IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF
LAND AT HUMBER DOUCY LANE

APPELLANTS' CLOSING SUBMISSIONS

Introduction

1. These Closing Submissions are made on behalf of Hopkins Homes and Barratt David Wilson in respect of two appeals against the refusal of applications for outline permission for up to 660 new homes together with 400 sq. m. non-residential floorspace and an early years facility on Land at Humber Doucy Lane ("the Site"), and full planning permission for the means of vehicle, cycle and pedestrian access to and from the Site.[1]

2. The Site comprises three parcels of predominantly agricultural land approximately 31.52 hectares in size on the northern edge of Ipswich.[2] The administrative boundary separating Ipswich Borough Council and East Suffolk Council runs through the Site.[3] The Site is subject to two site allocation policies, one in the Ipswich Core Strategy, and one in the East Suffolk Local Plan.[4]

3. As we set out in Opening, the Site is in a highly sustainable location, closely connected to existing development, but also to the forthcoming Ipswich Garden

[1] The full description of development can be found in the Application Form (AD1) and the respective decision notices: CD DD5 and DD6.
[2] A description of the various parcels can be found in in Kevin Coleman PoE, para. 3.3.
[3] See plan in Coleman Proof showing the administrative boundary as it crosses the Site at para 3.2
[4] CD DP1 and DP2.

Suburb. As an allocated site, the principle of development of the Site is not disputed by any of the main parties to this appeal.[5]

4. The Site has a long history of promotion for residential development. Ultimately, a cross-boundary allocation was adopted by the two LPAs who now resist these appeals. In 2020, East Suffolk allocated the part of the Site in its area in the Suffolk Coastal Plan under Policy SCLP12.24.[6] In 2022, Ipswich Borough Council allocated the remainder of the Site on its side of the boundary in 2022 in the Core Strategy under Policy ISPA4.[7] Together, the allocations provided for approximately 599 homes.[8]

5. As required by the Councils, identical applications for planning permission were submitted to them, the refusals of which have led to these two appeals.

6. As the Appellants' Statement of Case explains, prior to the submission the applications, the parties engaged in five months of generally productive pre-application discussions.[9] In December 2023, however, the LPAs informed the Appellants that they could not resource further pre-application work at that time, and that they wished to pause the pre-application discussions.[10] Moreover the pre-application response provided by the LPAs in February 2024[11] raised a concern relating to the location of the main access to the Site from Humber Doucy Lane, which the Appellants did not consider appropriate. The LPAs required the Appellants to investigate the use of third party land (i.e. the Rugby Club's) in order to facilitate siting the main access to the development at its "preferred" location, opposite Sidegate Lane.[12] This land was both outside the allocations and the Appellants' control.[13] The Appellants did not accept that it was a necessary or even preferable

[5] Indeed, as the Councils' Updated Statement of Case puts it: ""… the principle of residential-led, mixed development on this site is settled": CD SC4, para. 7.1.
[6] CD DP2, pg. 273.
[7] CD DP1, pg. 43.
[8] In the case of East Suffolk, "approximately 150" and in the case of IBC, 449 dwellings on 60% of the allocation site.
[9] Appellants' SoC, CD SC1, para. 1.13
[10] Ibid, para. 1.18.
[11] CD SC1 Appendix 2.
[12] See letter in Appendix 2 of Appellants' SoC.
[13] Appellants' SoC, CD SC1, para. 1.19.

option, and submitted the applications with the main vehicular access on land it does control opposite Inverness Road.

7. The location of the junction was reflected in IBC's Reason for Refusal 3 which noted a "fundamental concern" as to "the principle of the junction in this location".[14] However, it will be noted that that "fundamental concern" was dropped in the Councils' Updated Statement of Case.[15] The point is simply struck out, and formed no part of the rest of the Councils' case at the Inquiry

8. In totality the scheme was refused for 13 reasons (11 for ESC and 13 for IBC)[16], which, in summary, were as follows:

   i. Alleged failure to masterplan (RFR 1 in both DNs). The authorities referred to the failure to submit a "masterplan" and described this as a "a missed opportunity to holistically consider all aspects of the development together".

   ii. The impacts on highway network were said not have been assessed fully, and as such, the proposal was alleged to be "not adequately supported and evidenced by a complete and robust Transport Assessment" (RFR 2 in both DNs).

   iii. IBC alleged that, highways issues aside, there was a "fundamental concern" with the principle of the location of the main access because of its alleged visual impact and impact on existing residents (IBC only, reason 3)

   iv. The landscape and heritage impacts were said by both Councils to be unacceptable because of a failure to secure a transition to the countryside, and a failure to provide mitigation to protect nearby heritage assets (IBC reason 4, ESC reason 3)

   v. The Flooding and Drainage Strategy was said to be "deficient in a number of aspects" such that the authorities could not conclude that the proposals complied with policy (IBC 5, ESC 4).

[14] CD DD6.
[15] CD SC4, paras. 7.19 and 7.20.
[16] CD DD5 and DD6.

vi. The authorities considered that the Ecology (on-site) and BNG information submitted demonstrated that further work was required (IBC 6, and ESC 5).

vii. Similarly, in respect of HRA, the authorities considered that further information was required before it could be concluded that the proposed development would not have an adverse effect on the integrity of the European sites included within the Suffolk Coast RAMS (IBC reason 7; ESC 6)

viii. Further archaeological investigation was said to have been necessary (IBC reason 8, ESC 7).

ix. The air quality mitigation measures were said to be insufficient (IBC reason 9, ESC 6)

x. IBC considered that the rugby pitches require replacement (IBC only, reason 10)

xi. That 61 more homes were being proposed than the total identified in the allocations was alleged to result "… in a number of impacts on the site and surroundings which are considered to affect the acceptability of the development coming forward and would have an adverse impact on the character and appearance of the site's surroundings" (IBC 11, ESC 9)

xii. The quantum and quality of open space proposed was said to breach local plan policy (IBC 12, ESC 10)

xiii. Finally, a s. 106 agreement had not been completed s (IBC 13, ESC 11).

9. A number of these issues were obviously capable of being overcome had the authorities not proceeded to refuse the applications. That is evident from the fact that, now, at the conclusion of the Inquiry, the reasons concerning highways impact, the location of the main access, heritage, flooding and drainage, on-site ecology, BNG, air quality, archaeology, "master planning" and housing numbers have all, effectively, been overcome.

Procedural matters

10. A procedural point has arisen in light of East Suffolk's approach to CIL liability should the appeals be allowed. East Suffolk Council has adopted CIL. The Appeal

Scheme is a phased development. The proposed conditions make provision for a phasing plan to be submitted and approved, and for the development thereafter to be carried out in accordance with that phasing strategy. Where a planning permission is phased, each phase of the development is treated as if it were a separate chargeable development for the purposes of CIL liability. [17]

11. In the Conditions Session on 13th February 2025, East Suffolk suggested that, for the purposes of CIL, it would only treat the development as a "phased development" if the description of development in the grant of planning permission expressly provided that the development was a "phased" development.

12. We struggle to reconcile that with the requirements of the Regulations. A "phased planning permission" for CIL purposes means "a planning permission which expressly provides for development to be carried out in phases".[18] The proposed conditions before the Inspector would expressly provide for the development to be carried out in phases. A planning permission which, by condition, must be carried out in phases is manifestly a "phased development" within the meaning of the CIL Regulations.

13. However, and as explained at the Conditions Session, the Appellants would prefer to avoid this dispute entirely. The LPAs agree that the dispute can be avoided by amending the description of development to expressly specify that it is "phased". We understand from the Conditions Session that there is no dispute that the Inspector has the power to make this amendment, and that it should be done to avoid any future dispute materialising as to when CIL becomes payable should the appeals be allowed. East Suffolk Council have subsequently confirmed to the Appellants in writing that they are content with the terms of the amendment.[19]

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[17] See The Community Infrastructure Levy Regulations 2010, reg 8(3A) and PPG Paragraph: 008 Reference ID: 25-008-2019090 (Revision date: 01 09 2019.

[18] Reg 2(1) of the CIL Regulations 2010.

[19] "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."

Main issues

14. The 13 reasons for refusal identified above led to 13 Main Issues being identified for this Inquiry at the CMC.

15. However, at the close of the Inquiry, the issues of heritage, highways, flood risk, on-site ecology, archaeological and air quality have been resolved and are no longer in dispute. The issues of master planning and the quantum of development are not substantive issues in their own right for the reasons we explain below. Finally, the s. 106 point, as we explain, does not go to refusal. For the contributions in dispute, the Inspector will be presented with a "blue pencil clause". The issues in italics below are those which were effectively resolved either prior to or during the course of the Inquiry:

    i. Whether the approach to the appeal scheme would provide a comprehensive and coordinated approach to development of the site (IBC RFR1, ESC RFR1).

    ii. The effect of the scheme on the character and appearance of the area (IBC RFR4, ESC RFR3).

    iii. The effect of the scheme on designated heritage assets (IBC RFR4, ESC RFR3)

    iv. The effect of the scheme on highway safety (Main access, IBC RFR3, trip distribution, trip generation, pedestrian and cycling connectivity, IBC RFR2, ESC RFR2)[20]

    v. Whether the scheme would be at risk from flooding, having particular regard to flooding and drainage strategy (IBC RFR5, ESC RFR 4)

    vi. The effect of the scheme on ecology (IBC RFR6, ESC RFR5)[21]

    vii. The effect of the scheme on the Stour and Orwell Estuaries, and Deben Estuary, designated European conservation sites (IBC RFR 7, ESC RFR6)

[20] This includes trip distribution, trip generation, pedestrian and cycling connectivity.
[21] This includes BNG.

viii. The effect of the scheme on the archaeological significance of the site, having particular regard to investigation and mitigation strategies (IBC RFR8, ESC RFR7)

ix. The effect of the scheme on air quality, having particular regard to mitigation measures proposed (IBC RR9, ESC RFR9).

x. Whether the loss of sports pitches arising from the scheme would be justified (IBC RFR 10)

xi. Whether the scheme would represent an appropriate quantum of development on the site (IBC RFR11, ESC RFR10)

xii. Whether the scheme would make appropriate provision for green infrastructure (IBC RFR12, ESC RFR10)

xiii. Whether the scheme would make appropriate provision for infrastructure (IBC RFR13, ESC RFR11).

16. After setting out the relevant parts of the Development Plan, we address how the above issues have been resolved, and the Appellants' submissions on the four issues on which there remains a substantive dispute: landscape, HRA matters, the loss of the rugby pitches, and the proposed green infrastructure.

The Development Plans

17. As there are two appeals before the Inspector in respect of each (identical) applications to the Authorities, both Authorities' development plans are relevant, as is the Rushmere St Andrew Neighbourhood Plan.

18. The Ipswich Core Strategy[22] allocates the Ipswich portion of the Site under policy "ISPA4: Cross Boundary Working to Deliver Sites". The Policy explains that the land on the Ipswich portion of the Site is allocated for 449 dwellings and associated infrastructure to come forward in conjunction with land allocated on the East Suffolk side of the boundary. ISPA4 further provides that 60% of the site within Ipswich Borough is allocated for housing and 40% is allocated for secondary uses,

[22] CD DP1. Adopted 23 March 2022.

comprising open space and other green and community infrastructure. The policy then sets out a number of criteria which development "will be expected to comply with". To the extent that those criteria are in dispute, they are addressed in the Appellants' submissions under the "Main Issues" section below.

19. The East Suffolk Coastal Local Plan[23] allocates the portion of the Appeal Site within East Suffolk under Policy "SCLP12.24: Land at Humber Doucy Lane". The policy provides that 9.9ha of land to the east of Humber Doucy Lane is allocated for "approximately 150 dwellings in conjunction with land identified in the Ipswich Local Plan". Again, the Policy specifies criteria in respect of which development will be expected to comply, and the extent of dispute on the fulfilment of those criteria is addressed below.

20. Other key policies are set out in Mr Coleman's evidence. In respect of the IBC Core Strategy, they include the following:

    i. Policy DM23 – Density of Residential Development. The policy requires housing development to achieve a minimum density of 35 dwellings per hectare. No equivalent policy exists in East Suffolk.

    ii. Policy DM5 - Protection of Open Spaces, Sports and Recreation Facilities. This policy provides that development involving the loss of open space, sports or recreation facilities will only be permitted if specified conditions are met.

    iii. Policy DM6 - Provision of New Open Spaces, Sports and Recreation Facilities. This policy concerns the circumstances and extent to which new development is required to provide new open spaces, sports and recreation facilities.

    iv. Policies CS16 and DM10 concern green infrastructure and "green and blue corridors". CS16 notes an intention to "work with partners" to improve green infrastructure and link green corridors with a publicly accessible green trail around Ipswich. Policy DM10 states that development within green corridors will be expected to maintain and where possible enhance the functions of that corridor, and states a wider objective of enhancing public access through the green trail around Ipswich. It also states, among other things, that development

[23] CD DP2. Adopted 23 September 2020.

at the edge of Ipswich will be required to provide green trail links as part of open space provision.

East Suffolk

21. Relevant East Suffolk policies include the following:

    i. Policy SCLP8.2: Open Space. New residential development will be expected to contribute to the provision of open space and recreational facilities in order to benefit community health, well-being and green infrastructure.

    ii. Policy SCLP10.1: Biodiversity and Geodiversity.

    iii. Policy SCLP10.4: Landscape Character. Proposals for development should be informed by, and sympathetic to, the special qualities and features as described in the Suffolk Coastal Landscape Character Assessment (2018), the Settlement Sensitivity Assessment (2018), or successor and updated landscape evidence.

The Rushmere St Andrew Neighbourhood Plan

22. Further, the Rushmere St Andrew Neighbourhood Plan (made on 28th June 2023) includes a site-specific policy for that part of the Appeal Site that falls within East Suffolk, under Policy RSA 2. The key requirements of RSA 2 are:

    i. The development should make provision for reinforcement of existing planting and additional native tree planting along the north-eastern/eastern boundary of the site.[24]

    ii. The planting scheme should be designed to maintain separation between the development and adjoining areas, and should be accompanied by a management plan.[25]

[24] As Mr Coleman explains in his Proof at 6.13, the specifics of planting species would be a matter for detailed approval at a later stage, but the Illustrative Landscape Strategy submitted alongside the application shows how the substantial open space areas on the eastern side of the site would be capable of providing structural landscaping and new native tree planting, exactly as required under the policy.
[25] As Mr Coleman explains at para. 6.14, the open space 'buffer' alongside the type of planting shown on the Illustrative Landscape Strategy achieves this objective. Management of open space would be a matter for detailed approval at a later stage.

iii. Access onto Tuddenham Lane and Seven Cottages Lane shall be only for pedestrian and/or cycle access.[26]

Five-year housing land supply

23. It is common ground that IBC cannot demonstrate a five-year housing land supply: IBC calculates the that current supply is 3.04 years.[27] In Opening, we set out the dire position on housing delivery in Ipswich, and Mr Coleman's evidence provides further detail.[28] The implication of the failure to demonstrate a five-year supply under para. 11(d) of the NPPF (December 2024)[29] is that the most important policies in the Ipswich Development Plan for determining the application are deemed to be "out-of-date", and permission should be granted unless:

i. the application of policies in the NPPF that protect areas or assets of particular importance provide a strong reason for refusing the proposed development; or

ii. any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF 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.

24. As we set out below, it is the Appellants' case that the Appeal Scheme complies with the development plans as a whole, such that para. 11(c) of the NPPF applies. If and to the extent that there is a breach of the development plan taken as a whole, attention turns to para. 11(d)(i) and (ii) above. Under 11(d)(i), it is agreed that the impact on designated heritage assets (Main Issue 3) is outweighed under NPPF para. 215 by the public benefits arising from the scheme such that heritage does not provide a "strong" (or <u>any</u>) reason for refusing permission.

[26] As Mr Coleman explains at 6.14, this is exactly what is proposed, as per the relevant Parameter Plans and details access drawings.
[27] General Statement of Common Ground, ID29, pg. 4.
[28] Coleman Proof, section 7.
[29] CD NP2.

25. As to HRA matters, for the reasons explained below (and which are common ground between the Appellants and the LPAs) the operation of the Habitats Regulations takes this issue (Main Issue 7) out of the planning balance.

26. There is a discrete policy dispute as to the application of two IBC policies concerning open space provision and the loss of the rugby pitches (DM6 and DM5 respectively). To the extent that the Inspector considers there to be non-compliance with those IBC policies, the presumption in favour of granting permission in para. 11(d)(ii) applies in respect of the IBC appeal.

27. Therefore, to the extent that the Inspector concludes that there is non-compliance with IBC policy, the IBC appeal should nonetheless be allowed unless the harms of doing so would *significantly* and *demonstrably* outweigh the benefits (11(d)(ii)). We submit below that, on the limited harms in play at the close of the Inquiry, the benefits of the scheme manifestly outweigh the harms for the purposes of both appeals.

Affordable housing

28. As we set out in opening, IBC's failure to deliver affordable housing is even more acute. Its Local Plan identifies that the total annual affordable housing need in Ipswich is 239 homes per year. A mere 150 affordable homes in total have been delivered in the first six years of the plan period. 1,434 affordable homes ought to have been delivered over that period.[30] Notably, delivery of the appeal site formed part of the "action points" in the Borough's Housing Delivery Action Plan (2022).[31] None of this in dispute. There is no way to describe this failure as an "acute" dereliction of the Council's duties to provide homes for those most in need – a particular priority of the current Government.[32]

The Russell-Vick "Alternative Scheme"

29. The final matter which we address before turning to the Main Issues is the Phillip Russell-Vick "Alternative Scheme".

[30] Kevin Coleman Proof of Evidence, 7.13.
[31] Kevin Coleman Proof of Evidence, appendix 8.
[32] See NPPF December 2024 and WMS.

30. Appended to the Proof of Evidence of Ms Lisa Evans is a "Land Budget Exercise" prepared by Mr Russell-Vick together with a figure said to be a "Potential Alternative Scheme". Despite the settled position that an appeal is to consider the appeal scheme and not some imagined alternative, the Russell-Vick "Potential Alternative Scheme" has lurked behind the discussion of a number of Main Issues before the Inquiry.

31. However, and with respect to Mr Russell-Vick, at the close of the Inquiry the Appellants do not recognise any meaningful purpose or value of the "Alternative Scheme" introduced by the Councils.

32. In questions of Ms Evans, the Inspector observed to Ms Evans that she understood the purpose of the Alternative Scheme was to show how (on the Councils' case) a policy complaint scheme could manifest.[33] The Appellants shared that understanding: it is only if the Alternative Scheme can be policy compliant that it has any meaningful worth. As Ms Chittock confirmed, the scheme represents an acceptable outcome in terms of landscape and public open space and HRA recreational mitigation.[34]

33. However, as matters were explained in the Inquiry, in terms of showing how a policy-compliant scheme might come forward, the exercise is, with respect, of no value to the Inquiry whatsoever.

34. First, as to landscape, while Ms Chittock considered that it represented "an acceptable" scheme to the Councils in landscape terms, it does not follow that a preference for an alternative scheme means that the Appeal Scheme is unacceptable in landscape terms. In terms of the impacts of the Alternative Scheme, Mr Self considered that the LVIA would not have recorded a significant difference or a more favourable outcome in landscape character terms.[35]

35. Secondly, as to HRA matters, Mr Russell-Vick's scheme does not identify "SANG" land which meets the Council's criticism of the Appeal Scheme.[36] Indeed, the

[33] Evans XX CBKC, Day 8.
[34] Chittock XX CBKC, Day 4.
[35] Self Re-X, Day 4.
[36] Indeed, Mr Russell-Vick does not identify the layout of the different typologies of space at all.

Alternative Scheme fails to identify at all the layout or distribution of the typologies of open space included in Mr Russell-Vick's calculations.

36. Thirdly, as to IBC Policy DM5, Ms Evans expressly eschewed the Alternative Scheme as demonstrating compliance with DM5. Mr Russell-Vick expressly accepted that there are no sport pitches provided in his Alternative Scheme,[37] let alone a replacement of the rugby pitches under DM5. On the Councils' case, the loss of the rugby pitches within the Councils' Alternative Scheme breaches DM5. Leaving aside whether DM5 requires like-for-like provision or not (the Appellants say it does not, which we return to below), the Alternative Scheme fails to identify any alternative sport provision to reflect the loss of the rugby pitches, whether that be replacement sport pitches or some other recreational facility.

37. Fourthly, as to IBC DM6, on its own terms, the Alternative Scheme fails DM6. Mr Russell-Vick makes no specific provision for the 1.91ha of outdoor sports facilities his Table 2 identifies as being required, nor any other identified open space typology. Despite claiming that the purpose was to show compliance with Policy DM6, Ms Evans accepted that the scheme is contrary to DM6 in terms of providing the necessary open space typologies on site.[38]

38. Here we pause to reflect on the real consequence of the Russel Vick scheme as "evidence". We have to assume adopted local plan allocations are deliverable. The various criteria and elements must not be self-defeating. But the "Alternative Scheme" advanced by the Councils does not show how their criticisms made of the Appeal Scheme can be overcome. Rather, all the exercise highlights is that the Alternative Scheme would not satisfy the LPAs' demands. The Alternative Scheme is, therefore, an entirely self-defeating exercise from the Councils' point of view. It merely underscores the erroneous approach the Councils' have taken to their root and branch criticism of the Appeal Scheme and is of no assistance to the Inquiry in addressing those criticisms.

39. These Closing Submissions now address why it is the Councils who are wrong on those issues

[37] Russell-Vick XX CBKC, Day 7.
[38] Evans XX CBKC, Day 8.

Master planning (Main Issue 1)

40. In Opening, we described this issue as a "makeweight" point. We did so as this Reason for Refusal does not offer anything substantive to the Councils' case. Rather, the criticism of the Appellants in the master planning RfR really goes to is whether the scheme is acceptable in planning terms. But that necessarily turns on the resolution of the other Main Issues – not a procedural allegation that the process which led to the formulation of the scheme was inadequate. If the Main Issues are resolved in the Appellants' favour, this allegation goes nowhere.

41. With respect, the evidence has shown that the Appellants were right to characterise the point in this way. Ms Evans accepted that if the Inspector was not with the Council on the substantive planning issues, any alleged failure to masterplan would not be sufficient to justify the refusal of planning permission.[39] This issue has, therefore, always been academic.

42. We do not, therefore, propose to spend any further Inquiry time on this academic point. To the extent that the Councils maintain the allegation that there has been a failure to masterplan, we respectfully submit that Mr Coleman's evidence and the account set out in the DAS[40] provide a compelling account of the iterative master planning process which led to the formulation of the Appeal Scheme. None of this evidence was challenged in cross-examination of Mr Coleman. While it was suggested to Mr Coleman that he produced the scheme through a mathematic exercise designed to find space on the Site for 660 homes, there is no factual basis for that allegation whatsoever, which, in any event, was forcefully and repeatedly denied by Mr Coleman.[41]

Landscape (Main Issue 2)

43. We begin this Main Issue by recording what landscape and visual matters are not in dispute.

[39] Evans XX CBKC, Day 8.
[40] AD16.
[41] Clive Self also denied also the point that the scheme had been produced through "external influences" an application of "arithmetic": Self XX RW, Day 5.

44. First, there has been no challenge to the methodology or the findings of the Appellants' LVIA (subject to one point on viewpoint 12, which we deal with below). The conclusion reached in the LVIA was that "the Site is capable of accommodating the proposed development without resulting in significant harm to the surrounding countryside's character or views from the wider area" (emphasis added), together with attracting landscape benefits.[42] Therefore, while any residential development will significantly change the landscape of this Site, the LVIA has concluded that the scheme before the Inspector can be achieved without significant landscape or visual harm.

45. This is the only LVIA before the Inquiry. The Councils called two witnesses who had the expertise to produce an alternative LVIA, or who could have taken issue with the Appellants' assessment: Ms Chittock and Mr Russell-Vick. No alternative LVIA has been produced by them, nor do they suggest that the Appellants' findings are wrong (subject to one concern on viewpoint 12 raised by Ms Chittock). We also note that no rebuttal Proof was submitted in response to Mr Self's evidence.

46. Second, there is no suggestion by any main party that the order of development identified in the allocation policies is an in principle reason for refusal because the scheme would change landscape character. That would be entirely contrary to the Site having been allocated at all. As set out by Ms Evans:

> "It is not disputed that, as a Site Allocation, the Councils have accepted there would be development introduced into a previously undeveloped site and this would expand the urban edge of Ipswich into the rural landscape of East Suffolk. This would undoubtedly change the landscape character of the site and immediate area."[43]

47. Ms Chittock, as the LPAs' landscape witness, confirmed that, leaving aside the point as to 599 homes versus 660 - the principle of this order of development was not in dispute between the parties and was not objectional to her as the Councils' landscape witness.[44]

[42] L4, para. 6.7.
[43] Evans Proof para. 5.56.
[44] Chittock XX CBKC, Day 4.

48. Thirdly, there is no suggestion by any party that the Appeal Site is a "valued landscape" within the meaning of paragraph 187(a) of the NPPF. Mr Self has assessed the Site against the criteria for landscape value set out in the Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA) and the supplementary advice issued by the Landscape Institute in 2021 (TGN 02/21).[45] He concludes that the Appeal Site is not a valued landscape for the purposes of paragraph 187(a).[46] There has been no challenge to that analysis or conclusion.

49. Fourthly, as to landscape character, Ms Chittock criticises the approach to Parcel D on the ground that it should be treated differently by the proposals (in landscape terms) than the rest of the Site.[47] However, Ms Chittock confirmed that it was not the Councils' case that Parcel D should be free from any development *at all*, and she accepted that no such prohibition exists in the allocation policies.[48] In short, Ms Chittock's concern is that a greater amount of planting in Parcel D should be provided to mitigate the visual effects of the appeal scheme at this point of the Site.

50. However, neither of the landscape witnesses called by the Councils criticise the methodology of the Appellants' LVIA, and neither have presented an alternative LVIA. In respect of one finding only (viewpoint 12) Ms Chittock disagreed with the recorded magnitude of change. But she accepted that, even if the LVIA elevated that finding, the overall outcome would not justify a landscape reason for withholding planning permission.[49] The Inspector canvassed in her questions of Ms Chittock whether her concession on Viewpoint 12 meant that the concern as to increased mitigation on Parcel D is ultimately a moot point. We respectfully suggest that it is. The Council's *preference* for modifying what is otherwise acceptable in landscape terms is not a legitimate landscape ground for dismissing the appeals.

51. Fifthly, it is not contended by the Councils that the *visual* impacts lead to a reason for refusal. This was confirmed by Ms Chittock.[50] Ms Chittock agrees that the visual effects of the proposed development can largely be mitigated over time.[51] In her

[45] Self Proof, para 3.50.
[46] Self Proof, para. 3.63.
[47] Chittock Proof, para. 6.30
[48] Chittock XX CBKC, Day 4.
[49] Chittock XX CBKC, Day 4.
[50] Both in XIC and XX.
[51] Chittock Proof para. 5.8.

written evidence, Ms Chittock identified three visual receptors for comment, but those matters did not lead Ms her to suggest that the visual effects amount to a reason for refusal.

i. In respect of Viewpoint 12, which is immediately adjacent to the Appeal Site,[52] Ms Chittock suggested an alternative "magnitude" of change (from "moderate" to "substantial"), but not having undertaken an LVIA could not assert that the "effect" would change from "moderate"). This was the only receptor for which an alternative magnitude of change was suggested. However, in any event, Ms Chittock ultimately accepted that a substituted finding in respect of this one viewpoint immediately adjacent to the Site would not be a sufficient reason for withholding planning permission on an allocated site.[53]

ii. The assessment of Viewpoint 34 was noted as only including summer views.[54] But Ms Chittock accepted that when looking at winter a landscape architect and the Inspector would contemplate summer and vice versa. Moreover, the Inquiry and the Inspector's site visits took place in the bleak midwinter. The Inspector is therefore fully able to consider this viewpoint precisely in the manner suggested by Ms Chittock. No additional effect was suggested; the LVIA stands.

iii. In respect of Viewpoint 33, Ms Chittock wished to see more planting on the northern boundary of Parcel D, but she did not offer any alternative magnitude of change for visual impact, and accepted that the magnitude of change for Viewpoint 33 given in the LVIA (Negligible Adverse at year 15) was unchallenged.[55]

52. Against that context, what *is* disputed by the Councils via Ms Chittock is (a) the nature and extent of the landscape "buffers" comprised in the Appellant's proposals for green infrastructure, (b) the set back of the development on Humber Doucy Lane, and (c) the quality of the open space. As open space is identified as a separate Main Issue, we deal here only with the first two of those points.

[52] L4, pdf pg. 44.
[53] Chittock XX CBKC, Day 4.
[54] Chittick Proof, para. 5.4.
[55] L4, Appendix I, pg. viii (pdf 105).

(a) The buffers

53. The Inquiry heard how the Appeal Scheme's landscape strategy centres around the provision of a green infrastructure network in and around the development parcels, and, importantly, creates an effective transition from the Site to the wider countryside.[56] We have, at the Inquiry, referred to these various portions of land as the "landscape buffers". Ms Chittock's position was that, in some areas (namely the north/north east of the Site), the buffers are "too constrained"

54. Before addressing the specific points taken in Ms Chittock's evidence as to the extent and effectiveness of the buffers, we suggest that there is a clear and obvious way of testing the effectiveness of the buffers (in landscape terms) and whether they achieve (in landscape terms) an effective transition between the Site and wider landscape: the LVIA.

55. The LVIA assessed the landscape and visual impact of the appeal scheme – including the buffers. As is common ground, there is inevitably going to be some landscape and visual harm resulting from *any* delivery of the allocation in the order of development identified. The conclusion of the LVIA, as we set out above, was that "the Site is capable of accommodating the proposed development <u>without</u> resulting in significant harm to the surrounding countryside's character or views from the wider area".[57] As set out above, neither the LVIA's methodology nor findings have been challenged by the Councils.

56. Therefore, the principal tool for testing the landscape and visual impact of the Appeal Scheme (the LVIA) has concluded that the Appeal Scheme (and, therefore, the buffers) <u>can</u> be delivered without significant harm to landscape or visual matters. That is a powerful suggestion that the landscape buffers are adequate in landscape terms. If the LVIA found that the Appeal Scheme could be delivered without significant landscape or visual harm, that is a very clear indication that the landscape buffers and other components of the green infrastructure would operate effectively in landscape and visual terms. With respect, the Councils cannot rationally leave the LVIA and its conclusions as to landscape impact unchallenged, but contend that the

[56] See Self Proof para. 4.7 and the illustrative landscape strategy (AD17).
[57] See above, para. 44.

landscape impacts of the scheme assessed by that LVIA are unacceptable because a suitable transition has not been achieved in some areas.

57. In short, if the buffers failed to achieve an effective transition, that would be reflected in the LVIA. However, the LVIA has concluded that the scheme can be delivered without significant landscape or visual harm (recalling that a degree of harm is inevitable). Neither the LVIA's findings or methodology have been challenged. We therefore submit that the Inspector can conclude that the proposed green infrastructure offers a sufficient transition and secures a soft edge to the development, and complies with both Authorities' landscape policy requirements.

58. As to the specific points raised by the Councils via Ms Chittock, the Appellants submissions are as follows.

Extent of landscape buffer

59. Ms Chittock has identified four areas of landscape buffer which she considered to be "particularly constrained": north of E1/E2, north east of B1/B2, and north of parcel D.[58]

60. The allocation policies do not specify dimensions or parameters for the landscape buffer. As noted above, the LVIA concluded that the Appeal Scheme can be delivered without significant harm to landscape or visual matters, and that assessment has not been challenged. We therefore make two observations on the point taken by Ms Chittock as to the buffers.

61. The first is that policy compliance does not turn on the application of arithmetic. The issue is one of substantive planning judgement for the Inspector. Policy compliance does not turn on whether any particular buffer is 15m as opposed to 10m and so on.

62. The second and related point is that the debate before the Inquiry over the meterage in the buffers at various points is, with respect, academic in light of what the LVIA records and what the allocation policies require. The policies require a qualitative planning judgement as to whether the landscape components achieve the landscape

[58] See fig. 1 on pg. 23 of Ms Chittock's Proof of Evidence.

requirements of the allocation policies.[59] The proposals have been assessed as being achievable without significant landscape or visual harm. That is a compelling factor for the Inspector in judging the landscape and visual impact.

63. To the extent that engagement in the debate over the meterage of the buffers identified by Ms Chittock is of assistance to the Inquiry, we draw the Inspector's attention to the following matters:

    i. At Parcels E1 and E2, the northern boundary faces onto arable field, and both parcels have an outgrown large hedge which is a beneficial and effective existing boundary treatment. Ms Chittock accepted that bolstering the existing planting there and achieving policy compliance would require 10m. Even on Ms Chittock's measurements of the buffer in that location (13.5m versus the Appellants' measurement of 15m), 10m of planting would be achievable. This concern therefore ought to have fallen away.

    ii. As to the buffer at B1/B2 and D, as Mr Self explains, the proposals must be viewed in the context of the existing nature of the vegetation and boundary treatments.[60] As to Parcel B, the northeastern boundary is currently clearly defined by a dense belt of vegetation, comprising a mix of scrub, outgrown hedgerows and mature trees. None of this would be removed by the Proposed Development. At Parcel D, the Site meets the dense vegetation of the railway cutting.

64. The buffers can therefore offer an effective transition and soft edge to the wider countryside. That is entirely consistent with the conclusions in the LVIA that the development can be accommodated without significant harm being caused to the surrounding countryside's character or views from the wider area

b) Humber Doucy Lane

[59] In the case of East Suffolk, "Provision of a soft edge to the urban area through the provision of significant landscaping". In the case of IBC, "Development must respect the maintenance of separation between Ipswich and surrounding settlements which is important to the character of the area. This should be achieved by 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" and "a soft edge to the urban area where it meets the countryside".
[60] Self Proof, para. 5.20

65. Ms Chittock considered that "adequate space should be provided along the front of the development to introduce significant new avenue tree planting to strengthen the prevailing character".[61]

66. Where parcels E1 and E2 meet Humber Doucy Lane, Mr Russell-Vick does not treat this area any different to the Appeal Scheme. Ms Chittock confirmed that the Alternative Scheme would be an acceptable scheme to the authorities in landscape terms.[62] Ms Chittock therefore accepted that, as at this frontage of Humber Doucy Lane, the appeal scheme was acceptable in landscape and visual terms.[63]

67. The other part of the scheme where the development fronts Humber Doucy Lane is Parcels A1 and A2. The Appellants' proposals include the positioning of new and existing hedgerow along this boundary together with tree planting. Ms Chittock accepted that, in light of the proposed size of the buffer, there would be adequate soil space to accommodate a series of oak along the hedgerow.[64] Ms Chittock's concern as to adequate room for tree planting therefore ought properly to have also fallen away. While a point was taken by Ms Chittock as to the acceptability to the Highways Authority of tree canopies overhanging the carriageway,[65] the Inspector will observe through her travels throughout the County and indeed Country that it is common place for mature trees to overarch rural lanes – indeed, this is precisely the character that is the origin of the "*ombre douce*" that the Napoleonic prisoners of war so enjoyed on this lane.

68. The Councils' criticisms as to the frontage of Humber Doucy Lane, we suggest, have been overcome.

Conclusion on landscape matters

69. There is, we respectfully suggest, a failure to "see the wood for the trees" in the Councils' landscape case. The Councils allege that the landscape impacts of the scheme are not acceptable because of the alleged failure to provide a suitable transition to the countryside, the treatment of the frontage to Humber Doucy Lane,

[61] Chittock Proof, para 6.36.
[62] Chittock XX CBKC, Day 4.
[63] Ibid.
[64] Chittock XX CBKC, Day 4.
[65] Ibid.

and the treatment of Parcel D.[66] The tool used to assess the landscape impacts of the scheme, however, has concluded that the Appeal Scheme *can* be accommodated without significant harm. If the landscape proposals failed to achieve a suitable transition between this greenfield site and the wider countryside, that would have been reflected in the outcome of the LVIA.

70. The Council's do not challenge the approach or findings of the LVIA (save in respect of one viewpoint which, Ms Chittock conceded, would not justify refusal). But they maintain that an unacceptable landscape impact arises. That is, with respect, not rationally supported by the evidence.

Heritage assets (Main Issue 3)

71. While heritage impacts were included as a reason for refusal, there is no longer any live heritage dispute between the main parties.

72. There are two heritage assets in nearby the Appeal Site: Allens House and Laceys Farmhouse. Both are listed buildings. There are no heritage assets within the Site itself.

73. The Councils' site allocation policies include requirements that the development of the Site preserves the setting of these listed buildings.[67] It is now common ground between the Appellants and the Councils that, despite these policy requirements, the allocation site could not be developed for the amount of houses provided for in the allocation (599) in a manner which would avoid, or materially reduce, the level of harm to the significance of Allens House and Laceys Farmhouse.[68]

74. The Councils therefore accept that *any* development of the Site on the scale identified in the allocation policies could not comply with the policies' requirements as to the preservation of the setting of Allens House and Laceys Farmhouse. With that agreement it in mind, it is unsurprising that the Appellants and the Councils also

[66] We assume that, given the concession by Ms Chittock as to the ability of trees on Humber Doucy Lane to be delivered, that this concern will not be advanced in the Councils' Closing Submissions as a landscape reason for dismissing the appeal.
[67] In the case of IBC, ISPA 4 the policy requires that the settings of specified heritage assets "… must be preserved or enhanced as part of any future development of the site". In the case of East Suffolk, the policy includes the criterion that "Design, layout and landscaping of the development should be carefully designed to preserve the setting of the nearby listed buildings".
[68] CD SoCG3, para. 8.

agree that an effect of the Appeal Scheme is that the setting and significance of Allens House and Laceys Farmhouse will not be preserved.[69]

75. Specifically, the Appellants and the Councils agree that the impact of the proposed development is upon the contribution that the setting of Allens House and Laceys Farmhouse makes to the heritage significance of those designated heritage assets . The Heritage SoCG records the nature of those indirect effects.[70]. It is agreed that there are no direct effects from the scheme on the significance of the heritage assets.[71]

76. Notably, there is agreement that the harm to the significance of Allens House and Laceys Farmhouse is a "low level of less than substantial harm".[72] It is common ground that the relevant policy this engages for the Inspector is Paragraph 215 of the NPPF:

> "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal …"

77. Further it is common ground that the benefits of the proposals do outweigh that limited harm to the significance of the heritage assets, in accordance with paragraph 215 of the NPPF.[73] As a result, the Councils do not say that heritage impact is a "strong reason for refusal" under para. 11(d)(i) of the NPPF.[74]

78. Accordingly, it is common ground between the Appellants and the Councils that heritage impact is not a reason for withholding planning permission for the Appeal Scheme. The Appellants respectfully invite the Inspector to adopt this analysis and conclude that the limited harm to the significance of the heritage assets is outweighed by the positive benefits of the proposal, and that national policy for the protection of heritage assets is complied with.[75]

Highways (Main Issue 4)

[69] Ibid, para 7.
[70] Ibid, para. 5.
[71] CD SoCG3, para. 8.
[72] CD SoCG3, para 6
[73] Evans Proof, para. 7.25.
[74] Evans XX CBKC, Day 8.
[75] Ibid.

79. At the application stage, SCC issued a holding objection on highways grounds. This raised concerns as to access junction design and highways modelling. Additionally, as noted above, IBC included a RfR which alleged that the location of the main access onto Humber Doucy Lane was unacceptable in principle in character terms. As explained above, IBC dropped this latter concern in their Updated Statement of Case, and have not pursued the point in this Inquiry.[76]

80. SCC's holding objection has also since been overcome following productive discussions between the parties during the Inquiry. Specially:

i. The concern over modelling has been overcome. Following a review of the information provided with Mr Hassel's Proof and Rebuttal Proof, SCC no longer pursue the modelling objection to the Appeal Scheme. SCC is content that based on all of the information which has been provided by the Appellants, taken with consideration of the SCTM outputs, (a) there would not be an unacceptable impact on highway safety or (b) that the residual cumulative impacts on the road network, following mitigation, would be severe (NPPF 2024 para 116).[77]

ii. The concern over access junction design has been overcome. The original Highways SoCG recorded that SCC agreed that the proposed site access junctions were appropriate, subject to the matters identified in respect of each of the junctions in the SOCG.[78] The Addendum to the SoCG records that SCC are now satisfied that those requirements can be accommodated within the Appellants' access proposals by way of condition on the full planning permission.[79]

iii. The position on section 106 contributions has also been resolved. We refer the Inspector to the SoCG for the detail of what contributions have been agreed.[80]

81. The remaining highways issue in dispute is one of detail rather than one of principle going to refusal. SCC seek a shared footway/cycleway on the north side of Sidegate

[76] See above para. 7
[77] ID28, para. 2.
[78] Specifically, paragraphs 2.1, 2.3, 2.6 and 2.8 of the original SoCG (CD SoCG4).
[79] The suggested terms of any such conditions are appended to ID28. See para 4.
[80] ID28, paras. 6 to 15.

Lane from the junction of Sidegate Lane with Humber Doucy Lane to the entrance of Northgate High School of up to 3.2m of carriageway (Option A).

82. The Appellants consider that is not necessary. The Appellants consider the appropriate improvements would be a 2m footway on the north side of Sidegate Lane/Sidegate Lane west between the junction of Humber Doucy Lane and Sidegate Lane, and the junction of Sidegate Lane West and Colchester Road (Option B).

83. It is now for Inspector to determine which option is appropriate should the Appeals be allowed, and the parties' preferred options are reflected in alternative draft conditions before the Inquiry.

84. Therefore, subject to resolution of that disputed issue, SCC and the Appellants are in agreement, and no main party alleges that the highways impact is a reason for dismissing the appeals.

The Wheatcroft Point

85. For completeness, we note that a concern has been raised by both the LPAs and the County Council in a letter to the Inspector shortly before the Inquiry opened as to a perceived amendment of the Appeal Scheme. Mr Hassel's Rebuttal Proof of Evidence contained various plans which sought to illustrate how the various concerns of SCC in respect to specific junctions (see above80.ii) could be accommodated within the Appeal Scheme as proposed. These plans were not presented by the Appellants as amended application plans but rather evidential documents to show how the scheme could accommodate the County's concerns.

86. The County agreed during the course of the Inquiry that the measures shown on Mr Hassel's plans can be secured by way of condition to the full planning permission in respect of access, and suggested agreed conditions were included in the Addendum to the Highways SoCG and are now in the final agreed schedule of conditions.[81] Accordingly, this concern has been overcome, and the final position is that both the LPAs and the County Council accept that this can be secured without an amendment which would have led to a *Wheatcroft* issue.

[81] ID28, Annex 1.

Flood risk (Main Issue 5)

87. A holding objection was made by SCC as to drainage and flood risk matters. It sought further information and clarity on matters such as the modelling approach, the volume of attenuation and whether the FRA provided the requisite level of information.[82] These matters were resolved during the course of the Inquiry to the satisfaction of SCC, and, therefore, no main party alleges that flood risk/drainage is a reason for refusal.

On-site ecology and BNG (Main Issue 6)

88. The Councils' Decision Notices alleged that insufficient ecological information had been submitted with the applications in respect of protected and priority species, and ancient/veteran trees.[83] Further ecology information has been provided to the Councils, and they are now content that, in light of this further information, this RfR can be addressed by way of condition and/or planning obligation.[84] As such, this RfR has been overcome.

89. Moreover, both Mr Coleman and Ms Evans are in agreement that the achievement of 10% Biodiversity Net Gain (on-site and offsite) is a benefit of the Appeal Scheme which attracts medium weight.[85]

HRA (Main Issue 7)

90. The Appeal Site is in proximity to Deben Estuary SPA and Ramsar Site (c. 4.8km south of the Site), the Stour and Orwell Estuaries SPA and Ramsar Site (c. 6.7km east of the Site), and the Sandlings SPA (c. 11km east of the Site).[86]

91. It is common ground that, taken in isolation, any recreational disturbance effects arising from the Appeal Scheme would have no adverse effect on the integrity of the European sites. However, it is agreed that, when the appeal scheme is viewed in-

[82] See CD SoCG5.
[83] See the Council's Updated SoC para 7.30.
[84] Councils' Updated SoC para 7.32.
[85] See below para. 195
[86] Marsh Proof, para. 7.2-7.4. While there are two other sites in proximity, the parties agree that only the above three are of any relevance to the appeal scheme: CD SOCG9, para 1.

combination with other plans or projects, recreational disturbance impacts have the potential to result in adverse effect on the integrity of the above European sites.[87]

92. As to other potential impacts: it is agreed that no direct impact pathway between the appeal scheme and the European sites exists. Other than recreational impacts, it is agreed that air quality impacts should be screened. It is common ground that the Appeal Scheme will not result in significant adverse effects on the integrity of the European sites by way of air pollution.[88]

93. The agreement that there is potential for likely significant effects on the integrity of European sites arising from recreational disturbance engages the duty in reg. 63 of the Conservation of Habitats and Species Regulations 2017. The nature and extent of that duty is not in dispute and which, in summary, is as follows:

    i. The Inspector, as the "competent authority", must, before granting planning permission, make an "appropriate assessment" of the implications of proposed development for the European sites in view of the sites' conservation objectives: reg. 63(1).

    ii. Planning permission may only be granted if the competent authority ascertains that the scheme will not adversely affect the integrity of the European sites: reg. 63(5).

    iii. By reg. 63(6), in considering whether a plan or project will adversely affect the integrity of the sites, the competent authority must have regard to the manner in which the scheme is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the permission should be given: reg. 63(6).

94. As set out in Opening, the Appellants' recreational mitigation measures as set out in the Information to inform the HRA ("the SHRA")[89] comprise a "three pronged" approach:

[87] CD SOCG9 para 5.
[88] CD SOCG9, para 3.
[89] CD AD30

i. Payment of the tariff set out in the Suffolk Coast RAMS for management of the designated sites;

ii. Provision of extensive well-designed open space and walking routes on-site, accessible to new and existing local residents. Of the 11.44ha of open space and recreational facilities comprised in the development, Dr Marsh considers that 11.23ha of this greenspace will contribute to recreational mitigation for the European designated sites;[90] and

iii. Promotion and facilitation of connections to wider walking routes/public footpaths across the surrounding landscape, accessible to new and existing local residents.[91]

95. There is no dispute that the first point – payment of the RAMS tariff – could be secured by the s. 106 agreement.[92] There is also no dispute as to the third point: the Councils agree that the walking routes afforded by existing off-site public rights of way (as described in the Appellants' "Shadow HRA")[93], will provide a range of suitable walking routes for residents, including a number of attractive longer walks in excess of 2.7km.[94]

96. The HRA dispute with the Councils is whether the on-site mitigation measures comprised in the Appeal Scheme allow the Inspector to rule out adverse effects on the integrity of the three protected sites arising from recreational disturbance.

97. On that issue, the Councils' position before the Inquiry has been that the Inspector can only conclude that adverse recreational impacts can be ruled out if the on-site mitigation meets specific "SANG" standards. As Mr Meyer states in respect of the recreational mitigation proposals: "For the avoidance of doubt, the Councils consider that to meet the necessary policy and Habitats Regulations requirements land for this

[90] Marsh Rebuttal, para. 2.12
[91] CD AD30. See also Marsh Proof, 7.12, for further detail on the mitigation approach. Although this is "precautionary" as it excludes children's plan, whereas Mr Russell-Vick and Mr Meyer includes children's play as HRA mitigation compatible.
[92] Meyer Proof.
[93] CD AD30.
[94] CD SOCG9, para 8.

purpose must meet SANG standards", before citing the Natural England "SANG" Guidance developed for Thames Basin Heaths.[95]

98. The Appellants dispute that analysis entirely. There is no legislative, policy or scientific basis which provides that an AA in this case can only be favourable if the on-site recreation measures meet "SANG" standards. Rather, whether adverse effects can be ruled out is a matter of judgement in any particular case. That judgement is not controlled by the importation of standards developed in the context of a different SPA, nor, as we set out below, local plan policy. Indeed, any such requirement would be contrary to the judgement required by the competent authority under reg. 63 in any particular case as to the effects of the scheme on the integrity of the relevant European sites.

99. We submit that the issue for the Inspector under reg. 63, in light of the agreed matters, and as framed by Dr Marsh, is this: is the functional effectiveness of the on-site recreational mitigation measures such that (together with rest of the mitigation strategy), the Inspector can rule out adverse recreational impacts on the European sites?[96] That is quintessentially a matter of judgement for the Inspector, having regard to the nature of the mitigation measures proposed in light of the views of the relevant experts.

100. To assist the Inspector with the application of that judgement, we address this Main Issue by firstly considering the concept of recreational mitigation and "SANG". Second, we consider the expert evidence before the Inquiry. In short, in the course of considering the proposals, none of the experts nor Natural England have disputed the effectiveness of the Appellants' on-site recreational mitigation measures. We suggest that this is compelling factor which should lead the Inspector to conclude that recreational mitigation impacts can be ruled out.

101. In assessing the expert evidence before the Inquiry, we deal with the significant change in position in the Councils' assessment of the on-site recreational mitigation strategy. Namely, the suggestion now in Mr Meyers' Proof of Evidence that, in order

[95] See CD B21.
[96] PoE 7.11 and oral evidence.

to rule out adverse effects on the integrity of the protected European sites, the on-site mitigation measures must now meet specified "SANG" standards.

102. Third, we consider the evidence before the Inquiry as to the quality of the recreational mitigation space which the Inspector ought to be considering in assessing whether adverse impacts arising recreational disturbance can be ruled out.

103. Finally, we address the HRA policy position in IBC Policy ISPA4.

a) Recreational mitigation, "SANG" and what is in a name?

104. As the pathway to potential adverse impact is recreational disturbance, mitigation takes the form of diversion of future and existing recreational activity from the European sites as well as a sum for management of those sites for the residual visits that cannot, in practice, be diverted. This is reflected in the RAMS advice and (specifically at para. 20 of East Suffolk's SPD1 and para. 2.4 of IBC's SP2) and in Annex 1 to the HRA record sheet[97] which sets out Natural England's advice on the matter.

105. As noted above, therefore, the recreational mitigation proposed consists of three prongs – the agreed RAMS contributions and package of off-site and on-site recreational opportunities, particularly for dog walkers. Given the impossibility of recreating the estuarine characteristics of the Europeans site, attention is focused on the quality, attractiveness and convenience of these off-site and on-site recreational opportunities to divert existing and potential future recreational activities (particularly, but not limited to, dog walking).

106. As set out below, until the Inquiry this three-pronged approach of mitigation was not criticised for not claiming to contain, on site, a "SANG". Indeed, the on-site recreational opportunities (c. 11.5ha) very expressly did <u>not</u> limit themselves to what the Councils now say are only "SANG-compatible" open space typologies, and Mr Meyer was correct that neither he nor any other reasonable reader (e.g, Natural England) could have read the SHRA as saying otherwise. Nonetheless, they were

[97] DD1.

(subject to two matters we address below) considered acceptable mitigation, such that adverse effects could be excluded with the requisite degree of legal certainty.

107. This is (or should be) not surprising as Annex 1 of the HRA Record[98] makes it very clear that what is required is functionally adequate green space – not "SANG per se. "SANG" – there referred to specifically as the principles developed to mitigate recreational impact at the Thames Basin Heaths - is only described as "helpful" for design purposes, not mandatory standards to be complied with regardless of location. Indeed, Natural England warned of their specific origin and nature.

108. That approach - that green space/recreational mitigation may be necessary and that land "such as SANG" could be deployed for this purpose - is found to be echoed in the supporting text to ESC allocation, RAMs advice, Annex 1 to HRA Record,and IBC Policy DM8. While IBC ISPA4(f)(iii) requires a site-level HRA and SANG", the supporting text at para. 8.30 notes only that SANG may be required, and importantly for the purpose of Policy ISPA4, "SANG" is defined in the Local Plan's Glossary not by reference to standards or guidance but by reference to *effectiveness* – a matter of judgement for the decision-maker.[99]

109. Importantly, in this context both the LPAs' (Mr Meyer's) HRA Record[100] and the NE consultation response[101] recite the SHRA's[102] elements of on-site and off-site mitigation and term this "SANG". If nothing else, this correctly reflects the fact that there is no statutory or regulatory meaning to "SANG" as a term. What constitutes "SANG" may (will) vary with the circumstances. What is important is whether the on-site green space (together with other elements of the mitigation package) provides the recreational opportunities that combine to function in a manner to divert recreational trips that might otherwise have been expected to have been undertaken at the European sites.

110. Ultimately "what's in a name"? As set out below, Mr Meyer and Natural England considered the mitigation proposed in the SHRA to constitute "SANG" for their

[98] CD DD1.
[99] CD DP1, pg 253.
[100] CD DD1.
[101] CD 16.
[102] CD AD30.

purposes and to be sufficient, if secured, to allow a favourable conclusion on the AA that harm could be excluded to the requisite degree of legal certainty to pass the tests in reg. 63.

111. That is the approach urged upon the Inspector here.

b) The Experts' Views

112. The proposals before the Inquiry have been considered by at least the following ecology experts.

i. The CSA team who authored the SHRA for the Appellants.

ii. Dr Marsh, an ecologist instructed by the Appellants.

iii. The LPAs' ecologists, Ms Hooten and Mr Meyer (and Mr Meyer subsequently gave evidence to the Inquiry); and finally

iv. Natural England, the Government's statutory advisor for the natural environment and statutory consultee for this application both when before the LPAs and now when the Inspector is the "competent authority" for HRA purposes.

113. Prior to this Inquiry, none of those experts considered that the Appellants' on-site recreational mitigation measures were not sufficient for the purposes of ruling out an adverse effect arising from recreational disturbance on the integrity of the relevant European sites.

114. It is convenient to begin by considering the Councils' views on the effectiveness of the on-site recreational mitigation measures recorded during the determination of the applications. Taking these in chronological order, we begin with the East Suffolk Council Ecology Team consultation response prepared in coordination with IBC.[103]

115. In its consultation response, East Suffolk Ecology considered the Appellants' Shadow HRA[104] and stated that, "*subject to detailed consideration through the HRA, the principle of the measures proposed is in line with what would be expected to be required for a development such as this*…", before noting "*an initial concern that*

[103] CD B13. See introduction community under "ESC Ecology Comments".
[104] CD AD30.

the quoted area of greenspace to be delivered as part of the development is not achievable". We will return to the latter point. For present purposes, we emphasise that, at the outset of the Councils' consideration of the Appeal Scheme, the Councils' ecologists did not suggest that the proposed on-site recreational mitigation measures were incapable of enabling adverse recreational impacts to be ruled out in an appropriate assessment. Quite the opposite, subject to two points, they considered it would.

116. The next point in time is the Councils' "appropriate assessment".[105] The Councils' HRA Record, prepared jointly by both Councils' ecologists, records the outcome of Councils' appropriate assessment as the competent authority. It states that the authors had considered the mitigation measures set out in the Appellants' Shadow HRA[106] and the parameter plans submitted with the application.[107] Mr Meyers also confirmed that he considered the DAS and illustrative landscape masterplan.[108]

117. Having considered all of that material which detailed the Appellants' proposed mitigation measures, there was, again, no suggestion in the AA that the proposed approach could not lead to a favourable outcome. Indeed, Mr Meyer and Ms Hooton repeated the point that "the principle of the measures described is in line with what would be expected to be". Rather, what *was* raised was an "uncertainty" that "that the quoted area of greenspace to be delivered as part of the development is achievable" in light of the drainage and other infrastructure, together with a query as to the inclusion of the parcel of land which we have described as "the Tuddenham Road Triangle".

118. In the light of those two points, the Councils' ecologists considered that "Adequate demonstration that the development if permitted can secure the delivery of the avoidance and mitigation measures identified is necessary to be able to conclude that the proposal will not result in an adverse effect on the integrity of any European designated site" (emphasis added).

[105] CD DD1.
[106] CD DD1, pg. 5.
[107] CD DD1, pg. 6.
[108] Meyer XX CBKC, Day 6.

119. Therefore, at the AA stage, the Councils' ecologists considered that the outcome of the AA could be favourable if the inclusion of drainage and other items in the green infrastructure was not an obstacle to the delivery of the recreational mitigation strategy, and the uncertainty of the Tuddenham Road Triangle was resolved.

120. The next point in time is the Committee Reports.[109] These repeated the point made in the Councils' AA: "Adequate demonstration that the delivery of the identified avoidance and mitigation measures" – that being a reference to the measures comprised in the proposals – "can be secured is necessary to be able to conclude that the proposal will not result in an adverse effect on the integrity of any European designated site".[110] The principle of the effectiveness of the mitigation was, again, not disputed. What was objectionable was the perceived uncertainty as to the delivery of the mitigation measures. Rather, the Reports suggest that if those concerns could be overcome, a favourable AA could be concluded.

121. The same point is carried forward into the Councils' Decision Notices:

> "Information to inform an HRA report has been submitted and includes measures to mitigate the impact of the development on the integrity of any European designated site. This includes the provision of on-site recreational greenspace but there is concern with the deliverability and appropriateness of the required amount of greenspace proposed. The inclusion of infrastructure such as drainage within the greenspace proposed, as well as some greenspaces potentially containing existing habitats of biodiversity value, is considered to reduce the quantity of the greenspace which can be considered as public open space for mitigation purposes. It has therefore not been adequately demonstrated that the proposed development if permitted can secure the delivery of the avoidance and mitigation measures identified" (emphasis added).[111]

122. Again, the Councils raised no concern at this stage as to the effectiveness of the recreational mitigation measures or otherwise suggested that the measures could not lead to a favourable AA. What *was* raised was a concern as to whether the proposed

[109] CD DD3 and DD4.
[110] CD DD4, para. 3.3h.
[111] CD DD6, reason 7. The ESC DN is in materially the same terms but at reason 6.

green infrastructure could in fact be delivered given that the design included drainage within it.[112]

123. However, the Inspector will have noted that the concern as to the presence of drainage infrastructure in the green space undermining its effectiveness has now fallen away entirely. Ms Chittock has accepted that SUDSs form an appropriate part of green space in landscape terms. Mr Meyers also accepted that that SUDs can and should be taken into account both in landscape terms and also recreational mitigation purposes. Mr Russell-Vick considered that SUDs are compatible with recreational mitigation space.[113] In addition, the query as to the Tuddenham Road Triangle has been resolved (it has been excluded from the quantum of recreational mitigation land).[114]

124. Mr Meyers, in turn, accepted that the objection in the Councils' HRA reason for refusal has been overcome. So far as the HRA reason for refusal is concerned, Mr Meyers confirmed that there is no longer any issue in dispute between the Appellants and the LPAs.[115]

125. Mr Meyers also accepted that there was no complaint by the LPAs when considering the Appeal Proposals that certain spatial typologies were included but should be excluded from the mitigation strategy, or that certain spaces did not meet "SANG" standards. The LPAs' criticisms (which have now fallen away) concerned the *quantity* of the space proposed, not the *quality* of that space (i.e. whether or not it meets specified "SANG" standards). If, as the Councils now contend, that the proposed green infrastructure must meet such standards in its entirety, one could reasonably have expected the LPAs ecologists to have raised this issue at some point prior to these appeals. They never did.

126. Rather, the principal point consistently raised by the Councils in considering the Appeal Scheme was that the Appellants needed to demonstrate that the proposed

[112] Nb: The Decision Notice also includes reference to "as some greenspaces potentially containing existing habitats of biodiversity value". This point did not form part of Mr Meyer's Proof of Evidence. Mr Meyer confirmed in cross-examination (CBKC Day 6) that he had not and was not pursuing this point.
[113] Evans Proof, pg. 67, footnote 17.
[114] See DAS (CD AD16), pp. 114-115.
[115] Meyer XX CBKC, Day 6.

green infrastructure could in fact be delivered in order to rule out an adverse effect on the integrity of the sites.

127. That is precisely where the evidence heard by this Inquiry has arrived. On the reasoning behind the Councils' own appropriate assessment, therefore, it can be concluded that the proposal will not result in an adverse effect on the integrity of any European designated site. That is, we respectfully suggest, a significant factor in the Inspector's assessment of whether adverse recreational effects can be ruled out.

Natural England

128. Natural England is a further expert which has considered the scheme. They were consulted on the Appeal Scheme at application stage.[116] Their consultation response records in the "Summary of Advice":

> "**NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED**
>
> In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures should be secured:
>
> • A minimum 10ha area of suitable alternative natural greenspace (SANGS), which includes all the measures outlined in the SHRA and a requirement to provide a detailed plan and a long term funding, maintenance and management strategy for the SANGS at a future planning application stage.
>
> • A suitable contribution per new dwelling to the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy ('RAMS') to ensure that the delivery of the RAMS remains viable."

129. On page 3 of the response, Natural England recorded that:

> "The SANG proposed (<u>as detailed in the SHRA report</u>) includes:
>
> • 11.5ha of open space and green infrastructure • High-quality, informal, semi-natural areas
> • Circular dog walking routes of 2.7 km within the site and/or with links to surrounding Public Rights of Way
> • Dedicated 'dogs-off-lead' areas
> • Signage/information leaflets to householders to promote these areas for recreation • Dog waste bins
> • A commitment to the long term maintenance and management of these provisions

[116] CD B16.

> Natural England's advice is that your authority secure these measures, through a suitable obligation or legal requirement, as part of the Outline planning consent. Furthermore, your authority should give consideration as to how the design of the SANGS, in line with the measures outlined in the SHRA, will also be secured." (emphasis added)

130. Natural England, therefore, had regard to the recreational mitigation measures set out in the SHRA, and concluded that it had no objection to planning permission being granted, subject to those mitigation measures being secured. Mr Meyers accepted that no reasonable reader could have understood the proposed green infrastructure network set out in the Appellants' SHRA as meeting what he would call "SANG" standards.[117] It is notable that Natural England did not depart from their advice when Mr Meyer sought clarity from them.[118]

131. The substance of the response, as Mr Meyer accepts, is that Natural England considered the recreational mitigation measures in the SHRA to be acceptable mitigation, and raised (indeed, raise) no objection.

132. At this Inquiry, the Councils pray in aid of Natural England describing the measures in the SHRA as being "SANG" in order to assert that "SANG" is required to achieve a favourable AA. This is not only a remarkable *volte face* from Mr Meyers's position at the AA stage, but it is also, with respect, misconceived. As noted above, the fact that Natural England may have described the measures as "SANG" does not change the position that what Natural England approved of was the mitigation measures <u>in</u> the SHRA. As Mr Meyers accepted, no reasonable reader could understand that document as proposing "SANG", *stricto sensu.*

133. Indeed, as the Inspector put to Dr Marsh, the "SANG" label is moot in this context, as whether on-site recreational space is labelled "SANG" or something else, the point that matters for the Inspector is that the quality of the space is such that adverse effects on the protected sites arising from recreational disturbance can be avoided. We respectfully agree with that observation. The relevance of Natural England's view is not the nomenclature, but the substance: they plainly were of the view that

[117] Meyer XX CBKC, Day 6.
[118] CD B17.

the quality and quantity of the mitigation measures was such that they had no concerns about recreational disturbance on the protected sites.

134. Nothing has changed in the Appeal Scheme considered by the Inquiry which would lead Natural England to change its position. Natural England's lack of objection to planning permission being granted if the SHRA mitigation measures are secured is, we suggest, a very compelling factor in favour of a conclusion that the recreational mitigation measures enable adverse recreational impacts on the protected sites to be ruled out.

c) The parties' views as to the nature of the recreational mitigation space

135. The final point we note in respect of the reg. 63 duty is that, in considering whether the recreational mitigation space enables the Inspector to conclude a favourable AA, there is a significant degree of agreement as to the quality and purposes the on-site recreational open space should seek to achieve for effective mitigation purposes.

136. Ms Chittock, in response to a question from the Inspector as to the Council's expectation of the on-site recreational space, explained that "We understand that it is a town edge and we under that it would not be a pristine re-wilded space or Thames Basin Heaths", adding that the spaces did not need to recreate the SPA conditions, but needed to attract people so as to prevent them from travelling *to* the SPAs.[119]

137. Mr Self sets out a similar view in his rebuttal, noting that full "nature immersion" will not happen in or around a major development.[120] Mr Meyer also considered that the spaces are not seeking to replicate the conditions of the SPA. The purpose of the recreational mitigation space, Mr Meyer accepted, is to attract people to those spaces for recreational use (walks etc.), rather than them travelling to the European sites.[121]

138. Similarly, Dr Marsh considered that the on-site recreational space needed to be an attractive area to avoid people travelling to the SPA, but not replicate the conditions of the SPAs.

[119] Chittock XX CBKC, Day 6. While Ms Chittock wanted to see the open space to be larger, she clarified that the Councils were not expecting the space to be in a single large block.
[120] Self Rebuttal Proof, para. 11.
[121] Meyer XX CBKC, Day 6.

139. The on-site and off-site recreational measures here combine. As Mr Self and Dr Marsh indicated, and as will have been appreciated from the site visit, real countryside opens up north of the railway, with extensive walking routes through the attractive Fynn Valley. The on-site routes through and around the development provide access for existing and future residents not only to the open space provided in a number of typologies across the Site, but also to this wider more "natural" farmed landscape.

140. Against that context, the Appellants invite the Inspector to prefer Dr Marsh's evidence, and conclude that recreational disturbance effects on the European sites can be ruled out in light of the provision in the Appeal Scheme of 11.23ha of greenspace, viewed in the context of the extensive off-site walking route options and improved links to the wider countryside,[122] and payment of the RAMS tariff.

d) Recreational mitigation policy requirements

141. Finally, we turn to the policy position. The HRA issue which we identify as arising for the Inspector under reg. 63 is whether the functional effectiveness of the on-site recreational mitigation measures is such that (together with rest of the mitigation strategy), adverse effects on the integrity of the European sites arising from recreational disturbance be ruled out. As set out above, the judgement required by reg. 63 is not controlled by whether or not the mitigation meets some specific "SANG" standards.

142. If the Inspector accepts that submission, there is not, as the Councils appear to suggest, a remaining policy issue against the scheme. In East Suffolk, there is no policy requirement to deliver "SANG", whether that be within the meaning of the guidance development by Natural England for Thames Basin Heaths, or by East Suffolk in SPD7. That SPD is only relevant where there is a requirement to deliver "SANG". East Suffolk's allocation policy (SCLP12.24) says nothing as to the provision of "SANG" at the Site.

143. In respect of IBC, the allocation policy includes the following as one of its criteria that new development is expected to meet: "A project level Habitat Regulations

[122] Marsh Proof, para. 7.23-7.28.

Assessment will be required and Suitable Alternative Natural Greenspace (SANGs)". A SHRA has been submitted, and the Inspector will carry out her own assessment of the scheme in light of the statutory duty. That requirement has, therefore, been complied with.

144. The use of "SANGs" in the policy takes the matter no further. That term in ISPA4 has to be read with the definition of "SANGs" in the Core Strategy. The term is defined as "The name given to greenspace that is of a quality and type suitable to be used as mitigation to offset the impact of new development".[123] That, in short, is the reg. 63 issue for the Inspector. If the Inspector is satisfied that the greenspace fulfils that function, then, as Ms Evans and Dr Marsh accepted, the greenspace is "SANG" for the purposes of the policy, and ISPA4(f)(iii) would be complied with.

145. While it was suggested to Dr Marsh in cross-examination that because ISPA4 identifies a requirement for SANGs, East Suffolk's SPD should be applied to the meaning of that term, we assume that this submission will not be pursued given the acceptance by Ms Evans that the term as used by ISPA4 is controlled by the Core Strategy (i.e. her acceptance that the on-site recreational mitigation is "SANGs" for the purposes of the policy if it meets the definition in the Glossary).

146. To the extent that the submission is maintained, the Appellants submit that to suggest that an SPD developed by a different planning authority in respect of a different development plan controls the meaning and effect of this policy is a novel proposition, and, respectfully, is plainly wrong and invites an error of law.

Conclusion on HRA matters

147. The HRA issue before the Inspector is one of substance rather than nomenclature. Does the Appellants' recreational mitigation strategy allow adverse effects on the integrity of the European sites arising from recreational disturbance to be ruled out? The Inspector's judgement on that issue is not, as the Councils suggest, controlled by whether the on-site recreational space meets some specified "SANG" standards. By suggesting otherwise, the Councils seek to set up a straw man: ""SANG" as we

[123] CD DP1, page 253.

define it is required to achieve a favourable AA. The on-site measures do not meet "SANG" as we define it. Therefore, the Appeals should be dismissed."

148. That is, as we say above, contrary to what reg. 63 requires in practice. It is also contrary to the LPAs expert's position at all material times prior to this Inquiry. The Councils never suggested that the on-site recreational mitigation measures do not permit adverse effects to be ruled out. Rather, the only substantive points taken by the Councils was whether (for two reasons) the proposed on-site measures were *achievable*. The Councils now accept that this concern has been overcome.

149. Similarly, Natural England have expressly accepted that the on-site recreational measures (with the off-site measures and RAMS payment) would be effective to rule out adverse effects. In accordance with case law, the Inspector is entitled to give "great weight" to the opinion of the statutory advisor on nature conservation, unless there is a compelling reason to depart from it. Rather than compelling <u>contrary</u> evidence, the position is that the scheme and mitigation considered by National England as acceptable is exactly the <u>same</u> scheme before the Inquiry now.[124] Dr Marsh, on behalf of the Appellants, also considers that adverse effects on integrity can be ruled out.

150. All the evidence, we respectfully suggest, supports the view that adverse effects on the integrity of European sites can be ruled out. If the Inspector reaches that view, then for the reasons given above, the proposal is also compliant with Policy ISPA4(f)(iii).

Archaeology (Main Issue 8)

151. Both Councils alleged in their RfRs that further archaeological evaluation needed to be undertaken. However, following the commencement of trenched archaeological evaluation, SCC is satisfied that the Reason for Refusal on archaeology can be addressed by condition.[125] SCC is satisfied that, although there are archaeological remains which will require mitigation excavations, there is nothing of schedulable

[124] And which, subject to his two now overcome concerns, that Mr Meyer finds acceptable in his HRA record sheet (CD DD1).
[125] CD SC2, para. 6.62

quality (national significance) and worthy of preservation in situ.[126] The LPAs have fallen in behind SCC and no longer maintain this RfR.[127] Accordingly, this reason has been overcome.

Air quality (Main Issue 9)

152. Both Authorities refused permission on the ground that the measures proposed to address air quality were insufficient to mitigate the harm arising through the development, and considered that it could not be concluded that the proposed development would accord with the NPPF and local plan policy.[128] Following further discussion between the parties, this RfR has been overcome: the Councils consider that this matter is capable of being addressed by way of condition and/or planning obligation.[129]

Loss of sport pitches (Main Issue 10)

153. The Appeal Site currently contains two rugby pitches in Parcel E which are in use by the Ipswich Rugby Club. Those pitches are on IBC's side of the administrative boundary. The Club's use of the pitches is subject to a licence with the Appellants.[130] Planning permission was granted by IBC in August 2016, limited for a period of three years to 2.5 hours per week when the senior pitches were not in use.[131] That permission expired in on 15th August 2019.[132] No further permission has been granted.

154. The land on which the pitches are located is included in the IBC allocation policy. The Appeal Scheme involves building out residential development on that land. In terms of replacement provision, the Appeal Scheme proposes a Multi-Use Games Area ("MUGA"). As Mr Coleman explained, the MUGA would be open to a range

[126] CD SC2, para. 6.67
[127] CD SC4, para. 7.42.
[128] SCLP10.3 (Environmental Quality) and SCLP11.2 (Residential Amenity) in the case of ESC. DM3 in the case of IBC.
[129] CD SC4, para. 7.43.
[130] Coleman Proof.
[131] CD OT3.4 Part 4 IP16 00588 FUL.
[132] See condition 2: "Unless planning permission is renewed the temporary use hereby permitted shall cease on or before 15th August 2019".

of sports, available all year round, and every day of the week, for an extensive number of hours.[133]

155. The loss of the rugby pitches raises a discrete policy dispute for resolution by the Inspector. ISPA4 includes among the infrastructure requirements "Replacement sports facilities if required to comply with policy DM5…" (emphasis added). Turning to DM5, that policy restricts development involving the loss of open space, sports or recreation facilities unless one of three conditions are met.

156. The first of those conditions – (a) – permits the loss of the space/facility without replacement subject to certain criteria being met. Conditions (b) and (c) permit the loss of the space/facility subject to criteria as to alternative provision.[134]

157. The Appellants do not suggest that condition (a) is satisfied. Therefore, policy compliance turns on whether the development and replacement satisfies conditions (b) or (c).

Must any replacement be for the same sport?

158. As a preliminary point, we note that conditions (b) or (c) do not require replacement provision of the same sport. The words used in DM5(b) are that "alternative and improved provision would be made in a location well related to the users of the existing facility". "Alternative and improved provision" are clear, broad and easily understood words: they require some alterative provision which is an improvement to the status quo. Plainly, the alterative could be for the same sport, but the words used in the policy do note state that it is a necessary condition. The same analysis applies to condition (c): "alternative sports and recreation provision" do not, on any reading, restrict compliance to provision of facilities of the same kind.

Correct approach to DM5(b)

[133] Coleman Proof, para. 10.53.
[134] Specifically, condition (b) requires that: "alternative and improved provision would be made in a location well related to the users of the existing facility" and condition (c) requires that "the development is for alternative sports and recreation provision, the need for which clearly outweighs the loss."

159. The words used in condition (b) require a judgement to be made by the Inspector which can be broken down into three distinct aspects, all of which the Appellants say should lead to a favourable outcome on the facts of this case.

160. First, is there an alternative sport facility being provided as part of the proposed development? That is a straightforward a question of fact. Here, it is clearly satisfied. Alternative sport provision in the form of the MUGA is included in the proposals.

161. Second, is the alternative provision an improvement compared to what will be lost? That is a broad concept which entitles a decision make to consider not only the physical condition of the existing provision, but also matters such as accessibility to the public and its long-term security. We address why the MUGA is an "improvement", and therefore satisfies this condition, below.

162. Finally, is it "well related to the users of the existing facility"? That suggests, principally, geographic proximity to existing users. Again, we submit that plainly this condition is satisfied. The proposed MUGA is in close proximity to the existing pitches. No one at this Inquiry has seriously suggested that to not be the case.

163. The dispute between the parties focuses on the second issue: whether the MUGA is an "improvement" to what is being lost. The Appellants say that the MUGA plainly *is* an improvement to what has been lost, for the following reasons.

i. The existing facility only allows use for a single sport: rugby. The MUGA, as the name implies, is open to all kinds of sports use. More *types* of sport can be played on the facility. That is an improvement to provision allowing a single sport to be played.

ii. The existing facility, being turf, means that its use is limited in wet conditions. The replacement facility has an artificial surface and therefore does not suffer from the same problem. More sport *overall* can be played. That too is an improvement.

iii. The facility is only usable by the specific club who has the licence. The existing provision is precarious as a matter of private law. The replacement facility will

not be limited to a specific private organisation and cannot be revoked at the discretion of the owner. That is an improvement on the existing provision.

iv. The existing use is unlawful as a matter of planning law and continued failure to enforce is inconsistent with the reasons given for imposing the time-limiting condition.[135] In contrast, the alternative provision would, if the appeals were allowed, benefit from planning permission and no time-limiting condition. That is a significant improvement.

v. Notwithstanding that *any* continued use by the rugby club is unlawful in planning terms, it is also restricted by condition to 2.5 hours on Sundays (condition 3) when matches are not being played on the senior pitches (condition 8). No such condition is proposed in respect of the use of the MUGA. That, also, is a significant improvement.

164. In any event, for the reasons given by Mr Coleman, the proposal includes provision for outdoor sports and recreational facilities together with the residential units, and is therefore a proposal "for alternative sports and recreation provision, the need for which clearly outweighs the loss" within the meaning of DM5(c). As set out below under DM6 (Main Issue 12), whether or not the total of open space required is as per the DAS Table 9 or Table 2 of Ms Evans' Appendix A, the 11.44ha provided is significantly in excess of policy requirements – and always represents a surplus in excess of the 2.7ha of unlawful rugby pitches "lost". Consequently, whether considered DM5(b) or DM5(c), there is more than adequate recompense for the allocation of rugby pitches for housing.

165. The Councils seek to avoid engaging with the improvement offered by a lawful sports facility (perhaps a telling recognition of the force of that point in the Inspector's assessment of whether the alternative provision is an "improvement"). Ms Evans was unwilling to give a conclusive view on whether the current use was lawful or not, but on the facts available to the Inquiry, the continued use is necessarily unlawful on an application of Part VII of the TCPA 1990, as the use of the land in

[135] See the reasons for condition 2 in the planning permission (OT3.4 Part 4 IP16 00588 FUL): "The proposal is not considered suitable as a permanent use of the land, given that the site is designated as countryside, where the creation of sporadic and isolated development that is not connected with the essential requirements of agriculture is usually discouraged."

breach of condition 2 has subsisted for less than 10 years (i.e. only since 16th May 2019). Section 191(3)(a) therefore cannot be satisfied.[136]

166. Although Ms Evans indicated that she was not asking the Inspector to make any determination on lawfulness, there appeared to be a suggestion by the Councils, via cross-examination of Mr Coleman, that there may be a subsisting use right in planning terms for the rugby club which accrued at some point in the past via the Rugby Club exceeding the extent of what was permitted by the historic permissions and the time for enforcement action elapsing thereafter.

167. There is no factual basis on which the Inquiry could make such a finding. The description of historic use by the rugby club's evidence does not come close to showing, as a matter of fact, that the use became lawful at some point in the past.[137] In any event, such a suggestion fails to grapple with the "new chapter in the planning history" represented by the implementation of the 2016 Permission. To invite the Inquiry to find that the use would be lawful in this manner is, with respect, to invite a clear error of law. On the evidence provided by the LPAs, the position is, as we set out above, that the continued use is in breach of condition 2, and therefore necessarily unlawful.

168. Against that context, the Appellants respectfully submit that the "improvement" case for the alterative sports provision is overwhelming – provision for a single sport, used in breach of planning control by a private organisation and at the discretion of the landowner for 2.5 hours per week – is proposed to be replaced with a facility that is open to multiple sports, the public at large, and with the security of long-term permission. We therefore invite the Inspector to conclude that the proposal complies with Policy DM5.

169. Ultimately, the loss of an unlawful sports use (for 2.5 hours on Sundays) of land held on a licence from the developer, on a site allocated for residential development, needs to be weighed in the planning balance against the delivery of the Site. Like-for-like replacement (which seems to be the LPAs' demand) would remove c. 100 dwellings,

[136] See relevant extracts in ID35.
[137] Recalling the need for "precise and unambiguous" evidence that enforcement action could have been taken throughout the relevant immunity period: see PPG, Paragraph: 006 Reference ID: 17c-006-20140306.

and is therefore understandably not within the Russell-Vick "Alternative Scheme", as such a demand is manifestly inconsistent with achieving the 599 dwellings in the allocation policies.

170. That is the stark choice posed by the case now articulated by the Councils on this point: is it better in the public interest to retain 2.7ha for an unlawful use on someone else's land, or to embrace a MUGA and 100 dwellings (30% of which would be affordable).

Quantum of Development (Main Issue 11)

171. This was the second of the "makeweight" issues we identified in Opening. As is the case with the master planning point (Main Issue 1), Ms Evans has confirmed that if the substantive planning issues are resolved in favour of the Appellants, this reason for refusal would fall away.[138]

172. Indeed, Ms Evans correctly conceded that, if the substantive issues were resolved in favour of the Appellants, the extra 61 dwellings would be a *benefit* of the scheme to be taken into account in the planning balance.[139]

173. Therefore, on this further issue, the Councils have confirmed that this reason for refusal cannot be sustained if the substantive issues are resolved against them. It manifests itself on the "positive" side of the equation.

Provision of Green Infrastructure (Main Issue 12)

174. Green Infrastructure is relevant to two issues in these Appeals: firstly, whether the green infrastructure is sufficient for recreational mitigation purposes and the HRA duty (Main Issue 7), and secondly, whether the green infrastructure complies with IBC local plan policy as to open space requirements. We have dealt with the first of those issues under Main Issue 7. In this section, we address the open space provision as against IBC policy requirements.

175. There is a policy requirement in DM6 of the IBC Core Strategy that the Appeal Scheme delivers open space and sports and recreation facilities. The types and

[138] Evans XX CBKC, Day 8.
[139] Ibid.

required standards of these spaces and facilities are identified in Appendix 3 to the IBC Core Strategy. It is agreed that IBC's requirements should be applied to the scheme as a whole, given that they are more onerous.[140]

176. The Appellants say that these standards generate a policy requirement of 5.21ha of open space and sports and recreation facilities.[141] The "Alternative Scheme" prepared by Mr Russell-Vick suggests that, for 660 homes, 8.11ha is required.[142] The difference arises because Appellants do not include provision for two typologies - playing fields and allotments - as there is an undisputed surplus of these typologies locally (0.57ha in the case of allotments; 2.23 ha in the case of outdoor sports facilities (excluding golf)).[143] On the Councils' case, outdoor sports facilities and allotments need to be added to the calculation, hence the generation of a higher figure.

177. However, whichever of those two requirement figures is applied, the appeal scheme includes c. 11.44ha[144] and, therefore, generates a surplus. On a DM6 policy requirement of 5.21ha, the surplus is 6.23ha. On a DM6 policy requirement of 8.11ha, the surplus is 3.33ha. The starting point, therefore, is that on either party's case, the appeal scheme delivers *more* open space in terms of quantum than is required by Policy DM6. The complaint in the RfR cannot therefore be that there is insufficient open space, but rather mix of typology.[145]

178. The issue for determination which arises for the Inspector is whether it is policy compliant to omit certain typologies from the open space provision in circumstances where those typologies are in surplus locally.

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[140] Evans XX CBKC, Day 8. Although there are two sets of open space standards, Ms Evans accepted that it was "best" to compare the scheme against the IBC requirements (against ESC requirements there was a "lesser" deficit, see her Appendix B.
[141] DAS, CD AD16, pg. 115.
[142] The difference arises because, as explained below, the Appellants' calculation exclude typologies which are in surplus locally. On the Councils' case, outdoor sports facilities and allotments need to be added to the calculation, hence the generation of a higher figure. Compare Table 2 LE pg. 64 with table in DAS 115.
[143] See "Background to the Revised Public Open Space Standards and Surplus and Deficiency Maps", January 2016 (Coleman Appendix 11), entry for "North East") the OSA (CD AD15).
[144] DAS 115-116.
[145] The Russell-Vick alternative scheme fails both quantity and typology. It has a deficit overall, and makes no provision for playing pitches; indeed it delineates no specific typology at all.

179. The Appellants submit that it is entirely policy complaint for the Appellants to adopt this approach, for the following two reasons (either one of which is sufficient to enable policy compliance).

180. Firstly, properly construed, the policy does not require inclusion of typologies which are in surplus locally. Such a requirement cannot be gleaned from the words actually used in the policy. As a matter of common sense, it would be a surprising outcome if a local plan policy required the decision maker to ignore local conditions and existing surpluses or deficits, and instead require all typologies of space to be required without reference to the extent of spaces already available. If the authors of the policy had intended that outcome, one could reasonably expect the words used to expressly provide that that all typologies of open space identified in the local plan must be provided in all new developments. They do not.

181. In considering the meaning of planning policy, as the courts consistently emphasise, one must apply "realism and common sense", together with "a proper understanding of [the policy's] practical purpose". [146] Also relevant in this exercise is "the effect [the policy] is intended to have in guiding planning decision-making" – "a practical and coherent interpretation, if that is possible, should be the aim".[147]

182. The interpretation of DM6 suggested by Ms Evans is that a development must provide all typologies of open space to the extent required by the methodology in appendix 3, regardless of existing conditions locally. She went on to say that the starting point is on-site provision, but if not, then a contributions to off site provision would be required.

183. That interpretation, we suggest, is not only absent from the words used, but defies realism and common sense. Planning is about meeting the land use needs of the future. Requiring a developer to provide all typologies of space, regardless of whether particular typologies are in abundance locally, overlooks that basic aim. Self-evidently, if there is a surplus, there is no planning need for that typology.

[146] *R. (on the application of Plant) v Lambeth LBC* [2023] EWCA Civ 809 at [34] per Sir Keith Lindblom SPT.
[147] Ibid.

184. The Councils' suggestion that DM6 requires that all typologies must be provided regardless of whether there are surpluses can also be tested this way: if a site could not physically accommodate on-site provision of a typology in surplus, Ms Evans' position is that the development would be required to make a contribution to off-site provision to achieve compliance with DM6. Such an outcome could not possibly be reg. 122 compliant. It cannot seriously be suggested that IBC, in adopting its Core Strategy, sought to achieve that outcome.[148] No properly drafted planning policy would set up its decision makers to require contributions which cannot be justified under general planning law. That is a strong indication that the Councils' interpretation is wrong.

185. Further, omitting those typologies which are in surplus accords with the guidance set out in IBC's Open Space SPD.[149] The Open Space SPD concerns the provision of new open space and outdoor sport and recreation facilities required by new development.[150] It "provides guidance to assist the implementation of the adopted Local Plan".[151] It "focus" is "calculating provision for new residential development"[152] and "explains to applicants how open space, sport and recreation and tree canopy cover requirements will be calculated for new development…"[153]

186. Chapter 4 of the SPD concerns "Implementing Open Space Requirements"[154] and explains that "the overall approach" is set out in the flow chart at Figure 1.[155] The fourth box of Figure 1 requires the decision maker to consider what the quantitative standards in the Local Plan indicate the space that is needed to serve the development, and fifth box requires the decision maker to consider the amount and quality of existing open space in the ward. Notably, the sixth box asks whether the "types of provision which are in quantitative deficit" (emphasis added) can be accommodated on site. The rest of the table concerns the provision should then be arrived at.

[148] Noting that the Core Strategy post-dates the CIL Regs.
[149] CD SPD 7: "Public Open Space".
[150] See SPD 7, para 1.5
[151] SPD 7 para 1.6
[152] SPD 7 para 1.7.
[153] SPD 7 para 1.8
[154] SPD 7 page 15.
[155] SPD 7 para 4.4.

187. The clear indication from the SPD is this: what has to be provided for DM6 purposes is contributions towards those typologies which are in *deficit*. The SPD does not suggest or require the implementation of the policy in any particular case to secure provision of typologies which are in surplus locally. That is an entirely unsurprising outcome, and accords with common sense.

188. Therefore, properly construed, the omission of certain typologies which are in surplus is not contrary to DM6.[156]

189. Second, and in any event, DM6 expressly provides that "There may be circumstances where development would more suitably accommodate greater provision of one typology at the expense of another." The policy goes on to state that the circumstances in which one typology may be favoured over another "… will be considered on their merits." There is nothing in those words to prevent a particular category of being omitted entirely at the expense of increasing provision another. Omitting those categories which are in surplus locally is, we respectfully submit, a compelling reason to justify their omission from the typologies provided on site. That is particularly so given that, whatever is omitted, on either parties' case, there is a significant <u>overall</u> surplus of open space as against policy requirements being provided by the scheme.

190. To the extent that the Councils take issue with a shortall in the parks and gardens typology,[157] the same point applies: the Inspector is entitled to, and we respectfully suggest, ought to conclude, that this is justified in the circumstances. As Mr Self explains:

> "5.49 The rationale for providing a significantly greater proportion of natural and semi natural green space as opposed to formal parks and gardens, is to allow a generous and contextually appropriate green edge to be created to the development that has the capacity to accommodate a variety of uses, within a Green Trail."
>
> …

[156] N.b. RW's attempt to use ESC SP6 in cross-examination of Mr Coleman: 1. SPD6 does not inform DM6; SPD7 is relevant; 2. The context of SPD6 is an apparent existing deficit, see para. 2.75 of SPD6; 3. SPD6 provides for local circumstances to justify a departure from the space standards, see para. 2.76.
[157] Evans Proof, para. 5.125

> 5.52 Given the context of the Appeal Site and its relationship to the neighbouring green corridor, then I consider that greater emphasis should be placed on providing a larger proportion of informal open space rather than formal."

191. The Appellants submit that this is a strong reason for justifying a greater quantum of natural and semi natural green space at the expense of formal parks and gardens. If that is accepted, any shortfall in the provision of formal parks and gardens does not result in a breach of policy. This is also not inconsistent with the Alternative Scheme posited by the Councils as an acceptable scheme (which has, we note, an overall deficit of space to meet all requirements identified by Mr Russell-Vick). The Alternative Scheme follows the same principles of layout as the Appeal Scheme (although it does identify or delineate the location of the various spatial typologies or include replacement sport provision, unlike the Alternative Scheme).[158]

192. For those reasons, the Appellants submit that the proposal is entirely compliant with Policy DM6.

Infrastructure contributions (Main Issue 13)

193. As set out in Mr Kinsman's evidence, and elsewhere in respect of highways/transportation, considerable progress has been made between the parties during the course of the appeal process towards agreeing financial contributions, and the provision of land and potential delivery options for the early years facility on site. The position in respect of the remaining contributions towards infrastructure which are in dispute was discussed in the Disputed Matters Round Table Session and is as follows:[159]

    i. SCC seek a contribution of £2,963,961.00 towards secondary school improvement. For the reasons given by Mr Kinsman, the Appellants consider that capacity will be available and currently proposes no contribution.

[158] See Appendix A to Clive Self PoE.
[159] This is drawn from the table from Mr Kinsman's Rebuttal Proof, 2.1, entitled "Current Position", which we refer the Inspector to.

ii. SCC seek a contribution of £1,017,926.00 for sixth form expansion. The Appellants' case is that some capacity will be available and currently proposes no contribution.[160]

iii. SCC seek a contribution of £1,022,274.00 towards SEND provision. The Appellants' case is that the SCC calculation is overstated and that falling population figures do not support the need for contributions.[161]

iv. SCC seek a contribution of £142,560.00 towards library improvements. The Appellants' case is that need has not been evidenced, and SCC calculation is overstated, and does not consider that a contribution is necessary.

194. The section 106 agreement will include a "blue pencil" clause to include these provisions to the extent that the Inspector considers them necessary. If the Inspector does not agree with the Appellants' case and considers sixth form and/or SEND contributions are required, the Inspector is presented with a choice of two contribution tables. Table A is based on SCC's sixth form pupil yield, while Table B is based on the lower sixth form pupil yield presented in Mr Kinsman's Rebuttal. Accordingly, while the Appellants do not consider that the contributions are necessary, this issue does not ultimately go to refusal.

Benefits

195. There is a significant degree of agreement both as to the number of benefits which the Appeal Scheme brings, as well the weight that should be afforded to them. We set out below the position at the close of the Inquiry:[162]

Benefit	Appellants' Weighting	LPAs' Weighting (at the close of the Inquiry)
Delivery of allocations ISPA4.1 and SCLP12.24	Very substantial	
Housing delivery	IBC: Very Substantial ESC: Medium	IBC: Very Substantial ESC: Substantial
Ability of the Appeal Scheme to increase	Substantial (IBC area) or Medium (ESC area)	A benefit if the three substantive issues are

[160] See Kinsman Rebuttal para. 3.20-3.21.
[161] See Kinsman Proof, 4.57 to 4.71.
[162] Based on the table in Mr Coleman's Rebuttal Proof.

delivery over and above Local Plan assumptions.		resolved in favour of the Appellants.
Affordable Housing Delivery	Very Substantial	Very Substantial
10% Biodiversity Net Gain (on-site and offsite)	Medium benefit	Medium benefit
Additional on-site ecology measures	Minimal benefit	
Assisting in addressing a shortfall in Youth play opportunities	Medium benefit	
Improved opportunity for participation in sport.	Medium benefit	
Improved access to open space for existing residents.	Minimal benefit	No benefit
Measures designed to support healthy communities.	Minimal benefit	
Contribution to the "Green Trail" policy objective.	Medium benefit	Minimal benefit
Improved availability of local facilities for existing residents	Minimal benefit	Minimal benefit
Economic benefits	Medium benefit	Minimal benefits[163] to construction activity only/, more if undisputed operational benefits included
Community infrastructure	Minimal benefit	Minimal benefit
Contributions to health care, libraries, school places, and waste	No benefit	No benefit
Improved accessibility for wider community between the Appeal Site and town centre (as per Mr Cantwell Forbes)	Medium benefit	
Other local pedestrian/ cycle improvements that may be agreed as part of the s106/conditions package.	Minimal benefit, as these are likely to be smaller scale and more localised improvements.	
Archaeological investigation	Minimal benefit	Minimal benefit

[163] Ms Evans only includes the benefits of the construction period and does not identify the operational period to bring any benefits.

196. Taken together, whether one looks to the Appellants' list or the Councils' list, these are a compelling basket of benefits arising from the scheme, proposed as it is on allocated land in conformity with the plan-led system.

197. In respect of the "overarching objective" of sustainable development in the NPPF (para. 8) we find common accord. The social benefits of housing and affordable housing are each given "very substantial positive benefit" by both parties. To these both parties add "medium benefit" for environmental objective, and for economic objectives, neither the quantum nor characterisation of the contribution of the Site to the fulfilment of para. 85 of the NPPF is in dispute. Mr Coleman has attributed "medium benefit"; Ms Evans only failed to do so because she had not attributed weight to the substantial on-going operational economic contribution of the scheme.

198. In combination, the benefits are the sum of the individual components and, while not a mathematical exercise, it can only be concluded on either parties' case that they will be substantially in excess of "very substantial".

Planning Balance

199. In addition to the significant agreement on the weight to be given to the benefits, there is significant agreement the close of the Inquiry as to the harms at play in the planning balance. In particular, given the resolution of a number of Main Issues, a number of harms identified by Ms Evans are now accepted to no longer be considered as such in the planning balance.

i. The "fundamental concern" as to the alleged unacceptability of the main access in landscape character terms was not pursued by the Councils. That harm falls away.

ii. The "master planning" point is no longer pursued as a freestanding objection.

iii. The highways concerns identified in the County Council's holding objections have fallen away, and the Inspector has a further Statement of Common Ground

setting out the position. Ms Evans confirmed that this harm should come out of the planning balance.[164]

iv. Similarly, flooding and drainage concerns have been resolved to the satisfaction of the LLFA, and can no longer be considered a harm.

v. HRA does not form a distinct harm in the planning balance as, if the Inspector cannot arrive at a favourable AA, there is no planning balance to undertake.[165] It does not, therefore, feature in the planning balance.

vi. The "in excess" of 599 dwellings point is recognised as a benefit if the substantive objections are overcome.

vii. On infrastructure contributions, Ms Evans accepted that this should not be considered a negative.[166] The Inspector has a "blue pencil clause" for the contributions in dispute. If they are considered necessary in planning terms they can be provided. This issue, therefore, does not lead to refusal.

"Harm"	**LPA's weighting prior to the Inquiry**	**LPAs' Weighting at the close of the Inquiry**	**Appellants' Weighting**
Main Issue 1/RfR 1 – Master Planning	Very substantial harm	Neutral	No harm
Main Issue 2/RfR 3 and 4 – Landscape Impact	Substantial Harm	(1) Location of access: no harm (2) Visual impact: no harm (3) Character: ?[167]	Medium harm
Main Issue 3/RfR 4 Heritage Impacts	Minimal harm	Minimal harm[168]	Low end of less than substantial harm
Main Issue 4/RfR 2&3 – Highways Impacts	Very Substantial harm	No harm	No harm
Main Issue 5/RfR 5 – Flood Risk	Substantial harm	No harm	No harm

[164] Evans XX CBKC, Day 8.
[165] Accepted by Ms Evans in XX.
[166] Evans XX CBKC, Day 8.
[167] While Ms Evans afforded "substantial" for the landscape character impact (although her Proof gave "medium" for effect on Humber Doucy Lane), she did accept that landscape character could not justify refusal if the LVIA's findings stood. The evidence of Ms Chittock, who, in landscape character terms, provided no alternative for the "slight" and "negligible" effects recorded in the LVIA for "immediate" and "wider" landscape character receptors; the Site as a character receptor recorded an unchallenged "moderate" effect at year 15 (see Evans XX CBKC and Chittock XX CBKC).
[168] Ms Evans accepted in cross-examination that this would not be a "strong reason for refusal" for the purposes of para. 11(d)(i) of the NPPF

Main Issue 6/RfR 6 – Ecology and BNG	On-site: No harm BNG a positive	On-site: No harm BNG a positive	No harm Positive
Main Issue 7/RfR 7 – HRA	Very Substantial harm	No harm	No harm
Main Issue 8/RfR 8 – Archaeology	No harm	No harm	No harm
Main Issue 9/RfR 9 – Air Quality	No harm	No harm	No harm
Main Issue 10/RfR 10 – Loss of Rugby Pitches	Very substantial harm	Very Substantial harm	Medium harm
Main Issue 11/RfR 11 – Quantum of housing	Very substantial harm	A benefit if the substantive issues are resolved.	No harm
Main Issue 12/RfR 12 – open space provision	Not specified	Not specified	No harm to minimal harm
Main Issue 13/RfR 13 – Contributions to Infrastructure.	Substantial harm for absence of primary, secondary and sixth form. Very substantial harm for absence of special needs. Medium harm for absence of library contribution.	No harm	No harm

201. Reviewing the central column of the above table reveals just how far the Councils' case has retreated from the high watermark of their 13 reasons for refusal.

202. Of substance in the planning balance there are now only two remaining issues to which the Councils' cling:

(1) The non re-provision of 2.7ha of rugby pitches allegedly required by IBC under Policy DM5; and

(2) an alleged failure in terms of typology (not quantum) of open space against IBC Policy DM6.

203. In this context it is ironic that the "Alternative Scheme" presented by the Councils performs less well than the appeal scheme. It too makes no provision for replacement pitches under DM5. It has a qualitative and quantitative failure against DM6. It fails both policies (on the Councils' case) while only delivering 599 dwellings, against the appeal scheme achieving 660.

204. But, in truth, it is respectfully submitted that taking the Council's case on DM5 and DM6 at its highest, these two "failures" if they be such (see submission above) cannot rationally be said to outweigh the sum of the agreed benefits set out above, let alone "significantly and demonstrably".

205. On either the "tilted" or "flat" balance, the Appellants respectfully submit that the planning balance falls overwhelmingly in favour of allowing the appeals and, therefore, the delivery of this allocated site.

Conclusion

206. For the reasons given above, the Appellants submit that the Appeal Scheme is in accordance with both Authorities' development plans and the Neighbourhood Plan, that the benefits of the proposal overwhelmingly outweigh the negatives, and that the appeals should therefore be allowed.

207. To the extent that the Inspector considers that there is non-compliance with IBC Policy DM5 or DM6 arising from the open space provision or replacement provision, we respectfully submit that any non-compliance would not significantly and demonstrably outweigh the many (agreed) benefits of the Appeal Scheme.

208. Therefore, on either basis, the Appellants invite the Inspector to allow the appeals, in the public interest, thereby enabling the delivery of up to 660 homes and associated infrastructure on a plan-led site which both Authorities accept as suitable for this much-needed development.

CHRISTOPHER BOYLE KC

HARLEY RONAN

18th February 2025

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