, to the quality of the remaining provision, the ESC Healthy Environments SPD, drawing on 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. It is defined as "*a form of large scale, exceptionally high quality natural/semi-natural green open space that is provided with the primary purpose of deterring people away from use of European sites for day*

[101] *Ibid*, §7.7. Note that Mr Russell-Vick's figure of 10.44ha of SANG for the potential alternative scheme applies a comparable 9.23% discount to the starting figure of 11.5ha for 599 dwellings, in line with the allocation.
[102] [B16], [B17].
[103] Namely that 11.23ha of open space can be counted towards the mitigation. See Dr Marsh Rebuttal Proof, Table 1
[104] [SPD6], p52, Figure 5. As Mr Meyer explained, the Park ^& Gardens in this case are not designed to be provided in a semi-natural format. See DAS, p117

to day recreation activity purposes."[105] The SPD sets out a range of essential, desirable, and gold standard criteria for SANG provision for developments of different scales.[106]

75. Dr Marsh very frankly and correctly accepted in his oral evidence that the on-site mitigation proposed does not meet all of the essential SANG standards set out in Table 15 for a Tier 2 development.[107] He stated that the Appellant was not aiming to meet every facet of those guidelines, because it had never claimed to be providing SANG.[108] Nevertheless, when asked by the Inspector what approach she *should* adopt, on the Appellant's case, to determining whether the proposed HRA mitigation measures are adequate, Dr Marsh indicated that the SANG standards in the Healthy Environments SPD were helpful after all.

76. Moreover, Dr Marsh's evidence that the on-site mitigation will be effective, despite not meeting SANG standards, is dependent on the scheme delivering 9.56ha on natural and semi-natural green space. He accepts – indeed positively avers – that natural and semi natural green space is the *key* typology for delivering effective mitigation. And, whether the required quantum of on-site mitigation is 11.5ha or 10ha, it is the 9.56ha of alleged natural and semi natural green space which makes up the vast majority of the mitigation.

77. And yet the obvious reality of the situation is that much, if not most, of the 9.56ha of space relied upon by Dr Marsh is plainly not deliverable even as semi-natural greenspace. Indeed, this appeared to have been accepted by other witnesses and potentially even counsel for the Appellant (see above at [60]). Faced with this position Dr Marsh was forced to argue that some of the areas, even if they did not constitute semi-natural green space in their own right, would operate as linkages between true area of semi-natural green space.

---

[105] [SPD6], §163.p.16: "*Suitable Alternative Natural Greenspace is high-quality, extensive (around 8ha per 1,000 people) natural or semi-natural green space that has been provided with the primary purpose of relieving recreational pressure on ecologically sensitive European Sites (e.g. the Deben Estuary), as per the outcome of an Appropriate Assessment under The Conservation of Habitats and Species Regulations (2017). Pressure is relieved by providing a highly attractive, high quality alternative offer closer to where people live, so that they are less likely or are less often going to visit European sites for recreational activities such as dog walking.*"

[106] [SPD6], Table 15: Suitable Alternative Natural Greenspace (SANG) Design Quality Matrix, pp.64-66. The proposed development is a Tier 2 development of 150+ units.

[107] Cross-examination by RW (day 6).

[108] Aidan Marsh, Rebuttal Proof, §2.2, p.3: "It is important to note that I dispute this assertion that SANG standards must be applied."

78. In summation, therefore, the Appellant's case on the HRA mitigation is entirely unpersuasive. It comes nowhere near to establishing the level of certainty required. It is based on a misconceived notion that SANG is not required, when there is a specific policy requirement for it; that SANG standards are not to be applied, when there is local guidance to this very effect; that only 10ha of on-site open space is required, when this is significantly below the starting-point and has no proper justification; and relies on the vast majority of open space on site coming forward as semi-natural green space when, on any account, this will not be achieved.

79. By contrast Mr Meyer's evidence to the inquiry was clear and consistent. He explained that, in line with Natural England guidance (as incorporated within the ESC Healthy Environments SPD) and in his professional opinion, the provision of SANG to at least Tier 2 essential standards in the most appropriate form of mitigation to avoid the risk of adverse effects on nearby European sites. He explained that 11.5ha of on-site SANG was considered an appropriate quantum to acceptably mitigate the potential adverse impacts of the appeal scheme on nearby protected sites.[109] And he explained that the appeal scheme currently falls short of those standards across the vast majority of the site, with only a few of the wider areas of the proposed green buffer capable of providing SANG-quality open space.

80. Faced with these realities, Mr Boyle mounted a rear-guard action in which he (a) sought to argue for the first time, in re-examination of Dr Marsh, that *in fact* SANG is being provided; and (b) in cross-examination of Mr Meyer, focused almost exclusively on procedural points. The LPAs suggest that this is because the Appellant has no credible answer to Mr Meyer's evidence as it stands before the Inquiry.

81. As to the first point, it may be thought a little surprising that the definition of SANG in the IBC Core Strategy only appears to have only come to the attention of the Appellant's team through cross-examination of Mr Meyer. It begs the question of the extent to which the Appellant has paid regard to the site-specific requirements, at least in respect of HRA mitigation. But in any event, it takes the Appellant nowhere.

[109] In line with Natural England's recommendation, as we understand it [B17].

SANG is defined as *" greenspace that is of a quality and type suitable to be used as mitigation to offset the impact of new development"*. But this is hardly a revelation (it could almost be said to be tautologous given that SANG is an acronym for suitable alternative natural green space). The key question is whether the green space is of a *quality* or *type* to constitute effective mitigation (and therefore SANG) — i.e. the central issue between the parties — and that question is to be answered by applying established standards for SANG, including those in the Healthy Environments SPD.

82. As to the second point, it was suggested in cross-examination that the HRA reasons for refusal were focused solely on concerns about SUDS infrastructure and existing valued habitats within the proposed on-site greenspace and that, these having been overcome since the application was determined, the reasons have fallen away. This suggestion goes nowhere.

    a. First, it is simply inaccurate. The reasons for refusal were broader than the two specific points regarding SUDS and existing habitats. Mr Meyer's evidence to the Inquiry clearly falls within the scope of the reference to the "deliverability and appropriateness" of "on-site recreational greenspace".[110]

    b. Second, in the HRA Statement of Common Ground, signed by Dr Marsh on behalf of the Appellant on 11 December 2024, the issue between the parties was distilled as: "whether the package of mitigation measures provided, specifically the quantum and design of the on-site Suitable Alternative Natural Greenspace (SANG), is adequate to conclude that the proposed development will not have an adverse effect on the integrity of the identified European sites."[111]

    c. Third, even if it were the case that the first time that SANG was contemplated as a disputed issue between the parties was in Mr Meyer's proof, that does not mean that it should not be factored into the decision-making process now. The LPAs are not only entitled but *obliged* under the scheme of the Habitats Regulations to raise concerns about the adequacy of the proposed HRA mitigation. It is of course for the Inspector, now the competent authority for appropriate assessment purposes, to decide whether or not those concerns are

[110] [DD6] §7 [DD5] §6
[111] [SoCG9], §8.

valid,[112] but there can be no proper objection to Mr Meyer having raised them in his Proof of Evidence.

Loss of the rugby pitches [Main Issue 10]

Value of the pitches

83. The rugby pitches at the south-eastern corner of the appeal site are clearly an asset of considerable community value, despite being privately operated by Ipswich Rugby Football Club ('**IRFC**'). In his evidence to the Inquiry[113], Mr Hancock explained that, save for the COVID period, the pitches have been in use continuously since 1994.

84. The pitches are used extensively. During the winter Rugby season (September to April) they are used on Saturday afternoons (1pm-4pm), on Sunday mornings (9am-1pm) and on occasion on Sunday afternoons. In the summer off-season, they are used on weekday evenings (Tuesdays, Wednesday and Thursdays), as well as for pre-season training at weekend. And during the Easter, Summer and October school holidays, the pitches host all day events (10-4pm). The pitches are used by members of all ages. The senior teams sometimes hold matches on the pitches when the main pitches are unavailable, as well as for training. And the youths and children (from Under 6's to Under 18's) regular use the pitches for both training and matches. And it is clear that they are a facility used by lots of people. On a regular Sunday, when everyone is simply training, the pitches will accommodate approximately 150 children. Occasionally, along with other nearby facilities, they host festivals at which time there can be up to 1,000 children on site.

85. Mr Hancock was clear that the club would be unable to absorb the current demand for pitch space on other pitches on the IRFC site, were the pitches on the appeal site to be lost without suitable replacement provision being made available. He explained that, in such circumstances IRFC *"would lose the ability to offer rugby for a large section of our membership and this would be severely detrimental to serving the needs of the Ipswich rugby community which extends beyond players and parents."*[114]

[112] In so doing she is certainly not bound by the wording of the reason for refusal.
[113] ID25
[114] *Ibid.*

Policy protection for the pitches

86. It is unsurprising that, against that background, ISPA4 includes a specific policy protection for the rugby pitches (as Mr Coleman properly acknowledged the reference to "replacement sports facilities" in (f)(ii) can only be to the rugby pitches in question).

87. It is apparent from documentation before the Inquiry[115] that the Inspectors examining the IBC Core Strategy were conscious that, were the allocation to come forwards, IRFC may need replacement or additional facilities. They enquired as to whether the allocation should be enlarged to allow for this to take place on-site. The answer from both the Council and the then landowner was no. The pitches were to be protected by application of Policy DM5 – which only permits their loss in certain defined circumstances – with the landowner (represented by Mr Coleman's firm) giving comfort to the inspectors that, were replacements necessary, this would be achieved off-site in the "immediate locality". The landowner indicated that they would *"to continue to liaise with the Rugby Club regarding the most appropriate options"*[116].

88. At all times when this policy was developed, examined and adopted the latest planning permission for use of the pitches had already expired. The policy protection in ISPA4f(ii) was nevertheless promulgated and adopted, no doubt in recognition of the considerable community value that use of the continued use of the rugby pitches provides (and the lack of any prospect of enforcement action being taken to require that use to cease). As Mr Boyle rightly remarked, planning policy is not (usually) concerned with protecting private interests. It is, however, concerned with protecting and promoting valuable community uses and facilities[117]. And there is no restriction on policy doing so only where there is an extant permission for such as use. Indeed,

[115] KC Proof, para 4.29 and [PP24]

[116] [PP24], p5

[117] See for instance, NPPF, paras 20 (c) *"make sufficient provision for…..community facilities")* ;98 (*"planning policies and decisions should (a) plan positively for the provision and use of…community facilities (such as….spots venues, open spaces….(c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs"*); and 200 (*"Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs)*

were there such a restriction, planning policy would be restricted to maintaining the status quo.

"Justification" for their loss

89. The Appellant purports to justify the loss of the rugby pitches in two ways. First, they contend that their meets the tests established in Policy DM5. Second, they argue that the weight to be attributed to their loss is to be reduced on the basis that the ongoing use is "unlawful". Neither argument withstands scrutiny.

Operation of Policy DM5

90. Policy DM5 of the IBC Core Strategy deals with the protection of *existing* open spaces, sports and recreation facilities.[118] It states that development involving the loss of such facilities will only be permitted where one of the identified exceptions within the policy is satisfied. These are:

    a. "the site or facility is surplus in terms of all the functions an open space can perform, and is of low value, poor quality and there is no longer a local demand for this type of open space or facility, as shown by the Ipswich Open Space, Sport and Recreation Facilities Study 2009 (as updated in 2017) and subsequent update; or
    b. alternative and improved provision would be made in a location well related to the users of the existing facility; or
    c. the development is for alternative sports and recreation provision, the need for which clearly outweighs the loss."

91. It is common ground that Policy DM5 is relevant to the loss of the rugby pitches. Mr Coleman did not seek to suggest that the policy is disapplied by what he characterised as the unlawfulness of the use of the pitches. Rather, the Appellant's case is that they satisfy exception (b)[119] (and possibly exception (c)) of Policy DM5 and that the loss of the pitches is thereby justified. It is accepted by the Appellant that criterion (a) does

[118] [DP1], p.125.
[119] The Appellant's Statement of Case only sought to rely on exception (b).

not apply because there is ongoing local demand for the pitches.[120] Mr Coleman also accepted that the pitches were not of low value or poor quality.[121]

92. Exception (c) is, in the LPAs' submission, irrelevant. It applies when the development "*is for alternative sports and recreation provision*" and is plainly designed to apply in circumstances where a sports or recreational facility is redeveloped to deliver a different type of sport or recreational activity (for example the redevelopment of a gym as a leisure centre with a swimming pool). The suggestion that the provision of a single multi-use games area ('**MUGA**'), which is ancillary to a large residential development and meets the needs that development creates, brings that development within the scope of DM5(c) is simply not credible.[122]

93. Ms Evans and Mr Coleman disagreed on the correct interpretation of DM5(b). Mr Coleman considered that alternative provision could, in principle, be for *any* type of sport or recreational activity, provided it was offered in a nearby location to the existing facility.[123] In the LPAs' submission this is clearly not the correct interpretation exception (b), which requires alternative or improved provision "*in a location well related to the users of the existing facility*" (emphasis added). The Appellant has focused entirely on the 'well related location' part of the equation and neglected to consider that, as Ms Evans explained, the users of the existing facility in the present case are people who play rugby. Why, one asks rhetorically, would the alternative and improved provision be well related to the users of the existing facility, if it was going to provide facilities which do not meet the needs of those existing users? Thus, on a straightforward reading of the text of Policy DM5, alternative and improved provision for the playing of rugby would need to be delivered to satisfy exception (b)

Are the exceptions in DM5 satisfied?

94. We have already explained why, in the LPAs' view, Policy DM5(c) does not apply, in that a large-scale residential development with an ancillary MUGA cannot logically be considered development "*for alternative sports and recreation provision*". The Appellant accepts that Policy DM5(a) is not satisfied. It remains, therefore, to consider

[120] Kevin Coleman, Proof of Evidence, §10.46.
[121] XX of Coleman by RW (Day ?)
[122] Kevin Coleman, Proof of Evidence, p. 25.
[123] Cross-examination by RW (day 8).

whether the MUGA can be considered "*alternative and improved provision […] in a location well related to the users of the existing facility*" so as to satisfy Policy DM5(b). The LPAs suggest that it plainly cannot.

95. In the first instance, it is telling that the MUGA was originally proposed not as a replacement for the existing rugby pitches — nor indeed as provision for outdoor sport at all — but as youth provision under the requirements of Policy DM6.[124] This is how the facility was presented in the DAS at 'Table 9: Ipswich Standards for the Provision of Open Space, Sports and Recreational Facilities'. And it is referred to in the DAS throughout as part of "Play and Recreation Strategy" for the site.[125] Mr Coleman's evidence has sought to retrofit this approach and put forward the MUGA as alternative provision under DM5.[126] But Policies DM5 and DM6 are designed to do different things. One is aimed at protecting facilities for existing users and the other at meeting the needs of the new residents.

96. In oral evidence, Mr Coleman suggested that there was no reason why the facility could not be used by adults as well as young people and thereby perform two functions; both as replacement provision for the rugby pitches under DM5 and new provision for young people under DM6.[127] However, even if we accept that the MUGA is capable of being treated as alternative provision for the purposes of determining whether DM5(b) is satisfied, if the Inspector agrees with the LPAs that the wording of this criterion requires alternative provision <u>for playing rugby</u>, then the MUGA clearly will not satisfy it in practice.

97. The MUGA would be 37m x 34m; some twenty-five times smaller than the existing rugby pitches, which measure 2.70 ha.[128] It would be a hard surfaced court (rather than the turf or 3G Artificial Grass required for playing pitch sports[129]), with no car parking or changing facilities, and seemingly no means of booking. It would allow for a handful of people to play at any one time, as compared to the tens, if not hundreds accommodated by the existing pitches. As emphasised by Sport England in

[124] [AD16], p.115.
[125] [AD16], p119
[126] Kevin Coleman, Proof of Evidence, §10.48.
[127] Cross-examination by RW, (day 8).
[128] [APD6], p.27.
[129] *Ibid*, §6.23, p. 34.

its appeal statement, and in line with common sense, the MUGA would be incapable of functioning as a usable facility for training and matches for members of IRFC, i.e. for the users of the existing facility.[130] Consequently, the LPAs maintain that none of the exceptions under Policy DM5 apply and the loss of the rugby pitches would be in breach of the policy, and by extension Policy ISPA4(f)(ii).

Weight

98. Mr Coleman also seemed to suggest that overall compliance with Policy DM5 was irrelevant to the weight to be given to the loss of the pitches in the planning balance; indicating that he would ascribe medium weight to the loss regardless of whether or not DM5 was satisfied. This clearly cannot be correct. Should the Inspector conclude that Policy DM5 has been breached, this would need to be reflected somewhere in the planning balance, regardless of whether it is expressed by increasing the weight given to the loss of the pitches directly or by the inclusion of an additional separate harm for non-compliance with the development plan policy. Indeed, it is submitted that substantial weight be given to such a breach, on the basis that it would be permitting development to come forward on the site in the teeth of a specific policy requirement that (if the DM5 exceptions are not met), the rugby pitches are replaced.

99. Mr Coleman also seeks to reduce the weight to the loss of the rugby pitches on the basis that there is no extant planning permission for their use. The LPAs would submit that this should not significantly reduce the weight to be attributed to their loss for the following reasons:

    a. First, as noted above, the principal policy seeks specifically to protect (and promote) valued with valuable community facility. The policy protection is not contingent on that use having an extant permission.

    b. Second, there is no realistic prospect of enforcement action being taken against that use. It has been ongoing for five and half years since the expire of the last permission. No action has been taken to date. It is not hard to see why. It

[130] *Ibid*, pp. 33-34.

provides a very important community facility, and there is no evidence that its use has given rise to any complaints.

c. Third, as Mr Coleman accepts[131], there is every likelihood that were IRFC to apply for planning permission again, it would be granted. Given the actual usage and lack of any evidence of complaints, it is not clear that a permission would necessarily be subject to the same restrictive usage conditions as the earlier permissions.

d. Finally , neither Mr Coleman nor (with respect) the Inspector are in a position to judge whether the continued use is unlawful. Mr Hancock's evidence is that the pitches have been used continuously since 1994. There use is well in excess of the condition imposed on each of the temporary planning permission restricting the period when the pitches can be used. It would therefore appear that there has been a breach of planning control ongoing for quite some time. Whether there has or was a continuous breach for a period of ten years or more such that the use is immune from enforcement action[132] and therefore lawful[133] has not yet been determined (and nor is it the Inspector's role to determine as much). Contrary to Mr Coleman's apparent understanding[134], the absence of a certificate of lawfulness does not render the use unlawful. A certificate of lawfulness is simply declaratory of existing rights.

100. In light of the above if, as the LPAs suggest is the case, the Appellant cannot bring themselves within one of the exceptions in Policy DM5, the loss of the rugby pitches must weigh very heavily against the grant of planning permission. A scheme could and should have come forward which secured their replacement.

Open space quantum and green infrastructure [Main Issue 12]

101. As already touched upon above at paragraph 19, a landscape-led approach to masterplanning ought to have started by calculating the open space requirements for the appeal site.

[131] Cross-examination by RW (Day 8).
[132] Under s.171B(3) [ID35]
[133] Under s.171(2)(a) [ID35]
[134] Coleman Proof, para 10.11

Relationship between SANG and other open space requirements

102. A range of open space typologies are required by the relevant development plan policies and accompanying SPD guidance. IBC Policy DM6 and Appendix 3, Table 9, sets out seven typologies which major development is expected to provide: namely (i) parks and gardens; (ii) amenity green space; (iii) natural and semi-natural greenspace; (iv) outdoor sport; (v) provision for children; (vi) provision for young people; and (vii) allotments.[135] The ESC Healthy Environments SPD sets out a methodology for the provision of open space in line with Policy SCLP8.2: Open Space, requiring the provision of four typologies under step 1 — (i) parks and gardens; (ii) natural and semi-natural greenspace; (iii) amenity greenspace; and (iv) allotments — and under step 2 the provision of (v) play provision for children and young people.[136]

103. However, on the LPAs' case, the process of calculating open space requirements on the appeal site must start with the requirement for SANG under IBC Policy ISPA4(f)(iii). Compliance with DM6 cannot be considered in isolation, as the Appellant has sought to do.[137] The requirement to provide SANG under ISPA4(f)(iii) is *in addition to* the requirement to provide *"other open space in compliance with the Council's Open Space Standards set out in Appendix 3"* in ISPA4(f)(ii). Furthermore, the ESC Healthy Environments SPD — which constitutes adopted guidance for the purposes of the ESC portion of the appeal site and an obvious material consideration attracting significant weight for the purposes of the IBC portion — states at §2.35 that:

> *"Where SANG (as high quality natural/semi-natural green space) is to be delivered as part of a wider mix of open space types, the calculation of the SANG quantity (approximately 8ha per 1,000 people) should be done first, and then the calculation of all green open space types besides natural/semi-natural greenspace done following this, and then these totals added together to give the total indicative figure for how much green open space overall should be provided."*[138]

104. Thus the specific requirements for open space under DM6 and the Healthy Environments SPD should be understood as being additional to SANG provision, though clearly there may be a considerable degree of overlap with compatible

[135] [DP1], p.127, 239.
[136] [DP2], p.142; [SPD6], pp.35-36.
[137] Kevin Coleman, Rebuttal, §§90, 99.
[138] See also [SPD6] §§2.66, 2.84, 2.85.

typologies, in particular natural and semi-natural greenspace. This was the approach taken by Mr Russell-Vick in his land-use budgeting exercise, where he calculated how much land would be required for open space typologies and secondary uses which are not compatible with SANG and then added this to the quantum of SANG required — 11.5ha for the appeal scheme and 10.44ha for a potential alternative scheme of 599 dwellings — before adding the two figures together to calculate a total land use surplus or deficit once the development parcels were factored in.[139] It is the approach which should have been taken by the Appellant, but was not.

Operation of Policy DM6

105. Turning from the relationship between SANG and other open space requirements to consider the operation of IBC Policy DM6 on its own terms, we see that in contrast with DM5, which protects existing open spaces, sports and recreation facilities, DM6 is aimed at meeting the needs of the new residents of a development.

106. As Ms Evans explained in her evidence to the Inquiry, the wording of Policy DM6 indicates that the starting point for all major development is that the typologies set out in Appendix 3 should be delivered on-site "*where practicable*". The IBC Public Open Space SPD sets out at paragraph 4.13 that, as a general rule, all typologies are expected to be delivered on-site for developments of more than 250 dwellings.[140]

107. Policy DM6 explains that there may be some circumstances where the size of the site or the level of existing provision of certain typologies within a walking catchment area means that off-site provision is appropriate. It is in these circumstances (and only in these circumstances) that considerations of surplus and deficit become relevant. The Appellant is wrong to assume that typologies in local surplus can simply be deducted from the overall quantum of open space required under DM6, and Mr Coleman was right to accept that there is no support for this approach in DM6.[141] Instead, surplus and deficit considerations should inform which typologies are prioritised for on-site delivery, and which can be met by off-site provision.

[139] Tables 4 and 5, Appendix A to Lisa Evans, Proof of Evidence, pp. 66-67.
[140] [SPD7], Table at §4.13, p.18.
[141] Cross-examination of Kevin Coleman by RW (day 8).

108. Ms Evans accepted that the flow chart at page 17 of the Public Open Space SPD could be better worded, but explained that her reading of it, in combination with the text of Policy DM6 itself, corroborated this approach.[142] On a proper understanding of DM6 and the SPD, an assessment of existing open space provision within the vicinity of a development should be used to inform decisions about which typologies to accommodate on-site in circumstances where on-site provision of all typologies has been demonstrated not to be practicable. In such circumstances, it makes sense that types of open space in local deficit should be prioritised for on-site delivery, while types in surplus could be delivered by way of off-site provision or a commuted sum to improve the *quality* of existing open space within a walking catchment.

109. It is telling that the flow-chart in the Public Open Space SPD asks firstly whether "*types of provision which are in quantitative deficit, can be accommodated on the site*" , and if the answer is "yes", goes on to ask whether there are "*quality deficiencies in the existing off-site facilities that would serve the development (i.e. within the catchment)*" (emphasis in original), before making refence to conditioning on-site provision and signing a section 106 agreement (to secure the offsite contributions). This is of a piece with the proper understanding of DM6 set out above.

110. In his oral evidence, Mr Coleman turned to the flow chart in the Public Open Space SPD (seemingly for the first time) to support the Appellant's construction of Policy DM6, which subtracts typologies in surplus from the overall open space requirement for a new development, acknowledging during cross-examination that there was no support for this proposition in the wording of the policy itself. In the LPAs' submission, this is a misunderstanding of the guidance in the Public Open Space SPD. Properly construed it is clear that the guidance around assessing local deficits should be used to inform decisions on which typologies to accommodate on- or off-site. Even if Mr Coleman is right, however, that the SPD supports his reading of the policy, supplementary planning documents cannot trump adopted policy in circumstances where the two are in conflict.

[142] [SPD7], Figure 1, p.17.

111. It is also telling that, as Mr Coleman acknowledged in cross-examination[143], the Healthy Environments SPD provides no support for the Appellant's approach of reducing the overall quantum of open space to be provided whenever there is a local surplus of one typology.

112. But all of this is stage 2 of the process of applying DM6. Stage 1 requires the developer to consider whether on-site provision *is practicable*. In the present case, the Appellant provided no evidence to the LPAs that it was not. They have never reached stage 2. And Mr Russell-Vick's alternative land budget exercise demonstrates that, if one were to bring forward the allocation as a whole and for an appropriate number of houses, this would be practicable.

Deficiencies in open space provision on the appeal site

113. The overall open space provision for the appeal site is 11.44ha, according to the figures set out at Table 9 of the DAS.[144] On the LPAs' case, as already set out above, this is less than ought to have been provided for SANG alone. When SANG is factored in alongside the non-SANG compatible typologies required under DM6, the result is the 6.04ha overall deficit in land take identified by Mr Russell-Vick (see above at [28]).[145]

114. Moreover, there is no provision proposed in Table 9 for outdoor sports or allotments, either on- or off-site,[146] and an undersupply of the parks and gardens typology relative to the requirement in Appendix 3 to the IBC Core Strategy. This absence of provision stems from the Appellant's misunderstanding of Policy DM6, which led to the conclusion that a purported local surplus of these typologies mean they did not have to be provided either at all or in full.[147] As regards allotment provision specifically, the Appellant does not seem to have had regard to the Council's waiting lists, as required by Appendix 3. Ms Evans clarified in her oral evidence that there are currently 386 people on the waiting list for allotments within the borough.

[143] Cross-examination of Mr Coleman by RW (Day 8).
[144] [AD16], Table 9, p.115.
[145] Appendix A, Lisa Evans, Proof of Evidence, Table 5, p.68.
[146] Note that the MUGA falls within provision for young people in the DAS, rather than provision for outdoor sport, as explained at [AD16], p.114.
[147] Kevin Coleman, Proof of Evidence, pp. 29, 44.

115. It should be noted that the shortfall in open space provision on the appeal site would not be resolved if ESC, rather than IBC policy requirements were applied. As Table 2 in Appendix B to Ms Evans' Proof of Evidence indicates, the application of ESC requirements across the site would still result in an overall open space deficit of 3.17ha.

116. The LPAs recognise that this is a sensitive and challenging site to develop in compliance with open space policy requirements. It requires, as Mr Russell-Vick described it, a degree of "flex". This is precisely why careful planning is essential and in particular why a land use budgeting exercise is so useful.

117. Had the Appellant understood and applied Policy DM6 correctly and been able to demonstrate that provision of all open space typologies on-site was not practicable, the next step should have been to establish, through conversations with the LPAs, which typologies might be more appropriately provided via off-site provision or financial contributions. No such solution was ever proposed by the Appellant. Instead, they simply deducted certain open space typologies from the overall quantum required by policy, while adding nothing extra for SANG, resulting in an appeal scheme which does not provide a policy-compliant quantum and range of open space for new residents.

IV. THE PLANNING BALANCE

118. As already outlined above at, a planning balance only falls to be conducted if the Inspector is not with the LPAs on the issue of HRA mitigation. If she has reasonable doubts about the adequacy of the mitigation proposed, then in accordance with the requirements of the Habitats Regulations, permission must be refused.

119. If a planning balance is conducted, it will be on basis of the tilted balance, because IBC lacks a five-year housing land supply. However, the agreed position before the Inquiry, as set out above at [14], is that:

a. If the Inspector concludes that the site-specific landscape requirements in the principal policies have not been met, then the appeal scheme will not have responded appropriately to its context and will be poorly designed;

b. In such circumstances, paragraph 139 of the NPPF indicates that permission should be refused; and

c. A conclusion that the scheme is not well-designed would significantly and demonstrably outweigh the benefits of the scheme, even taking those benefits at their highest.

120. As such, if the Inspector agrees with Ms Chittock's evidence on the adequacy of the green buffer, the quality of the on-site open space, the effectiveness of the use of green infrastructure, and/or the ability of the appeal scheme to create an effective transition between the urban edge and the wider countryside the requirements of the principal policies would be breached, and the agreed position is that permission should be refused.

121. Should, however, the Inspector prefer the evidence of Dr Marsh and Mr Self on HRA mitigation and landscape matters respectively, the following harms would remain to be weighed in the balance:

a. There would still be residual harm to the landscape character of the site caused by its development for housing, even if the Inspector were to conclude that the appeal scheme responds appropriately to the site-specific policy requirements.

b. There would be an agreed low level of less than substantial harm to the heritage assets, Allens House and Laceys Farmhouse. This is in conflict with ISPA4(c) which requires their settings to be preserved. It is agreed that, under the balancing exercise required by paragraph 215 of the NPPF, the public benefits of the appeal scheme would outweigh the heritage harm taken in isolation. However, it must still be carried forward into the overall planning balance, albeit attracting only minimal weight.

c. Perhaps of most significance, the loss of the rugby pitches is accepted as a harm in its own right by Mr Coleman, notwithstanding his apparent suggestion that lack of compliance with IBC Policy DM5 would have no bearing on the weight to be attributed to that harm. For the reasons set out above at [98-100], the LPAs maintain that if DM5 is breached — as we say it is — that must clearly increase the weight given to the loss of the rugby pitches in the overall balance. We would invite the Inspector to agree with Ms Evans that this loss, without proper justification or suitable replacement provision, should attract very substantial weight.

d. On the LPAs' case, the failure to provide the full quantum open space typologies required by IBC Policy DM6 over and above the requirement for on-site SANG constitutes a harm, independent of any impacts on landscape character and adequacy of HRA mitigation. Even if the Inspector does not agree with the LPAs that 11.5ha of on-site SANG is required (or that on-site SANG is required at all), it is still apparent that the Appellant has misinterpreted Policy DM6 as permitting the non-provision of certain types of open space where there is a local surplus, leading to a lack of provision of sports facilities and allotments and an undersupply of parks and gardens. The weight which can properly be attributed to this harm will be influenced to some extent by the Inspector's conclusions on the extent of on-site SANG requirements, but the LPAs would invite her to accord this harm substantial weight.

e. Finally, there is the adverse impact of granting permission contrary to the requirements of the principal policies on masterplanning and the unjustified housing quantum. While Ms Evans accepted in her oral evidence that these would not justify withholding permission alone, they should still be considered as additional harms in the planning balance.

122. Turning to the benefits of the scheme, Ms Evans accepted in her proof and her oral evidence that new market and affordable housing provision would attract considerable weight in the planning balance. It is undoubtedly true that the delivery of 660 homes would constitute a significant benefit, and the LPAs do not seek to

downplay this. However, two points provide relevant context within which the benefit of new housing delivery should be viewed:

a. First, this is an allocated site, earmarked for the delivery of 599 homes; not a speculative development. Thus, while the appeal scheme would deliver 660 homes, the difference between the scheme and the no-scheme world is not, in reality, the difference between the benefit of 660 homes and no benefit at all, but rather the added benefit of a circa 61 homes over the allocated number.

b. Second, the Appellant in opening and Mr Coleman in his oral evidence repeatedly stressed the fact that IBC lacks a five-year housing land supply and the consequent urgency of housing delivery in the borough. This urgency was presented as a compelling reason why the appeal site should be brought forward earlier in the plan period than anticipated. At the same time, however, the Appellant is seeking an extended six-year period for the submission of reserved matters applications. The Appellant cannot have it both ways; either the housing delivery situation is so urgent that the site must come forward without delay, or it is not. If the appeals are allowed, the LPAs would urge the Inspector to allow no more than three years for the submission of reserved matters applications under Condition 1, so the site can contribute to housing delivery within the borough as soon as possible.

123. The other benefits of the scheme should, in the LPAs' submission, attract only relatively modest weight.

124. The LPAs submit that, even if the Inspector were against the LPAs in respect of the HRA and landscape matters then, taken together, the harms of the proposed development would still significantly and demonstratively outweigh its benefits.

V. CONCLUSION

125. Despite the length of these closings, at its heart this is a simple case. The Appellant has failed to demonstrate that 660 homes can be delivered on the appeal site without breaching key development plan policies and the requirements of the Habitats

Regulations. Indeed, the evidence at this inquiry has demonstrated, conclusively that the appeal scheme would breach multiple requirements of the site specific polices, and that the Inspector cannot have the requisite confidence that adverse impacts on European Protected sites would be avoided.

126. IBC and ESC therefore request that the Inspector refuse planning permission and dismiss the appeal. They do so having worked closely together throughout pre-application, application and now appeal process, furthering their objective of delivering plan-led and well-designed homes on their allocated sites. And they do so in the expectation that a refusal would prompt the Appellants to bring forward an alternative proposal, which is properly masterplanned and landscape-led, and which fully addresses the requirements of this strategically important site.

ROBERT WILLIAMS
LOIS LANE
Cornerstone Barristers
18 February 2025